

June 25, 2018

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

RE: Public Comments for Electro Purification LLC -- Production Permit in Middle Trinity Management Zone Application for 2.5 million gallons per day of groundwater

Dear Barton Springs Edwards Aquifer Conservation District Board of Directors,

Hill Country Alliance (HCA) and its supporters recognize and appreciate the critical work that the Barton Springs Edwards Aquifer Conservation District (the District) Board and staff perform in their charge of protecting the common resource upon which countless water well owners rely as their sole source of household water. We also recognize the tremendous value that the District gives in the protection of the iconic and life supporting Trinity Aquifer and the Barton Springs segment of the Edwards Aquifer.

Furthermore, we recognize the perilous and largely underfunded position that most groundwater districts face when seeking to protect historic exempt domestic and livestock well owners in the face of well-financed industrial scale permit applications. At least five high-profile cases are being contested in Texas that seek to test the strength of local groundwater districts' ability to protect the production capabilities of their most senior rights holders.

Electro Purification LLC (applicant), a for-profit wholesale water supply company based in Houston Texas has applied for permit to pump 2.5 million gallons of groundwater per day (912.9 million gallons per year) from the Trinity Aquifer's Cow Creek formation in Hays County. Hill Country Alliance (HCA) staff have reviewed the proposed *Electro Purification -- Production Permit in Middle Trinity Management Zone Application* and its supporting documentation and appreciates the District Executive Director's caution in crafting a permit with multiple safeguards designed to protect the resource from overdraft, while considering the production rights of all users.

HCA urges the District's Board of Directors to consider implementing the following supplemental measures to further safeguard the historic property rights of existing well owners; and the perpetual high-quality and quantity of the water system comprised of the Trinity, the Edwards, and their surface flow interactions.

Financial Protections for Well Owners

Though Avoidance and Mitigation protections are well thought out, HCA would request that the mitigation fund as described in Section 9 be available for *all* well failure oriented financial burdens incurred by harmed well owners due to the applicant's pumping activities. These should include the cost of supplemental water supply and delivery in the event of water quality degradation, well or pump failure, or for the additional electrical cost to pump water from greater depth.

Financial remedies for Avoidance and Mitigation protections should be expanded to include potable rainwater harvesting systems for those seeking alternatives to participation in damaged well remediation. Those systems should be built to deliver the same quantities of water as the wells that they replace.

In order to protect well owners from the potential financial liabilities of disabled wells due to the applicant's production as specified in Section 9, the applicant's *Financial Commitment for Mitigation Actions* should be expanded from \$50,000 to a dollar amount that reflects the actual financial burdens associated with the cost of reworking multiple wells. This enlarged sum would constitute a reservation fund to remedy multiple well failures and protect well owners against the potential bankruptcy of the applicant.

Additionally, HCA recommends expansion of Section 2.17 to protect the District and its well owners from any change of applicant ownership, and to protect well owners against any potential bankruptcy actions or settlements of the applicant or its successors.

Collective Well Owner and District Board Input On Phased Production Increases

While HCA is satisfied that the District has backed its phased production system (and attended Special Provisions) with the most vigorous application of scientifically based criteria, the permit allows the District's General Manager sole discretion to direct phased production changes. HCA recommends that decision be subject to the approval of the District's elected Board of Directors with the opportunity for a public hearing and public comment.

Water Quality Protection

HCA recommends that the Water Quality Sampling – Annual Fund Contribution of \$1500 for annual water quality sampling and analysis of wells in the immediate area of the applicant's well field, be expanded in both amount and scope to springs and seeps that contribute to surface water flows.

Surface Water Supply Protection

HCA recommends that the District implement strict spring water quality and flow guidelines to protect surface water flows that serve downstream users, fish, and wildlife, and ultimately Edwards Aquifer recharge. Those guidelines may be attached to the creation and implementation of a Management Zone for appropriate Cow Creek or Lower Glen Rose springs and a Lone Man Creek Management Zone.

Impact Determination Timing of Damaged Wells

Section 7 requires that within 30 days following the GM's determination of the existence of *an unreasonable impact, more likely than not attributable to the production of groundwater from the applicant's well field, the applicant shall implement the mitigation steps*. HCA recommends that, due to the immediate domestic needs of the damaged well owner, the permit specify a 7-day maximum period for impact determination.

Financial Protections for Future Well Owners

In both the *Edwards Aquifer Authority v. Day* and *Edwards Aquifer Authority v. Bragg* cases, the Supreme Court of Texas has explicitly stated that groundwater is a vested private property right in place, subject to governmental taking. Section 9's Financial Commitment for Mitigation Actions clause should provide for takings compensation provisions for property owners who find themselves unable to produce water in the future because the applicant's production has damaged the aquifer's ability to produce water.

Our comments reflect the collective vision of our Hill Country supporters, stakeholders, businesses and elected officials for the protection of the Hill Country's natural resources for current and future generations. Thank you for your consideration of these comments. If you have questions or concerns, please contact me at (512) 694-1121.

Sincerely,

Charlie Flatten
Water Policy Program Manager
Hill Country Alliance
512.694.1121

CC: Garry Merritt, Board President, HCA; Katherine Romans, Executive Director, HCA