Barton Springs Edwards Aquifer
CONSERVATION DISTRICT

October 19, 2015

Sent via certified mail and email

Edmund R. McCarthy
Jackson, Sjoberg, McCarthy & Townsend, LLP
711 West 7th Street
Austin, TX 78701

RE: Temporary Production Permit for Needmore Water LLC

Dear Mr. McCarthy:

The purpose of this letter is to transmit the Temporary Production Permit for Needmore Water LLC's (Needmore) "Well D" issued by the Barton Springs Edwards Aquifer Conservation District (District). The District has designated the well for Agricultural Livestock use and is initially setting the authorized withdrawal volume of Well D at 179,965,440 gallons with a special condition prohibiting operation of the well based on evidence of damage to the well and its current inoperable condition. This letter describes the basis for the permit terms, requests additional action by Needmore related to satisfying the special condition, and requests a meeting with you.

I. Maximum Production Capacity

The District has evidence indicating that Well D is damaged/deteriorated and incapable of producing any groundwater at this time. In addition, the 887 acre-feet requested in the application does not appear feasible, and therefore does not meet the District's interpretation of the meaning of the term "maximum production capacity".

Although, no standard definition of "Maximum Production Capacity" of a well can be found in the technical literature. The term is similar to *well yield*, which is the volume of water per unit of time discharged from a well (Driscoll, 1986). The well yield is calculated when the "pumping" water level in the well stabilizes (Todd and Mayes, 2005). Inherent to any well yield or well capacity definition is the concept that no harm will occur to the well or pump during the long-term operation of the well, and the yield is practical and feasible. Since this term may apply to long-term (annual) permitting considerations, the definition needs to be firmly rooted in data, and not speculative or theoretical estimates. Further, the term needs to represent the practical limitations of an actual operating well, realistic pumping durations, and time needed for recovery. On the basis of these practical considerations, the General Manager interprets the meaning of the term "maximum production capacity" as follows:

> ***Maximum Production Capacity:*** *The amount of water that can be produced from a well completed in compliance with applicable well construction standards that: 1) achieves a stable pumping level and 2) will not cause adverse effects to the pump or well after long-term operation. The amount may be based on a 36-hour pump test and considers the practical operation duration as 80% of the annual permit term. Inherent to this definition is the correct design of the pump (size, efficiency) for the given well construction and conservative aquifer parameters (head, transmissivity).*

Pump test information submitted with the application indicated an actual pumping rate of 428 gpm and a test duration of approximately 22 hours. Although the testing was not conducted for the requisite 36-hour duration and did not achieve a stable pumping level, the General Manager has determined that, given the limited information, the appropriate authorized volume shall be calculated based on the actual pump test pumping rate of 428 gpm at 80% of the annual permit term. Accordingly, the calculated annual Temporary Production Permit volume is 179,965,440 gallons.

Please also note that the Temporary Production Permit does not authorize groundwater production until such time that the well has been brought into compliance with applicable rules related to well construction standards and maintaining the well in good non-deteriorated condition. The District requests that the applicant provide a plan describing how it will address the well condition as a required component of the Regular Permit application requirements.

II. Use Type

The relevant use type for issuance of the Temporary Production Permit is determined by evaluating the period of time Well D operated before the effective date of HB 3405 (June 19, 2015). The September 19, 2015 Needmore permit application indicated both general and agricultural use types prior to June 19, 2015, however, the information provided was insufficient to clearly designate the primary use type.

Supplemental information provided in response to the District's written requests and information obtained from the District's October 14, 2015 site visit indicated that the well was used solely to supplement a ponded water feature which is used primarily for recreation (swimming, fishing, and boating) and for wildlife. On the basis of this information, the District is initially characterizing the use type for Well D as Agricultural Livestock. Although the well is not used to support livestock on the Needmore Ranch, the definition of this use under District Rule 2.1 includes "wildlife management." District Rule 2.1 defines wildlife management to include "the watering and/or feeding of free-ranging, non-caged, wild animals under a management plan approved by TPWD, US Fish and Wildlife Service, or other governmental agency with authority to approve and regulate wildlife management plan." While you have confirmed the existence of a plan, the District has not received a copy of the plan. Please provide a copy of the "active plan" referenced in the October 15, 2015 within 30 days of the date of this letter. The District requires a copy of the plan as it processes the Regular Permit.

III. Transport of Groundwater Outside the District

The pond supplied by Well D is located outside the boundaries of the District. The District is in the process of reviewing whether transport of water from Well D outside the District is authorized under HB 3405 or whether a transport permit and fees are required as would be the case under existing rules applicable to permit holders. Additional guidance will be provided to Needmore during the processing of the Regular Permit.

IV. Meeting

The District requests a meeting with you and Mr. Khorzad to discuss the issues identified by the District, including providing additional information on well use, transport of water outside the District, and maximum production capacity.

Finally, the District appreciates the responses demonstrated by you and Mr. Khorzad, including arranging a site visit, during the short time frame required to process the Temporary Production Permit.

References

Driscoll, F.G., 1986, Groundwater and Wells, 2nd edition Johnson Screens, St. Paul Mn, 1089 p.

Todd, D.K., and L.W. Mays, 2005, Groundwater Hydrology, 3rd edition, John Wiley & Sons, Inc. 636 p.

