

Item 4

Board Discussions and Possible Actions

- d. Discussion and possible action related to procedural matters on the permit application for a Production Permit (Application) of Electro Purification LLC to authorize withdrawal of an annual permitted volume of approximately 912,500,000 gallons per year (2.5 MGD) of groundwater from the Trinity Aquifer for wholesale water supply.

The Board will consider the following:

- Timeline associated with processing of application;
- Written comments and requests for contested case hearing;
- Determination to conduct a contested case hearing;
- Requests that contested case hearing be conducted by and referral to the State Office of Administrative Hearings (SOAH);
- Deposit for and approval of contract with SOAH to conduct hearings;
- Date, time, location and who will conduct the preliminary hearing;
- Designation of presiding officer;
- Matters to be included in any referral to SOAH, including hearing location and cost allocations;
- Selection of special counsel; and,
- Other matters necessary to conduct future hearings(s) in connection with the Application.

Note: At this meeting, the Board of Directors will not conduct a hearing, determine party status, nor decide whether to grant or deny, in whole or part, the Application. The Board will consider the procedural steps identified above that relate to how, when and where the future hearings will be conducted. Adequate notice of the future hearings will be provided.

Vanessa Escobar

From: Tom Biggins <tb78619@gmail.com>
Sent: Saturday, June 23, 2018 1:48 PM
To: BSEACD
Cc: Bill Dugat; ed@ermlawfirm.com
Subject: Contested Case Request – Board Hearing Requested Electro Purification’s Groundwater Proposed Production Permit
Attachments: Contested Case.odt

Board of Directors

General Manager

Barton Springs Edwards Aquifer Conservation District

1124 Regal Row

Austin, Texas 78748

Re: Contested Case Request – Board Hearing Requested

Electro Purification’s Groundwater Proposed Production Permit

Dear BSEACD:

Pursuant to 4-9.13(B)(1), my name is Irene A. Biggins and my address is 601 Buckskin Pass, Driftwood, TX. I appreciate the opportunity to submit comments regarding EP’s proposed production permit.

I oppose the issuance of the proposed permit to Electro Purification. Consequently, I request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

I have standing to contest the proposed permit and should be a party. I own 6.34 acres of land within 2 miles of EP’s well field. The Trinity Aquifer, from which EP intends to pump, underlies my property. I rely on groundwater from the Trinity Aquifer for my total water supply needs. I have 1 well that is 210’-320’ deep.

If my well ceases to yield water, I will be without a source of water supply and my property values will plummet. 4-9.13(B)(2).

My husband and I are retired and on a fixed income. If EP is allowed to pump any amount of water, it would seriously dry up our well. We would not be able to sell our property or live on it. The drainage caused by pumping from EP's well field will result in the diminution and potential elimination of groundwater that is a valuable asset held by me and will decrease my property values. 4-9.13(B)(2)(3) & (5).

I own the groundwater beneath my land and have not transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP's well fields, which the District has authority to regulate. 4-9.13(B)(5).

Should EP amend its application and decrease the volume of groundwater it is requesting to an amount that will not drain the groundwater from beneath my land, I would not consider withdrawing my protest. 4-9.13(B)(4).

EP is an LLC, which means if the company files for bankruptcy none of the owners of the company could be held liable for ANY of the mitigation costs.

Below, please find my specific comments related to the District's proposed permit.

For more than 30 years, The Barton Springs Edwards Aquifer District (BSEACD) elected board of directors and its professional staff have adhered to their mission: conserving, preserving, protecting and recharging groundwater. In doing so, the BSEACD has worked to promote efficiency, prevent waste, and protect our natural resources and property owners.

601 Buckskin Pass, Driftwood, TX has a BSEACD registered well. Our well and property are within the two-mile limit as indicated by this study. We support the research, work and efforts made by the BSEACD and applaud the district for their transparency and efforts to accept comments from area property owners and the general public. As we proceed through this process, we urge the BSEACD to further study and evaluate the proposed conditionally phased permit based on significant issues in the following areas.

Studies, Historic Usage and Research –

- While the BSEACD has conducted research and data on this portion of the aquifer for this particular permit, more historic information is needed before any recommendation or action should be taken on this conditionally phased permit. For example, there is insufficient data and studies on interaction of groundwater between aquifers, recharge, fault lines, and permeability.

- The BSEACD board, staff and general manager to allocate funds and resources towards development of DFC (desired future conditions) methodology for the Trinity Aquifer.

- BSEACD should conduct a sustainable yield study on the Trinity Aquifer, just like they did for the Edwards Aquifer. This study will also help with future permit requests.
- Based on the pumping tests and the modeling in the BSEACD Evaluation Study and Statement of Position, the magnitude of the proposed EP wells will significantly decrease the yield and may end pumping of existing wells due to lower groundwater levels. Further evaluation of projected pumpage and additional monitor wells are needed for this evaluation.
- While the studies to date have focused on the impact of existing water wells within a 2-mile radius of the proposed EP wells, there is insufficient data and evaluations for those wells and properties immediately outside of this range.
- No precise information is provided on the total number of individual wells owners and the actual impact as not all of the private wells in this area are registered with the BSEACD – both within the 2-mile range and the immediate area outside of the 2-mile range.
- Water quality is as important as the water quantity in this region. The BSEACD needs to conduct more studies and analysis and evaluate the impact on water quality under this conditionally phased permit.

Conditional Permit Questions and Modifications –

- We would be in imminent danger of forest fires in our little neighborhood which would all but wipe us out in Rolling Oaks. Our sub division has many combustible areas which would spread very quickly. Will EP come in to help us? Loss of life?
- The Mitigation Plan is insufficient in its design and funding. EP or its successors need to be required to contribute to an escrow fund that is independently managed and directed. I think EP should be required to post a bond in the amount in excess of \$25k x number of well in possible impact area. However, this would not even cover mitigation costs in the event EP files for bankruptcy. This would tie mitigation up in court for years. Too much is being expected from landowners who will be hurt, rather than EP.

Why should it be alright for EP to pump my water out from under me and sell it for profit and leave me “high and dry” with no water? At my age I am opposed to anything that will endanger my “little piece of heaven” here in the Texas Hill Country. Please do not remove my natural resources and quality of life and give it away to profiteers. EP has a reputation and their underhanded motives have been historically proven. They are water thieves; nothing less and nothing more.

These issues and many others raise serious questions on the proposed EP conditionally phased permit. There is an inherent uncertainty in modeling for this type of phased permit due to the complex hydrology, insufficient historical data, and assessing the near term and long-term aspects of this plan. We sincerely request that the BSEACD conduct further studies and provide additional analysis that include water quality and quantity, mitigation, impact, enforcement, monitoring and protection on the proposed conditionally phased permit and allow for further review and public comment before a plan is presented to the BSEACD board.

Respectfully,

Thomas P and Irene A. Biggins

601 Buckskin Pass

Driftwood, TX 78619

tb78619@gmail.com

CC: Bill Dugat, Attorney for BSEACD

bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant

ed@ermlawfirm.com

June 25, 2018

Via email to: bseacd@bseacd.org

Board of Directors
General Manager
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

**Re: Contested Case Request – Board Hearing Requested
Electro Purification’s Groundwater Proposed Production Permit**

Dear BSEACD:

Pursuant to 4-9.13(B)(1), my name is Mary Louise (“Louie”) Bond, and my address is 1200 Todo Lane, Driftwood, TX 78619, a property I have owned and resided at for more than 35 years. I appreciate the opportunity to submit comments regarding EP’s proposed production permit.

I oppose the issuance of the proposed permit to Electro Purification. Consequently, I request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

I have standing to contest the proposed permit and should be a party. I own 7.11 acres of land within 1.5 miles of EP’s wellfield. The Trinity Aquifer, from which EP intends to pump, underlies my property. I rely on groundwater from the Trinity Aquifer for my water supply needs. I have one (1) well that is 333 feet deep.

If my well ceases to yield water, I will be without a source of water supply and my property values will plummet. 4-9.13(B)(2).

The drainage caused by pumping from EP’s wellfield will result in the diminution and potential elimination of groundwater that is a valuable asset held by me and will decrease my property values. 4-9.13(B)(2)(3) & (5).

I own the groundwater beneath my land and have not transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP’s wellfield, which the District has authority to regulate. 4-9.13(B)(5).

Should EP amend its application and decrease the volume of groundwater it is requesting to an amount that will not drain the groundwater from beneath my land, I would consider withdrawing my protest. 4-9.13(B)(4).

I adopt by reference the comments submitted by TESP. Below, please find my additional specific comments related to the District's proposed permit.

My most important comment! We need the BSEACD board, staff and general manager to allocate funds and resources towards development of DFC (desired future conditions) methodology for the Trinity Aquifer. BSEACD should conduct a sustainable yield study on the Trinity Aquifer, just like they did for the Edwards Aquifer. This study will also help with future permit requests. Without it, we're "guessing" about impact. If we wait or move more cautiously while the study continues, we'll be adopting a conservative approach that guarantees adequate clean water for all of us for decades to come.

Here are more overall comments about my recommendations:

- More monitor wells, and EP should pay for them. These wells should also be used as triggers for action. (More wells helps BSEACD catch impact/drawdown faster at all levels. They need to be arrayed at various distances and depths from the EP wells for a more complete picture of the aquifer here.) Most neighbors would be willing to offer up their wells as monitors.
- A baseline from all wells within the impact zone before pumping begins, and EP should pay for that. Level, flow, quality. (We can establish the status of all wells now so that we can prove impact without doubt later.)
- A fresh potable water supply ready to deliver if/when there is a problem with a well in the impact zone. (BSEACD should inspect this new process to be sure that EP can deliver water to affected parties within 24 hours of reporting. They should be prepared to deliver water until the case is resolved.)
- Mitigation should include wells at all levels in the impact zone. (If what BSEACD and EP claim is true about the upper levels being safe, then this should be easy to add. It makes us feel more secure, and from their perspective, they'll never have to administer it.)
- A phased approach is the safest, but we need more input from affected landowners before any new phase begins.
- Unforeseen factors like severe drought or modeling inaccuracy need to trigger more investigation by BSEACD before automatic renewal of the permit each year.
- The length of this permit should not extend beyond the accuracy of current modeling of the Trinity Aquifer. As modeling continues, scientists need to be able to adapt pumping to appropriate levels as new knowledge comes to light.
- Considering the pending Needmore permit, BSEACD should lower the level of Phase 1 to accommodate for another large user, perhaps in half to 0.25 MGD.
- Consider adding additional phases so that each increase of 0.5 MGD requires another Phase. Adding 1 MGD to the pumping could cause the aquifer to be damaged before triggers can be activated.
- Impact avoidance should be offered to more wells in the impact area, as determined by a more cautious approach to damage. Better for all involved to avoid than to go dry and mitigate.
- When mitigation by drilling deeper is offered, assurance of similar water quality should be mandated.
- Impact area well owners should be offered rainwater collection as an alternative to deeper drilling in mitigation and avoidance.
- EP should provide and pay for an educational communications program that keeps all neighbors with impacted wells (even beyond the 2-mile zone) informed about current volumes,

changes in phases, triggers, numbers of impacted wells, etc. Needs to be mailed to every address on a regular basis.

Here are some specific wording changes I support:

- GM Statement of Position (page 3) User Conservation Plan: “At this time, the maximum mandatory drought curtailment for Historic Middle Trinity Production Permits is 30% off the permitted pumpage volume.” What is a historic drought occurs? How can this limit be raised, if necessary?
- GM Statement of Position (page 4) Desired Future Conditions: “GMA 10 does not yet have sufficient Trinity data nor methods in place for determining compliance with the current expression of the DFC.” If you can’t determine compliance, you shouldn’t be able to issue a permit.
- GM Statement of Position (page 5) Desired Future Conditions: “The Hill Country Groundwater Availability Model (GAM) for the Trinity Aquifer was not extended to include GMA 10. Currently, no numerical models for calculating the MAG for the Trinity Aquifer are available in GMA 10 ... The TWDB has not updated and provided the District with an official MAG for the recently annexed “Shared Territory.” Again, BSEACD should not issue a permit that could result in a large drawdown without this key piece of information.
- GM Statement of Position (page 5) Long-Term Unreasonable Impacts: “Because of the limited historical data and modeling tools as described above, the District is unable to evaluate the long-term, regional components of the unreasonable impact definition for the final phases of the permit at this time.” Again, BSEACD should not issue a permit hatcould result in a large drawdown without this crucial information.
- GM Statement of Position, Appendix D: Not enough monitoring wells at all. Only one in Lower Glen Rose and it’s an EP well. The EP Western monitoring well is past the 2-mile mark. Only 4 non-EP Cow Creek wells in area, all in Rolling Oaks. Only one Upper Glen Rose well, and it’s in the EP field.
- GM Statement of Position, Appendix E: Why such a large gap between Phases I and II for the Cow Creek trigger: (500 to 660 feet)? When we talk about mitigation or impact avoidance by “drilling deeper”... what does that even mean for people near the bottom of Cow Creek or Lower Glen Rose? Water quality is sure to decrease dramatically.
- Proposed Special Provisions, Section 1. “Trigger”... why a 30-day average? That seems like a lengthy time to identify a problem. Would like to see that shortened to 7-day average.
- Proposed Special Provisions, Section 2. #8. CMP-Evaluation. There is no timeline outlined for this step. I recommend adding one, “to schedule a meeting within 10 days”
- Proposed Special Provisions, Section 2. #9. CMP-Revised Curtailments. Calls for curtailment to begin on “first day of month following notification” which seems arbitrary and uneven in some instances. Would prefer to change to “within seven days.”
- Proposed Special Provisions, Section 2. #11. Unreasonable Impacts. One item is “the degradation of groundwater quality in other wells such that the water is unusable or requires the installation of a treatment system for its intended purpose” and there is no methodology or standard for water quality testing/determination in this permit.
- Proposed Special Provisions, Section 2. #15. Permit Amendments - Effects of Other Pumping. We already know about the Needmore permit and that it will have an

additional impact, so I ask that you decrease your Phase I level to 0.25 MGD, and keep all phases at a more conservative increase of 0.5 MGD.

