

May 6, 2024

BY HAND DELIVERY

Kinney County Groundwater Conservation District Rules Committee
503 S. Ann Street
Brackettville, Texas 78832

Re: Proposed critical period management plan to protect Las Moras Springs, Las Moras Creek and the aquifer

Dear Sirs and Madams:

This letter responds to a request for an opinion as to the legal durability of the attached proposed critical period management plan to protect Las Moras Springs, Las Moras Creek and the aquifer (“proposed CPMP”).

The State of Texas has created groundwater conservation districts (“GCDs”) “to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions.” Tex. Water Code Ann. § 36.0015(b). These districts are the “state’s preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with” the provisions of Chapter 36 of the Water Code. *Id.* GCDs are created pursuant to article XVI, section 59, of the Texas Constitution: “There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment” of preserving, conserving, and developing the natural resources of the State. Tex. Const. art. XVI, § 59(b).

GCDs have powers to regulate both the quantity and quality of groundwater. Tex. Water Code Ann. §§ 36.001(8), 36.101(a), 36.113, 36.116(a), 36.123(b). Chapter 36 grants districts “broad authority to manage, conserve, and protect groundwater resources through rulemaking and permitting” within their jurisdiction. *Guitar Holding Co., LP v. Hudspeth Cnty. Underground Water Conservation Dist.*, 263 S.W.3d 910 (Tex. 2008); Tex. Water Code Ann. §§ 36.101(a), 36.113(a).

Districts are required to adopt a groundwater management plan and rules to implement the management plan and the powers and duties they have been granted under Chapter 36 and their organic acts. Tex. Water Code Ann. § 36.101, 36.1071. Section 36.101(a) provides authority to districts to “make and enforce rules . . . to provide for conserving, preserving, protecting, and recharging of the groundwater . . . in order to control subsidence, prevent degradation of water

quality, prevent waste, and to carry out the powers and duties provided by this chapter.”

Districts are required to adopt groundwater management plans to address drought conditions, which should be implemented through district rules. Tex. Water Code Ann. § 36.1071(a)(6), (f). Then, in considering permit applications, districts are required to consider whether granting aa application would be consistent with the district’s management plan. Tex. Water Code Ann. § 36.113(d)(4). In issuing permits, districts may require that permits include water conservation plans and drought contingency plans. Tex. Water Code Ann. §§ 36.113(c)(4), (7), 36.1131(b)(10).

The proposed CPMP for Las Moras Springs represents a reasonable, legal approach to address the District’s obligation to protect groundwater resources in the District. Tex. Water Code Ann. § 36.0015(b); Tex. Spec. Dist. Loc. Code Ann. § 8846.101. The proposed CPMP is consistent with the approach taken by other districts working to conserve and protect their groundwater resources, especially in light of droughts and climate change models.¹ The District should consider adoption of the proposed CPMP and incorporation of its requirements into its rules. In adopting a CPMP and rules, it will be important for the District to draft rules that articulate how the CPMP will work. The District should also require that permit holders adopt and implement conservation plans.

KEMP SMITH LLP



By: Deborah C. Trejo, Attorney

Enclosure

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¹ See, e.g., <https://haysgroundwater.com/drought-management>; <https://www.centraltexasgcd.org/groundwater-management/drought-management-plan/>; <https://www.edwardsaquifer.org/business-center/groundwater-permit-holder/critical-period-drought-management/>.