

**MEMORANDUM**

**TO:** Mr. Larry French, Director of Groundwater Resources Division,  
Texas Water Development Board

**FROM:** Bob Harden, R.W. Harden & Associates, Inc.

**DATE:** October 29, 2015

**SUBJECT:** Comments on HB 30

R.W. Harden & Associates, Inc. is providing the following comments in response to the TWDB's request for public comment on HB 30. We are providing these comments with a genuine desire for rationally based, fair and impartial groundwater management programs. We are not providing these comment on behalf of any particular client..

RWH&A was requested to provide specific recommendations for certain language in the enrolled bill. Specifically, that a designated groundwater production zone be separated by hydrogeologic barriers. Our recommendation was based on the importance of administering separate and segregated regulation and management. We are aware of many stakeholders, including fresh and brackish groundwater owners who are concerned about the potential for HB 30 to be used to create differential regulations in hydraulically connected aquifers that have differing water quality in the updip and downdip portions of the aquifer . Additionally, the State Supreme Court has used the words "common aquifer" to describe a purpose of groundwater regulation (Day Case 2012). This Supreme Court reference is independent of water quality in the common aquifer.

The bill language uses a test that describes the presence of barriers "sufficient to prevent significant impacts" to adjoining freshwater zones. We recommend that a test of significant barriers consider whether production in a designated brackish zone can demonstrably affect the Desired Future Condition of the adjoining fresh water zone. Basically, if production in a brackish zone demonstrably affects a DFC in an adjoining fresh water zone in a similar manner as production in the associated fresh zone can, then sufficient barriers are not present. We believe this best represents the essence of the definition of an aquifer subdivision. As you may be aware, for many

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decades our State has used the water code definition of aquifer subdivision as a basis for delineating regulatory zones for groundwater.

We also believe there may be an opportunity for the TWDB to help educate numerous stakeholders about the difference between shallower fresh water strata and deeper brackish strata. We recognize that there may be areas where there is little hydraulic communication between the fresh and brackish zones of a given “stacked” strata aquifer, and in such cases the two strata may deserve separate regulatory programs. It is also common for brackish groundwater to be hydraulically connected to up-dip fresh water within the same stratigraphic zone. Where this is the case, the impacts associated with brackish groundwater development are generally indistinguishable from those resulting from pumpage in the fresh water zone.

We appreciate the opportunity to provide comments on this important topic and request that they be considered when developing the study’s scope.

If we can be of any further assistance, please feel free to give me a call.