- Proposed Special Provisions, Section 2. #18. PWS Infrastructure. Gives three years from permit to pumping. Way too long to have up-to-date modeling reflected in the permit. Suggest revision to two years or re-evaluation before pumping initiates.
- Proposed Special Provisions, Section 4. “All applicable drought curtailments will apply.” Does this consider an historic drought occurring? I request that each Phase add only 0.5 MGD to prevent damage to wells and the aquifer, a more conservative approach.
- Proposed Special Provisions, Section 5. “...and upon request to adjacent well owners.” Should be changed to “and provided to well owners in the impact area.”
- Proposed Special Provisions, Section 8. Increase amounts to include more wells in the impact zone. Where will data from telemetry be available to the public? How many wells are covered by these provisions? Seems inadequate.
- Proposed Special Provisions, Appendix A, Section 2. I request more monitoring/index wells be used as triggers. Why only one well? What if there is an error or some type of malfunction. Scientific accuracy calls for several wells to measure drawdown for trigger curtailments.
- Proposed Special Provisions, Appendix A, Section 3. 30-day rolling average gives too much time for damaging drawdown, should be measure in a weekly average. Why no curtailment to Trigger 1 and only 20 percent to Trigger 2? The aquifer could get into trouble quickly with such a languid timeline. We need to pay closer attention to these stop signs as they are triggered.
- Proposed Special Provisions, Appendix B, Section 1, Part 2 Timeline. EP and BSEACD need to show that they have a complete list of landowners in the impact zone before any more notifications are due. Needs to be corroborated and inspected by neighborhoods and governmental agencies. Add Wimberley View to San Marcos Daily Record for publication, as it is the local news source for neighborhoods in the impact zone. Signs for neighborhoods should be large, attractive and legible. Public meeting sounds great, but what impact does public opinion have on moving forward with the next phase of production? How will it affect decision-making? Can it be spelled out in the permit?
- Proposed Special Provisions, Appendix B, Section 4, #4. Groundwater Production Zone. Since BSEACD scientists have concluded that there is some permeability between aquifer layers and some drawdown of the Upper and Middle Glen Rose can be expected, I request that these wells also qualify as “eligible” for avoidance actions and/or mitigation. After all, if (as EP claims) there is no connectivity, this will be perhaps unnecessary but could provide great assurance to the well owners in the impact zone. Also, BSEACD scientists have claimed that long-range modeling is not complete or accurate, so the permit should include any possible drawdown victims for future compensation if these wells are negatively impacted in water quality or quantity/level of flow.
- Proposed Special Provisions, Appendix C, Section 5, Step 1. The loss of water can be catastrophic to well owners in the impact area, so the first action should involve EP (the Permittee) delivering plenty of fresh, potable water before any investigation begins. This water should be immediately available at no cost, even if it is later determined that the cessation was not caused by EP.

- Proposed Special Provisions, Appendix C, Section 5, Step 2. The GM should have the final decision on whether the well is located inside the PIA.
- Proposed Special Provisions, Appendix C, Section 6. Again, the water should be free.
- Proposed Special Provisions, Appendix C, Section 7, intro. GM should inspect any agreement between well owners and Permittee before well owners sign.
- Proposed Special Provisions, Appendix C, Section 7, #1. For some wells, lowering the pump means hitting shale or dramatically decreasing water quality. How is this addressed?
- Proposed Special Provisions, Appendix C, Section 7, #2. How deep is “not deep enough”?
- Proposed Special Provisions, Appendix C, Section 7, #3. WE ARE NEVER GOING TO PAY EP FOR OUR OWN WATER. LET’S BE CLEAR ABOUT THAT.
- Proposed Special Provisions, Appendix C, Section 7, #5. Settlement agreement should be inspected by GM before parties sign it.
- Proposed Special Provisions, Appendix C, Section 9. \$50,000 may not be adequate for multiple re-drilling or pump lowerings simultaneously.
- Proposed Special Provisions, Appendix C, Section 10. “One time only” won’t work for this situation. What if a well is “remedied” and then ceases production again during another Phase? We need protection for the life of the permit, especially since modeling is inaccurate for the length of the permit. While pumping continues, mitigation should continue.

Items I support in this proposed permit.

- I support a phased-in approach with assessment before each new phase, if we cannot initiate a new permit at each phase.
- I fully support setting triggers for mandatory curtailment, but I do not think one well is adequate for that function.
- I fully support the avoidance measure of proactively lowering the pumps of those wells that testing has shown will be negatively impacted, though I do have concerns about water quality.
- I fully support the general manager making the final decision on well work, etc.
- I fully support BSEACD’s intention to keep studying and modeling the Trinity Aquifer and to make their permit determinations based on the most current research. Ideally, the scientific study should be complete before initiation of pumping.

Respectfully,



Mary Louise ("Louie") Bond
1200 Todo Lane, Driftwood, TX 78619
(512) 560-4877
SecretWaterWarriorSociety@gmail.com

CC: Bill Dugat, Attorney for BSEACD
bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant
ed@ermlawfirm.com

June 25, 2018

Via email to: bseacd@bseacd.org

Board of Directors
General Manager
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

Re: Contested Case Request – Board Hearing Requested
Electro Purification’s Groundwater Proposed Production Permit

Dear BSEACD;

Pursuant to 4-9.13(B)(1), our names are Susan & Chris Elliott, address is 300 and 302 Buckskin Pass (one parcel, two wells, two addresses for mailing), Driftwood, TX, 78619. We appreciate the opportunity to submit requests regarding EP’s proposed production permit.

We oppose the issuance of the proposed permit to Electro Purification. Consequently, we request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

We have standing to contest the proposed permit and should be a party. We own 5.5 acres of land within 1.2 miles of EP’s well field. The Trinity Aquifer, from which EP intends to pump, underlies our property. We rely on groundwater from the Trinity Aquifer for our water supply needs. We have TWO wells; one 770’ drilled in 1992, and a 380’ drilled in 1973 both in production with good water quality, consistent flow and consistent average water levels for the 770’.

The high volume of this permit; in terms of water quantity along with the lack of tighter water quality standards, challenges our independence, water security and threatens our health if not addressed completely. The financial challenges along with unreasonable on-going costs to treat water (should our water quality degrade) could hurt our property value. We sight the reasons below.

BSEACD states, throughout its Rules and Bylaws, that water level and quality are important. Under 2.1 Definitions of Terms:

“Trigger” means:

“Trigger” - specific conditions of aquifer water level elevations, spring discharges, and water quality that the District will monitor and use as indicators of drought conditions for purposes of declaring the various drought severity stages.

[Page 5]

But, BSEACD states in EP’s permit a new definition of “Trigger” without any reference to water quality.

Trigger – a designate water level in an index well that prompts a response action once the measured water level has been reached...

[EP Permit Page 3]

As far as water quality, again different meanings:

Stated By BSEACD GM Statement of Position:

Degradation of water quality in other wells such that the native water for its current purpose: This condition is not determinable based on existing information, but its likelihood is probably spatially and temporally variable.

[Page 4]

Stated in EP’s Permit Section 2 General Unreasonable Impact:

-the degradation of groundwater quality in other wells such that the water is unusable or require the installation of a treatment system for its intended purpose.

[EP Permit Page 4]

BSEACD, from its inception, has been clear about the importance of water levels and quality as reflected in its Rules and Bylaws. Water quality is a standing right for BSEACD to protect. But in the EP permit, water quality has changed in importance being relegated to “spatially and temporally variable” and that water quality has been removed completely from the definition of a Trigger in the EP Permit under Compliance Actions. Plus under the GM Statement of Position and EP permit “the degradation of ground water quality” is acknowledged in this permit.

We believe these omissions are a mistake and marginalize the importance of water quality to well owners in general. To label a well, with a good history of water quality, that has gone bad from drawdown by EP as a by-product to treat but not first protect is wrong in so many ways.

We know each well is different in how it reacts in space and time and that water levels can be measured with a smaller sample in the field. We also know that water quality also reacts to space and time but at a slower pace over a wider area; therefore it should be defined and measured as such and not tied to water level measuring sites, alone. We want to know that BSEACD understands that water quality measuring is a preventative measure, much better for the well owner than treating poor water after the fact.

As well owners in EP's impact zone, we need steps to avoid degradation of water quality by being part of a wider sampling of water quality (than stated in the permit). Geologically factors can be very localized. The main index well as stated in Section 2 page 12 and your current monitoring wells are a start, could easily miss individual property owner degradation water quality or miss larger trends across the wide impact zone. EP's pumping could induce downward leakage from the overlying aquifer and this, in turn, could contaminate or otherwise worsen water quality on a well-by-well basis. We need a system to catch water quality problems.

BSEACD in all your wisdom, and best science practices you need better water quality data from a wider field. We feel under served, as your primary index and monitoring wells do not reflect the very localized nature of the groundwater in our wells or our neighbors. Pockets of poor water may appear and or disappear but that is no excuse to not collect data.

Water quality testing and its long-term data collecting needs to be incorporated as viable best science for clear decision making into Triggers and Response Action, Levels 1-4 under Section 3. PERMIT COMPLIANCE ACTIONS.

We respectively ask BSEACD to start collecting baseline water quality data before more pumping, from all interested well owners in the impact zone and make this data an aggregated part of EP Permit Compliance Actions.

Please offer every well owner in the EP impact zone that signs up- a baseline for a complete water chemistry test, at EP's expense, by a certified lab that is court admissible. Further, when pumping starts, please offer monthly water testing for conductivity and pH testing, at EP's expense, for interested well owners in the zone. Follow this up with a yearly complete water chemistry test to complete your data. Also every well owner that signs up for water testing should be offered cost effective conductivity meters for independent weekly testing not included in your data collection. Only if they desire or when they see a change in water quality over X should they contact you. From our conversation with other GWD experts, this process of water quality data collection can be organized and aggregated as a quality data for assessment. As stated before, we further request that BSEACD include this wider data collection of water quality in its permit definition under Section 3., Permit Compliance Actions, Triggers, Response Action, Level 1-4. Water quality data should be given as a significant role as water level data.

We also request BSEACD to include our 770' well, (our main well) at EP's expense, using our driller (we have a bid ready from the driller who knows this country and installed this well in 1992) for monitoring of not only water quantity, but water quality testing. We ask for this because this well is in the same depth as EP and its level and quality will be affected as noted by TWO long standing drillers.

As property owners we own the groundwater beneath our land under the BSEACD rules and have NOT transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP's well field, which the District has authority to regulate rights under Rules 4-9.13(B)(5).

We believe BSEACD should amend the EP permit to reflect a lower pumping start while including water quality data from a larger field as part of its Section 3 Permit Compliance Actions assessment. Should BSEACD amend EP's permit application to reflect these requests, we would consider withdrawing our protest. 4-9.13(B)(4).

We adopt by reference the comments submitted by TESPA.

My personal feelings as a Father and Grandfather, Chris Elliott:

I know from many conversations with people much smarter than I, that you will issue this permit! You're trapped. You need to save yourself because of how the laws are written. You're doing your best- to build layers of protection for us, but in the end, we face one truth, this pumping is personal, it's our wells. We drink from them. Being an owner in a commercial pump zone is sobering at best. You live with the very real possibility that your water, known and trusted for years, will change and probably not for the better. We live independently on land with gardens and animals. The soil is deep and rare for Hill country. Three generations depend on this life style. All of this is on the line and we can do nothing but wait and watch since you and EP are in control. I ask you as one human to another, have the heart, have the courage to give us at least one tool we can use to defend ourselves and assure our water is ok to drink. We need water quality testing of our wells, not just your wells. Please don't make us beg when we taste and know our water is poor and your wells say different. Don't subjugate us or make us dependent on you or EP. Give us a chance to stand up and protect our individual well and life.

PLEASE INCLUDE US, THE WELL OWNERS, IN WATER QUALITY TESTING AND USE THAT DATA TO MAKE WATER QUALITY PART OF YOUR TRIGGER SYSTEM TO SLOW OR STOP PUMPING. Find a way until these laws are fixed.

Thoughtfully with hope,
Chris and Susan Elliott, Savanna and Nicholas, Montana, Dillon and Reed
300 Buckskin Pass
805.801.9003
Chris@MyHKS.com

CC: Bill Dugat, Attorney for BSEACD
bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant
ed@ermlawfirm.com

From: Adrienne [<mailto:superluckygirl13@yahoo.com>]
Sent: Monday, June 25, 2018 12:21 PM
To: BSEACD <bseacd@bseacd.org>
Cc: bdugat@bickerstaff.com; ed@ermlawfirm.com
Subject: Contested Case Request - Board Hearing Requested - Electro Purification's Groundwater Proposed Production Permit

June 25, 2018

Via email to: bseacd@bseacd.org

Board of Directors
General Manager
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

Re: Contested Case Request - Board Hearing Requested - Electro Purification's Groundwater Proposed Production Permit

Dear BSEACD:

Pursuant to 4-9.13(B)(1), my name is Adrienne Evans-Stark, and my address is 500 Jennifer Lane, Driftwood, TX 78619, mailing address P.O. 468, Terlingua, TX 79852. I appreciate the opportunity to submit comments regarding EP's proposed production permit.

I adopt by reference the comments submitted by TESP.

I oppose the issuance of the proposed permit to Electro Purification. Consequently, I request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

I have standing to contest the proposed permit and should be a party. I own 3.74 acres of land within two miles of EP's wellfield. The Trinity Aquifer, from which EP intends to pump, underlies my property. I rely on groundwater from the Trinity Aquifer for my water supply needs. I have one well that is 440 feet deep.

If my well ceases to yield water, I will be without a source of water supply and my property values will plummet. 4-9.13(B)(2).

The drainage caused by pumping from EP'S wellfield will result in the diminution and potential elimination of groundwater that is a valuable asset held by me and will decrease my property values. 4-9.13(B)(2)(3) & (5).

I own the groundwater beneath my land and have not transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP's wellfield, which the District has authority to regulate. 4-9.13(B)(5).

Should EP amend its application and decrease the volume of groundwater it is requesting to an amount that will not drain the groundwater from beneath my land, I would consider withdrawing my protest. 4-9.13(B)(4).

Below, please find my specific comments related to the District's proposed permit.

We as property owners need more monitor wells, and ElectroPurification (EP) should pay for them. These wells should also be used as triggers for action. More wells would help BSEACD catch impact and drawdown faster at all levels. These wells need to be arrayed at various distances and depths from the EP wells for a more complete picture of the aquifer here.

There needs to be a baseline from all wells within the impact zone, and EP should pay for that. We need to establish the status of all wells now so that we can prove impact without doubt later.

