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ROBERT L. NICHOLS
STATE SENATOR

February 4, 2010

Mr. Gary Montgomery
President
San Jacinto River Authority
450 Gears Road, Suite 200
Houston, Texas 77067

Dear Mr. Montgomery:

I want to thank you and your staff for taking the time and initiative to educate the citizens of Montgomery County on the groundwater shortage problem. I am particularly appreciative of the numerous public meetings, educational campaigns, and willingness to meet with Montgomery County elected officials and residents as you lay out the San Jacinto River Authority's (SJRA) proposed solution. As you know, I have followed the development of this situation since before being sworn into the Texas Senate in 2007. SJRA has taken great strides to educate the public, and I applaud your efforts.

However, as I travel the district and visit with elected officials and community leaders, I have been asked some questions that need answers. Many individuals in Montgomery County have raised serious concerns about SJRA's contract with the City of Houston (Houston) and SJRA's Groundwater Reduction Plan (GRP) contracts. I think SJRA has a responsibility to the public in these matters, and I respectfully request answers to the following:

1. What is the public benefit, to the citizens in Montgomery County, of prohibiting a Large Volume Groundwater User (LVGU) from purchasing water from Houston, in any particular year, if the SJRA chooses not to use the entire balance of Houston's portion of Lake Conroe's yield?

Article II section 2.2 of the water sale contract between SJRA and City of Houston states:

"...absent the written consent of SJRA, Houston agrees not to sell, commit, or otherwise provide all or any portion of the Reserved Quantity (i) to a person or entity (other than Houston) subject to a groundwater reduction mandate imposed by the LSGCD, or (ii) a person or entity for a period extending beyond the calendar year for which the SJRA has provided the above statement of Noticed Quantity."

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The effective impact of this clause is that a LVGU must negotiate for Lake Conroe water with SJRA and SJRA only. While I support the idea of SJRA obtaining the Houston portion of water in Lake Conroe, I fail to see the public benefit of prohibiting a LVGU from obtaining this water if SJRA chooses not to use all of it.

The contract differentiates between Noticed Quantity and Reserved Quantity giving a clear indication that in certain years it is assumed there will be more water in Lake Conroe than what SJRA needs. I feel it is your responsibility, as a publically appointed body, to at least give LVGUs in Montgomery County the opportunity to negotiate with Houston for the balance of unclaimed water.

2. Under what circumstances would SJRA allow Houston to sell a portion of the unclaimed water to a LVGU in Montgomery County?

The contract indicates that SJRA may give written consent for Houston to sell water to a LVGU in Montgomery County. For the benefit of several of my concerned constituents, please explain a situation where a LVGU would be allowed to purchase Lake Conroe water from Houston.

3. What practical incentives exist in SJRA's GRP to implement significant water conservation projects?

At Judge Sadler's water summit last fall there seemed to be unanimous consent that water conservation should be of the utmost importance in any solution. Yet, as I understand it, your GRP contract creates a disincentive to LVGUs who would otherwise be willing to spend a considerable amount of money on water conservation projects such as indirect reuse.

Article III section 3.04 of SJRA's GRP contract states:

"Participant agrees that to the extent it earns any surface water conversion credits, groundwater reduction credits, or similar credits, as and if offered and issued by the Conservation District, that directly or indirectly result from the delivery of Water to Participant, such credits shall be transferred to the Authority for the benefit of all Participants at no cost."

My interpretation of this is that if a LVGU makes it through the significant hoops of getting the proper indirect reuse permits, the LVGU will have to share its conservation credits with all GRP participants. In my opinion this effectively takes away any incentive for a LVGU to invest time and money into an indirect reuse conservation project.

Coincidentally, if a LVGU does indeed go through the process of establishing a viable indirect reuse project, a LVGU must then get written approval from SJRA to implement the project.

Article IV section 4.12(c) states:

"Water shall not be subject to indirect reuse by Participant without the written consent of

the Authority, and then only upon terms and conditions the Authority deems favorable and appropriate"

Additionally, if a LVGU receives permission to do an indirect reuse project, the LVGU must still pay additional fees to SJRA. This is true even if their conservation project reduces their demand for surface water.

Article IV section 4.12(b) states:

"...unless specifically approved in writing by the Authority, any reduction in water demand of Participant resulting from such re-use of Water shall not serve to reduce the Contract Quantity"

I strongly believe we should encourage real conservation measures, in addition to household practices, and I fail to see where your GRP achieves that. Indirect reuse is a cost efficient way to achieve significant water conservation, and I find it concerning that SJRA's GRP practically denies the opportunity to do such a project.

4. Does SJRA support indirect reuse projects which allow communities to utilize excess water in Lake Conroe?

When Lake Conroe opened in 1973, its permitted annual yield was 100,000 acre/feet. This number was used long before there were any developments around Lake Conroe, and is a number I hear very often. However, since 1973 numerous communities and businesses have developed around the lake and subsequently discharge additional water into the lake. According to the Texas Commission Environmental Quality (TCEQ) 45 entities are permitted to discharge more than 14 million gallons of treated effluent into Lake Conroe every day.

