Barton Springs
Edwards Aquifer
CONSERVATION DISTRICT

October 18, 2016

The Honorable Lyle Larson
Texas House of Representatives
Chairman, Subcommittee on Special Water Districts
P.O. Box 2910
Austin, Texas 78768-2910

Re: District Response to Public Comments Provided by Mr. Greg LaMantia at the September 21, 2016 Hearing of the Natural Resources Subcommittee on Special Water Districts in Del Rio, Texas

Dear Chairman Larson,

As General Manager of the Barton Springs/Edwards Aquifer Conservation District (District), I would like to express appreciation for your attention to water resources management in Texas. Your leadership on this matter and your record on addressing the state's existing and future water supply challenges have been integral to bringing the necessary attention to these very important issues.

With regard to the work of your subcommittee, the District was made aware of the public comments of Mr. Greg LaMantia, representing Needmore Ranch, during the hearing in Del Rio on September 21, 2016, which was focused entirely on his experience with our District in obtaining a permit for an existing well on his property. In providing his comments, Mr. LaMantia offered his point of view and expressed some frustration since his property was included with the expansion of the District's boundaries through the passage of H.B. 3405 in 2015. We appreciate that there is a learning curve associated with applying for and lawfully operating a well under a new permit in a newly annexed area; however, we disagree with some of the assertions made by Mr. LaMantia, and feel compelled to respond. The District has a very different perspective and asks that you consider the following.

Please note that Mr. LaMantia, through the Needmore Water LLC, has been issued a Temporary Production Permit in accordance with the provisions of H.B. 3405. As required by H.B. 3405, the Temporary Permit is a transitional mechanism that allows for the continued operation of an existing well without interruption while an application for conversion to a Regular Production Permit is in process. It is also important to note that this pending conversion application has not yet been considered by the District Board of Directors (Board). Therefore, this letter and enclosed response has not been reviewed by the Board. The points raised in Mr. LaMantia's

testimony are addressed point-by-point in the attached document. We respectfully request your consideration of the District's responses.

Please understand that the District recognizes that groundwater in Texas is a private property right that must be preserved and protected. Our District has established a well-respected reputation of developing policies on the basis of sound science. We are committed to maintaining this reputation through fair and equitable application of these science-based policies that balance our region's demand for groundwater with maintaining long-term availability for existing well owners and all others dependent on the resource. We only ask for some relatively short-term patience while we assist well owners in the newly annexed area with implementing the recent legislation to allow them to obtain and operate under permits that will ultimately serve to protect the private property rights of all well owners in the District.

The District appreciates the opportunity to provide our perspective on the comments presented by Mr. LaMantia. Further, we would very much appreciate the opportunity to provide testimony or comments to the committee at future hearings or meet with you in person if possible. We stand ready to assist you in any way we can, and we intend to continue to work cooperatively to assist Mr. LaMantia with the permitting process and the lawful operation of his well.

Please feel free to contact me by email at john@bseacd.org or by phone at (512) 282-8441 if you would be available to discuss this matter further.

Sincerely,

John T. Dupnik, P.G.
General Manager

CC: Members of the Subcommittee on Special Water Districts
The Honorable Jason Isaac, State Representative, District 45
The Honorable Donna Campbell, State Senator, District 25
The Honorable Kirk Watson, State Senator, District 14
The Honorable Judith Zaffirini, State Senator, District 21
The Honorable Donna Howard, State Representative, District 48
The Honorable Eddie Rodriguez, State Representative, District 51
The Honorable Paul Workman, State Representative, District 47
The Honorable Elliott Naishtat, State Representative, District 49
The Honorable John Cyrier, State Representative, District 17
Mr. Jon Schnautz, Office of the Speaker of the House
Ms. Buffy Barrett, Chief Clerk, Committee on Natural Resources

BSEACD Response to Public Comments Provided by Mr. Greg LaMantia at the Natural Resources Subcommittee on Special Water Districts Hearing on September 21, 2016 in Del Rio, Texas

The comments provided by Mr. LaMantia, representing Needmore River Ranch (Needmore), are summarized below in *italics* followed by the District's response.

