

NOTICE OF OPEN MEETING

Notice is given that a **Regular Meeting** of the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District will be held at the **District office**, located at 1124 Regal Row, Austin, Texas, on **Thursday, February 26, 2015**, commencing at **6:00 p.m.** for the following purposes, which may be taken in any order at the discretion of the Board.

Note: The Board of Directors of the Barton Springs/Edwards Aquifer Conservation District reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by the Texas Government Code Sections §551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Homeland Security). No final action or decision will be made in Executive Session.

1. **Call to Order.**
2. **Citizen Communications (Public Comments of a General Nature).**
3. **Routine Business.**
 - a. **Consent Agenda.** *(Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as a separate item of Regular Business on this agenda.)*
 1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000. **NBU**
 2. Approval of minutes of the Board's February 12, 2015 Regular Meeting. **Not for public review at this time**
 3. Approval of action to postpone a public hearing to consider adjusting the water use fees for Conditional Production Permits until a future Board meeting. **NBU**
 - b. **General Manager's Report.** *(Note: Topics discussed in the General Manager's Report are intended for general administrative and operational information-transfer purposes. The Directors will not take any action unless the topic is specifically listed elsewhere in this agenda.)*
 1. **Standing Topics.**
 - i. Personnel matters and utilization
 - ii. Upcoming public events of possible interest
 - iii. Aquifer conditions and status of drought indicators
 2. **Special Topics.** *(Note: Individual topics listed below may be discussed by the Board in this meeting, but no action will be taken unless a topic is specifically posted elsewhere in this agenda as an item for possible action. A Director may request an individual topic that is presented only under this agenda item be placed on the posted agenda of some future meeting for Board discussion and possible action.)*

- i. Update on Team activities and highlights
- ii. Update on regulatory and enforcement activities
- iii. Update on current Aquifer Science Team projects
- iv. Update on efforts to characterize the saline zone of the Edwards Aquifer
- v. Update on activities related to the HCP and the associated draft EIS
- vi. Update on the status of the City of Kyle's remanded permit application

- c. Directors' Reports.** *(Note: Directors' comments under this item cannot address an agenda item posted elsewhere on this agenda and no substantive discussion among the Board Members or action will be allowed in this meeting. Communications reported under this item may be used to support Performance Standard 4-1 of the District's Management Plan related to demonstration of effective communication with District constituents.)*

Directors may report on their involvement in activities and dialogue that are of likely interest to the Board, in one or more of the following topical areas:

- Meetings and conferences attended or that will be attended;
- Conversations with public officials, permittees, stakeholders, and other constituents;
- Recognition of people doing good things for groundwater management in the District; and
- Issues or problems of concern.

4. Discussion and Possible Action.

- a. Discussion and possible action related to approval of an agreement with TxDOT and Central Texas Regional Mobility Authority in connection with proposed State Highway 45 Southwest and the Consent Decree and Partial Final Judgment in the matter of Save Barton Creek Association v. Federal Highway Administration (W.D. Tex. 1990). **Pg. 12**
- b. Discussion and possible action related to a request for an Attorney General opinion on regulatory authority of the District. **NBU**
- c. Discussion and possible action related to an update on activities related to the Electro Purification Trinity well field located just outside of the District's boundaries. **Pg. 22**
- d. Discussion and possible action related to pursuit of the District's legislative agenda including proposed legislation to expand the District's territory. **Pg. 24**
- e. Discussions and possible action related to an update on progress towards a regulatory mechanism to allow permit transfers. **NBU**
- f. Discussion and possible action related to implementation of District rule 3-6.1 encouraging conservation-oriented rate structures. **Pg. 29**

- g. Discussion and possible action related to providing direction to the General Manager on scheduling and participation of Directors in District meetings. **NBU**

5. Adjournment.

Came to hand and posted on a Bulletin Board in the Courthouse, Travis County, Texas, on this, the _____ day of February, 2015, at _____ .m.

_____, Deputy Clerk

Travis County, TEXAS

Please note: This agenda and available related documentation have been posted on our website, www.bseacd.org. If you have a special interest in a particular item on this agenda and would like any additional documentation that may be developed for Board consideration, please let staff know at least 24 hours in advance of the Board Meeting so that we can have those copies made for you.

The Barton Springs/Edwards Aquifer Conservation District is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations and equal opportunity for effective communications will be provided upon request. Please contact the District office at 512-282-8441 at least 24 hours in advance if accommodation is needed.