There needs to be a fresh potable water supply ready to deliver when there is a problem with a well in the impact zone. BSEACD should inspect this new process to be sure that EP can deliver water to affected parties within 24 hours of reporting. EP should be prepared to deliver water until the case is resolved. Mitigation should include wells at all levels in the impact zone. This should be easy to add. It makes us be more water-secure.

A phased approach is the safest, but we need more input from affected landowners before any new phase begins.

Unforeseen factors like severe drought or modeling inaccuracy need to trigger more investigation by BSEACD before automatic renewal of the permit each year.

The length of this permit should not extend beyond the accuracy of current modeling of the Trinity Aquifer. As modeling continues, scientists need to be able to adapt pumping to appropriate levels as new knowledge comes to light.

Please consider adding additional phases so that each increase of 0.5 MGD requires another phase. Adding 1 MGD to the pumping could cause the aquifer to be damaged before triggers can be activated. Impact avoidance should be offered to more wells in the impact area, as determined by a more cautious approach to damage. This is better for all involved to avoid than to go dry and mitigate. When mitigation by drilling deeper is offered, assurance of similar water quality should be mandated.

Impact area well owners should be offered adequate storage and installation of potable rainwater collection as an alternative to deeper drilling in mitigation and avoidance.

EP should provide and pay for an educational communications program that keeps all neighbors with impacted wells (even beyond the 2-mile zone) informed about current volumes, changes in phases, triggers, numbers of impacted wells, etc. This needs to be mailed to every address on a regular basis.

I fully support a phased-in approach with assessment before each new phase.

I fully support setting triggers for mandatory curtailment.

I fully support the avoidance measure of proactively lowering the pumps of those wells that testing has shown will be negatively impacted.

I fully support BSEACD's intention to keep studying and modeling the Trinity Aquifer and to make their permit determinations based on the most current research

I have owned my land for 24 years. I co-own the property with Eric Stark. We pay our property taxes on time every year. My well provides good water for our family and it is unthinkable and untenable for someone else to take our water. Losing our water flow in our water well would cause us undue hardship.

Respectfully,
[electronic signature]
Adrienne Evans-Stark

500 Jennifer Lane
Driftwood, TX 78619

mailing address:
P.O. 468
Terlingua, TX 79852
(915)276-0402
superluckygirl13@yahoo.com

cc: Bill Dugat, Attorney for BSEACD
bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant
ed@ermlawfirm.com

From: Michael Gomez [mailto:mhgomez2001@yahoo.com]
Sent: Monday, June 25, 2018 3:23 PM
To: BSEACD <bseacd@bseacd.org>
Subject: Electro Purification Permit--Comment/Contested Case Hearing

I Michael Gomez (representing HLAM Ltd.), owner of the Escondida Ranch, request a contested case hearing.

Reasons for contested case hearing are:

Page 10 Technical Memo, Evaluation of the Potential for Unreasonable Impacts from EP Well Field, "The aquifer test were conducted at a time when water levels were above average in central Hays County. When a factor of 50 ft, to account for severe drought conditions, is subtracted from the aggregate drawdown from test, resulting water levels would be such that Woods #1 and Escondida wells would cease to produce water."

If EP is allowed to continue and expected unreasonable impacts do occur, wells on our property may have to be lowered, reworked, larger pumps installed and any future wells would be more expensive to drill. Any interruption in water from wells will severely impact the livestock on our property, even if EP remedies the situation through IAP and Mitigation Plan.

Page 5, General Manager's Statement of Position, "Because of the limited historical data and modeling tools as described above, the District is unable to evaluate the long-term, regional components of the unreasonable impact definition for the final phase of the permit at this time." This statement is in conflict with other aspects of the Technical Memo cited above. The pump test shows and has conclusions in it use words like "the condition is very likely", "condition is almost certain" when describing unreasonable impacts.

Another point that has not been addressed is property value. The uncertainty EP and this permit is causing will cause people to be reluctant to invest in the area without a certain source of water. Increased cost for new personnel wells will have to be taken into account.

At the public hearing on Monday, the information from the district was clear. Stopping all permits is not the answer, but the district on many occasions stated that "they do not have enough data", "accurate models do not exist for the area", etc. So, to continue with this massive permit before thoroughly answering all the valid questions put forth by the citizens of Hays and staff of the Conservation District (in draft permit and technical memo) could have catastrophic and unforeseen impacts to the area.

Sincerely,
Michael Gomez
5000 FM 3237
Wimberley, TX 78676
956-648-7678

Mailing: PO Box 2531 Wimberley, TX 78676

Michael Gomez

From: catheiney78676@gmail.com [mailto:catheiney78676@gmail.com]

Sent: Monday, June 25, 2018 3:03 PM

To: BSEACD <bseacd@bseacd.org>

Subject: EP permit

To Whom it May Concern:

Please accept this as our response to the proposed permit of EP to pump 2.5 mgpd from the Trinity acqifer inn Hays County. Texas. Where to start. This is most concerning for many reasons & we will try to be succinct. We hereby incorporate all opposing comments to EP's permit, submitted by those in the 2-3 mile possibly affected area, as if set forth verbatim herein and request a contested hearing before the Board as per Rule 4-9.13. Our well sits at the edge of that 2-3 mile area, in the Upper Glen Rose, with our pump sitting at approximately 265', & which is possibly not covered by the mitigation measures set forth in the propsoed BSEACD pumping permit. Yet, I know exactly when the EP pump tests were conducted because my well water became rusty colored and it took a day for it to clear up; the same type of issues seen during really bad drought. Being over 60, with limited income sources, there is no extra money for lowering well, new pump, etc. Our submersible pump & wiring & pressure tank were replaced in 2016, so they shouorgaized good for a decade or more (we got 20 years put of the old one). Sadly, it seems as though EP wants to suck out everybody's water,only to sell it back to us. I beseech the Board to listen to the hundreds, possibly thousands, of people who may be affected & keep this from happening.

Legal vs Moral. While the Rule of Capture allows the Odell's and Bridges' to pump as much water as they can, it surely cannot allow the leasing of land to a company solely to commercially mine/pump 2.5 mgpd (912,500,000 gallons per year of our groundwater. Almost a biillion gallons a year, EP proposes to send out of this area for the profit of Lessee. And this does NOT even account for the 1 mgpd Needmore has requested, .Just let that sink in, both of those equal 1.24 billion gallons/year. The Rule of Capture is being exploited and it is BSEACD's legal obligation to stop this blatant and immoral water grab and conserve these valuable resources for all property owners into the future. If the Odell's and Bridges were to pump all the water they could to bottle & sell to retail markets, they would not be able to pump & process the requested 2.5 mgpd. If the two ranches were subdivided as per Hays County rules, they would make 300, 5 acre lots & using the very generous estimate of 300 gpd of typical household, those 300 properties would consume 90,000 gpd or 32,850,000 gpyr. Huge difference. This should be the maximum amount they can pump a year; no more than a 300 home rural subdivision would use and not one drop more!

Needmore Ranch which is probably 2-3 miles as the crow flies from the EP operations has also submitted an application to pump 1 mgpd. How exactly how is that going to work? That would be 3.5 mgpd from our acquirer (or 1,277,500,000 gpd) Current, mitigation efforts proposed by BSEACD will not protect current landowners with wells in the "assumed", affected area and quite possibly, a larger area from these pumping operations. I'd be willing to bet the EP pumping will dry up the springs at the Blanco on the Needmore property (which 25 years ago Ozarka was interested in leasing for bottling) & Needmore will be in need of mitigation & remediation. The difference is the resources of Needmore (financial & legal) to guarantee they are adequately compensated for their losses..

Drought. At this writing, local water providers are beginning Stage 2 water restrictions because of drought conditions, which we experience regularly. How will BSEACD manage these pumping operations while maintaining water quality & volume for current well owners. Will BSEACD be able to guarantee area springs, creeks & private wells won't suffer? This is a safety issue as drought & cedar make for horrifying wildfires & if there isn't sufficient water and/or pressure to fight them, lives may be lost and millions in personal property will be in jeopardy.

Property Values & Tax Revenues will both suffer should area wells suffer from this unprecedented water grab, even if mitigated. That loss of revenue will affect not only the residents directly affected but every municipality, school district & the county, who all use property values & property taxes collected & sales taxes to fund their operations. Real estate businesses will be affected. Tourism will also be affected, which is the life blood of most of Hays County via sales taxes collected from tourists, retail business & lodging owners; pretty much every aspect of Hays County revenues will be affected.

Mitigation. The measures set forth in the BSEACD permit for mitigation are not nearly stringent enough, in either scope, amount or procedure. The onus should not be on the damaged well owner to prove EP is responsible for the failure, when our wells have operated without issues for years prior to their receiving a permit for a massive pumping. The burden, inconvenience, stress & any loss of property value falls on the well owner, not EP & puts the well owner at EP's mercy for remediation (immediate source of potable water, well work, etc.) & while the well may be reworked or redrilled at EP's discretion, there is no compensation for the inconvenience, stress, or other losses attributed to the event. Additionally, EP should be required to post a bond equivalent to a min. of \$50k per residential well within a 3 mile radius of EP's pumping operations to insure monies are available to compensate well owners for well work & other mitigation/remediation needs in the likely event EP goes bankrupt, if/when wells start failing. This is a corporate tactic, well known in corporate & legal circles to cut their losses & run rather than taking responsibility, leaving homeowners & taxpayers with the tab. The BSEACD Board should not be an enabler of this type of corporate method of operation by requiring a surety bond, in the amount stated above. Look at the amount of uncompensated time spent by each commenter (reading the permit application, attending meetings, researching their wells, composing their responses, etc.) just this round; collectively thousands of hours in order to be heard against a well-financed and lawyered up corporation potentially ruining the use & enjoyment of their property & potentially affecting the value of their property. Additionally, the mitigation fund should be reset with each phase & replenished as it is used to keep the adequate amounts escrowed for emergency mitigation & continued remediation of wells, as necessary. Additionally, well owners should not be required to waive any future remedies at law for damages in order to get remediation of dry well or poor water quality due to EP pumping operations.

Modeling & Monitoring. There is not enough certainty of the Trinity data & modeling and not enough monitoring wells. There should be monitoring wells outside the expected 2-3 mile affected zones, as even the best modeling can be wrong (just look at the predictions of sea rise & coastal US cities 30 years ago that did not come true).

We appreciate the effort that BSEACD is expending to manage this unprecedented water grab, especially the phased pumping. But even that amount should be cut by 1/2 to .25 instead of .5 mpcd. We appreciate the effort to preserve and conserve the precious ground water sources in our corner of Hays County. Given the number of comments received on this permit from stakeholders of all types (property owners, conservation organizations, churches, business owners, etc), the Directors should understand the area residents are serious, organized & determined to keep the quality of life & preserve the water to which we are entitled.

Thank you for your attention to these matters.

Chris & Cathy Heiney
2201 FM 3237
Wimberley, Tx 78676.

The Mundy Firm PLLC

4131 Spicewood Springs Rd, Suite O3
Austin, Texas 78759
512-334-4300
jeff@jmundy.com

June 23, 2018

Via email to: bseacd@bseacd.org

Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

**Re: Contested Case Request – Board Hearing Requested
Electro Purification’s Groundwater Proposed Production Permit**

Dear BSEACD:

The Trinity Edwards Springs Protection Association (“TESPA”) appreciates the opportunity to submit comments regarding Electro Purification’s (“EP”) proposed production permit, and wishes to thank the District Staff, General Manager, current and former, and Board for the tremendous efforts that have gone into creation of the proposed permit. We recognize the tremendous amount of labor, and sincere efforts to balance sometimes seemingly irreconcilable and duties imposed by the legislature, courts, and the expectations of the community.

We respectfully submit these comments on behalf of the members of TESPA, who potentially will be impacted by this proposed permit.

TESPA opposes the issuance of the proposed permit to Electro Purification.

TESPA requests a contested case hearing before the Board of Directors.

TESPA has standing and should be a party. More than 100 members of TESPA have indicated they own wells within or near the two-mile impact zone and requested that TESPA oppose this permit on their behalf. Additional members are beyond the two-mile impact zone, but based on the District’s projections, they too potentially are impacted by this permit. Further, District staff member Mr. Smith indicated that there may be potential impacts to Jacob’s Well and Pleasant Valley Springs, and TESPA’s mission includes protection of springs and public water resources such as Jacob’s Well and Pleasant Valley Springs.

CRITICAL OMISSION REQUIRING FURTHER WORK

There Is Inadequate Planning if a Home Loses Water

In the event a home loses water, the proposed permit allows at least 30 days before EP is required to fix the lack of water to the home. Without water, a home will be uninhabitable. What is the family supposed to do to flush toilets, shower, cook, or drink? Even a disruption of a single day or two will cause major disruptions, particularly for families with children, elderly, or those with limited financial resources who cannot simply go stay in a hotel until the District and EP agree on a remediation plan.

An emergency response plan must be required so that water is supplied to the home so the families are not forced out of their homes. This portion of the proposed plans is the single most critical flaw in the permits and absolutely must be corrected before this project is allowed to proceed any further. This omission very reasonably causes fear to all of the homeowners. The District and EP say this scenario will never occur. If it believes that, EP should be willing to agree to truck in water to supply the home to operate and remain habitable. The amount supplied should be in line with the District's well studied estimates of the average user requirements per person per day for this area.

The current proposed permit is completely and utterly devoid of any emergency response plan.

Introduction

EP has applied to the District for a groundwater production permit for almost a billion gallons a year. This request is the largest that has ever come before this district and is the largest permit request to produce groundwater from the Trinity Aquifer in Hays County.

EP's requested amount is equal to over half of ALL existing pumping in Hays County going to one permittee. Total groundwater pumping in Hays County in 2013 was estimated at 5,061 acre-feet.¹ Even more inexplicable and bewildering, Table 1 to the Groundwater Management Area 10 Explanatory Report, says the Modeled Available Groundwater is 3,557 acre-feet for Hays

¹ Groundwater Management Area 10 Explanatory Report, Table 2. <http://bseacd.org/uploads/Trinity-Final.pdf>

County.² The District's calculation is 3,846 acre-feet.³ Yet, EP's proposed is 2,800 acre-feet on top of the already existing permits. Attached is the Modeled Available Groundwater chart attributed to creation by the District, which shows **THIS SINGLE PERMIT WILL GIVE AWAY ALL OF THE REMAINING MODELED AVAILABLE GROUNDWATER IN THIS DISTRICT TO EP.** This unprecedented and grossly disproportionate amount to one permittee is not for the benefit of the permittee's land upon which the wells will produce, but to export the water out of the area. The water is drawn from hundreds of other landowners' properties without compensation to them, despite Texas law granting them a vested property right to the water under their land.

