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August 6, 2009

Andrew S. Miller
Kemp Smith LLP
816 Congress Avenue, Suite 1150
Austin, Texas 78701-2443

Re: Petitions of G&J Ranch and Mesa Water LLP pursuant to TEX. WATER CODE ANN. §36.108(l) challenging DFCs adopted by the joint planning group for GMA 1

Dear Mr. Miller:

In your letter of July 22, 2009, on behalf of Hemphill County Underground Water Conservation District ("District") regarding the above matter, you ask the Texas Water Development Board ("TWDB") to dismiss the petitions filed with the District on July 15, 2009 and with the TWDB on July 17, 2009 as premature. For the reasons set out below, the TWDB treats the July 17 submissions as courtesy copies and therefore has no need to formally dismiss the "petitions".

As you point out, the GMA 1 joint planning group ("GMA 1") adopted Desired Future Conditions (DFCs) on July 7, 2009. Section 356.43 of TWDB rules states that the Board will review a petition when:

- (1) the petition conforms to the requirements of [chapter 356 of the TWDB's rules];
- (2) the districts have adopted their desired future conditions;
- (3) the petitioner has provided the districts . . . with a copy of the petition and supporting evidence . . . at least thirty (30) days prior to filing an appeal with the Board;
- (4) the substantive issues raised in the petition have not been previously reviewed by the Board; [and]
- (5) no more than one year has passed since the districts' adoption of the desired future conditions . . .

31 TEX. ADMIN. CODE §356.43(a). With the adoption of DFCs by GMA 1 on July 7, the second and fifth criteria have been met. But under §356.43(a)(3) the TWDB shall not review a petition until at least 30 days have passed since the petition is provided to the districts. Consequently, the TWDB will not consider as filed with the TWDB any petitions received from G&J Ranch or Mesa Water LP ("Petitioners") before August 14, 2009.

Our Mission

To provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas.

P.O. Box 13231 • 1700 N. Congress Avenue • Austin, Texas 78711-3231
Telephone (512) 463-7847 • Fax (512) 475-2053 • 1-800-RELAYTX (for the hearing impaired)
www.twdb.state.tx.us • info@twdb.state.tx.us

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The cover letter from Sprouse Shrader Smith P.C., enclosed with the July 15, 2009 filing, states that the attached petitions are notice copies and that petitions will be filed with the TWDB 30 days from receipt of the notice (or August 14, 2009, at the earliest). The TWDB takes this statement as reflecting the intent of the Petitioners merely to inform the TWDB. Therefore, the TWDB does not consider a petition appealing GMA 1's adopted DFCs suitable for review under Section 356.43 to have been filed with the TWDB at this time. Consequently, there is no need to dismiss the petitions that have been provided only for informational purposes.

In your letter you refer to both the adoption by GMA 1 of DFCs and the acceptance and approval of the DFCs by the TWDB as events that trigger the petition process. To clarify, Section 356.43(a) refers only to the adoption by the districts of DFCs. Acceptance or approval of the DFCs by the TWDB is not a prerequisite for the filing and review of a petition appealing the approval of a DFC.

Sincerely,



J. Kevin Ward
Executive Administrator

cc: Marvin W. Jones, Attorney for Petitioners
C.E. Williams, Panhandle Groundwater Conservation District
Steve Walthour, North Plains Groundwater Conservation District
Jim Conkwright, High Plains Underground Water Conservation District
Kenneth L. Petersen, General Counsel, TWDB
Robert Mace, Deputy Executive Administrator, Water Science and Conservation, TWDB
Rima Petrossian, Manager, Groundwater Technical Assistance, TWDB