



CITY of SIMONTON

February 19, 2013

Sent U.S. Postal Service RRR No. 7011 0110 0000 6349 5219

Zach Holland, General Manager  
Bluebonnet Groundwater Conservation District  
303 East Washington Avenue, Suite D  
P.O. Box 269  
Navasota, Texas 77868

Re: Notice of contest for Electro Purification application to Bluebonnet Water Conservation District.

Dear Mr. Holland:

Bluebonnet Water Conservation District is currently reviewing an application from Electro Purification Corporation. The application seeks authorization for Chambco, LLC to sell water to the City of Rosenberg, Texas, and could be used by their residents as well as those of the City of Richmond, Texas.

The City of Simonton objects to the approval of the application in its current form on the following grounds:

- There is a reasonable threat to increase subsidence that would increase the incidence and threat of flooding.
- There is a reasonable threat of water-volume reduction currently used by the residents of Simonton.
- There is a reasonable threat for aquifer level reduction and that existing well owners will be negatively impacted by falling water levels potentially causing an unknown number of the City's wells to run dry.
- There is a reasonable threat to the reduction of water quality for Simonton residents since water at the top of the water column is less preferred and lowering of the aquifer level would result in lower-quality water available at existing well depths.
- There is a reasonable threat to the future needs of Simonton area residents.

The City of Simonton understands and appreciates that water is a regional resource. Further, we recognize that the need to have water equitably distributed for public use is likely paramount among your group's directors. We also recognize the rights that the Texas Supreme Court has held that a private property owner does have the right, under certain circumstances, to sell the water which they can pump from beneath their property. We further recognize that there is a great need by the people of the Cities of Rosenberg and Richmond to satisfy their need for water

now and in the future since their rights to water from the Brazos will likely never yield an adequate supply of water for their residents.

However, the City of Simonton has a number of reasonable concerns related to the important issues that must to be resolved prior to any further advance or any level of approval of this application. An independent study must be performed to answer some basic questions in the comments that follow.

**Excessive Volume.**

Up to twenty million (20,000,000) gallons of water per day in 10-20 inch wells.

It is understood that ten million gallons are under contractual consideration to the Cities of Rosenberg and Richmond and that another five million are understood to remain available as "optional" for purchase by these cities. The remaining five-million gallons would be available to subsequent unnamed purchasers.

**Excessive Draw Down.**

The application appears to allow for a "draw-down" of the existing aquifer levels of from 150 feet to 450 feet. This volume of draw-down must impact the structures through which the aquifer flows, and a reasonable mind would conclude that there will be a negative impact to the structure.

The concerns are as follows:

- Will a void created by the draw-down cause a collapse of the geologic structures through which the water flows? If so, is it not reasonable to conclude that this collapse would create subsidence above those collapsed structures?
- If the geologic structures did collapse, is it not reasonable to conclude that they would no longer sustain the flow rate (20m Gal/Day) under consideration? If so, would this collapse place in jeopardy any improvements or infrastructure the seller and buyer would have in place and would render it useless for the anticipated flow rate?

**Pulling the Plug on Simonton's Water.**

The City of Simonton does not provide municipal water or sewer services to its residents. With the exception of a small, privately owned "convenience well" located in the downtown area of our City, residents of Simonton rely exclusively on well water. It is the City's understanding that most of these private wells are in the 300 – 450 foot depth. What impact to existing water well owners would a draw-down of any amount and up to 450 feet have on these wells? Is it not a reasonable conclusion that some portion of these wells could run dry and be rendered useless or diminish the flow-rate of the wells or quality of the water they currently produce?

**Buying our Own Water.**

Fort Bend County is one of the fastest growing counties in the State of Texas, and west Fort Bend County is where much of that growth is occurring. In response, Simonton area land owners are preparing for what is to be the greatest influx of population growth ever seen in our area's history. It all hinges on the availability of water.

Simonton and the MUD's that have been created in the area's surrounding Simonton will depend on the same aquifer that this application seeks to approve withdrawal from. It is possible and even likely that, at some point in the future, the State of Texas will require Simonton to provide municipal services to this growing population as a municipal service.

If this application is approved and water supply or water quality are diminished to area residents or in a worse-case-scenario, the wells dry up, the City could conceivably be forced, at that time, to purchase water from a third-party provider such as Chambco, LLC or another city and pay possibly exorbitant rates for what is effectively "our own water."

### **Local Subsidence.**

Fort Bend County is one of two counties in the nation that are under a state-created subsidence district. The Fort Bend County Subsidence District maintains strict control over water withdrawn within the county and enforces state-mandated surface water conversion rules within its jurisdiction; however, the counties adjoining Fort Bend County do not have such a group to protect them from subsidence.

### **Water Does Not Respect County Lines.**

The wells noted in the application border Fort Bend County from two sides and from two counties: Austin County to our west and Waller County to our north. More specifically, these wells lie within one-half of a mile of Fort Bend County on two of the county's borders.

### **Subverting the Subsidence District.**

It is estimated that as much as 40 percent of the water to be withdrawn will come from beneath Fort Bend County; however, this application appears to exclude any approval or even a review of it by the Fort Bend Subsidence District.

By placing the wells immediately outside of Fort Bend County, this application relies on a legal technicality that appears to subvert the intent of the State of Texas as well as the Fort Bend County Subsidence District to control the rate of subsidence within Fort Bend County.

The technicality is that although the wells would assuredly withdraw water from beneath Fort Bend County the wells would not "technically" exist in Fort Bend County and are not, therefore, subject to the Fort Bend Subsidence District rules or related jurisdiction. It is clear that that the wells would be placed in such a proximity to the borders of Fort Bend County that any potential negative effects created by the wells would definitely have an impact on Fort Bend County.

