

RESOLUTION NO. 2010-854

RESOLUTION AMENDING THE DISINCENTIVE PERMIT FEE RATE

WHEREAS, Section 8801.161(a-1), Special District Local Laws Code, provides that the Board the board may establish a disincentive permit fee to serve as a regulatory tool by creating a disincentive to continued over-reliance on groundwater; and

WHEREAS, Section 8801.161(b), Special District Local Laws Code, provides that the rate of the fee collected by the Board shall be determined after a hearing held pursuant to the requirements of Section 8801.109, Special District Local Laws Code; and

WHEREAS, on February 10, 2010, at a regular meeting, the Board adopted Resolution No. 2010-852 calling a public hearing on March 10, 2010, at 10:00 a.m. at the office of the Subsidence District, 1660 West Bay Area Boulevard, Houston, Harris County, Texas, and notice of such hearing was duly given, delivered, mailed, published, and posted pursuant to Section 8801.110, Special District Local Laws Code; and

WHEREAS, in the case of *Beckendorff v. Harris-Galveston Coastal Subsidence District*, 558 S.W.2d 80 (Tex. Civ. App.--Houston [14th Dist.] 1977), *aff'd per curiam*, 563 S.W.2d 239 (Tex. 1978), the permit fees of the District were determined to be regulatory in nature in accordance with the District's regulatory purpose partly due to the fact that the District's permit fees are "intended to operate as an economic disincentive to groundwater withdrawal;" and

WHEREAS, the 1999 District Regulatory Plan adopted by the Board of Directors on April 14, 1999 calls for the establishment of a specific disincentive permit fee rate and sets forth the regulatory requirements related to the administration of the disincentive permit fee; and

WHEREAS, the Board of Directors now wishes to revise the disincentive fee to reflect increases in related cost factors and comparable alternative water supply rates.

City of Houston Water Rates (CoH)

The District is no longer limited when establishing the DF to no more than 110% of the City of Houston's highest rate charged for water. Although currently the highest rate charged by the City of Houston is \$5.27 per 1,000 gallons. In 2004 the wholesale water rate (basically the rate that GRP participants and purchasers are paying) was \$1.34 per 1,000 gallons for the minimum amount specified in their individual contracts. The City adds an additional amount for usage above the minimum amount specified (2004 = \$0.52/1,000gal). For 2009, the City's wholesale water rate was \$1.884/1,000gal. (2009 additional rate = \$0.611/1,000). The increase, just in the base rate from 2004 to 2009 was 40.6%. Applying that increase would increase the \$3.50 DF rate to **\$4.92** per 1,000 gallons. It should also be noted that the City of Houston is likely to increase their water rates in mid-2010, most likely based on a CPI adjustment.

Summary

The three methods described above, demonstrate a range of increases of \$0.44, \$0.84, and \$1.42. Using the CoH wholesale water rate as the primary index, an increase in the 2004 DF rate of \$3.50 per 1,000 gallons to **\$5.00** per 1,000 gallons seems justified.

It should also be noted that the calculations the District uses for computing a DF are based on 80% of the permittees total water demand (90% within Area 1). For ease of operations, many of the Authorities, including the City of Houston adjust their rates to be multiplied against 100% of total water demand. By doing this they simplify their calculation to the formula "meter reading X water rate." Directly comparing rates is not always a straight comparison.

Item F

Harris-Galveston Subsidence District Report and Recommendations on the Disincentive Fee

History

HGSD adopted the Disincentive Fee rate December 1999 to go into effect for Area 1 and 2 permittees in 2001 and Area 3 permittees in 2003. The rate was established at \$3.00 per 1,000 gallons and charged against groundwater use in excess of 20% of total water demand (10% for Area 1 permittees). The fee was established based on the cost difference between the lowest groundwater cost (\$.20) and the highest surface water cost (\$2.59) and then an incentive factor of 25% (\$.60) was added, bringing the Disincentive Fee rate to \$2.99, rounded to \$3.00 per 1,000 gallons.

In 2004, the HGSD Board authorized the DF rate to be increased from \$3.00/1,000 gal. to \$3.50/1,000 gal. based on a review of three indices, updated in the following text.

It is clear that the DF has provided adequate incentives for compliance thus far, but it has been five years since the Disincentive Fee was reviewed and updated and a review of the DF is well merited. We have taken several different items into account in our review of the DF rate: Consumer Price Index, US Army Corp of Engineers Civil Works Construction Cost Index System, and the City of Houston water rate structure. All three indices were updated based on a 2004 start date and compared to the latest data available for 2009.

Consumer Price Index (CPI)

Since the end of 2004, annual general inflation has ranged from -0.2% to 4.2%. The CPI base period for the Houston-Galveston-Brazoria, TX region is 1982-1984 and is set at 100. Using the CPI of 170.0 for December 2004 and the CPI of 191.608 for the October 2009, general consumer costs have risen by 12.7%. By applying the CPI increase from the end of 2004 to October of 2009, the \$3.50 DF rate would be increased to **\$3.94** per 1,000 gallons.

US Army Corp of Engineers Civil Works Construction Cost Index System (CWCCIS)

The most recently released CWCCIS tables are revised through September, 2009 but estimate quarterly costs through the 4th quarter 2025. The CWCCIS breaks costs into several categories. For this review we have used the following two categories 1) Buildings, Grounds & Utilities and 2) Permanent Operating Equipment. Both categories however have the same cost increases from 2004 to 2009. The CWCCIS base year is 1967 at \$100. For September, 2004 the cost factor was \$563.78. For September, 2009, the last actual numbers available, the cost factor was \$698.75. Therefore, by applying the CWCCIS cost adjustments from 2004 to 2009 (a 23.9% increase), the \$3.50 DF rate would become **\$4.34** per 1,000 gallons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HARRIS-GALVESTON SUBSIDENCE DISTRICT THAT:

1. All statutory requirements and conditions for the establishment of a disincentive permit fee have been met by the Board.
2. The Board of Directors hereby establishes a disincentive permit fee rate of \$5.00 per thousand gallons of authorized groundwater withdrawal.
3. The disincentive permit fee rate is to be implemented and applied in accordance with this Resolution, the requirements of the 1999 District Regulatory Plan or any subsequent amendment or re-adoption of that plan, and other applicable Board policies or resolutions.
4. Any funds collected from the disincentive permit fee shall be accounted for and maintained separately from other funds of the District unless otherwise directed by Board action.
5. Any funds collected from the disincentive permit fee shall be expended by Board resolution or policy in accordance with the regulatory purposes of the District.

AND IT IS SO ORDERED.

PASSED AND ADOPTED ON THIS THE 10th DAY OF MARCH, 2010.

HARRIS-GALVESTON SUBSIDENCE DISTRICT

BY: James C. Boy
Chairman

ATTEST:

[Signature]
Secretary