Sincerely,

John T. Dupnik, P.G.
General Manager

cc:

Wet Rock Groundwater Services, LLC
317 Ranch Rd 620 South, Suite 203
Austin, TX 78734

Needmore Water LLC
3900 N. McColl Rd
McAllen, TX 78501

Bill Dugat
Bickerstaff Heath Delgado Acosta LLP
3711 S. Mo-Pac, Suite 300
Austin, TX 78746

Barton Springs/Edwards Aquifer Conservation District

512-282-8441 ~ 1124 Regal Row Austin, TX 78748 ~ www.bseacd.org

Temporary Production Permit
Permit No: T015-10-2015

Owner:	Needmore Water LLC (Greg LaMantia)
System:	Needmore Water LLC (Greg LaMantia)
Mailing Address:	3900 N. McColl Rd McAllen, TX 78501
Physical Well Address:	Fulton Ranch Rd Wimberley, TX 78676
Management Zone:	Upper/Middle Trinity Management Zone
Aquifer:	Upper/Middle Trinity Aquifer
Number of Wells:	1

Terms: This permit is effective for the period of time between June 19, 2015 and the date that the District makes a final, appealable action on the issuance of a Regular Production Permit in accordance with District Rule 3-1.55.2.C.

This permit expires on August 31st of each year and, unless a Regular Production permit has been issued, is automatically renewed on September 1st of each year, granted that the permittee:

1. Operates the well consistent with the authorization in the permit application;
2. Timely pays all fees; and
3. Complies with all District rules, orders, permit conditions, permit requirements and terms of this permit.

Failure to pay fees, report pumpage, or abide by Rules, Bylaws, or Special Provisions of issuance, will subject this Permit to revocation. Permittee is subject to the enforcement mechanisms available to the District for any violation of applicable District Rules or Bylaws.

Permitted Groundwater Withdrawal: Only that amount of water which is required without being wasteful during the term of this Permit, but not to exceed: **179,965,440** gallons/year

Special Provisions: The permitted groundwater withdrawal volume is not authorized for production until 1) the Permittee has provided adequate documentation that the well has been repaired in accordance with applicable well construction standards, 2) the well is in good, non-deteriorated condition in accordance with Permit Condition #15 of this Permit, and 3) the well complies with the applicable requirements of 16 TAC 76.1004 and with District Rule 3-5.

Issued By: _____ **This Permit is hereby issued on:** 10/19/2015
John Dupnik, P.G., BSEACD General Manager

PERMIT CONDITIONS AND REQUIREMENTS

All permits are granted subject to the Rules, regulations, Orders, special provisions, and other requirements of the Board, and the laws of the State of Texas. In addition, each permit issued shall be subject to the following conditions and requirements:

1. The Temporary Production Permit is granted in accordance with the provisions of H.B. 3405 of the 84th Texas Legislature in conjunction with Chapter 36, Texas Water Code, and the Rules, regulations and Orders of the District and acceptance of the permit constitutes an acknowledgment and agreement that the permittee will comply with all the terms, provisions, conditions, requirements, limitations, and restrictions embodied in the permit and with the Rules, regulations, and Orders of the District applicable to permit holders.

2. The Temporary Permit does not confer any rights and privileges to the well owner or permittee other than those set forth in this Section.

3. Any person who relies on the Temporary Permit to drill, operate, or engage in other activities associated with a water well assumes the risk that the District may grant or deny, wholly or partly, the permit application when the District takes final action after notice and hearing to issue a Regular Production Permit pursuant to the application.

4. A functioning water meter must be installed within 30 days of the issuance of the Temporary Permit pursuant to Rule 3-2.

5. The permittee shall keep accurate records and meter readings, on a monthly basis, of the amount of groundwater withdrawn, the purpose of the withdrawal. Such records shall be submitted to the District office on a monthly basis, unless some other reporting period is specified in the permit, even if there is zero pumpage or transport for the time period and shall also be available for inspection at the permittee's principal place of business by District representatives. Immediate written notice shall be given to the District in the event a withdrawal of water exceeds the quantity authorized by the permit or rules.

6. Production shall not exceed the permitted volume authorized in the Temporary Production Permit.

7. The produced water shall be dedicated to beneficial use at all times.

8. The Temporary Production permittee is not required to comply with provisions of Rule 3-7 related to temporary drought curtailments.

9. The drilling and operation of the well for the authorized use shall be conducted in such a manner as to avoid waste, pollution, or harm to the aquifer.

10. The well site shall be accessible to District representatives for inspection during normal business hours and during emergencies. The permittee agrees to cooperate fully in any reasonable inspection of the well site related monitoring or sampling by District representatives. The well owner shall provide a 24-hour emergency contact to the District.

11. The application pursuant to which the permit has been issued is incorporated herein, and the permit is granted on the basis of and contingent upon the accuracy of the information

supplied in that application and in any amendments thereof. A finding that false information has been supplied shall be grounds for immediate revocation of the permit. In the event of conflict between the provisions of the permit and the contents of the application, the provisions of the permit shall prevail.

12. Violation of the permit's terms, conditions, and requirements, including pumping amounts in excess of authorized withdrawal, shall be punishable by civil penalties as provided by Special District Local Laws Code Chapter 8802 and the District Rules.

13. The Temporary Permit holder shall timely pay to the District all administrative fees and fees related to the amount of groundwater authorized to be produced pursuant to the Temporary Permit and District Rule 3-1.16 related to Fees and Payment of Fees.

14. Violation of the permit's terms, conditions, or requirements including pumping amounts in excess of authorized withdrawal shall be punishable by civil penalties as provided by Special District Local Laws Code Chapter 8802 and the District Rules.

15. The well authorized by this Permit must be maintained in good, non-deteriorated condition in compliance with District Rule 5 related to the District well construction standard.