Comment No. 1: *5,000 contiguous acres of land overnight went from (i) unregulated to regulated, and (ii) land got split between two districts. Result, now landowner is subject to paying "transport fees" to move and use his groundwater from one side of his ranch to the other. Land is contiguous.*

District Response: Needmore has not been assessed any transport fees and with the new rule change, will not be subject to transport permitting or payment of transport fees.

When H.B. 3405 was passed in 2015, the new boundary created an immediate transport situation at the Needmore property as defined by statute since the producing well was located within the District and was used to discharge water to a surface creek to be conveyed to an impoundment located outside of the District where it was being used primarily to support recreational boating and fishing in the impoundment, and wildlife management.

Without a request from Needmore, the District took the initiative to adopt new rules that specifically provide an exemption from transport permitting and transport fee requirements for Needmore and any other similarly-situated well owner.

Comment No. 2: *The District is imposing substantial substantive fees and other costs on the landowner beyond what is clearly authorized by statute, and beyond what is charged or imposed on other permittees even though the intent is to benefit/protect third-party permittees/landowners, not the impacted/affected landowner, e.g., monitoring wells.*

District Response: This is simply not true. The Board deliberately waived all application fees for all new Temporary Permit applicants including Needmore in an effort to smooth the transition of existing well owners from unregulated to permitted. Further, the Temporary Production Permit was issued to Needmore for all existing and planned agricultural uses (including wildlife management) and invoiced for production fees at the highly discounted agricultural rate of $0.003/$1,000 gallons for a total annual production fee of $552. For reference, an equivalent amount of permitted production at the rate paid by all other Temporary Permit holders ($0.17/$1,000 gallons) would be assessed at total annual production fee of $30,594. In other words, the amount charged to Needmore was assessed at a rate that is less than 2% of the rate charged to all other non-agricultural permit holders.

The production fee rates for both nonexempt agricultural and non-agricultural uses are clearly authorized in both the Chapter of the Texas Water Code (§36.205) and the District's enabling legislation (Special Districts Local Laws 8802.104 and 8802.1045). Therefore, all of the evidence is in direct contradiction to the allegation that the District is charging unauthorized fees or substantial fees beyond those charged to others.

Mr. LaMantia offered an example of permit requirements that would impose additional costs for monitoring an offsite well. Again, Needmore is operating under an existing Temporary Permit

with no such requirements. Any proposed conditions associated with a Regular Permit have not been considered by or imposed by the Board, therefore, any related discussion is premature.

Comment No. 3. *The District has portrayed a permit application for approximately 895 ac-ft/year for agricultural use on 5,000 acres as presumptively going to have an "unreasonable negative impact" on neighboring permittees/landowners. The potential for "negative impact" is statutorily prescribed. It is not founded on any real science. The District is primarily relying upon a hypothetical model (Theis Equation) that does not acknowledge the existence of recharge to the aquifer either from rainfall or lateral recharge from storage of other aquifers or areas of the same aquifer.*

District Response: This comment was evidently referencing the Needmore application to convert the Temporary Permit to a Regular Permit under the H.B. 3405 process based on the results of an aquifer test conducted to support the application. Please recognize that it would be premature to discuss the review and findings of a specific application that has not yet been presented or considered by the District Board. In terms of the general policy, however, the District has recently adopted a permitting framework through new rules that prescribes a scientific evaluation of the potential impacts of a proposed large-scale pumping project on existing wells and the aquifer using aquifer-test data and best available science/analytical tools (See rule excerpt attached). Conceptually, the permitting process would involve prescribing conditions for requested pumping with potential to cause unreasonable impacts, as determined by the scientific evaluation, which would be triggered by actual measured aquifer conditions, not modeled or "hypothetical," as described by Mr. LaMantia.

The District staff has been closely coordinating with Mr. LaMantia's attorney and consultant on the review of the Needmore application and the proposed permit terms and anticipated staff recommendations. This characterization of the District's permitting approach is somewhat surprising as it is completely contradictory to communications with Mr. LaMantia's representatives where they have expressed appreciation to the District on behalf of Mr. LaMantia for developing this permitting framework and applying a permitting concept that is based on "reliance upon science and actual measured data."

