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EDMOND R. McCARTHY, III

December 19, 2016

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Tennessee

Barton Springs Edwards Aquifer Conservation District  
Attn: John Dupnik, General Manager  
1124 Regal Row  
Austin, Texas 78748

*via e-mail &  
Regular US Mail*

Re: Needmore Water LLC's Regular Permit pursuant to HB 3405

Dear John:

I am writing in response to your letter dated November 15, 2016, declaring "administrative complete" Needmore Water LLC's application for a Regular Permit pursuant to HB 3405. In your letter, *inter alia*, you provide that "[Needmore] must comply with District Rule 4-9.13 to request a hearing on the application."

My response is intended to be responsive to your letter; however, I wish to point out the following matters based upon the plain language of HB 3405 (Act of June 19, 2016, 84<sup>th</sup> Leg. R.S. Ch. 975, 2016 Tex. Gen. Laws 3426-3429):

- A. HB 3405 requires the District provide notice and conduct a hearing on the issuance of the Regular Permit. Act of June 19, 2016, 84<sup>th</sup> Leg. R.S. Ch. 975, §4(e), 2016 Tex. Gen. Laws 3427.
- B. Following the hearing, HB 3405 mandates that the District:

shall issue an order granting the regular permit authorizing groundwater production in the amount set forth in the temporary permit unless the district finds that authorizing groundwater production in the amount set forth in the temporary permit will cause:

- (1) a failure to achieve the applicable adopted desired future conditions for the aquifer; or
- (2) an unreasonable impact on existing wells.

- C. The hearing described in Section 4.(e)<sup>1</sup> is not a “contested case hearing.” Additionally, nowhere in HB 3405 is there any authorization for any person or entity, other than the District and the Applicant, to participate as “parties” to the hearing. I would like to visit with you and Bill Dugat about this.
- D. If the District’s order on Needmore’s Regular Permit is to grant an amount less than that applied for, then Needmore’s remedy is to request a hearing at SOAH to contest the District’s order. That hearing does not arise until after the District acts on the application.
- E. As I have previously advised the District, the rules promulgated and adopted months after the date Needmore filed is applications for Temporary and Regular Permits under HB 3405 do not apply to the Needmore application. Chapter 245, Tex. Local Gov’t Code; see *Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d. 945-948 (Tex. 1940); *South Plains La Mesa Railroad v. High Plains UWD No. 1*, 52 S.W.3d. 770, 780 (Tex. App.-Amarillo 2001, no writ). In order to save paper, I am incorporating my September 1, 2016, and all of the objections and legal arguments presented to the District therein here by reference as if the same were recited in there entirety. I am happy to provide additional copies of that letter and the referenced authorities if you like.

Notwithstanding the foregoing, and without waiving any of the objections expressed herein, including in my prior cited correspondence, or otherwise available to Needmore; in the alternative, please consider this letter as Needmore’s:

- (i) request that the District conduct the hearing to issue and order granting Needmore’s Regular Permit in accordance with Section 4.(e)<sup>2</sup>;
- (ii) objection to the issuance of a Regular Permit for less than the full amount applied for;
- (iii) objection to the issuance of a Regular Permit that includes any additional permit specific special conditions, including the proposed special conditions described in your November 15, 2016, letter;
- (iv) objection to any other proposed modification of the volume of groundwater production requested by Needmore pursuant to HB 3405 and its unambiguous definition of “maximum production capacity”; and
- (v) request for a contested case hearing pursuant to Section 4.(g) of HB 3405<sup>3</sup> in the event that the District enters an order issuing a Regular Permit for less than

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<sup>1</sup> Act of June 19, 2016, 84<sup>th</sup> Leg. R.S. Ch. 975, §4(e), 2016 Tex. Gen. Laws 3427

<sup>2</sup> Act of June 19, 2016, 84<sup>th</sup> Leg. R.S. Ch. 975, §4(e), 2016 Tex. Gen. Laws 3427

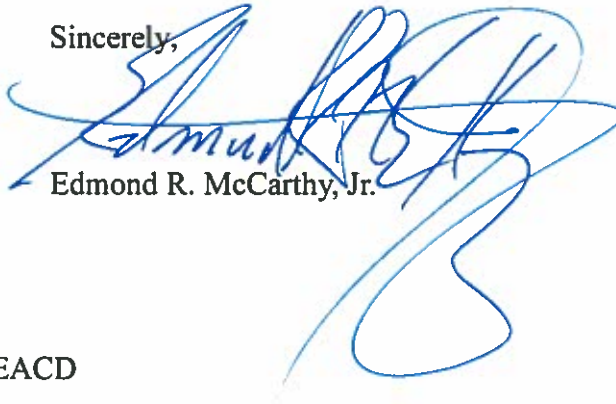
<sup>3</sup> Act of June 19, 2016, 84<sup>th</sup> Leg. R.S. Ch. 975, §4(e), 2016 Tex. Gen. Laws 3427

the maximum production capacity applied for free of permit specific special conditions.

Please confirm receipt of this letter. By copy of this letter I am providing the District's General Counsel, Bill Dugat, with this response.

Best wishes.

Sincerely,



Edmond R. McCarthy, Jr.

ERM/tn

cc: Bill Dugat, General Counsel, BSEACD  
Needmore Water LLC  
Kaveh Khorsad, P.G.