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October 30, 2015

Texas Water Development Board  
Attn: Dr. Sanjeev Kalaswad  
Director of Conservation & Innovative Water Technologies  
P.O. Box 13231  
Austin, Texas 78711-3231

*via e-mail*

Re: HB 30 – Response to Request for Public Input on Brackish Groundwater  
Production Zones

Dear Dr. Kalaswad:

I am writing in response to TWDB's request for input on the identification of "Brackish Production Zones," pursuant to House Bill 130, 84<sup>th</sup> Regular Session, on behalf of Clayton Williams Farms, Inc., with operations in Pecos County, Texas. Clayton Williams Farms, Inc. ("CWF"), owns and/or controls approximately 17,000 acres of land in the Leon Belding area located just outside of Fort Stockton, Pecos County, Texas. CWF conducts irrigated farming activities on a substantial portion of this acreage relying upon groundwater resources produced largely from the Edwards-Trinity Aquifer with some production from the Rustler Aquifer. Although not yet developed for the CWF acreage, the Capitan Reef underlying the CWF lands provides an additional substantial source of groundwater available for support of agricultural and other beneficial uses. The groundwater underlying the farms is owned by Fort Stockton Holdings, LP ("FSH"). Together, FSH and CWF would like to have ready access to the multiple groundwater resources underlying the acreage in Pecos County, and be able to put the same to multiple beneficial uses, including irrigated agriculture and municipal and industrial purposes.

CWF's lands and FSH's groundwater are located within the jurisdiction of the Middle Pecos Groundwater Conservation District ("MPGCD" or the "District"). The District has publically articulated a position with respect to its control over the permitting and use of any groundwater produced from aquifers within its jurisdiction irrespective of the water quality, which is restrictive of its application for beneficial purposes, particularly those located outside of the District.

For example, in 2010 when the District conducted public hearings on its then proposed Desired Future conditions and Management Plan, the MPGCD's management recommended de minimis volumes of groundwater be allowed to be pumped, limiting the permissible available groundwater to ridiculously low volumes without scientific basis or justification. The Capitan Reef Aquifer, which has been described as an ocean of water (both in quality and quantity) underlying the Permian Basin, including substantial areas within the MPGCD's jurisdiction, was described by District Management as only having 11,122 acre-feet of combined annual production available from within both the GMA 3 and GMA 7. *See* MPGCD's Management Plan at pp. 14-15. For the Rustler Aquifer, which is also generally considered to have poorer quality (higher total dissolved solids or "TDS") than the Edwards-Trinity Aquifer in the region, the MPGCD's Management Plan capped the permissible annual production at 10,508 acre-feet per year to achieve the District's restrictive DFCs. *See* MPGCD's Management Plan at p. 16; *see also* Appendix F of the MPGCD Management Plan.

The District defends the confiscatory effects of its Management Plan and practices as nothing but illustrative of its being "conservative" and focused on ensuring the "sustainability" of the aquifers subject to its jurisdiction. While cloaking its actions to impair the lawful exercise of landowners' property rights in their groundwater and the beneficial use and enjoyment of the same in such laudable buzz-words, the reality is that the District's attitude and practices related to the privately owned groundwater subject to the scope of its regulatory jurisdiction is such that the District unreasonably restricts the production of groundwater. It is disingenuous to claim as a goal to insure that the groundwater resources never be exhausted because, in fact, the practice is actually to prevent the application of the privately owned resource to any statutorily recognized beneficial use or purpose in a meaningful way. Use of terms like "conservative or conservation" and "sustainable" is an attempt to justify a means to deny permits to produce the groundwater and, in particular, to transport it for beneficial use outside of the District.

During the public hearing process in 2010 described above, when challenged about why the District's Management was recommending as part of its Management Plan such unsupportable and ridiculously low volumes of producible water from the Capitan Reef and Rustler Aquifers, the response offered was that due to the fact that the quality of the groundwater in those aquifers was so poor because of its "brackish" character, that no one used them – it was so salty even the cows would not drink it; therefore, no one would seek any permits so setting the DFCs to achieve a low MAG was not a big deal. In other words – "just trust me, don't worry about it."