Item 1

Call to Order

Item 2

Citizen Communications

Item 3

Routine Business

a. Consent Agenda

Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as an item of Regular Business.

- 1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000.**
- 2. Approval of minutes of the Board's February 12, 2015 Regular Meeting.**
- 3. Approval of action to postpone a public hearing to consider adjusting the water use fees for Conditional Production Permits until a future Board meeting.**

Item 3

Routine Business

b. General Manager's Report. Note: Topics discussed in the General Manager's Report are intended for administrative and operational information-transfer purposes. The Directors will not deliberate any issues arising from such discussions and no decisions on them will be taken in this meeting, unless the topic is specifically listed elsewhere in this as-posted agenda.

1. Standing Topics.

- i. Personnel matters and utilization**
- ii. Upcoming public events of possible interest**
- iii. Aquifer conditions and status of drought indicators**

2. Special Topics. (Note: Individual topics listed below may be discussed by the Board in this meeting, but no action will be taken unless a topic is specifically posted elsewhere in this agenda as an item for possible action. A Director may request an individual topic that is presented only under this agenda item be placed on the posted agenda of some future meeting for Board discussion and possible action.)

- i. Update on Team activities and highlights**
- ii. Update on regulatory and enforcement activities**
- iii. Update on current Aquifer Science Team projects**
- iv. Update on efforts to characterize the saline zone of the Edwards Aquifer**
- v. Update on activities related to the HCP and associated draft EIS**
- vi. Update on the status of the City of Kyle's remanded permit application**

Item 3

Routine Business

c. Directors' Reports. Note: Board Member comments in this part of the agenda cannot address any aspect of an agenda item posted elsewhere on this agenda, and no substantive discussion among the Board Members or action by the Board on these comments will be allowed in this meeting.

(Note: Directors' comments under this item cannot address an agenda item posted elsewhere on this agenda and no substantive discussion among the Board Members or action will be allowed in this meeting. Communications reported under this item may be used to support Performance Standard 4-1 of the District's Management Plan related to demonstration of effective communication with District constituents.)

Individual Board Members may, on a voluntary basis, make a brief report to the entire Board on their personal involvement in activities and dialogue that are of likely interest to the rest of the Board, in one or more of the following topical areas:

- **Meetings and conferences attended or that will be attended;**
- **Conversations with public officials, permittees, other stakeholders, and private citizens;**
- **Kudos and recognition of people doing good things for groundwater management in the District;**
- **Concerns about specific issues or problems for groundwater management in the District.**

Item 4

Board discussions and possible actions

- a. Discussion and possible action related to approval of an agreement with TxDOT and Central Texas Regional Mobility Authority in connection with proposed State Highway 45 Southwest and the Consent Decree and Partial Final Judgment in the matter of Save Barton Creek Association v. Federal Highway Administration (W.D. Tex. 1990).**

**JANUARY 15, 2015 DRAFT
SUBJECT TO BOARD/MANAGEMENT APPROVAL**

**AGREEMENT BETWEEN
BARTON SPRINGS/EDWARDS AQUIFER CONSERVATION DISTRICT (BSEACD)
AND
TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)
REGARDING
STATE HIGHWAY 45 SOUTHWEST**

This Interlocal Agreement regarding State Highway 45 Southwest (Agreement) is made effective upon execution by the last party to execute (Effective Date) by and between the Barton Springs/Edwards Aquifer Conservation District (BSEACD) and the Texas Department of Transportation (TxDOT) (collectively, the Parties).

WHEREAS, BSEACD is a political subdivision of the State of Texas created under the authority of Article XVI, Section 59, of the Texas Constitution, and operates pursuant to the provisions of Chapter 36 of the Texas Water Code and Chapter 8802 Texas Special District Local Laws Code, and is authorized by the Texas Interlocal Cooperation Act, § 791.001, et. seq. of the Texas Government Code to enter into this Agreement; and

WHEREAS, TxDOT is an agency of the State of Texas and is authorized by the Texas Interlocal Cooperation Act, § 791.001, et. seq. of the Texas Government Code, Texas Transportation Code, §201.209 and 43 T.A.C. §9.9 to enter into this Agreement; and

