COMMENTS TO SENATE COMMITTEE ON AGRICULTURE, WATER AND RURAL AFFAIRS

IN OPPOSITION TO SB 1392 AS INTRODUCED

BY

SIMSBORO AQUIFER WATER DEFENSE FUND

LEAGUE OF INDEPENDENT VOTERS OF TEXAS

April 10, 2017

Chairman Perry, Senator Kolkhorst and Members of the Committee:

My name is Michele Gangnes. I live on my land in Lee County, but I am speaking as a founding board member of the Simsboro Aquifer Water Defense Fund and the League of Independent Voters to OPPOSE SB 1392. The two organizations are not related other than in common interests and common purposes, carried out in different venues and different ways. The League is a state wide organization. The Simsboro Defense Fund is, obviously, local to the counties of central Texas that lie over the Simsboro formation of the Carrizo-Wilcox Aquifer but also has wider support across Texas.

The issue that unites us is groundwater, specifically the conservation and protection of our aquifers and the *equal* protection of our future generations, our rural economies and the environment, and the landowner private property rights of those who want to keep their water in the ground to promote those other protections. The issue that unites us is groundwater, specifically the conservation and protection of our aquifers and the *equal* protection of our future generations, our rural economies and the environment, and of the landowner private property rights of those who want to keep their water in the ground to promote stewardship for the other needs.

I say “equal” to mean equal to a water seller’s right and a distant municipality’s right to drain, both landowners who sell and landowners who don’t. And I am deliberately drawing a contrast to SB 1392’s language of “equal dignity” to be accorded to producing and exporting groundwater, presumably at the expense of conservation and protection of aquifers. In fact, if exploitation of groundwater is the prioritized option *now* over other sources of future supply ---that is, the mining of and eventual depletion of our aquifers while we hope that something better will come along, as Chairman Perry

alluded in talking to a group of us last summer --- we are selling our future to for-profit speculators, special interests and an unverified future demand that may or may not materialize.

Our views on demand can be argued --- what cannot be argued is that we can institute the best methods of permit management through application of the best science available, not mandated "filling of orders." We can also institute the best practices of conservation and water management *now, on both the supply side and especially the demand side, all with the objective of reducing that speculative future demand and with the effect of actually conserving and protecting our aquifers as a reliable component of our long-term supply --- hopefully our "perpetual" ace in the hole supply.*

We understand amendments to SB 1392 have already been proposed. We hope the amendments recognize our concerns. But we have learned that in the Legislature, it's best to speak up anyway, even though we hope it will prove unnecessary because reason will prevail. We trust, with all due respect to Chairman Perry, that his Christmas tree will be carefully decorated by his colleagues --- or maybe it should just be left in the forest. Anyway, this is our 30,000 foot view of our interpretation of the objectives of SB 1392 as drafted.

Despite the differences in our organizations, we have a common denominator. Members of the League and supporters of the Defense Fund are pioneer families, ranchers, farmers, retirees, local business persons, commuters to the big city and refugees from the unaffordable big city who live in the rural counties that lie over the Simsboro. But we count among our supporters, the voices of urban seniors and millennials, urban moderates, conservatives and liberals, along with members of both political parties and *independent voters* who might live anywhere in between cities and rural. We are a growing voice, not a receding voice.

The reaction to SB 1392 among these members and supporters could not be more uniformly negative, because our desire to steward and sustain our natural resources for future generations, especially our aquifers and the precious water they hold, is the tie that binds us all. SB 1392, frankly, is an arrogant attempt to force the will of the few over the will of the many.

Our rural constituency is not water-greedy, we are not selfish, we don't hoard water --- we know what "share our resources" means and we are prepared to do so. We most definitely do not understand the label of "balkanizers" assigned to us, because that pejorative flies in the face of everything lower-case "i" *independent* Texans stand for --- a dual spirit of "don't tread on me but I understand taking care of my neighbors."

But to quote my inimitable Lee County Judge Paul Fischer: "My momma taught me to share, but taking it *all* is not sharing."

When SAWS made its *first* failed foray into the Simsboro in 1999, the Bureau of Economic Geology predicted significant drawdowns in my county and others from what was only the first of several future projects. Now, Forestar, End Op, Vista Ridge and other projects are permitted and the water under Alcoa that SAWS first wanted is still for sale. In the words of the first president of my local groundwater district back in 1999, "*If you went down to San Antonio and the Edwards Aquifer and said I'm gonna draw down at least 100 feet over 1,400 square miles, those people would be coming to your funeral, because someone would hang you."* I probably don't have to tell you the drawdown my county is looking at 15 years later, is more like 300-400 feet, *or more,* under current estimates of future pumping that has been permitted*.*

If this Legislature passes SB 1392, my county, and other local counties, are fair game for many more big straws. If SB 1932 passes in its current form, I probably will no longer have my local Lost Pines Groundwater Conservation District to intercede for me --- I will probably be "assigned" to the Post Oak Savannah Groundwater Conservation District next door in Milam and Burleson counties because that district fills all permit applications. Post Oak has not offended the water marketers by "going slow", as Lost Pines has tried to do, most recently using a negotiated, graduated permit approach to resolve disputes and still perform its regulatory function.

