



**Resolution of the Hays County Commissioners Court Regarding
Legislation Related to Goforth Special Utility District**

WHEREAS, Goforth Special Utility District (“Goforth Water”) recently executed a contract (the “Contract”) with Electro Purification, LLC, a private for-profit entity (“E.P.”), for the provision of groundwater from the Trinity Aquifer in Hays County, Texas;

WHEREAS, the Contract provides that Goforth Water may utilize its eminent domain authority to acquire easements from landowners within Hays County to allow E.P. to construct a water pipeline extending from western Hays County to eastern Hays County;

WHEREAS, the Contract provides that Goforth will, after utilizing eminent domain or the threat of eminent domain to acquire utility easements, surrender use of that easement to E.P. for its water pipeline;

WHEREAS, the Contract does not limit E.P. to delivery of groundwater to Goforth Water only, but allows E.P. to serve its own private for-profit interests by delivering groundwater to other customers, whether public or private;

WHEREAS, after the Supreme Court of the United States decided *Kelo v. City of New London*, 545 U.S. 469 (2005), the Texas Legislature responded by passing Senate Bill 18 (2011)(“SB18”) which greatly modified use of eminent domain by governmental and quasi-governmental entities in Texas;

WHEREAS, among the modifications presented by SB18, Chapter 2206 of the Texas Government Code (“TGC 2206”) was amended to require “a public use” of the property being taken by use of eminent domain;

WHEREAS, in her *Kelo* dissent, Justice O’Connor argued that to allow private benefits to be tenuously weighed with incidental public benefits is to “wash out any distinction between private and public use of property” (See *Kelo* at 494);


WHEREAS, Goforth Water representatives have argued that the “public use” requirements of TGC 2206 are not violative of TGC 2206 because of an exemption under §2206.01(c) for projects relating to a “water supply,” even though E.P.’s use of the easements would confer “a private benefit on a particular private party through use of the property;”

WHEREAS, Representative Isaac has filed HB 3407 and Senator Campbell has filed SB 1634, which are sister Bills tailored to prevent these uses of eminent domain authority by Goforth Water, while respecting Goforth Water’s need for this authority within its service area; and

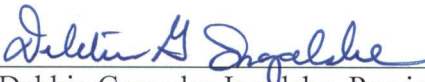
WHEREAS, HB 3407 and SB1634 would serve to protect the interests of the citizens of Hays County;

NOW, THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court hereby supports HB 3407 and SB 1634, which are attached hereto as Exhibits “A” and “B,” respectively.

ADOPTED THIS the 24th DAY OF March, 2011.



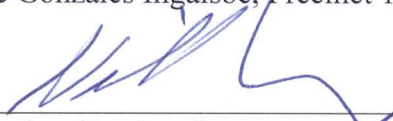
Judge Bert Cobb, M.D.
Hays County Judge



Debbie Gonzales Ingalsbe, Precinct 1



Mark Jones, Precinct 2

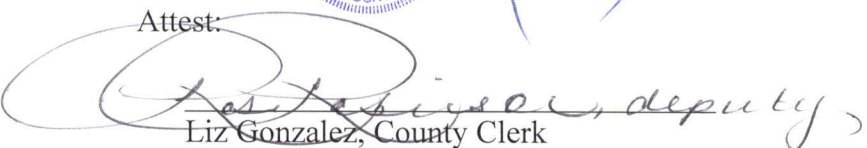


Will Conley, Precinct 3



Ray Whisenant, Precinct 4

Attest:



Liz Gonzalez, County Clerk

Attachment "A"

By: Isaac

H.B. No. 3407

A BILL TO BE ENTITLED

AN ACT

relating to the Goforth Special Utility District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 7212, Special District Local Laws Code, is amended by adding Sections 7212.103 and 7212.104 to read as follows:

Sec. 7212.103. LIMITATION ON EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain in a geographic area outside the boundaries and service area of the district.

Sec. 7212.104. PROHIBITION ON CONSTRUCTION OF CERTAIN WATER TRANSPORTATION SYSTEMS. The district may not construct a water transportation system designed in whole or in part to transport more than 1,000 gallons of groundwater per day if the transportation system in whole or in part is constructed or to be constructed on a right of way obtained in whole or in part:

(1) by exercising the power of eminent domain; or

(2) from a state or local governmental entity or a quasi-governmental entity.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Attachment "B"

By: Campbell

S.B. No. 1634

A BILL TO BE ENTITLED

AN ACT

relating to the Goforth Special Utility District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 7212, Special District Local Laws Code, is amended by adding Sections 7212.103 and 7212.104 to read as follows:

Sec. 7212.103. LIMITATION ON EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain in a geographic area outside the boundaries and service area of the district.

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