The current framework of the District which ostensibly allows water to be taken by EP for its profit from other landowners, in which they have a recognized property right, is an unconstitutional taking without compensation. The taking is far more than a de minimis taking incidental to the permit. Indeed, the projections of the District show that EP will be taking water – property – from 1,500+ other landowners for miles around without any compensation from either the District or EP. Some of TESPAs's members were approached by EP to sell or lease their water rights and refused. So, what rights they refuse to grant voluntarily to EP, the District proposes to take and convey to EP without consent and without compensation. Thus, the very framework upon which the permitting is conducted is fundamentally unconstitutional, similar to the unconstitutional framework of financing school systems that dogged the State for years.

While the District is not the cause of the insane, inconsistent, indefensible, and unconstitutional labyrinth of Texas water law, the EP permit request is a warning flashing wildly calling out the Texas Legislature and/or Supreme Court to abolish the court-created rule of capture for water and the bizarre and indefensible labyrinth of policy and laws still trying to allow it to continue. EP's grossly disproportionate request should be sufficient to drown the rule of capture in Texas, the last state in the United States to allow the rule of capture for water. The rule of capture for water is indefensible, and in violation of the Conservation Amendment to Constitution of the State of Texas passed by voters after the Supreme Court created the rule of capture. The framework of permitting to try to manage vested property rights recognized in *Day v. Edwards Aquifer Authority* requires a fundamental transformation of perspective in how permitting is conducted. TESPAs recognizes the District lacks authority to overrule the decision of the

² Same GMA 10 Report at Table I.

³ See, three charts/tables received from the District with its MAG's.

Supreme Court of Texas, but EP is advised that TESPAs and its members object on this ground and intend to pursue this protest to the Supreme Court and request the abolition of the pernicious and unjust rule of capture for water, which is inconsistent with the concept that groundwater is property of the landowner.

While it is apparent that the District has spent considerable time developing proposed permit conditions, TESPAs members still have numerous serious concerns related to EP's proposed permit. In general, the proposed permit does not protect the long-term sustainability of the Trinity Aquifer. Thus, the production jeopardizes the rights and interests of over one thousand landowners who potentially will be impacted by EP's permit, many whom are members of TESPAs.

Therefore, TESPAs submits these comments in opposition to EP's proposed permit.

Background

In July of 2017, EP applied for a groundwater production permit with the District for a Middle Trinity Aquifer well field in Hays County. The permit application indicates that pumping rates will be phased in over time with a maximum permitted pumping rate of 2.5 million gallons per day (MGD), or approximately 912 million gallons per year, pumped from seven wells located on the Odell and Bridges properties. EP has indicated that it will export the requested water via pipeline out of the area to supply a contract with Goforth Special Utility District to purchase water from EP. **The District has projected that pumping this amount of groundwater will cause 300-500 feet of drawdown in the Cow Creek Aquifer within one year and after seven years could result in dewatering of the Cow Creek Aquifer.**⁴

As a result, in February 2018, the District determined that potentially "unreasonable impacts" will occur to residential wells in the vicinity of the well field as a result of EP pumping its requested volume.

The District's rules at page 24 define "unreasonable impacts" as:

"Unreasonable Impacts"— a significant drawdown of the water table or reduction of artesian pressure as a result of pumping from a well or well field, which contributes to, causes, or will cause:

⁴ BSEACD, 2018. Evaluation of the Potential for Unreasonable Impacts from the EP Well Field, Hays County, Texas. BSEACD Technical Memo 2018-0219.

1. well interference related to one or more water wells ceasing to yield water at the ground surface;
2. well interference related to a significant decrease in well yields that results in one or more water wells being unable to obtain either an authorized, historic, or usable volume or rate from a reasonably efficient water well;
3. well interference related to the lowering of water levels below an economically feasible pumping lift or reasonable pump intake level;
4. the degradation of groundwater quality such that the water is unusable or requires the installation of a treatment system;
5. the Desired Future Condition (DFC) to not be achieved;
6. depletion of groundwater supply over a long-term basis, including but not limited to chronic reductions in storage or overdraft of an aquifer;
7. a significant decrease in springflow or baseflows to surface streams including a decrease that may cause an established minimum springflow or environmental flow rate to not be achieved; or
8. land subsidence.

The District staff determined that the permit as requested by EP potentially would cause some surrounding wells located within two miles of EP's to cease to yield water, have significantly decreased yields, or experience the lowering of water levels below a reasonable pump intake. As a result, pursuant to the District's rules, EP submitted a compliance monitoring plan, an impact avoidance plan, and a mitigation plan to cure these potential unreasonable impacts.

On May 21, 2018, BSEACD staff issued a Statement of Position and recommendation to the Board of Directors (essentially a proposed permit) to grant EP's permit application with special conditions. Staff recommended that pumping volumes be phased in over four phases and recommended special provisions to be included in the permit designed to avoid and mitigate unreasonable impacts to wells and the aquifer.

Technical staff at the District concluded: "Evaluation of the aquifer-test data and modeling of the proposed pumping of 2.5 MGD of groundwater from the existing well field results in substantial drawdown in the Cow Creek and also possibly the Lower Glen Rose."⁵ Staff determined that modeled drawdown after one year of pumping from EP's wellfield ranges from 300 feet to 500 feet in five

⁵ BSEACD, 2018. Evaluation of the Potential for Unreasonable Impacts from the EP Well Field, Hays County, Texas. BSEACD Technical Memo 2018-0219

observation wells and “longer periods of pumping will cause even greater drawdown” and “modeling 7 years of drawdown effectively shows de-watering of the Cow Creek.”⁶

The Trinity Aquifer is Already Declining

The EP permit will result in further water level declines in the Trinity Aquifer, and even the phased approach recommended by staff still results in significant drawdown. By approving EP’s permit, the District is permitting overdraft of the Aquifer – where withdrawals exceed recharge. This result is defined in the District’s rules as an “unreasonable impact,” even with all of the special conditions and phased production. So, in addition to violating the District’s rules prohibiting “unreasonable impacts,” the permit as proposed also is prohibited by the Conservation Amendment of the Texas Constitution.

Permitting aquifer overdraft violates the Texas Constitution Conservation Amendment. Thus, the permit should be denied or restricted to the lowest amount needed to achieve the purpose of the permit, not the greatest amount.

The Constitution of Texas, Article 16, section 59(a), mandates: “The conservation and development of all of the natural resources of this State...and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties...”

Water levels in the Middle Trinity Aquifer declined between 3 and 54 feet between 1980 and 1997.⁷ A historical observation well near Wimberley shows a decrease in water levels of more than 100 feet since the mid-1980s.⁸ Additionally, water wells near the Blanco River show substantial water-level declines during drought when pumping is typically higher. For example, a well in Blanco near the Blanco River showed more than 80 feet of water-level decline during drought periods.⁹ Adding to the vulnerability of the Trinity Aquifer is the fact that it is

⁶ *Id.*

⁷ Jones et al., 2011. Groundwater Availability Model: Hill Country Portion of the Trinity Aquifer of Texas.

TWDB Report 377.

⁸ TWDB (Texas Water Development Board), accessed 2018a, Groundwater Data Viewer for Well 68-08-109):

<http://www2.twdb.texas.gov/apps/waterdatainteractive//GetReports.aspx?Num=6808109&Type=GWDB>

⁹ Wierman et al., 2018. Groundwater Level Monitoring Results for HTGCD Transducer Wells and Wimberley Valley Public Water Supply Well, Hays County, Central TX. Meadows Center for Water and the Environment, Texas State University at San Marcos, TX.

thought to recharge very slowly. The water in the Cow Creek Aquifer that EP has requested to pump is likely thousands of years old.

Hydrogeologists studying the Trinity Aquifer recognize the significance of its connection to surface water throughout the Hill County – specifically in Hays County near the EP well field, which is located between the iconic spring Jacob’s Well and the groundwater fed Blanco River. According to scientists, “The Trinity Aquifer serves as the...source of baseflows to the streams that cross the Hill Country. The Cow Creek also provides substantial Blanco River baseflows through Jacob’s Well and Pleasant Valley Springs (both artesian springs). These baseflows ultimately recharge the Edwards Aquifer down gradient.”¹⁰

Groundwater under artesian conditions in the Cow Creek section of the Middle Trinity Aquifer provides the majority, if not all, of the base flow at Jacob’s Well.¹¹ Hydrogeologists have also documented that the Trinity contributes a significant amount of water as recharge for the Edwards and that the Trinity fed Blanco River recharges both San Marcos Springs and Barton Springs.¹² Recent studies have confirmed previous understandings about recharge to the Edwards Aquifer and recognize, for the first time, recharge to the Middle Trinity along Onion Creek and the Blanco River. According to the study, “both diffuse and discrete recharge along streams are important processes for the Middle Trinity.”¹³ The EP permit will exacerbate water level declines in the Trinity Aquifer, ultimately impacting surface water flows. District staff has stated that in the long-term, if EP pumps the maximum volume of 2.5 MGD, there is a potential that spring flow could be impacted.

¹⁰ Smith et al., 2014. Hydrologic Influences of the Blanco River on the Trinity and Edwards Aquifers

Central Texas, USA. In: Andreo B, editor. Hydrogeological and environmental investigations in karst systems. Environmental Earth Sciences 1, Springer-Verlag Berlin Heidelberg, p. 153–161.

¹¹ Wierman et al 2008. Cypress Creek/JWS Hydrogeologic Report. Hays Trinity Groundwater Conservation District

¹² Smith et al., 2015. Surface water–groundwater interactions along the Blanco River of central Texas, USA. Environmental Earth Science, DOI 10.1007/s12665-015-4630-1.

¹³ Hunt et al., 2017. Surface-water and Groundwater Interactions in the Blanco River and Onion Creek Watersheds: Implications for the Trinity and Edwards Aquifers of Central Texas. South Texas Geological Society Bulletin Volume LVII, Issue Number 5.

The Proposed Permit Should Limit EP To The Least Amount of Groundwater It Reasonably Needs In Order to Protect Impacted Landowners' Property Rights.

Texas Water Code § 36.002(a) provides that, “[t]he legislature recognizes that a landowner owns the groundwater below the surface of the landowner’s land as real property.” The Texas Supreme Court held in *Edwards Aquifer Authority v. Day* that, “land ownership includes an interest in groundwater in place.”¹⁴ Under Texas Water Code § 36.0015, the State created groundwater conservation districts “***in order to protect property rights***, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater...” How can EP with approximately 1,000 surface acres take water from 1,500+ landowners with wells without compensation to them?

The District is abundantly empowered to limit EP to the least amount of water it needs, proportionately to its share of the area of the neighboring landowners, rather than the maximum it can pump – in order to protect the vested property rights of adjacent landowners. “More importantly, however, the Court observed in *Eliff* that “correlative rights between the various landowners over a common reservoir of oil or gas” have been recognized through state regulation of oil and gas production that affords each landowner “the opportunity to produce his fair share of the recoverable oil and gas beneath his land.”

Edwards Aquifer Auth. v. Day, 369 S.W.3d 814, 830 (Tex. 2012).

Here is the explanation of correlative rights by the Supreme Court in *Eliff*:

The landowner is privileged to sink as many wells as he desires upon his tract of land and extract therefrom and appropriate all the oil and gas that he may produce, so long as he operates within the spirit and purpose of conservation statutes and orders of the Railroad Commission. These laws and regulations are designed to afford each owner a reasonable opportunity to produce his proportionate part of the oil and gas from the entire pool and to prevent operating practices injurious to the common reservoir. In this manner, if all operators exercise the same degree of skill and diligence, each owner will recover in most instances his fair share of the oil and gas. This reasonable opportunity to produce ***his fair share*** of the oil and gas is the landowner’s

¹⁴ See *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814, 823 (Tex. 2012).

common law right under our theory of absolute ownership of the minerals in place. But from the very nature of this theory the *right of each land holder is qualified*, and is limited to legitimate operations. Each owner whose land overlies the basin has a like interest, and each must of necessity *exercise his right with some regard to the rights of others*. No owner should be permitted to carry on his operations in reckless or lawless irresponsibility, but *must submit to such limitations as are necessary to enable each to get his own*.

Elliff v. Texon Drilling Co., 146 Tex. 575, 582, 210 S.W.2d 558, 562 (1948)(cited with approval in multiple places in the *Day* opinion).

If EP wants to pump a higher volume of groundwater than what it can pump without impacting other landowners, then EP should lease the groundwater rights from additional properties or be required to compensate them for their proportionate share of water taken without their consent. It is important to note that EP's wells are primarily drilled near the boundaries of the properties it has leased, rather than in the center of these properties, reflecting a deliberate mindset to take from the neighbors despite their objections. The water that EP is pumping, therefore, is most certainly being drained from adjacent tracts of land from which EP has not leased the groundwater rights and to which the other landowners have not and do not consent. EP should be required to distribute the proceeds of the sale of the water produced and exported proportionately to the other landowners from whom EP is taking water without their permission. If EP walked into their homes, grabbed a TV and walked out, every single court in the state would view that seriously and require compensation – at a minimum. Why is water which is critical to being able to live in the home different? Are TV's more important to protect under Texas law than a landowner's water? The Supreme Court and Legislature have clearly and forcefully stated that the water under a person's land is their property. EP should not be allowed to take other's property without their permission and without fair and just compensation.

The Constitution of Texas, Article 16, section 59(a), mandates: “The conservation and development of all of the natural resources of this State...and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties;...” (emphasis added). Thus, the Constitution of Texas in the Conservation Amendment provides such powers to all state entities, and in addition to authorizing such powers, goes further and mandates such action.

Here, the BSEACD fills the same role, with the same rights and duties, as the EAA and the same role as the Railroad Commission does in oil and gas regulation. *Day* explains: “Similarly, one purpose of the EAAA's regulatory provisions is to afford landowners their fair share of the groundwater beneath their property. In both instances, correlative rights are a creature of regulation rather than the common law. In 1904, when *East* was decided, neither groundwater production nor oil and gas production were regulated, and we indicated that limiting groundwater production might impede public purposes. The State soon decided that regulation of oil and gas production was essential, adopting well-spacing regulations in 1919, and it has since determined that the same is true for groundwater production, as for example, in the EAAA.”

