

STATE OF TEXAS

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RESOLUTION #110224-02

**COUNTIES OF HAYS, TRAVIS
BASTROP, AND CALDWELL**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BARTON
SPRINGS / EDWARDS AQUIFER CONSERVATION DISTRICT
CONCERNING LEGISLATION THAT MAY CHANGE THE BASIS
FOR GROUNDWATER MANAGEMENT IN THE STATE OF TEXAS**

WHEREAS, the Barton Springs/Edwards Aquifer Conservation District (the District) is a groundwater conservation district created by an act of the 70th Legislature and subject to various requirements of existing State law governing groundwater districts, including Texas Water Code Chapter 36; and

WHEREAS, the District is charged by its statutory authorities to provide for the conservation, preservation, protection, recharging and prevention of waste of groundwater and of groundwater reservoirs in the District's jurisdiction; and

WHEREAS, the District understands that its regulation of groundwater in its management plan is based on protecting the private property rights to groundwater of individual landowners by protecting the private property rights of all groundwater owners, as sufficiently stipulated by Texas Water Code §36.002; and

WHEREAS, the District's groundwater resources are unlike sand-and-gravel aquifers and are karstic in nature, subject to rapid and variably recurring recharge, rapid subsurface transport, and rapid, temporary changes in groundwater levels and spring flows of variable duration; and

WHEREAS, the large majority of permittees in the District, each having only a single to a small number of high-capacity wells on small tracts of land, have historically provided groundwater from each such system that serves as the sole-source drinking-water supply for hundreds to thousands of Texas citizens, and as support for other economically important uses; and

WHEREAS, on the basis of sound science the District has determined that the existing authorized pumping from those few wells on those small tracts of land have now fully subscribed the reliable firm-yield supply of groundwater from the major aquifer under the District's stewardship, and any additionally demanded water withdrawals will have negative effects on those supplies of drinking water during drought and on the spring flows on which a federally endangered species depends for habitat; and

WHEREAS, under current statutory authority throughout Texas, the use of groundwater by a property owner with a well on a tract of ten acres or more that is used for domestic and livestock purposes and that is equipped so that well is capable of producing no more than 10,000 to 25,000 gallons of water per day, dependent on enabling legislation of the groundwater conservation district, is not subject to permitting or further restrictions on its production; and

WHEREAS, SB 332 and its companion bill in the House have been introduced to establish a meaningful new “vested” class status accorded the overlying property owner with respect to groundwater rights, subject only to a standard of “reasonable” regulation by a groundwater conservation district; and

WHEREAS, the combination of new “vested rights” and undefined “reasonable regulation” will tend, perhaps unintentionally but almost certainly, to increase the likelihood that some large property owners who want to pump water for something other than their own domestic and/or livestock uses, without regard to the aquifer condition, will choose to legally challenge the regulatory authority of groundwater conservation districts to manage the aquifers systemically and for the benefit of all property owners, and which may in turn, whether intentional or not, produce an enduring negative impact on the financial wherewithal of nearly all groundwater conservation districts to prosecute their statutory charge; and

WHEREAS, SB 667 and its companion bill in the House have been introduced that reaffirms the current statutory authorities, the requirement for differing local groundwater management approaches that are based on actual local aquifer characteristics, conditions and usage, and the importance of the public interest as well as the rights of property owners; and

WHEREAS, all of the District’s permittees depend upon the District’s ability to regulate groundwater use in a fashion that not only conforms to its authorities and management plan but that also protects their currently authorized water supplies that are used for purposes essential to life and economic and emotional well-being:

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District that the governing body of the District:

1. Considers the existing language of Texas Water Code §36.002 as a necessary and sufficient basis for preserving, conserving, and protecting the groundwater resources of the District and for recognizing and honoring that groundwater is a private property right and not a public water of the state;
2. Encourages the Texas Legislature to provide full and open hearings of the various merits and issues associated with SB 332, SB 667, and their House companions that take into account the broader public interest of the rights of all groundwater users and not just a particular groundwater user; and

3. Supports legislation that hews to the affirming tenets of SB 667 as responsible groundwater management;
4. Urges the Legislature to exercise special care in making the statutory changes that are specified in SB 332, as introduced, as such changes may be accompanied by unintended and other deleterious consequences with respect to protecting desired future conditions of the aquifers and in assuring groundwater availability expected by existing users, with respect to the economic viability of groundwater conservation districts; and
5. Authorizes the District's General Manager and his designated representatives to convey the elements of this resolution to legislators and relevant committees that are deliberating groundwater rights, ownership, and management.

In Favor 5

Opposed 0

PASSED AND APPROVED THIS 24 DAY OF FEBRUARY, 2011.



Mary Stone, President

ATTEST:



Craig Smith, Secretary