### **Like a "Wink and a Nod."**

Further, the primary recipients of the water, Rosenberg and Richmond, exist squarely in the geographic center of Fort Bend County. It would appear to a casual observer that the application would subvert the rules of the Fort Bend County Subsidence District by asserting that since the water is "produced" outside of Fort Bend County, it will not have an impact on subsidence within Fort Bend County. This "wink-and-nod" approach is not what was intended when the Fort Bend County Subsidence District was created.

### **In Simonton, Flooding and Subsidence Are Real.**

Our area has a long history of flooding. Available photographs indicate the aftermath of flooding in Simonton that has occasionally inundated our area as far back as the early 1900s. While certain reservoirs upstream of Simonton do a fair job in controlling runaway flooding, the very-real threat remains. In 1992 and 1994, Simonton was impacted by two separate major flood events that caused millions of dollars in damage and severe loss of property due to erosion. Two city roads no longer exist and one city road has been bisected by erosion.

### **Simonton Is Already Three Feet Lower than 1997 Maps Indicate.**

According to the now out of date 1997 FEMA FIRM Flood Maps that are currently considered effectively obsolete and under review, Simonton is already low. It has a Base Flood Elevation (BFE) level of 111 feet which varies nominally from location to location within the city. Our BFE places the entire western portion of Simonton, including around 78 percent of the population, squarely within the flood plain and leaves much of the area near the Brazos River in the flood way.

A few years ago, in an effort to gather more accurate mapping data, Fort Bend County authorized a new study using LIDAR data to determine whether the BFE was accurate. The resulting study determined that, in fact, the BFE should be revised to a BFE level of 114 feet. This level places virtually all of Simonton's land area within the flood plain.

FEMA has completed all aspects of review of the new draft maps, and we expect that the revised maps could be approved without notice once FEMA has completed their process. Simonton has been advising property owners to build according to the new maps for quite some time.

### **Effect on Real Estate Values.**

Considering that Simonton was already squarely within a flood plain and that its property values have reflected this fact since the 1992 and 1994 floods, the increase of up to four feet on the BFE and resulting construction restrictions and requirements further complicated our ability to maintain property values. Our real estate market values have begun to rebound in the past few years, largely due to the fact that flooding has not occurred in more recent years.

### **The Brazos River.**

The evidence is clear that Simonton floods because it is already low and it is immediately adjacent to one of Texas' most notable rivers: the Brazos River, which is beyond the control of any entity when in flood stage. No level of subsidence can be tolerated by our community. No entity has the right to place Simonton in further jeopardy for flooding. No entity has the right to diminish the supply or quality of water to Simonton area residents.

### **Independent Study Is Needed.**

There has been no independent study that proves subsidence will not occur. While the application does provide quite a bit of engineering and technical data, that data was not produced by an independent source. To be deemed reliable, the City of Simonton requests that the Fort

Bend County Subsidence District authorize and perform, at Fort Bend County expense, a complete independent study of the proposal to assess its impacts on all levels.

**Fort Bend Subsidence District Review and Approval Needed.**

The Fort Bend County Subsidence District has not been asked to provide comment nor review this application. To be approved, the Fort Bend County Subsidence District should have a voice since even a casual observer would agree that drawing this water, 40 percent of which comes from beneath Fort Bend County, would have potentially significant impact on the residents of Fort Bend County.

**The City of Simonton Requests the Following at this Time:**

- Prove through an independent study that there is absolutely zero (no) chance that Simonton will suffer further subsidence and subsequent increased rate of erosion to the Brazos River banks. Not even a fraction of an inch can be tolerated by our community
- Prove that the "draw-down" within the aquifer will have absolutely zero (no) impact on City of Simonton wells at all levels so that the aquifer levels will remain constant at current levels and that Simonton residents' quality of water will not be negatively impacted.
- Bring the proposed wells under the review and authority of the Fort Bend County Subsidence District so that they can be properly regulated according to the State of Texas and Fort Bend County since the aquifer from which the water will be drawn also resides under Fort Bend County.

In conclusion, the City of Simonton recognizes and understands that it is water that fuels our economic future. It is a resource that when properly managed can be sustained well into our State's future. We also recognize and understand that no one party has the right to injure another in their quest for it or the economic proceeds it can provide.

The City of Simonton appreciates your sensitivity to the needs of the City and its residents as well as the needs of those in the areas around us.

Thank you for your consideration of this matter.

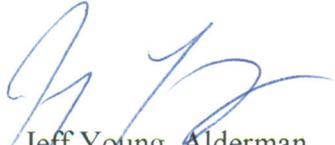
Sincerely,



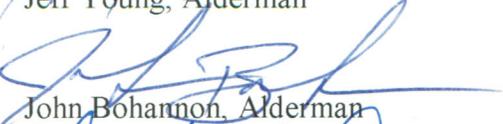
Daniel McJunkin, Mayor



Jane Stockton, Mayor Pro Tem



Jeff Young, Alderman



John Bohannon, Alderman



Charles C. Gregory III, Alderman

*absent sr*  
Jay Tjoelker, Alderman

DMJ/sp

Cc: General Land Office, State of Texas  
Texas Commission of Environmental Quality  
Environmental Affairs Committee, State of Texas  
Rail Road Commission, State of Texas  
Olson & Olson  
Clifton Aldrich  
Fort Bend Subsidence District  
Commissioner Andy Meyers  
City of Rosenberg  
City of Richmond