Finally, the District takes exception to the portrayal of the District's use of analytical models as being "not founded on any real science." Absent a numerical model, the application of analytical models using the Theis Equation, a well-established analytical tool and hydrogeological equation, to predict the effects of pumping is an accepted methodology (including by the TCEQ for groundwater availability demonstrations) and standard practice for any competent hydrogeologist. To indicate otherwise ignores the best available science in the field of hydrogeology and is not founded on any credible basis.

Comment No. 4. *Imposition of special conditions that are not uniformly applied or imposed on other permittees. Focus appears to be on what are perceived to be "large permits" defined by the District to be permits authorizing production of greater than 2,000,000 gallons per year.*

District Response: Again, this comment appears to be referencing the District staff's review of the Needmore application which is ongoing and has not been presented or considered by the District Board. As such, any discussion of this specific application is premature.

As a general policy, however, there is a well-established precedent for stair-stepping or tiering regulatory requirements to scale with the magnitude of the project and the potential for impacts. The District has established rules and aquifer testing guidelines with defined tiers and increasing degrees of required information and testing requirements to be proportionate to the increasing degree of potential impacts associated with larger-scale pumping projects. These requirements are uniformly applied to all permit applications on the basis of the amount of pumping requested and are essential to avoiding unreasonable impacts to existing well owners and their private property rights.

Permit conditions are developed consistent with the District's permitting policy and the scientific evaluation of the supporting aquifer test and potential for unreasonable impacts to the aquifer and existing wells. The District relies on aquifer testing to evaluate each individual application to reflect the highly variable conditions of the Edwards and Trinity Aquifers in the District and the variable responses to pumping. To apply a one-size-fits-all approach would be much easier but simply does not work with these aquifers.

Comment No. 5. *Notwithstanding statutory prohibition in Section 8802.106 on exempting wells capable of pumping less than 10,000 gpd the District "exempted" by rule, without making any investigation of whether they meet the statutory criteria, hundreds of permits simply because their primary use in purportedly domestic and livestock.*

District Response: There is a long-standing historical precedent for establishing exemptions for certain domestic and livestock groundwater uses. Such exemptions are provided in the Texas Water Code and enabling legislation of individual Groundwater Conservation Districts (GCDs) and are also commonly recognized in other states and international water law. These exemptions are established in state law to reflect a minimum set of criteria for certain wells that cannot be required to obtain a permit for operation. GCDs have the authority and discretion to expand these exemption criteria beyond statutory minimum dependent on the circumstances specific to each individual GCD.

The District Board made a decision to expand the exemption criteria to allow existing low production domestic wells that would not otherwise have met the minimum lot size criterion (>10 acres) in the newly annexed area to be exempt from permitting. All such wells are required to be registered. The Board allowed this expanded permit exemption consistent with the effort to provide a smooth transition for existing well owners in the newly annexed area. It is not uncommon for a newly established area in a GCD to allow such exemptions to facilitate start up efforts. Further, it is not practical or efficient to expend District resources to require permits and metering for hundreds of low capacity/low production residential wells.

BSEACD Rule Excerpt: 3-1.4.G. (emphasis added)

Adopted: April 28, 2016

G. Applications found to have potential for unreasonable impacts.

1. Policy. The District seeks to manage total groundwater production on a long-term basis while avoiding the occurrence of unreasonable impacts. The preferred approach to achieve this objective is through an evaluation of the potential for unreasonable impacts using the best available science to anticipate such impacts, monitoring and data collection to measure the actual impacts on the aquifer(s) over time once pumping commences, and prescribed response measures to be triggered by defined aquifer conditions and implemented to avoid unreasonable impacts. Mitigation, if agreed to by the applicant, shall be reserved and implemented only after all reasonable preemptive avoidance measures have been exhausted and shall serve as a contingency for the occurrence of unreasonable impacts that are unanticipated and unavoidable through reasonable measures