Edwards Aquifer Auth. v. Day, 369 S.W.3d 814, 830–31, 178 Oil & Gas Rep. 817, 55 Tex. Sup. Ct. J. 343, 2012 WL 592729 (Tex. 2012).

The District Has Not Considered Impacts to Surface Water Resources in Violation of the Water Code.

Texas Water Code § 36.122(d)(2) requires groundwater districts to consider impacts to groundwater and surface water resources before issuing a permit. EP's request to produce almost a billion gallons of groundwater a day (approximately 2,800 acre-feet) from the Cow Creek, Middle Trinity Aquifer in Hays County is unprecedented. The District and hydrogeological consultants do not know what the long-term consequences this amount of pumping will have on the aquifer or the springs which it feeds. The District states in the proposed permit, “Because of limited historical data and modeling tools...the District is unable to evaluate the long-term, regional” impacts associated with the EP permit. The Water Code requires groundwater conservation districts to consider impacts to groundwater and surface water resources before issuing a permit, yet the District has clearly stated that it has not done so and cannot do so.

The District Has Not Considered the MAG Determined by the Executive Administrator

Texas Water Code § 36.1132 mandates:

(a) A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108 .

- (b) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
- (1) the modeled available groundwater determined by the executive administrator;
 - (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117 ;
 - (3) the amount of groundwater authorized under permits previously issued by the district;
 - (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
 - (5) yearly precipitation and production patterns.
- (c) In developing the estimate of exempt use under Subsection (b)(2), the executive administrator shall solicit information from each applicable district.

The proposal explains that the Hill Country Groundwater Availability Model (GAM) for the Trinity Aquifer was not extended to include GMA 10 and that “[c]urrently, no numerical models for calculating the MAG for the Trinity Aquifer are available in GMA 10. Additionally, the District states, “the Texas Water Development Board has not updated and provided the District with an official MAG for the recently annexed ‘shared territory,’ and so consequently, “the General Manager has determined a MAG using the GMA 10 Hays County MAG.”

The proposed permit never references the MAG that was calculated so the public has no way of knowing whether and to what extent the EP permit impacts the MAG. This omission raises notice concerns with regard to the permit. The larger concern, however, is that the District has not complied with Texas Water Code § 36.1132(b), which requires Districts in issuing a permit to manage groundwater on a *long-term* basis by considering the MAG *determined by the executive administrator*. The District has stated that an updated MAG for this area of the Trinity Aquifer has not been finalized and therefore, the GM calculated its own MAG. Nowhere in the Water Code is a groundwater district permitted to make up its own MAG to use in a permit evaluation.

The District Has Not Considered the Amount of Groundwater Authorized under Previously Issued Permits or Permits Issued in HTGCD

The District Has Not Considered Impacts from Needmore Water LLC’s Temporary Permit as required by Texas Water Code § 36.1132(b)(3). Needmore’s permitted 180,000,000 gallons of water a year is among of the largest

permits in the district's boundaries, yet does not appear to be factored into the models to consider long-term impacts to the DFC, which is mandatory.

The Compliance Monitoring Plan and Well Network Are Inadequate to Protect the Aquifer

The Compliance Monitoring Plan and associated monitoring well network, as proposed by the District, are inadequate to protect the Aquifer. Section 3 of the Proposed Special Conditions – “Permit Compliance Actions” requires EP to reduce pumping by certain percentages when drawdown in the Rolling Oaks Index Well reaches certain trigger levels. For example, “When drawdown in the Rolling Oaks Index Well reaches a sustained average water level that is equal to or greater than 400 ft below land surface (bls) for the Lower Glen Rose **and** 660 ft bls for the Cow Creek,” EP is required to reduce pumping by 20% of the authorized volume.

For all Permit Compliance Levels, the “**and**” between the Lower Glen Rose and Cow Creek *should be “or,”* indicating the response action is to occur when drawdown in *either* formation is reached, not both at the same time.

To provide maximum protection to the aquifer, when drawdown reaches a trigger level, the District should require EP to reduce the rate of its *actual* pumping volume that was occurring when the triggering event occurred, rather the authorized pumping volume. These two volumes could be the same, or they could be different if for some reason EP was not pumping at the maximum authorized amount. If EP is already pumping less than the authorized volume, then the curtailment associated with the trigger level may not result in an adequate decrease in pumping volume to counteract the triggering conditions.

The trigger levels allow EP to unreasonably drawdown the aquifer taking the highest quality water for export, and leaving lower quality water for the residents. The first trigger is set at 350 feet below land surface for the Lower Glen Rose and 500 feet below land surface for the Cow Creek – this is approximately a 110 foot drawdown in the Lower Glen Rose and 250 feet in the Cow Creek. When water levels reach these levels, under the District's proposal, Staff will evaluate impacts, but will allow EP to continue to pump without any reductions. The District's proposal allows EP to drawdown the Lower Glen Rose approximately 160 feet and Cow Creek aquifer approximately 400 feet without any requirements to reduce pumping.

Future changes in water quality due to EP pumping cannot be addressed in the avoidance plan, but should be addressed in the mitigation plan which addresses

unanticipated impacts after the well field is operating. Contingencies for unanticipated water level declines are included in the mitigation plan, ***but not potential changes in water quality***. The proposed monitoring plan provides for some water quality monitoring, but it is not sufficiently robust to protect all of the potentially affected well owners. The mitigation plan needs to include provisions/criteria for determining if water quality changes have occurred and if so, what remedial actions will be taken. ***TESPA requests a standard that an unacceptable change in water quality shall be deemed to have occurred if there are exceedances of TCEQ's maximum contaminant level or secondary standards described in 30 Texas Admin. Code 290.104(b) and 290.118(b)***.

The District should clarify statements in the proposed EP permit regarding trigger levels in the Lower Glen Rose and Cow Creek aquifers. The trigger levels set for the Rolling Oaks Well are expressed in feet below ground surface. Due to the varying land surface elevations in the area, determining impact avoidance or mitigation responses at private wells using depth below ground surface (i.e. Trigger Level 4 or 500' or 700' bgs) may not be adequate. Using a trigger level elevation may account for differing well head elevations across the area. Another possible approach would be to set the trigger levels at a set distance above a critical point in the aquifer, such as the top of the Cow Creek. Perhaps the District and the third-party administrator could consider a combination of all three criteria in determining avoidance or mitigation actions.

The District should require continuous water level monitoring and set trigger levels in the EP pumping wells in addition to the other triggers. Utilizing the Rolling Oaks Well is in effect a lagging indicator of potential dewatering of the aquifers whereas measuring water levels and setting trigger levels in the pumping wells is a more direct and responsive method of preventing dewatering of the aquifer.

Sixth, the proposed number and distribution of monitoring wells in the monitor well network is inadequate given the predicted scope of the cone of depression/impacts to area wells. The plan anticipates only one Upper Glen Rose and one Lower Glen Rose monitoring well to assess impacts over a many square mile area of impact. Although there are more wells in the Cow Creek, they are generally located very close to the wellfield. The proposed monitoring well network does not include any wells to the north, east and south of EP's wellfield. Consequently, it will not be possible to determine potential asymmetry of the cone of depression within the two-mile impact area and beyond. With the current monitoring program, any potential impacts outside of the narrow area of proposed

monitoring wells will have to be assessed using projections and models, not actual data. Pursuant to the permit, the District should attempt to locate an adequate number of existing wells or should require EP to install additional monitoring wells. Additionally, based on community concerns about potential impacts to the shallow Edwards/Upper Glen Rose aquifers, additional wells should be monitored in these shallower zones.

Additionally, pumping curtailments based on the existing District drought plan should be applied to actual pumping rates, not just permitted pumping volumes. Depending on actual pumping rates at the time of curtailment, EP may not have to reduce actual pumping, so actual pump rates should be an additional factor to monitor and consider. Finally, trigger level curtailments should be mandatory regardless of potential external conditions such as drought or nearby pumping by others whether within the BSEACD or HTGCD.

The Proposed Impact Avoidance Plan and Mitigation Plan Do Not Protect Landowners' Property Rights

The Trinity Aquifer serves as the sole water supply source for much of the central Texas Hill Country. The District has estimated that there are over 1500 households that will be impacted by production from EP's wellfield. The District's proposal, however, fails protect the property rights of these landowners near EP's wellfield because it allows EP to unreasonably drain groundwater from beneath these landowners' property.

The District's proposed Impact Avoidance Plan and Mitigation Plan prevent landowners from being able to access the groundwater that they own and have historically used. Under the District's proposal, landowners will have to lower pumps on their wells, re-drill deeper wells or buy alternative water supplies wells so that EP can pump an excessive amount of groundwater and sell it to other people to use miles away. The District may be requiring EP to pay for these measures, but by doing so, the District is allowing EP to take one person's locally sourced water supply – water that they own beneath their land – and give it to someone else to use. The entire concept of the Impact Avoidance Plan and Mitigation Plan infringe upon landowner's property rights because they permit EP to drain groundwater from beneath other landowners' properties.

It is the District's responsibility to prevent impacts – not to mitigate them. Rather than granting EP a permit for the full 2.5 MGD request, the District should

issue EP a permit for a reduced amount that will not result in impacts to surrounding wells both in the short term and the long term. The District should grant EP only that amount of groundwater that will not harm other landowners, not require landowners to go through a lengthy process to have their pumps lowered just so that EP can pump and sell all of the water above.

As stated above, if EP wants to pump a higher volume of groundwater than what it can pump without impacting other landowners, then EP should lease the groundwater rights from additional properties.

The Impact Avoidance and Mitigation Plans Put Landowners in a Vulnerable Position.

In addition to TESPAs position that the Impact Avoidance and Mitigation Plans infringe upon landowners' property rights, TESPAs is concerned that the plans will leave landowners vulnerable to financial burdens and water supply issues. For example, as stated above, the General Managers recommendation does not provide adequate emergency safeguards in the event a landowners well goes dry after EP begins pumping. Under the proposed Mitigation Plan, it could be at least thirty days before the General Manager is required to make a decision on whether EP is responsible for the unreasonable impact and then longer before EP would remedy the situation. Unless a landowner purchases alternative water supplies, lowers the pump on her well or drills a deeper well at her own expense, she would be without water this entire time. The Mitigation Plan must require EP to immediately address this type of situation, which is a public health concern, by providing a landowner (at EP's expense) with an alternative, temporary water supply until impacts to the landowners well can be mitigated.

The Mitigation Plan leaves room for EP to argue that it is not responsible for impacts to wells after production from EP's project begins. EP will likely argue that pumping from its wellfield is not reasonably attributed to the impacts landowners will experience. If a well is located within the Potential Impact Area, then the District should require EP to mitigate impacts. Although under the Mitigation Plan the General Manager and the third-party administrator determine whether unreasonable impacts are reasonably attributed to pumping from EP's wellfield, the Mitigation Plan does not address a situation where EP disagrees with this determination. The Plan states that if EP fails to comply with provisions of the Mitigation Plan, then the General Manager may immediately require temporary cessation of pumping, but this is discretionary. EP could prolong the mitigation process by disputing the General Managers determination, during which time,

many landowners could be without water or forced to undertake costly measures on their own to ensure they have access to water.

Both the Impact Avoidance Plan and the Mitigation Plan place major financial risks on landowners that may deter them from participating. Under the Impact Avoidance Plan and the Mitigation Plan, if a landowner does not know the production zone in which her well is completed and there are no records available on the well completion, EP is responsible for the cost associated with an investigation. However, if after the investigation, it is determined that the well is not in the Cow Creek or Lower Glen Rose formation, the landowner will be responsible for all costs associated with pulling the pump. This is a significant cost that may keep landowners from participating. EP should bear the costs of determining well eligibility for impact avoidance or mitigation (pump pulling, geophysical logging), regardless of whether or not the well is determined to be eligible. It is EP's project that is causing these costs to be incurred, not the well owners.

The Mitigation Plan does not address impacts to the water quality of wells that are caused by EP's project. The District's rules define an unreasonable impact as "Degradation of water quality in other wells such that the native water is unusable for its current purpose." In the Potential for Unreasonable Impact evaluation, the District states, "This condition is not determinable on the basis of existing information, but its likelihood is probably spatially variable." While EP may not be able to address water quality impacts proactively in the Impact Avoidance Plan, the District can certainly require EP to address water quality impacts in the Mitigation Plan once EP begins pumping. Contingencies for unanticipated water level declines are included in the Mitigation Plan, but not potential changes in water quality. The proposed monitoring plan provides for some water quality monitoring, but this is not sufficiently robust to protect all of the potentially affected well owners. The Mitigation Plan needs to include provisions and criteria for determining if water quality changes have occurred and if so, what remedial actions will be taken. The only listed EP mitigation options are: lowering the submersible pump, deepening a well, connecting to an existing water purveyor, reimbursement or monetary settlement. Treatment is not listed as a mitigation option.

The Lack of Opportunity to Object to Phase Increases in Proposed Permit Prevents Landowners from Protecting their Property Rights

In its public presentation on June 18th, the District stated that it expected to see trigger levels reached somewhere between 1.5 and 2.0 MGD. Yet, the proposed permit as written in conjunction with the District rules do not allow for potentially impacted landowners to have a right to object before the District grants EP, what is in practice an amendment to increase its pumping rate. The community is forced to fight this permit right now, even if some were willing to live with the 0.5 MGD, when the proposed permit prohibits the right to object later to increases from one phase to the next higher level. When the District foresees production curtailments being triggered at 1.5 – 2.0 MGD, the landowners should have a right to be heard.

The District has determined that landowners within two miles of EP's wellfield may experience unreasonable impacts, yet the District's proposal prevents these landowners from utilizing a legal process to protect their property that will be impacted. Under the phased proposal, the General Manager may authorize EP to increase pumping volumes without a hearing or afford neighbors a right to object. This means that landowners whose property may be negatively impacted by this increase in pumping will be unable to submit comments or protest the District's decision. In contrast, when the District decides to initiate a permit amendment to reduce the permitted volume EP can pump, a hearing is held.

Thus, the procedures in the proposed permit constitute unreasonable restrictions on potentially impacted parties exercising their right to petition government under the First Amendment to the Constitution of the United States, as well as due process protections under both the Constitutions of the United States and the State of Texas, and last under the Open Courts provision in the Constitution of the State of Texas.