WHEREAS, on January 23, 1990, BSEACD and the Texas State Department of Highways and Public Transportation, predecessor agency to TxDOT, agreed and recommended approval of and the Court entered a Consent Decree and Partial Final Judgment (Consent Decree) in settlement and compromise of disputed claims in *Save Barton Creek Association v. Federal Highway Administration* (W.D. Tex. 1990); and

WHEREAS, the Consent Decree, a copy of which is attached as Exhibit "A," contains judgment terms that are binding on TxDOT and BSEACD and that assign different roles and requirements with regard to the ownership, control, and future construction of certain highways in Southwest Travis County, ~~including "Outer Loop Segment 3;"~~; and

WHEREAS, State Highway 45 Southwest (SH 45 SW) is a proposed four-lane state highway consisting of four tolled main lanes of controlled access roadway, with a possible shared-use path on one side, extending approximately 3.6 miles from MoPac to FM 1626; and

WHEREAS, SH 45 SW is subject to the Consent Decree; and

WHEREAS, under Texas Transportation Code, §373.052, Central Texas Regional Mobility Authority (CTRMA) has the first option to develop, finance, construct, and operate any new toll project located in the territory of the CTRMA, including Travis County; and

WHEREAS, CTRMA exercised its option under Texas Transportation Code, §373.052, to develop, finance, construct, and operate SH 45 SW; and

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WHEREAS, subject to the state Environmental Impact Statement (EIS) and all other required approvals and requirements, CTRMA intends to design and construct SH 45 SW; and

WHEREAS, CTRMA and TxDOT will enter into a Project Development Agreement (PDA) establishing the respective obligations of CTRMA and TxDOT for the design, construction, and operation of SH 45 SW; and

WHEREAS, during the time period since the entry of the Consent Decree, advances have been achieved in the effectiveness of structural and non-structural Best Management Practices (BMPs), which provide for equal or greater protection to groundwater resources than the BMPs required under the Consent Decree; and

WHEREAS, it is the desire of the Parties to use the most effective BMPs in SH 45 SW; and

WHEREAS, BSEACD and TxDOT do not desire to judicially modify the Consent Decree; and

WHEREAS, TxDOT agrees to include terms and conditions described in this Agreement in the PDA to ensure SH 45 SW is designed, constructed, and operated in a manner that meets or exceeds all of the requirements in the Consent Decree, recognizing that certain standards and practices not known at the time of the Consent Decree will be used to ensure that the project is designed, constructed, and operated in a more environmentally sensitive and prudent fashion; and

WHEREAS, the Parties desire to enter into this Agreement to: (i) memorialize the commitments of the Parties relative to the design, construction, operation, maintenance oversight, and review of SH 45 SW to ensure consistency compliance with the Consent Decree and protection of groundwater; and (ii) evidence the ultimate rights and responsibilities of the Parties; and

WHEREAS, the Parties will all benefit from the performance obligations under this Agreement; and

WHEREAS, this Agreement concerns the performance of governmental functions and services;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

1. Statement of Intent

It is the intent of the Parties to use pollution control procedures, techniques, and devices (methods) that are described in this Agreement during the construction, operation, and maintenance of SH 45 SW, which are equally or more protective of

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water quality than comparable methodologies required in the Consent Decree, and which represent best available technology. The Parties acknowledge that the use of a method to protect water quality that is superior to an outdated method in the Consent Decree is adequate consideration to support this Agreement.

2. Analysis of Potential Impacts to the Edwards Aquifer

TxDOT will complete the EIS and prepare the Record of Decision for SH 45 SW in a manner that fully evaluates and discloses the potential environmental impacts of the project, including potential impacts to the Edwards Aquifer and Barton Springs.

3. Specific Project Commitments

a. Construction of SH 45 SW as a Parkway

SH 45 SW will be constructed as a parkway with no driveways and no connections other than to MoPac South (Loop 1), Bliss Spillar Road, FM 1626, and any other phases of SH 45. BSEACD would be notified of any requests for connections to SH 45 SW.

b. Stormwater Treatment Performance Standard

TxDOT or CTRMA (as designated in a separate PDA) will ensure SH 45 SW will be designed and perform to achieve a highway runoff total suspended solids (TSS) removal rate of at least ninety percent (90%) of the incremental increase in TSS load using a combination of structural and non-structural BMPs.

c. Structural BMPs

The following structural BMPs, at a minimum, will be used and maintained, as appropriate, to avoid or minimize the amount of pollutants in the runoff from the roadway:

