

July 5, 2011



TEXAS CATTLE FEEDERS ASSOCIATION

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Mr. Jim Conkwright
Manager
High Plains Underground Water Conservation District No. 1
2930 Avenue Q
Lubbock, TX 79411-2499

Dear Mr. Conkwright:

Thank you for hosting the public meetings March 23-25, 2011 and the two public hearings on June 27, 2011. We appreciate the opportunity to submit oral and written comments on the second draft of the rules (draft dated June 6, 2011) being proposed by the High Plains Underground Water Conservation District No. 1 (HPWD).

Texas Cattle Feeders Association (TCFA) represents cattle feedyards and cattle feeders throughout the three-state region of Texas, Oklahoma and New Mexico. All combined, our 200 feedyard members produce approximately 30% of the nation's fed cattle. In the service area of the HPWD, TCFA represents more than 60 feedyards. These feedyards are located in Bailey, Castro, Cochran, Deaf Smith, Floyd, Hale, Lamb, Lubbock, Parmer, Randall and Swisher Counties—all of which would be subject to new requirements if the proposed rules are adopted by the HPWD Board.

General comments

- TCFA policy (last updated Jan. 2011) supports the rule of capture and believes that groundwater is the real, vested property of private landowners with limited, reasonable regulation, based on sound scientific principles, by locally elected groundwater conservation districts to ensure beneficial future use. Further, TCFA encourages application of proven water conservation practices and supports research to advance desalination and water reuse technologies.
- We appreciate the changes made by the HPWD in the second draft of the rules, including a phased-in approach for gradual reduction in the Allowable Production Rate; removal of the High Decline Area concept; removal of the moratorium on new water wells; and the addition of a water banking provision. At the same time, we urge the HPWD to continue to be open to additional revisions, especially in light of the current unprecedented drought we are experiencing today. It may be too optimistic for the region to attain a 1.25 acre-foot per acre per year limitation by 2016 and maintain the economic viability of the region.
- On-going and updated evaluations of the economic impact of the HPWD rules will provide valuable information to assess the real implications of new requirements. These economic evaluations should be made available to the public in draft form for review and comment.

- The second draft of the rules continues to favor non-contiguous tracts for municipalities. These provisions need to be equitably applied to all water users. Some feedyards have made significant investments to secure water for the future by procuring land and/or water rights and installing water piping, pumps, storage tanks, etc. Many of these tracts are non-contiguous and the HPWD rules need to recognize these existing circumstances. In addition, TCFA requests the HPWD not preclude feedyards from securing land and/or water rights that are non-contiguous to meet the future needs of an existing, expanding or new livestock operation.
- We encourage the HPWD to clearly recognize the regulatory obligations placed on entities that are permitted to operate by the Texas Commission on Environmental Quality (TCEQ). We request that provisions be included in the final rules to recognize that in some circumstances the HPWD may need to grant a waiver or exception for additional water use in order to satisfy regulatory provisions imposed by the TCEQ.
- As the HPWD develops a new penalty policy to implement and enforce the new rules, we request that the Board make the draft policy available for review and comment by the public.

Specific rule-by-rule comments

Rule 1 – Definitions

(l) Contiguous Controlled Acre

COMMENT: TCFA has several concerns with this definition, especially as it relates to the treatment of non-contiguous tracts of land and/or water rights that have been acquired by a feedyard. Feedyards have installed costly infrastructure to allow for the pumping, collection, transfer and distribution of water. Many of these tracts of land and/or water rights are not contiguous to the feedyard production area. We recommend that the HPWD allow for these tracts to be treated as “contiguous,” especially where water is needed for animals. In addition, TCFA requests the HPWD not preclude feedyards from securing land and/or water rights that are non-contiguous to meet the future needs of an existing, expanding or new livestock operation.

We also recommend the HPWD address those land areas that are owned/operated/controlled/lease/rented by more than one person and/or entity, yet the areas are managed as one production unit. We believe those areas should be considered “contiguous.”

(x) Livestock

COMMENT: Based on the draft definition proposed in the rule, it appears the HPWD wants to make it clear that Concentrated Animal Feeding Operations (CAFOs) are not eligible to claim “exempt well” status. TCFA understands this concern. However, water produced and supplied to a CAFO will already exceed the exempt well limitation of 25,000 gallons per day. We believe it is redundant to specifically create a definition of “livestock” to exclude AFOs and CAFOs. In addition, for purposes of other regulatory agency requirements, CAFOs and the livestock held at CAFOs are considered livestock. We request that the HPWD not create a new definition that will further complicate CAFOs’ ability to be considered “livestock,” especially when the concern appears to already be addressed by the definition of “exempt well.” TCFA urges the HPWD to delete the definition of “livestock.”

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(y) Livestock Use

COMMENT: TCFA recommends that this definition be rewritten to state, “ ‘Livestock or poultry use’ means the use of groundwater for the watering of livestock used in accordance with Section 7.1 of these rules.”

Rule 5.3 – Allowable Production Rate for Wells and Rule 5.4 – Allowable Production Rate for Municipalities and Public Water Systems

COMMENT: TCFA has several concerns with the new restrictions for “contiguous acres” being placed on all water user groups other than municipalities and public water systems, especially as it relates to the treatment of non-contiguous tracts of land and/or water rights that have been acquired by a feedyard. Feedyards have installed costly infrastructure and integrated well systems to allow for the pumping, collection, transfer and distribution of water. Many of these tracts of land and/or water rights are not contiguous to the feedyard production area. We recommend that the HPWD allow for these tracts to be treated as “contiguous,” especially where water is needed for animals. In addition, TCFA requests the HPWD not preclude feedyards from securing land and/or water rights that are non-contiguous to meet the future needs of an existing, expanding or new livestock operation.

We also recommend the HPWD address those land areas that are owned/operated/controlled/lease/rented by more than one person and/or entity, yet the areas are managed as one production unit. We believe those areas should be considered “contiguous.”

Thank you again for the opportunity to provide these comments.

Sincerely,



Ross Wilson
President & CEO