



June 4, 2018

**COMMENTS ON INTERM CHARGE NUMBER 2
FOR SENATE COMMITTEE ON AGRICULTURE, WATER, & RURAL AFFAIRS**

All groundwater in Texas is private property. The Texas Supreme Court has consistently recognized and reaffirmed the owner of the groundwater must be provided a constitutionally protected Fair Share. All permitting should be based on this premise. "Property rights based" as opposed to "user based" permitting should be the determining factor used by all groundwater districts. Many groundwater districts use property rights to determine permitting and allocations. Some groundwater districts do not. This inconsistency creates confusion and unnecessary litigation resulting in uncertainty in the market and excessive costs.

The lack of consistent rules over aquifers also creates unnecessary confusion and cost. Aquifers do not recognize political boundaries. GCDs, for the most part, regrettably do. The Texas Desalination Association believes in aquifer-based management. Aquifer-based management means that aquifers that cross county boundaries are managed by uniform rules that account for the uniqueness of aquifer hydrogeology and provide an opportunity for owners of groundwater to access their constitutionally protected fair share of groundwater resources. Aquifer-based management is not a new concept in Texas. But, the principals associated with aquifer-based management are less common among GCDs today than they were among the first GCDs established in Texas 30 to 50 years ago.

The Texas Desalination Association wishes to promote the use of our state's brackish water resources. All groundwater, brackish or otherwise, should just be considered groundwater. An important consequence of embracing aquifer-based management is that it forces the creation of rules that recognize the inherent benefits of brackish groundwater projects, which can have a much lower level of risk than an equivalent fresh water project with regard to adversely impacting surface water bodies, domestic/livestock wells, and other shallow wells. Another important aspect of aquifer-based management, when it becomes integrated into the permitting process, the level of certainty with knowing the outcome of a project is increased because the amount of human discretion in the permitting process is reduced or eliminated. Put another way, regulatory certainty promotes permitting reliability, expediency and sustainable project development — and all contribute to proper valuation of water.

The Texas Desalination Association desires modification of statutes and regulations to encourage the use of brackish groundwater resources to meet the state's growing water needs. Numerous institutional and regulatory inefficiencies currently restrain the development and implementation of brackish water projects in Texas. Groundwater management decisions must be aquifer based.

The Texas Desalination Association looks forward to working with Senator Perry and the committee to further simplify and make more efficient use of this substantial natural resource.