- i. permeable friction course (PFC) pavement (on majority of road surfaces);
- ii. water quality ponds;
- iii. vegetated controls such as grassy swales;
- iv. vegetated filter strips (in areas where curbs and other stormwater conveyance infrastructure is not used); and

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- v. multiple hazardous materials traps (located at all creeks, waterways, and culverted drainage ways, and each adequately sized to contain a 10,000 gallon spill).

d. Non-structural BMPs

The following non-structural BMPs will be used, at a minimum, as appropriate, to avoid or minimize the amount of pollutants in the runoff from the roadway:

- i. no herbicide use within the right-of-way;
- ii. vacuum truck utilization, as determined by the independent environmental compliance manager (described below);
- iii. periodic inspections of hazardous materials traps and other permanent BMPs as required by TCEQ's Edwards Aquifer Rules (30 T.A.C. Chapter 213);
- iv. any equipment fuel or hazardous material storage, even if short-term, will be performed within a containment area to prevent the possibility of accidental discharge to groundwater;
- v. any equipment fueling will be performed at least 200 feet away from the nearest sensitive karst feature and water crossing; and
- vi. phased construction practices, where feasible, to limit the area and duration of construction disturbance.

e. Protection of Karst Features and Flint Ridge Cave

- i. Prior to the commencement of construction, a geologic assessment (GA) will be performed by TxDOT in accordance with TCEQ rules and in support of the state EIS for the purpose of identifying karst features within the SH 45 SW right-of-way that may significantly contribute to recharge of the Edwards Aquifer including Flint Ridge Cave. The GA will incorporate the assessment of excavations of karst features identified during the TxDOT karst survey and investigation conducted for the state EIS. The GA will also provide detailed explanations for why each of the identified potential karst features are considered to be either sensitive or not sensitive;
- ii. All sensitive karst features identified in the GA that may significantly contribute to recharge of the Edwards Aquifer, including Flint Ridge Cave, shall be protected using methods that

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are consistent with the intent of paragraph 1, and will minimize the impact to catchment areas and the quantity of interrupted recharge, to the extent practicable; and

- iii. TxDOT will provide a copy of the GA with the proposed method for protecting each sensitive karst feature to BSEACD and allow a minimum of 20 business days from the date that the GA is received by BSEACD to evaluate the designation of the sensitive karst features, their spatial relationship to the highway alignment and BMPs, and the proposed method of protection. To the extent BSEACD raises any concerns with the proposed methods of protection of a sensitive karst feature, and if TxDOT disagrees with the concern raised by BSEACD, TxDOT and BSEACD will convene in an attempt to resolve within 30 calendar days of when BSEACD raises an issue.

- f. BSEACD will be added to the list of agencies to be notified by the void discovery protocols described in the state EIS for SH 45 SW.

- g. Construction and Post-Construction Monitoring and Reporting
 - i. An independent environmental compliance manager shall be retained by TxDOT or CTRMA, after consulting with BSEACD, to:
 - a. be present on-site during construction of SH 45 SW to monitor construction activities and ensure that all environmental commitments in the plans for the project (including those intended to ensure that the construction of the project meets or exceeds the requirements of both this Agreement and the Consent Decree), are fulfilled; and
 - b. ensure that, upon completion of construction, all BMPs are implemented and functioning as designed.

 - ii. Upon the approximate five-year anniversary of the completion of construction, and on approximate subsequent five-year intervals, up to the 20th anniversary of completion of construction, TxDOT and BSEACD will arrange and perform a joint inspection of the BMPs to ensure that they are implemented and functioning as designed. For each of the four five-year inspections, TxDOT will procure a qualified, independent third party to assist with the joint inspection, at a cost not to exceed a total of \$30,000. BSEACD will reimburse TxDOT 50% of the cost of the qualified, independent third party. If BSEACD determines not to divide the cost of the qualified, independent third party, it will so advise

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TxDOT prior to the inspection, and the joint inspection will proceed without the assistance of the third party.