Since 2010, with (i) the experiences of the ongoing drought and the devastating drought year experienced statewide in 2011, still fresh on everyone's mind, (ii) the booming state population, (iii) our inadequate available water supplies, and (iv) technological advancements that facilitate the development of our brackish water resources to beneficial application, the District now wants to maintain its practices and artificially unreasonable low production volumes (MAGs) on the virtuous theories of "conservation" and "sustainability." In reality it is nothing more than the continued effort to control and/or prevent the beneficial development and use of the privately owned groundwater rights needed for beneficial use on a statewide basis through

"delay" – pure and simple delay which the District tries to mask as "conservation" and "sustainable" management.

The Texas Legislature enacted Senate Bill 1 in 1997 with the vision that the legislation would facilitate the State's ability to plan for and implement strategies to achieve our significant water supply needs into the future. HB 30 is another step in that process. It is a step that must be taken if we as Texans are to achieve the goals that were the genesis of SB 1. Opposition to the designation of Brackish Production Zones by MPGCD and other groundwater districts is nothing more than a concerted effort to obstruct Texas' ability to achieve those goals.

When the Legislature reconvenes for its 85<sup>th</sup> Regular Session in January 2017, we will be approaching the 20<sup>th</sup> anniversary of the enactment of SB 1. Looking back at the "milestones" achieved pursuant to SB 1, however, all we will find is two decades of groundwater districts like MPGCD successfully defending against the implementation of SB 1 and/or the accomplishment of any of the goals and objectives of the legislation envisioned by its authors to develop our available and much needed groundwater resources through a steady and, to date, successful campaign of "delay" waged in the name of "conservation" and "sustainability."

Much of the groundwater in west Texas is "Brackish," having a measured TDS in excess of 1000 parts per million ("ppm") or milligrams per liter ("mg/l"). Even the region's primary water supply source, the Edwards-Trinity Aquifer, is generally of a Brackish quality. CWF is fortunate to have on staff a former employee of the Texas A&M Agricultural Extension Service, Mr. Gary Bryant, who was stationed in Pecos County as a Water Specialist. While with the Extension Service, one of Mr. Bryant's duties from 2007 to 2012, was to study, test and evaluate the water quality of various west Texas streams and aquifers in the Pecos River watershed, including the Edwards-Trinity Aquifer in Pecos County. According to Mr. Bryant, the water quality of the Aquifer was Brackish in character (See Appendix "A" – Affidavit of Gary Bryant).

Enhanced technologies make beneficial use of these Brackish groundwater resources previously thought of as unusable or undesirable a reality. Legislative action to provide incentives to the development and beneficial use of the resources to meet statewide growing demands for additional water supplies is in the public interest. Such incentives include breaking down the regulatory road blocks posted by groundwater districts in the form of restrictions on permitting the production and use of the resource. This is particularly true where until the development of our state's brackish water supplies as an alternative to meet growing water supply demands reached current levels of interest, the districts historically discounted the brackish aquifers as not worth regulating by limiting the volumes available for permitting on the basis of lack of interest.

The study of these resources and identification of Brackish Production Zones with streamlined permitting process that will facilitate permitting, production and beneficial use, while providing safeguards to protect the affected designated Brackish zone, neighboring aquifers and/or aquifer zones, and other groundwater users and permittees as contemplated by HB 30 is a positive and constructive step in the right direction. The TWDB should not be

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deterred from its task by the hollow mantra of delay for the sake of conservation and sustainability. Texas cannot tolerate another day, much less another twenty years of delay if we are going to be able to meet our growing demands, serve the existing and projected population, and achieve the continued success that makes Texas, the Lone Star State, great.

On behalf of Clayton Williams Farms, Inc., and Fort Stockton Holdings LP, thank you for beginning the process and proceeding diligently to bring to fruition the ability of landowners and those responsible for providing for our water supply needs to reasonable and efficient means to develop our prolific brackish resources across the state and, in particular, in west Texas. Please know that CFW and FSH are interested in the TWDB's efforts and progress, and are willing to participate actively and be of service in the Board's Stakeholder process.

