

Hays County Commissioner

Precinct 3



Lon A. Shell

200 Stillwater, Suite 103 ▪ P.O. Box 2085 ▪ Wimberley, Texas 78676

June 25, 2018

Board of Directors
Barton Springs Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748
e-mail: bseacd@bseacd.org

Re: The General Manager's Statement of Position on Electro Purification LLC's (EP) Permit Application

To the Board of Directors of the Barton Springs Edwards Aquifer Conservation District:

As Hays County has experienced a tremendous amount of growth, the Commissioners Court has endeavored to ensure the protection of landowner rights while exercising our authority related to orderly and healthful development within the County. I know that the Barton Springs Edwards Aquifer Conservation District ("BSEACD") similarly plays an important role in the protection of landowner rights as you regulate the use of groundwater within your jurisdiction.

As the current Commissioner for Precinct 3, I am very concerned that Electro Purification LLC's ("E.P.'s") permit will fail to strike a balance between E.P.'s groundwater rights as a landowner (or lessor) and the rights of the residents of Hays County to maintain their access to groundwater. Only through BSEACD's receipt and consideration of input from the greater community can we hope to find a future that is compatible for all.

Hays County's ownership of Jacob's Well and investment in the Jacob's Well Natural Area, which is located within the same formation as the proposed E.P. wells and less than five miles from the proposed E.P. well-site, gives the County additional reason for concern. While BSEACD representatives have indicated that it is not likely that the first phase of E.P.'s permit would impact flow at Jacob's Well, I have little doubt that the full breadth of the E.P. permit *would* have impacts in the long term.

Jacob's Well and Blue Hole, both County-funded Parks projects, have become world-wide tourist attractions. During warmer months, the Jacob's Well Natural Preserve hosts 2,750+ visitors per week, with visitors traveling from as far away as Australia, Russia, and Western Europe. These natural features, connected by Cypress Creek, which is fed by Jacob's Well, have a notably positive economic impact on the Wimberley Valley. Tourism is a big part of the economy in the Wimberley Valley. What will happen to our economy when our springs don't flow?

I appreciate the District's intention to set triggers in the permit, ensuring that the Cow Creek and Lower Glen Rose formations will not be dewatered. However, the District's phased permit could be the very same slippery slope that allows E.P. to push up to a threshold that has a detrimental effect on groundwater supply, with contributory depletion coming from an unknown number of other sources within those formations. There are still many unknowns associated with the hydrogeology of our region. I believe the District should take a more conservative approach to phasing and triggers. I also believe the District should provide for additional public input prior to any decisions regarding phased production. A thorough public process and analysis should be conducted before any additional production is authorized.

E.P. has applied to produce a wholesale water supply of 912,500,000 gallons per year. They are pursuing a business plan to remove and export groundwater from the Wimberley Valley. They may have a legal right to produce groundwater, but not to the detriment of the residents around them who use their wells for everyday life. With this in mind, I believe the process for filing well impact complaints and mitigation actions should be enhanced to protect the property rights of all landowners and provide a more streamlined process toward a remedy. Enhancements could include, an increase to the mitigation fund minimum balance, reductions in timelines for processing of mitigation requests, and clearer language regarding the ability of the BSEACD General Manager to order the cessation of pumping if E.P. fails to comply with mitigation measures determined by the neutral third party. The neutral third party should have the final say in authorizing mitigation to well owners at the expense of E.P. Well owners that experience unreasonable impacts and request mitigation should immediately be provided with access to temporary, deliverable water supplies.

As you know, a portion of the Hill Country Priority Groundwater Management Area ("PGMA") overlays the western half of Hays County. Some of the properties on which E.P. will operate lie partially within the PGMA. The purpose of a PGMA is to "provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater." TEX. WATER CODE §35.019(a). PGMA's exist in areas that are "expected to experience critical groundwater problems." *Id.* §35.002. Some nine years ago, Hays County adopted Subdivision and Development Regulations that considered the sensitivity of the PGMA, limiting subdivision Lot-sizes served by individual water wells to 6 acres or more. It was a controversial action at the time. Some citizens objected to the regulation while others insisted that it should be more stringent, but the Commissioners Court of that time believed it was necessary to prevent water use from exceeding a safe and sustainable yield of groundwater in this formation.

I recognize that the District's task is quite different from Hays County's role in regulation of subdivisions, but it is notable that, if E.P. were a residential developer instead of a wholesale water supplier, application of our subdivision regulations to the Bridges and Odell tracts would yield approximately 583 home sites and a projected daily draw of approximately 193,185 gallons on our groundwater supply. That is the context in which we view the E.P. permit application. That is our basis for concern: our Subdivision and Development regulations, which are meant to protect this state-recognized sensitive area, would never allow the impact on the groundwater supply that is proposed by even the first phase of the E.P. permit.

Hays County is an invested partner in the study of our aquifers. In the past two years, Hays County has contributed \$200,000 toward the establishment of five groundwater monitoring wells, one of which is operated by BSEACD and others which are operated by the Hays Trinity Groundwater

Conservation District. We want to know more about our natural resources, particularly when our economy and our very lives rely on its quality and its availability. Until we have eliminated the unknowns, I humbly request that the District consider implementing additional safeguards before granting a permit of any kind to Electro Purification LLC.

My understanding is that you have already received request(s) for a contested case hearing. In order to secure Hays County's participation in a hearing, I request a contested case hearing on behalf of Hays County and intend to seek ratification of this request at the next available Commissioners Court meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. A. Shell', with a long horizontal flourish extending to the right.

Lon A. Shell
Hays County Commissioner
Precinct 3