- iii. To the extent BSEACD desires to install wells to monitor aquifer conditions in the vicinity of SH 45 SW, TxDOT will provide reasonable access to the SH 45 SW right-of-way, subject to appropriate safety requirements.
- iv. TxDOT or CTRMA shall remedy and mitigate to the extent possible should the BMPs fail to perform as designed.

h. Review and Observation by BSEACD

- i. During final design when design is still subject to change and prior to construction bidding, representatives of BSEACD will be permitted 20 business days to review and comment on any plans or subsequent, substantive changes to plans for handling of stormwater runoff, including any plans addressing phased construction practices and commitments to maintenance of the PFC material. To the extent BSEACD raises any concerns with the plans, and if TxDOT disagrees with the concern raised by BSEACD, TxDOT and BSEACD will convene in an attempt to resolve within 30 calendar days of when BSEACD raises an issue. BSEACD will also have an opportunity to review and comment on the water pollution abatement plan for SH 45 SW as provided for in TCEQ's Edwards Aquifer Rules (30 T.A.C. Chapter 213); and
- ii. Representatives of BSEACD will be permitted to observe construction of SH 45 SW and will be allowed to accompany TxDOT or CTRMA personnel on periodic inspections of BMPs. Observations are subject to reasonable notice, pre-scheduling with TxDOT/CTRMA, and safety-related requirements.

4. Effect of Agreement on 1990 Consent Decree

BSEACD and TxDOT do not desire to judicially modify the 1990 Consent Decree. BSEACD and TxDOT desire to enter into this separate Agreement with provisions relating to the design, construction, and operation of SH 45 SW that are equally or more protective of the Edwards Aquifer than the 1990 Consent Decree. This Agreement does not affect the enforceability of the 1990 Consent Decree.

5. Inclusion of Terms of this Agreement in Project Development Agreement

TxDOT agrees to include the terms of this Agreement as terms and conditions of any PDA between the CTRMA and TxDOT to ensure SH 45 SW is designed,

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constructed, and operated in a manner that meets or exceeds all of the requirements in the Consent Decree, recognizing that certain standards and practices not known at the time of the Consent Decree will be used to ensure that the project is designed, constructed, and operated in a more environmentally sensitive and prudent fashion.

6. Responsibility for Expenses

Each Party shall pay for its own expenses incurred under this Agreement.

7. Term

This Agreement will terminate on the 40th anniversary of the Effective Date.

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
LtGen J.F. Weber, USMC (Ret)
Executive Director

Date: _____

**BARTON SPRINGS/EDWARDS AQUIFER
CONSERVATION DISTRICT**

By: _____
Robert D. Larsen, Ph.D.
Acting Board President

Date: _____

ATTEST:

By: _____
Craig Smith
Board Secretary

Date: _____

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APROVED AS TO FORM:

By: _____
William D. Dugat III
Attorney

Date: _____

Item 4

Board discussions and possible actions

b. Discussion and possible action related to a request for an Attorney General opinion on regulatory authority of the District.