The recent graduated permits Lost Pines has issued show promise in both realistically responding to true demand while basing pumping limits on gradual satisfaction of data points based on DFCs. While stakeholder groups would urge additional forward-looking modeling based on the monitoring data to govern increased pumping, the Lost Pines approach is superior to the "permit all comers" approach of Post Oak.

In the face of the efforts to slice and dice the Simsboro by for-profit interests and distant municipalities, Post Oak counsel's boast that he will always win the lawsuit when Post Oak attempts to cut back production, is dubious. We would beg to differ given the trends in state policy --- why not regulate, realistically and fairly, on the front end? And let me note: <u>Post Oak</u> has not offended the water marketers <u>*yet*</u> --- there's a new wind blowing in that District, *because their "not for sale" constituents are engaged and are going to stay that way.*

Long before Chairman Perry bestowed "equal dignity" on the rights to *produce* groundwater and to *export* groundwater in SB 1392, and forgot to mention conservation and protection of the resource he seeks to exploit, this is what we all knew to be the

real story. (Maybe his attempt to amend Section 36.0015(b)(2) was nothing more than poor drafting; we hope so.]

We understand what the Texas Constitution requires of us when we use our aquifers. It requires seeing to it that the *conservation and protection of our natural resources*, specifically our groundwater, are of "equal dignity" with the development of groundwater, as contemplated by Article XVI, Section 59 (the so-called Conservation Amendment). The Amendment states clearly in relevant part: **The conservation and development of all of the natural resources of this State [explicitly including water], and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.** (emphasis added)

We know that Section 59 authorizes the formation of conservation districts **as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution.** And we know that the Legislature has previously determined in 36.0015(b), that groundwater districts are the preferred method of management of groundwater in this State, In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, consistent with the objectives of the Conservation Amendment. We worried when the Legislature added "to meet the needs of the State" to the call for groundwater districts to achieve balance between conservation and development. It was apparent this was a first salvo in the push for development of groundwater to become the tail wagging the dog in groundwater management.

But now all we have to say is this. Not even the most tortured interpretation of the Conservation Amendment allows the conclusion that depletion of aquifers --- that is the removal of the "conserve and protect" side of the equation--- is an acceptable mandate to meet "the needs of the state". But that is exactly what SB 1392 seeks to do, either subtly or not so subtly.

Moreover, SB 1392 seems to be declaring war on groundwater districts --- not *all* groundwater water districts, the compliant ones will succeed to primacy over the recalcitrants in the "common reservoir" management scenario --- just the ones who dare to live by the "go slow" philosophy of tapping our aquifers will actually be targeted. That is, the compliant ones either aren't under siege because they don't have enough water under them to be targeted or they have given over to the "permit everything asked for now, keep your head down and hope you'll be allowed to cut back after the aquifers are already damaged".

The Legislature does not have the authority to pass SB 1392 as drafted because it is not "appropriate" to accomplishing the requirements of Section 59. What that means to us is, in order to accomplish the purposes of the Conservation Amendment, there can be no justification for removing the below language from Section 36.101[1], essentially removing it from a groundwater district's purview in adopting the rules that it lives by:

> ...consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;

The Constitutional call for "conservation and development" of groundwater, and for "protection and conservation" of the resource does not mean amending the State Water Code to mandate "satisfying the needs of the State" through production and export. The two sides of the equation are important to avoid mining and depleting aquifers, in favor of sustaining them indefinitely. To that end, we do not argue against development, we simply state our aquifers should be pumped at sustainable rates, not at a massive rate that makes the most money or that meets a projected demand decades from now that is untested and unproven. In fact, "conservation" of the aquifer would result from protecting the property rights of those landowners who choose not to sell their water ---- they *want* to be stewards of the aquifer.

Reducing demand on the other end of the pipeline to reduce the demand on groundwater is every bit as worthy an endeavor as draining aquifers to satisy untested demand far into the future. In some cases, unfettered access to groundwater will lead to so much water supply that the receiving municipality must either commit waste--- not use the water for a beneficial purposes – or become a regional water broker attempting to offload unneeded supply onto areas beyond its borders. That very real case in point is the SAWS Vista Ridge project, and it illustrates what happens when reason does *not* prevail.

[1] S7. of SB 1392 as drafted.