Specifics Regarding Associational Standing

TESPA is a non-profit organization founded to protect the Trinity and Edwards Aquifers and the property rights of landowners overlying these aquifers. TESPAs has several hundred members and supporters. As an association, TESPAs has standing to contest EP's permit application on behalf of its members. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *Tex. Ass'n of Bus.*, 852 S.W.2d 440, 447 (Tex. 1993).

Individuals who are members of TESPAs own property near the proposed wellfield described in EP's application. In February 2018, the District determined that individuals who own property within the vicinity of EP's wellfield will be unreasonably impacted by production from EP's wellfield. *See* Exhibit A. EP is seeking a permit to pump almost a billion gallons a year from the Cow Creek, Middle Trinity Aquifer. **The District has projected that pumping this amount of groundwater will cause 300-500 feet of drawdown within one year and after seven years could result in dewatering of the Cow Creek Aquifer.**

Over 100 members of TESPAs will be impacted by EP's permit and asked TESPAs to object on their behalf. The Trinity Aquifer underlies all of these landowners' properties and the majority of these landowners (with the exception of a few who utilize rainwater) rely on groundwater from their domestic well for their water supply needs. The landowners listed in Exhibit B are members of TESPAs that have asked it to object on their behalf. The District has determined that EP's permit application has the potential to unreasonably impact many of these landowners' wells, therefore, these landowners stand to be adversely affected by EP's permit.

The landowners listed in Exhibit B hold legally-protected, justiciable interests in the groundwater beneath their land. Section 36.002(a) of the Texas Water Code provides that, "[t]he legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property." Additionally, the Texas Supreme Court held in *Edwards Aquifer Authority v. Day* that, "land ownership includes an interest in groundwater in place." The proposed permit will adversely affect and interfere with the interests and rights of the landowners listed in Exhibit B. 4-9.13(B)(3). The drainage caused by pumping from EP's wellfield will result in the diminution and potential elimination of groundwater that is a valuable asset held by landowners in addition to decreased property values.

As detailed above in TESPAs comments, if the proposed production permit is approved by the District Board of Directors, the over 100 landowners listed in Exhibit B and depicted in Exhibit C and D will be injured in addition to countless of their neighbors. 4-9.13(B)(2). Pumping from EP's wellfield will cause the wells on these landowner's properties to cease flowing or flow less efficiently. The District is requiring EP to lower pumps in wells or possibly re-drill wells for landowners who will be impacted by pumping from EP's wellfield. As we explained above, however, there is considerable risk and burdens on landowners associated with this process – and the end result is that EP will be pumping

groundwater from beneath *other* landowners' properties. EP does not own or lease the groundwater rights from these impacted properties, yet with the District's permission, it will be pumping this groundwater and selling it for a profit. If EP's permit is approved, the result will be that many landowners will be unable to access the groundwater that they have historically used and will be prevented from utilizing this groundwater – their private property – in the future.

Furthermore, many of these landowners, such as the Wimberley Valley Watershed Association or landowners along Lone Man Creek, own property located along creeks that are fed by seeps and springs from the Trinity Aquifer. The EP permit has the potential to drawdown the aquifer and dry up these important surface water features, which will result in these landowners' property values decreasing in addition to adverse ecological impacts. 4-9.13(B)(2).

Pursuant to Rule 4-9.13(B)(5), the landowners listed in Exhibit B have particularized injuries described above that will result if the District approves EP's permit. Under state law, these landowners own the groundwater beneath their land and have property rights and interests in their groundwater as well as their overlying land. These rights and interests are not common to members of the public and will be adversely affected by the proposed production from EP's wellfield, which the District has authority to regulate.

Conclusion

For the reasons provided, TESPAs on behalf of its members and the community, respectfully requests the District to decline to grant the production permit as proposed. Instead, the application should be sent back to staff for further consideration of these comments and the comments of the community.

Respectfully submitted,

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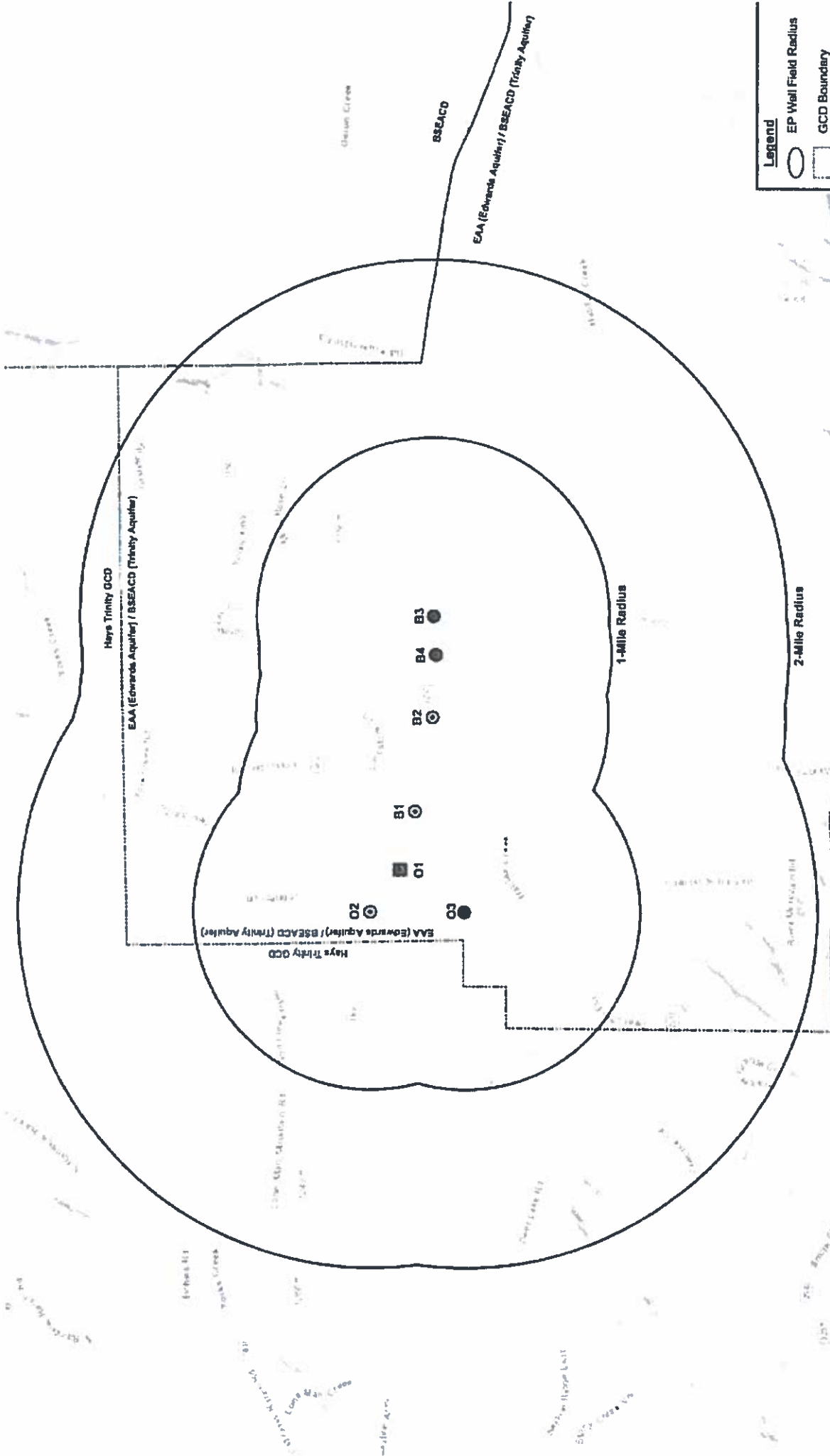
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EXHIBIT A – Impact Area Map




Legend

- EP Well Field Radius
- GCD Boundary
- EP Wells
- ⊙ Cow Creek Production
- Lower Glen Rosa
- Cow Creek

Impact Area

Wet Rock Groundwater Services, L.L.C.
 Groundwater Specialists
 117 Ranch Road East South, Ste. 213
 Austin, Texas 78714 P.O. 312.771.3226
 www.wetrock.com

Electro Purification, LLC
 Hays County, Texas



0 25 50 Feet

n By: AW Date: 8-17-18
 Name and No: ...
 ... TX 78698-A1
 sheet: UTM NAD 83 Z 14

**EXHIBIT B – Affected landowners who are
members of TESPAs**

Name	Address	Background Info
Marianna Airhart	800 Rolling Oaks Driftwood 78676	Well depth 600', Trinity aquifer. Second non-functioning well at 580'. Does not rely on rainwater.
Elizabeth Albarado	161 Rocking A Drive Driftwood 78619	Well depth unknown, aquifer unknown
Kendrick Anderson	112 Carril Vaquero Wimberley 78676	Well depth is 950 feet, unknown aquifer.
David Ash	516 Deer Lake Cove Wimberley 78676	Well - 200-300 feet
Donna Bailey	60 York Creek Road Driftwood 78619	Well depth ~550', Trinity aquifer, does not rely on rainwater.
Annette Berry	9800 FM 150 W Driftwood 78619	Well depth 200', unknown aquifer. Does not rely on rainwater.
Jeffrey Binder	125 York Creek Road Driftwood 78619	Well depth unknown, aquifer unknown
Jim Blackburn	Deer Lake Road Wimberley 78676	Well depth unknown, unknown aquifer.
Mary Louise Bond	1200 Todo Lane Driftwood 78619	Well is 333 feet deep.
John Booth	707 Deerlake Road Wimberley 78676	Well depth unknown, Trinity aquifer. Does not rely on rainwater.
Nick Bradshaw	605 Deer Lake Road Wimberley 78676	Well depth of 400', Hays Trinity district
Clark Burnett	115 Carril Vaquero Wimberley 78676	Well depth is 520 feet deep
Robert Burris	165 Limestone Lane Driftwood 78619	Well depth 700', unknown aquifer, does not rely on rainwater.
Wendy Chelette	250 Mount View Wimberley 78676	Well is at 660 feet.

Jim Chisholm	PO BOX 2281 403 Jaworski Circle Wimberley 78676	We have four wells on our property, 430', 96', 340', 349'. Unknown aquifer.
Jimmie Clubb	701 Buckskin Pass Driftwood 78619	Well depth 362', unknown aquifer. Does not rely on rainwater.
Cathy Cochran	820 Bluffview Drive Wimberley 78676	Well depth is 650', unknown aquifer. Does not rely on rainwater.
Richard Corder	1218 Water Park Rd Wimberley 78676	Well depth and aquifer unknown, does not rely on rainwater.
Travis Cox	8940 FM 150 Driftwood 78619	Well depth 890', Trinity aquifer. Supplemental rainwater.
Lisa Crane	4301 Lone Man Mountain Road Wimberley 78676	Well depth is 730'. Middle Trinity aquifer.
Charles David	2201 Windmill Run Wimberley 78676	well depth 800', unknown aquifer. Does rely on rainwater.
Sarah Davis	1805 Lone Man Mtn. Rd Wimberley 78676	Well depth 600', Glen Rose aquifer, does not rely on rainwater.
John Deones	379 Windmill Cove Wimberley 78676	Well depth 800', Middle Trinity aquifer, does not rely on rainwater.
Diane Drew	1851 Windmill Run Wimberley 78676	Well depth 960', Trinity aquifer. Does not rely on rainwater.
Caroline Duchscher	105 Limestone Ln Driftwood 78619	Well depth is 438', Glen Rose aquifer
Ellen Edwards	1101 River Mountain Road Wimberley 78676	Well depth is 1000', Glen Rose aquifer
Janice Gainey	6000 Water Park Wimberley 78676	Well depth is 950ft. deep, our pump is at 600ft. Trinity aquifer, does not rely on rainwater.

Susan Gates	598 Lame Hoss Lane Driftwood	Well depth 500'. Registered with BSEACD.
George Giere	801 Rolling Oaks Drive Driftwood 78619	Two wells, 670' (functioning) and 110-120' (non functioning). Edwards aquifer, does not rely on rainwater.
John Grayum	6919 FM 3237 Driftwood 78619	Well depth unknown, Trinity aquifer. Does not rely on rainwater
Michael Hanson	120 Silla Sendero Wimberley 78676	Well depth is 500', Trinity aquifer. No rainwater.
Jeff Hill	827 Jennifer Lane Driftwood 78619	Well depth 480', pump at 380', unknown aquifer. Does not rely on rainwater.
Malone Hill	910 Flite Acres Road Wimberley 78676	
Doug Holberg	820 Camino de Rancho Wimberley 78676	Well depth unknown, aquifer unknown, does not rely on well water.
Paul Howard	1000 Lonesome Trail Driftwood 78619	Well depth 580', Upper Glen Rose aquifer, does not rely on rainwater.
Jacquelin Hyman	301 Limestone Lane Driftwood 78619	Well depth ~480', Glen Rose - BSEACD aquifer.
Sarah Jackson	905 Jennifer Lane Driftwood 78619	Hays Co CAD ID for my place at 905 Jennifer Lane: R94997. 2.7 acres.
Richard Jordan	251 Limestone Lane Driftwood 78619	Well depth 445', Glenn Rose aquifer, does not rely on rainwater.
Flemming Jorgensen	560 Bluffview Dr. Wimberley 78676	Well depth 904', unknown aquifer. Does not rely on rainwater.

