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November 18, 2002

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OPINION COMMITTEE

OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION

The Honorable John Cornyn  
Attorney General of Texas  
P.O. Box 12548  
Austin Texas 78711-2548

FILE # ML-42893-02 3020  
I.D. # 42893

**RE: Request for Attorney General's Opinion Regarding Applicability of Section 16 of House Bill 2005, 77th Texas Legislature, Regular Session, 2001 (Act of May 28, 2001, 77th Leg., R. S., ch 1312, § 16, 2001 Tex. Gen. Laws 3222, 3226)**

Dear General Cornyn:

The 77th Texas Legislature adopted House Bill 2005, an act ("Act") creating the Trinity Glen Rose Groundwater Conservation District ("District"). The Act became effective September 1, 2001. The boundaries of the District include the area in the northern portion of Bexar County overlying the Trinity Glen Rose Aquifer. The creation of the District was confirmed and members of the Board of Directors of the District were elected at an election held November 5, 2002.

The District has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code. In addition to the powers provided in Chapter 36, Water Code, the district has certain specific regulatory powers with regard to groundwater wells. The Act provides for exemption from regulation by the District of certain grandfathered public water supply wells. Specifically, Section 16 provides:

**SECTION 16. PUBLIC WATER SUPPLY WELLS.**

**(a) A public water supply well is exempt from regulation by the district if:**

- (1) the well is in existence on the effective date of this Act and drilled in compliance with technical requirements in effect at the time the well was drilled; or**
- (2) the commission has approved plans submitted for the installation of the well before the effective date of this Act and the installation of the well is completed in accordance with the approved plans and the commission's technical requirements before the first anniversary of the effective date of this Act.**

**(b) The owner of a public water supply well shall register the well with the district and submit reports to the district. A public water supply well is subject to the district's prohibitions on the waste of groundwater.**

**(c) The district may not require a construction or operating permit for a public water supply well approved by the commission.**

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(d) Fees a retail public utility pays to the district shall be collected directly from the customers of the utility as a regulatory fee and shown as a separate line item on the customer's bill.

It has come to my attention that various well owners have completed the installation of public water supply wells in order to qualify for an exemption under subsection (a) (2) of Section 16 of the Act. Some of the owners completed the drilling, casing, cementing, and testing of the wells prior to September 1, 2002, in accordance with the Texas Commission on Environmental Quality's (TCEQ) technical requirements for well installation and in accordance with the approved plans submitted to the TCEQ prior to the effective date of the Act, September 1, 2001. Some of the owners have also capped the wells. The owners intend to place the wells into service as components of a public water supply system in subsequent years, after complying with applicable additional requirements of the TCEQ for placing public water supply wells into service.

Based on the foregoing, I respectfully submit the following questions for your opinion:

- 1. What level of well installation completion is required by the phrase "completed in accordance with the approved plans and the commission's technical requirements" in subsection (a) (2) of Section 16 of House Bill 2005?**
- 2. Does the completion by September 1, 2002 of the drilling, casing, cementing, and testing of a public water supply well according to the TCEQ's technical requirements and according to plans submitted to and approved by the TCEQ prior to September 1, 2001, qualify the well for exemption under subsection (a) (2) of Section 16 of House Bill 2005, if the well is then capped for subsequent placing in service as part of a public water supply system?**

Thank you for your consideration of this request. Your prompt attention to this issue would be greatly appreciated. Please do not hesitate to contact me or Jason Anderson on my staff should you have any questions or require additional information.

Yours truly,



Frank Madla

FM/ja