Testimony Before the Senate Natural Resources Committee On SB 332 and SB 667

By
W.F. (Kirk) Holland, P.G.
General Manager
Barton Springs/Edwards Aquifer Conservation District

Good afternoon, Chairman Fraser and Committee Members.

I am Kirk Holland, the GM of the BSEACD. We are a water use fee-based GCD that is located mainly in parts of southern Travis, northern Hays, and Western Caldwell Counties, primarily managing the Barton Springs segment of the Edwards Aquifer. Most of our permitted use is for public drinking water supplies; we have no irrigated agriculture water use in the District.

Our elected Board of Directors has directed me to make you aware of its views on both SB 332 and SB 667. They recently passed a resolution to that effect, and copies of it are being made available to you. By way of summary, I will make three points.

First, we believe that groundwater *is* a part of the real property estate, and as such it should be considered as belonging to the landowner and their lessees/assigns. It is not public water of the state, as surface water is, and groundwater should be managed and regulated by local representatives of all the landowners and groundwater users, not by some state-level commission, as is surface water. We find that the *existing* language of Ch.36.002 is necessary *and* sufficient to do that.

Second, we believe that full and open hearings, like this one, of the various merits and issues associated with proposed changes in Ch. 36 should take into account the broader, more "public" interest of the rights of <u>all</u> groundwater owners and users of an aquifer, and not view this only from the perspective of a particular single landowner. Protecting the rights of *one* user of an aquifer

requires protecting the rights of *all* its users. I believe that this is especially true of karst aquifers such as the Edwards Aquifer that we manage; it is very much a shared resource that rapidly responds to changes. The take-away here: aquifers are natural systems, and they must be *managed* as systems too.

Third and finally, we are concerned about what might be unintended consequences of the language proposed in SB 332. We have already heard in this hearing a lot about such consequences. Simply put, the insertion of "vested" and "reasonably" in Ch. 36.002 will very likely increase the number of lawsuits alleging either illegal unreasonable regulation and/or claims of compensable takings of a constitutionally protected legal right by some disappointed applicants[; this is a real concern] even as GCDs *rationally* deal with managing the groundwater resource, and *especially* once the MAG, or Managed Available Groundwater permitting limitation, is reached. A GCD then needs the flexibility to say "no", or "yes, but", or "yes, if" to protect the MAG. In our District, permitting beyond the Edwards MAG will demonstrably risk adverse impacts in the wells of numerous existing users, including especially the public water supplies of some 60,000 Central Texans, and in flows at Barton Springs that jeopardize the federally-listed endangered species there. The Legislature has stated that it prefers and intends for the GCDs to manage the groundwater, not the Courts -- and I am also confident that your preference does not extend to the federal government. Further, most GCDs do not have the financial wherewithal to defend themselves unnecessarily on a frequent, recurring basis – having to spend limited available resources on legal defense costs or compensable takings is one way to ensure that GCDs do not have the ability to manage locally its groundwater resources in the future.

I appreciate this opportunity to make our perspectives known to the Committee. That concludes my remarks and I will be happy to answer any questions the Members might have.