I recently learned that SJRA now considers the treated discharge as part of Lake Conroe's yield. This discharge is nothing more than extra water being deposited into Lake Conroe on top of the lake's existing volume. By SJRA's own admission, nearly seven feet of water spills over the Conroe Dam in an average year.

Given the fact that lake communities are adding to the volume of Lake Conroe, and excess water is being spilled over the dam, I am hopeful that SJRA will work with these communities to help them reclaim their discharged effluent. I assume that SJRA would support any project that helps a community conserve water by granting them access to some of the added capacity in Lake Conroe.

Specifically, MUDs 8 and 9 have proposed a project which allows them the opportunity to reclaim their discharged groundwater in a short period of time. While they would need to purchase a small amount of water from SJRA, this is a very economical way to reduce their groundwater usage. I would hope that SJRA would be amenable to their permit proceeding at least through the TCEQ's cursory review for administrative completeness. By reclaiming their own discharged water, this project should have little to no impact on the yield of Lake Conroe.

I spoke to officials at the Texas Water Development board and they assure me this is a common practice throughout the state. In fact, I believe this type of project would help many communities achieve the Lone Star Groundwater Conservation District's (LSGCD) groundwater reduction mandate in the same way a surface water pipe system would help other parts of Montgomery County.

In my opinion, this type of water conservation is what we should encourage in Montgomery County.

5. Does SJRA encourage the exploration of options besides the SJRA's GRP?

Recently I learned that an engineering firm is exploring the possibility of mining brackish water for a Montgomery County LVGU. I have publically encouraged the evaluation of all options, including surface water conversion, and hope that SJRA would also encourage all ideas to be explored. It is common knowledge that Lake Conroe cannot serve Montgomery County's needs in perpetuity; we must look at other options besides surface water conversion.

6. What studies have been done to predict the economic impact of lower lake levels?

No one debates that Lake Conroe was originally built as a storage reservoir, but some time between 1973 and 2010 thousands of families and businesses moved in around the lake. According to the county appraiser, lake area homes and businesses account for more than \$4.2 billion in total assessed value. This figure does not include sales tax revenues or economic development opportunities associated with Lake Conroe. This number cannot be ignored.

While I support using surface water out of Lake Conroe, I think we all have a responsibility to study the economic impact this project will have on lake areas communities and the county as a whole.

7. Would the SJRA consider selling surface water to an entity not participating in its GRP?

I believe any successful plan is one that gives LVGUs options they can choose for themselves. However, it seems that as soon as options are evaluated, they are taken off the table. The practical effect is that everyone must sign SJRA's GRP with no other options. It is my understanding that SJRA is the largest groundwater user in the county and would therefore be the largest beneficiary of the plan which reduces groundwater usage and spreads the cost among unequal beneficiaries. There may be other entities in Montgomery County willing to build their own system and who are more accountable to their constituencies. These entities should be able to explore their own options.

SJRA controls the only source of surface water in Montgomery County, is the county's largest user of groundwater, and seems unwilling to sell water to other LVGUs. This makes SJRA the seller, user, and effective controller of water in Montgomery County. Additionally, as I understand it, the terms of SJRA's GRP are effective in perpetuity.

While I acknowledge that the LSGCD has the ultimate legal authority over the county's

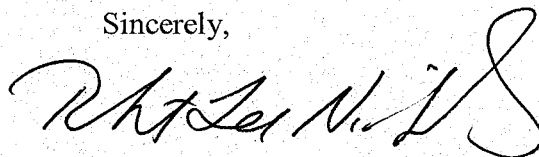
groundwater supply, the SJRA, from a perceived point of view, would have a monopoly over all water in Montgomery County. Governor Perry appointed your board members to be stewards of a public resource. However, it seems SJRA is only interested in building its customer base. Unless other options are made available to Montgomery County LVGUs, SJRA will have control of water that is unprecedented in Texas.

If I am incorrect in this assessment, please describe to me a circumstance in which SJRA would be willing to sell water to a LVGU in the same fashion SJRA will be selling water to itself to meet LSGCD's groundwater reduction mandate.

In conclusion, you can see there are numerous concerns about the way SJRA's plan is proceeding. These and other questions have been raised as I travel throughout Montgomery County. I am hopeful you can address the issues presented in this letter.

I appreciate the hard work you and your staff do. We have come a long way in the past few years to address this very important situation. I have confidence that we can address these and other concerns in the community.

Sincerely,



Robert L. Nichols
State Senator

cc: Governor Rick Perry
Lt. Governor David Dewhurst
Congressman Kevin Brady
Senator Tommy Williams
Representative Brandon Creighton
Representative Rob Eissler
Representative John Otto
Montgomery County Judge and Commissioners Court
City of Conroe Mayor and City Council
City of Cut-n-Shoot Mayor and City Council
City of Magnolia Mayor and City Council
City of Montgomery Mayor and City Council
City of Panorama Mayor and City Council
City of Stagecoach Mayor and City Council
City of Willis Mayor and City Council
San Jacinto River Authority Board of Directors
Lone Star Groundwater Conservation District Board of Directors
Texas Water Development Board
Texas Commission on Environmental Quality