Kevin Karvas	106 Carrill De Circulo Wimberley 78676	No well, exclusively on rainwater.
Ken Kellogg	670 Jennifer Ln Driftwood 78619	Unknown depth, unknown aquifer.
Martha Kinscherff	100 Bill Kuykendall Rd Kyle 78640	Well depth 70', Upper Trinity aquifer. Do not rely on rainwater.
Joan Lawson	105 Camino De Roble Wimberley 78676	
Susan Lazarus	1201 Deer Lake Rd Wimberley 78676	Unknown well depth, unknown aquifer. Does not rely on rainwater.
Kent Lenertz	131 Camino Derecho Wimberley 78676	~650', unknown aquifer. Does not rely on rainwater.
Lamont Lewis	262 Wolf Creek Pass Wimberley 78676	Well depth 850', unknown aquifer. No rainwater.
Nick Marinos	1050 Lonesome Trail Driftwood 78619	Unknown well depth. unknown aquifer, does not rely on rainwater.
David McCully	501 Buckskin Pass Driftwood 78619	Well depth ~400 ft, Upper Trinity aquifer.
Douglas & Gilda Moore	201 Limestone Lane Driftwood 78619	Depth of well unknown, BSEACD. Does not rely on rainwater.
Roey Munoz	401 Rainbow's End Wimberley 78676	Depth is unknown, aquifer unknown
Estelle Murchison	1201-1231 Water Park Road Wimberly 78676	Does not own a well, does not rely on rainwater.
Stephanie Nestlerode	650 Jennifer Lane Driftwood 78619	Well depth unknown, Cow Creek aquifer. Supplemental rainwater.
Judy Nichols	320 Mountain View Wimberley 78676	Well Depth 900 feet
Chad Norris	1101 Jennifer Ln Driftwood 78619	Well depth ~360', Top of Glen Rose aquifer

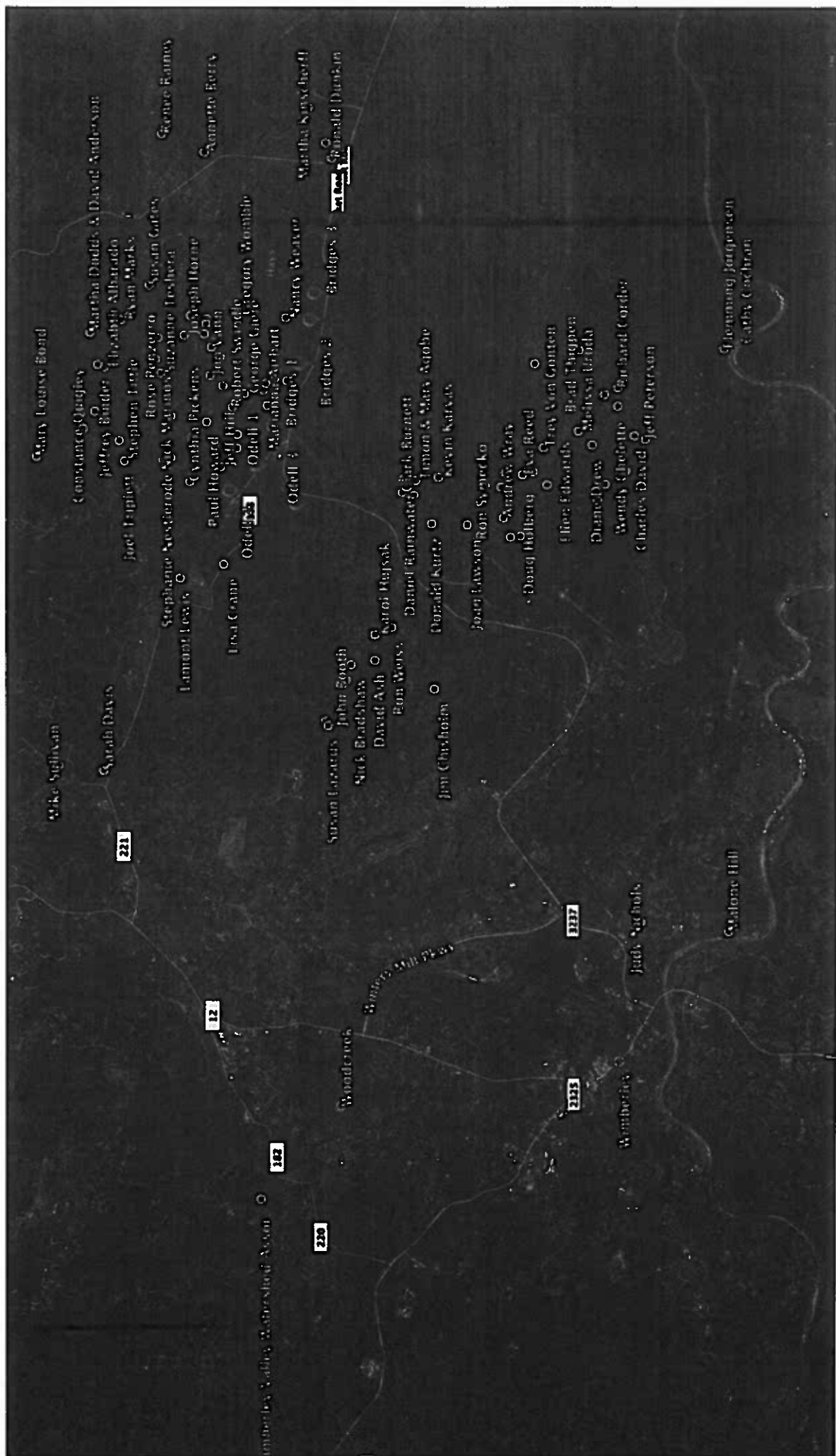
Sheri Overton	950 Lonesome Trail Driftwood 78619	Depth of well unknown, aquifer unknown. Supplemental rainwater.
Pape Dalton & Peggy (Life Estate)	6790 FM 3237 Driftwood 78619 (1 acre)	Well depth unknown, unknown aquifer
Dennis Pape	FM 3237 Driftwood 78619 (R16093 and R16094)	One well, unknown depth and aquifer
Dennis Pape & Dana Pape-Salas	6792 FM 3237 Driftwood 78619 (R16096, R17075, R16092)	Owens three wells, between 250-350'. Upper Glen Rose and Upper Trinity. Does not rely on rainwater
Sandra Pedrazas	990 Windmill Run Wimberley 78676	Unknown if relies on well, unknown if relies on rainwater.
Jeff Peterson	2251 Windmill Run Wimberley 78676	Well depth 990', glen rose aquifer
Cynthia Pickens	851 Jennifer Lane Driftwood 78619	Well depth 420', Trinity aquifer
Constance Quigley	700 Todo Lane Driftwood 78619	Well depth 420', Trinity aquifer. Supplemental rainwater.
Renee Rainey	501 Grande street Driftwood 78619	Well depth ~280', Glen Rose aquifer. Does not rely on rainwater.
Daniel Rainwater	117 Carril Vaquero Wimberley 78676	Unknown depth, unknown aquifer. Does not rely on rainwater.
Phil Rankin	1112 River Mountain Road Wimberley 78676	Well depth ~903', Trinity aquifer. No rainwater.
Eva Reed	333 Windmill Cove Wimberley 78676	We have an 800 foot well into the Trinity Aquifer. Supplemental Rainwater.
David Reid	401 Deer Lake Road Wimberley 78676	Well depth is 350' deep, aquifer unknown. No rainwater collection.

Jeff Ringelman	900 Camino De Rancho Wimberley 78676	Well depth of 700', producing at 550-600'. Unknown aquifer, does not rely on rainwater.
Annette Spanhel	1081 Lonesome Trl Driftwood 78619	On rainwater. Well no longer working.
Walter Stewart	70 Bols Road Wimberley 78676	Well depth 602', unknown aquifer. Does not rely on rainwater.
Mike Sullivan	101 S. Rainbow Ranch Rd Wimberley 78676	Well depth 400', unknown aquifer
Robert Swindle	1150 Jennifer Lane Driftwood 78619	Well depth ~580', unknown aquifer. Does not rely on rainwater.
Ron Symecko	120 Curva Bonita Wimberley 78676	Well depth ~700', Middle Trinity aquifer, does not rely on rainwater.
John Tanzillo	251 Windmill Cove Wimberley 78676	Well depth is 700 ft, unknown aquifer. Supplemental rainwater.
Suzanne Teshera	100 Misti Lane Driftwood 78619	Unknown depth (maybe around 550'), unknown aquifer. Supplemental rainwater.
Linda Thomas	301 Misti Lane Driftwood 78619	Well depth 345', unknown, does not rely on rainwater.
Joel Triplett	479 Jennifer Lane Driftwood 78619	Well depth 460', unknown aquifer, does not rely on rainwater.
Melissa Uroda	351 Winding Trail Wimberley 78676	Well depth 500 feet, Glen Rose aquifer, no rainwater.
Jon Vann	802 Rolling Oaks Dr. Driftwood 78619	Well depth is 450', Upper Trinity aquifer.
Betty Vaughan	234 Limestone Lane Driftwood 78619	Well depth unknown, Glen Rose aquifer

Trey Von Gonten	101 Windmill Cv Wimberley 78676	Well depth ~600', unknown aquifer
Ron Weiss	409 Deer Lake Road Wimberley 78676	Well depth 350', unknown aquifer. Does not rely on raintwater.
Linda Wilkin	5001 Loneman Mountain Wimberley 78676	Well depth 580', Glen Rose aquifer, does not rely on rainwater.
Janet Wilson	600 Misti Lane Driftwood 78619	Unknown depth of well, unknown aquifer, does not rely on rainwater.
Pat Davis/Barbara Foss	1079 Rolling Oaks Drive Driftwood 78619	Unknown well depth, unknown aquifer.
Wimberley Valley Watershed Assoc.	1405 Mount Shart Rd Wimberley 78676	Owens property adjacent to Jacob's and Cypruss Creek
Bob Wingo	1237 Water Park Rd. Wimberley 78676	Well depth 755', unknown aquifer.
Scott Woodward	2050 Windmill Run Wimberley 78676	Well depth 540', Glen Rose aquifer. Does not rely on rainwater.
Andrew Wray	100 Camino Derecho Wimberley 78676	Well depth is 720', unknown aquifer. Not on rainwater.
Nancy Weaver	515 Limestone Lane Driftwood 78619	Well depth is 400'.
Ronald Dunkin	8900 FM 150 Driftwood 78619	Well depiti is 725', Glen Rose aquifer. Not on rainwater
Karol Hujzak	505 Deer Lake Rd Wimberly 78676	Well depth 180', Glen Rose aquifer. Supplemental rainwater.
Hector Flores	244 Buckstinn Pass Driftwood 78619	Well depth 460', unknown aquifer
Stephen Tittle	451 Jennifer Lane Driftwood 78619	Well depth 450+', Trinity Glen rose

Chris & Sue Elliot	300 Buckskin Pass Driftwood 78619	Well depths 770' (Trinity) and 380' (Glen Rose). No rainwater
Irene Biggins	601 Buckstin Pass Driftwood 78619	Well depth 210-320', Glen Rose aquifer. No rainwater
Brad Thigpen	7001 Water Park Road Wimberly 78676	Well depth 650', pump at 550', Trinity (Lower GlenRose?)
Rose Penzerro	101 Misti Ln Driftwood 78619	Well depth 550', Trinity aquifer
Joseph Horne	450 Misti Lane Driftwood 78619	Well depth 480', Trinity aquifer. No rainwater
Timon & Mary Agobe	118 Carril Vaquero Wimberly 78676	Unknown well depth and aquifer
Martha Dodds & David Anderson	503 York Creek Road Driftwood 78619	Well depth ~325', Gen Rose aquifer
Ryan Marks	101 Bee Gee Road Driftwood 78619	Well depth 700+ (Glenn Rose) and 300+ (Edwards)
Gregory Womble	801 Billie Brookes Driftwood 78619	Well depth 149', Upper Trinity aquifer
Katie and Michael Robbins	715 Bee Gee Driftwood 78619	Well depth 500', Glen Rose aquifer
MaryAnn & Stephen Overby	185 Trails End Rd Driftwood 78619	Well depth unknown, aquifer unknown, does not rely on well water.
Lea & Stephen Westberg	7015 FM 3237 Driftwood 78619	Well depth ~450', BSEACD
Darren Masur	101 Corua Bonita Wimberly 78676	Well depth 500', aquifer unknown.
Donald Kurtz	101 Via De Noria Wimberley 78676	Well Depth 242', Trinity Aquifer

EXHIBIT C – Landowners’ Addresses Map

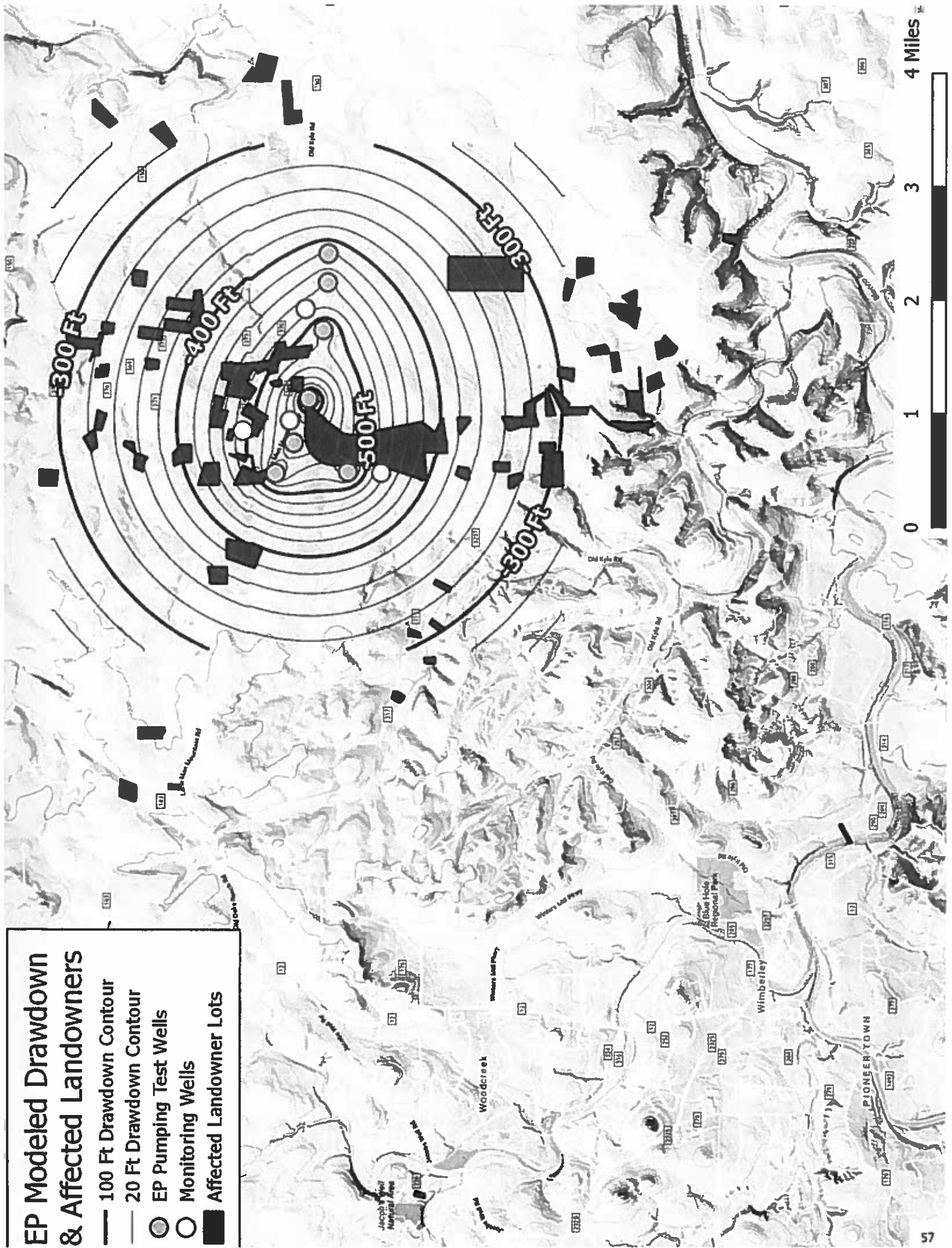


Mike McGowan
 Sarah Davis
 Constantine Quigley
 Jeffrey Butler
 Stephen Lorie
 Stephanie Weststrate
 Lammot Lewis
 Lisa Camp
 Paul Hayward
 Odette
 Odell
 Mary Louise Bond
 Martha Dadds & David Anderson
 Leahy Albarado
 Van Marks
 Susan Coffey
 Suzanne Fisher
 Joseph Horne
 Jeff Hill
 George George
 Gregory Wombey
 Marah
 Edgus
 Edgus
 Ronald Duncan
 Susan Laratus
 John South
 David Ash
 Ron Woods
 Daniel Rampante
 Mark Burnett
 Simon & Mary Agabo
 Kevin Karvas
 Joan Lawson
 Ron Syrecko
 Sandra Weas
 Doug Hollberg
 Lee Reed
 Troy Van Gonten
 Ellen Edwards
 Brad Thigpen
 Diane Dye
 Melissa Uffels
 Wendy Chelton
 Gerhard Cordier
 Charles David
 Jeff Peterson
 Judy Nichols
 Gyalone Hill
 Gyalone Jorgensen
 Cathy Cochran