Sincerely,



Edmond R. McCarthy, Jr.  
For Clayton Williams Farms, Inc. &  
Fort Stockton Holdings LP

ERM/tn

Encl.

**APPENDIX "A"**

**Affidavit of Gary Bryant**

**AFFIDAVIT OF GARY BRYANT**

STATE OF TEXAS                   §  
  §  
COUNTY OF PECOS               §

On this day, Gary Bryant personally appeared before me, the undersigned notary public, and being by me fully sworn on his oath, deposed and stated as follows:

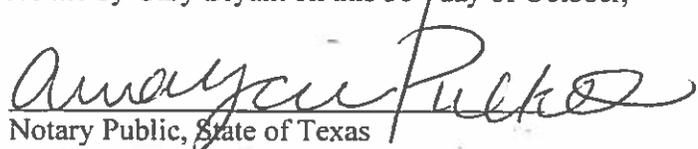
1. I, Gary Bryant, am over eighteen (18) years of age. I have never been convicted of a felony or crime involving moral turpitude, and I am fully competent to make this Affidavit. I have personal knowledge of the facts in this affidavit, and they are true and correct. This affidavit is submitted in connection with the Texas Water Development Board’s request for stakeholder/public input to identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater pursuant to House Bill 30 enacted by the Texas Legislature during the recent 84<sup>th</sup> Regular Legislative Session.
2. I am employed by Williams Farms located in the Leon-Belding area of Pecos County west of the City of Fort Stockton, P. O. Box 1668, Fort Stockton, Texas 79735. I am responsible for agronomic production at Williams Farms, and have been employed since 2014.
3. Prior to joining Williams Farms, I was the Water Specialist for the Texas A&M Extension Service in Fort Stockton, Texas from 2007 until 2012. As part of my duties, I studied and monitored the quantity and quality of the aquifers and surface water in the Pecos River Watershed, including the Edwards-Trinity Aquifer in Pecos County.
4. In my current employment with Williams Farms I continue to monitor water quantity and quality of the groundwater produced from the well fields at the Farms relied upon for crop irrigation. In that capacity, I have sampled and tested, caused to be sampled and tested and reviewed the results of sampling and testing results for the groundwater produced from the Edwards-Trinity Aquifer underlying the Williams Farms.
5. Based upon my studies, sampling and testing activities, and review of water quality sampling results over the past decade, it has been my experience and is my opinion that the majority of the Edwards-Trinity Aquifer is “brackish” in quality with total dissolved solids being in levels that exceed 1000 parts per million (PPM). Based upon my education, training and experience, fresh water is defined as have less than 1,000 ppm total dissolved solids (TDS) and brackish water being classified as having 1,000 to 10,000 ppm total dissolved solids.

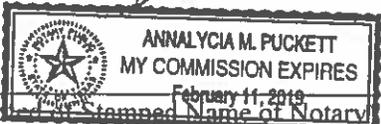
6. I am also familiar with the City of Fort Stockton municipal water supply source, which is groundwater from a well field adjacent to the Williams Farms in the Leon Belding Area of Pecos County west of Fort Stockton producing from the Edwards-Trinity Aquifer. Because of the brackish character of the groundwater produced (TDS above 1000ppm) the City operates a reverse osmosis treatment facility to treat the Edwards-Trinity Aquifer water it produces to a quality of less than 1,000 ppm in order to make it fit for consumption for the citizens of Fort Stockton and the prison inmates in the area.
7. The purpose of this affidavit is to testify to the fact the Edwards-Trinity Aquifer under Pecos County is in fact brackish.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Gary Bryant

SWORN TO and SUBSCRIBED before me by Gary Bryant on this 30<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Notary Public, State of Texas

  
(Printed or Stamped Name of Notary)  
My Commission Expires: February 11, 2019