EXHIBIT D – Drawdown map with affected properties

EP Modeled Drawdown & Affected Landowners

- 100 Ft Drawdown Contour
- 20 Ft Drawdown Contour
- EP Pumping Test Wells
- Monitoring Wells
- Affected Landowner Lots



June 25, 2018

Via email to: bseacd@bseacd.org

Board of Directors
General Manager
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

**Re: Contested Case Request – Board Hearing Requested
Electro Purification’s Groundwater Proposed Production Permit**

Dear BSEACD:

Pursuant to 4-9.13(B)(1), my name is Dennis D. Rape + Dana L. Rape, and my address is 6794 Fm 3237 Driftwood, TX 78619. I appreciate the opportunity to submit comments regarding EP’s proposed production permit.

I oppose the issuance of the proposed permit to Electro Purification. Consequently, I request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

I have standing to contest the proposed permit and should be a party. I own 171.98+ Home acres of land within est. 800 ft miles of EP’s wellfield. The Trinity Aquifer, from which EP intends to pump, underlies my property. I rely on groundwater from the Trinity Aquifer for my water supply needs. I have 1 well(s) that are 305ft deep.

If my well ceases to yield water, I will be without a source of water supply and my property values will plummet. 4-9.13(B)(2).

The drainage caused by pumping from EP’s wellfield will result in the diminution and potential elimination of groundwater that is a valuable asset held by me and will decrease my property values. 4-9.13(B)(2)(3) & (5).

I own the groundwater beneath my land and have not transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP’s wellfield, which the District has authority to regulate. 4-9.13(B)(5).

Should EP amend its application and decrease the volume of groundwater it is requesting to an amount that will not drain the groundwater from beneath my land, I would consider withdrawing my protest. 4-9.13(B)(4).

Below, please find my specific comments related to the District’s proposed permit.

[Insert comments]

Respectfully,

Dennis D. Pape + Dana L. Pape

(mailing)

Name *Dennis D. Pape + Dana L. Pape*
Address *6790 FM 3237 Driftwood, TX*
Phone Number *78619*

512-940-0429

*(Dana Pape-Salas
for Pape Family)*

CC: Bill Dugat, Attorney for BSEACD
bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant
ed@ermlawfirm.com

June 25, 2018

Via email to: bseacd@bseacd.org

Board of Directors
General Manager
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

**Re: Contested Case Request – Board Hearing Requested
Electro Purification’s Groundwater Proposed Production Permit**

Dear BSEACD:

Pursuant to 4-9.13(B)(1), my name is Dennis Pope, and my address is 6792 Fm 3237 Driftwood, TX 78619. I appreciate the opportunity to submit comments regarding EP’s proposed production permit. * see mailing address below*

I oppose the issuance of the proposed permit to Electro Purification. Consequently, I request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

I have standing to contest the proposed permit and should be a party. I own 6.43 + a Home acres of land within 100 ft miles of EP’s wellfield. The Trinity Aquifer, from which EP intends to pump, underlies my property. I rely on groundwater from the Trinity Aquifer for my water supply needs. I have 1 well(s) that are est 280-350 ft. deep.

If my well ceases to yield water, I will be without a source of water supply and my property values will plummet. 4-9.13(B)(2).

The drainage caused by pumping from EP’s wellfield will result in the diminution and potential elimination of groundwater that is a valuable asset held by me and will decrease my property values. 4-9.13(B)(2)(3) & (5).

I own the groundwater beneath my land and have not transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP’s wellfield, which the District has authority to regulate. 4-9.13(B)(5).

Should EP amend its application and decrease the volume of groundwater it is requesting to an amount that will not drain the groundwater from beneath my land, I would consider withdrawing my protest. 4-9.13(B)(4).

Below, please find my specific comments related to the District’s proposed permit.

[Insert comments]

Respectfully,

Dennis Pape

(mailing)

Name Dennis Pape
Address 6790 Fm3237 Driftwood TX, 78619
Phone Number 512-940-0429
Dana Pape-Sales
(for Pape family)

CC: Bill Dugat, Attorney for BSEACD
bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant
ed@ermlawfirm.com

June 25, 2018

Via email to: bseacd@bseacd.org

Board of Directors
General Manager
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748

**Re: Contested Case Request – Board Hearing Requested
Electro Purification’s Groundwater Proposed Production Permit**

Dear BSEACD:

Pursuant to 4-9.13(B)(1), my name is [↑] Dalton + Peggy Pape (Life Estate), and my address is 6790 Fm 3237 Driftwood, TX 78619. I appreciate the opportunity to submit comments regarding EP’s proposed production permit.

I oppose the issuance of the proposed permit to Electro Purification. Consequently, I request a contested case hearing before the Board of Directors pursuant to BSEACD Rule 4-9.13(B)(6).

I have standing to contest the proposed permit and should be a party. I own 1 (Home) acres of land within ^{est.} .25 miles of EP’s wellfield. The Trinity Aquifer, from which EP intends to pump, underlies my property. I rely on groundwater from the Trinity Aquifer for my water supply needs. I have 1 well(s) that are 290 ft deep.

If my well ceases to yield water, I will be without a source of water supply and my property values will plummet. 4-9.13(B)(2).

The drainage caused by pumping from EP’s wellfield will result in the diminution and potential elimination of groundwater that is a valuable asset held by me and will decrease my property values. 4-9.13(B)(2)(3) & (5).

I own the groundwater beneath my land and have not transferred or leased those rights to anyone else. These rights and interests are not common to members of the public and may be adversely affected by the proposed production from EP’s wellfield, which the District has authority to regulate. 4-9.13(B)(5).

Should EP amend its application and decrease the volume of groundwater it is requesting to an amount that will not drain the groundwater from beneath my land, I would consider withdrawing my protest. 4-9.13(B)(4).

Below, please find my specific comments related to the District’s proposed permit.

[Insert comments]

Respectfully,

(Life Estate)

Dalton Pape & Peggy Pape
Name C/o Dennis Pape + Dana Pape-Salas
Address 6790 FM 3237 Driftwood,
Phone Number TX 78619
512-940-0429
(Dana Pape-Salas
for Pape Family)

CC: Bill Dugat, Attorney for BSEACD
bdugat@bickerstaff.com

Edmond McCarthy, Attorney for Applicant
ed@ermlawfirm.com

Hays County Commissioner

Precinct 3



Lon A. Shell

200 Stillwater, Suite 103 • P.O. Box 2085 • Wimberley, Texas 78676

June 25, 2018

Board of Directors
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748
e-mail: bseacd@bseacd.org

Re: The General Manager's Statement of Position on Electro Purification LLC's (EP) Permit Application

To the Board of Directors of the Barton Springs Edwards Aquifer Conservation District:

As Hays County has experienced a tremendous amount of growth, the Commissioners Court has endeavored to ensure the protection of landowner rights while exercising our authority related to orderly and healthful development within the County. I know that the Barton Springs Edwards Aquifer Conservation District ("BSEACD") similarly plays an important role in the protection of landowner rights as you regulate the use of groundwater within your jurisdiction.

As the current Commissioner for Precinct 3, I am very concerned that Electro Purification LLC's ("E.P.'s") permit will fail to strike a balance between E.P.'s groundwater rights as a landowner (or lessor) and the rights of the residents of Hays County to maintain their access to groundwater. Only through BSEACD's receipt and consideration of input from the greater community can we hope to find a future that is compatible for all.

Hays County's ownership of Jacob's Well and investment in the Jacob's Well Natural Area, which is located within the same formation as the proposed E.P. wells and less than five miles from the proposed E.P. well-site, gives the County additional reason for concern. While BSEACD representatives have indicated that it is not likely that the first phase of E.P.'s permit would impact flow at Jacob's Well, I have little doubt that the full breadth of the E.P. permit *would* have impacts in the long term.

Jacob's Well and Blue Hole, both County-funded Parks projects, have become world-wide tourist attractions. During warmer months, the Jacob's Well Natural Preserve hosts 2,750+ visitors per week, with visitors traveling from as far away as Australia, Russia, and Western Europe. These natural features, connected by Cypress Creek, which is fed by Jacob's Well, have a notably positive economic impact on the Wimberley Valley. Tourism is a big part of the economy in the Wimberley Valley. What will happen to our economy when our springs don't flow?

I appreciate the District's intention to set triggers in the permit, ensuring that the Cow Creek and Lower Glen Rose formations will not be dewatered. However, the District's phased permit could be the very same slippery slope that allows E.P. to push up to a threshold that has a detrimental effect on groundwater supply, with contributory depletion coming from an unknown number of other sources within those formations. There are still many unknowns associated with the hydrogeology of our region. I believe the District should take a more conservative approach to phasing and triggers. I also believe the District should provide for additional public input prior to any decisions regarding phased production. A thorough public process and analysis should be conducted before any additional production is authorized.

E.P. has applied to produce a wholesale water supply of 912,500,000 gallons per year. They are pursuing a business plan to remove and export groundwater from the Wimberley Valley. They may have a legal right to produce groundwater, but not to the detriment of the residents around them who use their wells for everyday life. With this in mind, I believe the process for filing well impact complaints and mitigation actions should be enhanced to protect the property rights of all landowners and provide a more streamlined process toward a remedy. Enhancements could include, an increase to the mitigation fund minimum balance, reductions in timelines for processing of mitigation requests, and clearer language regarding the ability of the BSEACD General Manager to order the cessation of pumping if E.P. fails to comply with mitigation measures determined by the neutral third party. The neutral third party should have the final say in authorizing mitigation to well owners at the expense of E.P. Well owners that experience unreasonable impacts and request mitigation should immediately be provided with access to temporary, deliverable water supplies.

As you know, a portion of the Hill Country Priority Groundwater Management Area ("PGMA") overlays the western half of Hays County. Some of the properties on which E.P. will operate lie partially within the PGMA. The purpose of a PGMA is to "provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater." TEX. WATER CODE §35.019(a). PGMA's exist in areas that are "expected to experience critical groundwater problems." *Id.* §35.002. Some nine years ago, Hays County adopted Subdivision and Development Regulations that considered the sensitivity of the PGMA, limiting subdivision Lot-sizes served by individual water wells to 6 acres or more. It was a controversial action at the time. Some citizens objected to the regulation while others insisted that it should be more stringent, but the Commissioners Court of that time believed it was necessary to prevent water use from exceeding a safe and sustainable yield of groundwater in this formation.

I recognize that the District's task is quite different from Hays County's role in regulation of subdivisions, but it is notable that, if E.P. were a residential developer instead of a wholesale water supplier, application of our subdivision regulations to the Bridges and Odell tracts would yield approximately 583 home sites and a projected daily draw of approximately 193,185 gallons on our groundwater supply. That is the context in which we view the E.P. permit application. That is our basis for concern: our Subdivision and Development regulations, which are meant to protect this state-recognized sensitive area, would never allow the impact on the groundwater supply that is proposed by even the first phase of the E.P. permit.

Hays County is an invested partner in the study of our aquifers. In the past two years, Hays County has contributed \$200,000 toward the establishment of five groundwater monitoring wells, one of which is operated by BSEACD and others which are operated by the Hays Trinity Groundwater

Conservation District. We want to know more about our natural resources, particularly when our economy and our very lives rely on its quality and its availability. Until we have eliminated the unknowns, I humbly request that the District consider implementing additional safeguards before granting a permit of any kind to Electro Purification LLC.

My understanding is that you have already received request(s) for a contested case hearing. In order to secure Hays County's participation in a hearing, I request a contested case hearing on behalf of Hays County and intend to seek ratification of this request at the next available Commissioners Court meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lon A. Shell', with a long horizontal flourish extending to the right.

Lon A. Shell
Hays County Commissioner
Precinct 3

Arturo Ramon, II
200 Rolling Oaks Drive
Driftwood, Texas 78619

June 25, 2018

State Office of Administrative Hearing
P.O. Box 13025
Austin, Texas 78711-3025

Via Facsimilie (512) 475-4994

To Whom it May Concern:

I request that a hearing be conducted by the State Office of Administrative Hearings regarding the Well Modification Authorization Application and Production Permit Application filed on July 13, 2017 with the Barton Springs/Edwards Aquifer for wholesale public water supply.

Please do not hesitate to contact me regarding any and all matters in this case. Thank you.

Sincerely,

Arturo Ramon, II

Arturo Ramon, II
(512) 799-8200
tribalmarx@hotmail.com