Item 4

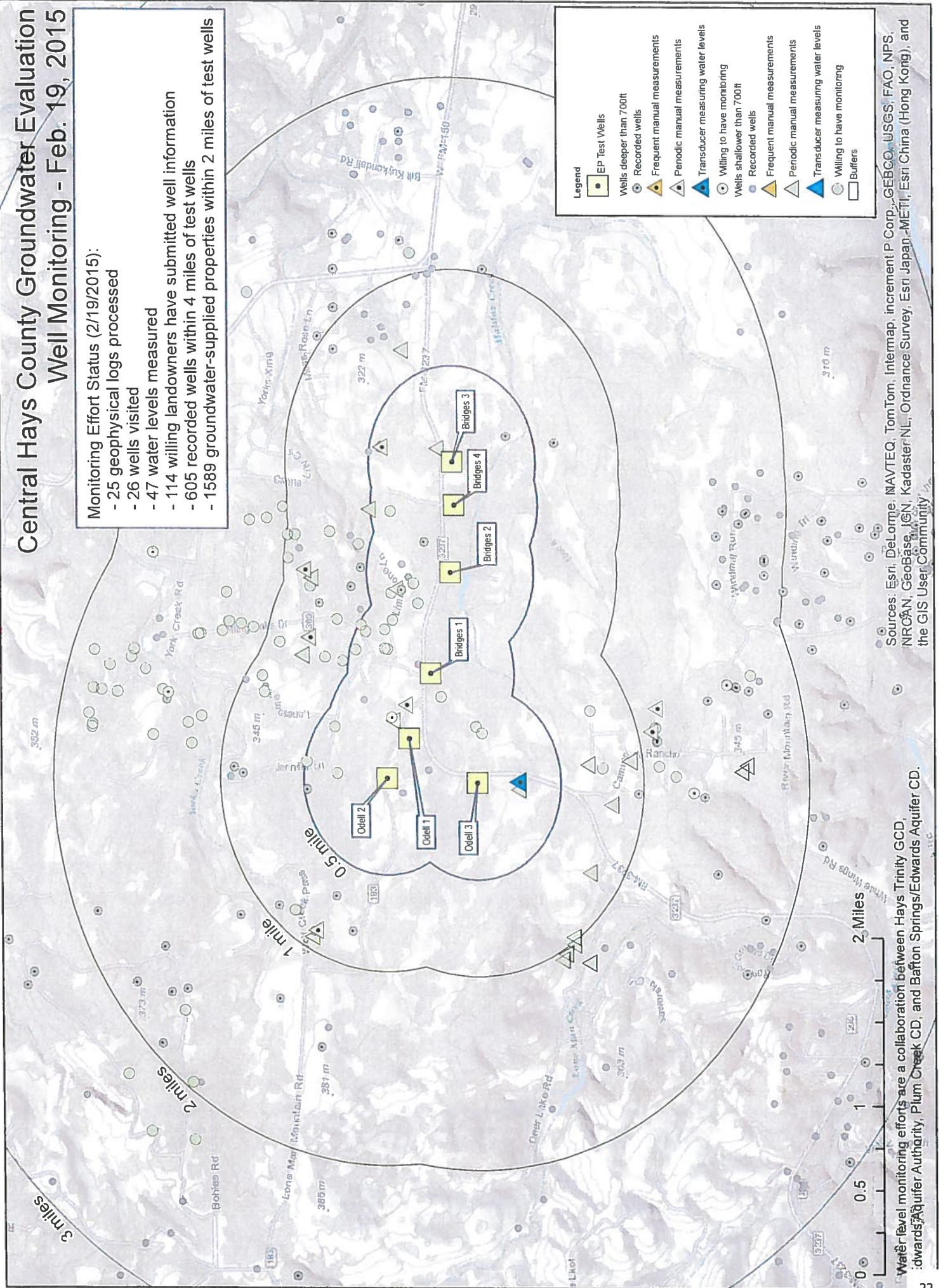
Board discussions and possible actions

c. Discussion and possible action related to an update on activities related to the Electro Purification Trinity well field located just outside of the District's boundaries.

Central Hays County Groundwater Evaluation Well Monitoring - Feb. 19, 2015

Monitoring Effort Status (2/19/2015):

- 25 geophysical logs processed
- 26 wells visited
- 47 water levels measured
- 114 willing landowners have submitted well information
- 605 recorded wells within 4 miles of test wells
- 1589 groundwater-supplied properties within 2 miles of test wells



Legend

- EP Test Wells
- Wells deeper than 700ft
- Recorded wells
- Frequent manual measurements
- Periodic manual measurements
- Transducer measuring water levels
- Willing to have monitoring
- Wells shallower than 700ft
- Recorded wells
- Frequent manual measurements
- Periodic manual measurements
- Transducer measuring water levels
- Willing to have monitoring
- Buffers

Water level monitoring efforts are a collaboration between Hays Trinity GCD, Edwards Aquifer Authority, Plum Creek CD, and Bafton Springs/Edwards Aquifer CD.

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community

Item 4

Board discussions and possible actions

d. Discussion and possible action related to pursuit of the District's legislative agenda including proposed legislation to expand the District's territory.

By: _____

___B. No. _____

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the territory and authority of the Barton
3 Springs-Edwards Aquifer Conservation District to regulate certain
4 wells for the production of groundwater.

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

6 SECTION 1. Subchapter A, Chapter 8802, Special District
7 Local Laws Code, is amended by adding Section 8802.0035 to read as
8 follows:

9 Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The
10 territory of the district includes any territory that is:

11 (1) inside the boundaries of the Edwards Aquifer
12 Authority; and

13 (2) in Hays County.

14 (b) The Edwards Aquifer Authority has jurisdiction over any
15 well that is drilled to produce water from the Edwards Aquifer in
16 the shared territory described by Subsection (a).

17 (c) The district has jurisdiction over any well that is
18 drilled to produce water from any aquifer other than the Edwards
19 Aquifer in the shared territory described by Subsection (a).

20 (d) The district has jurisdiction over any well that is
21 drilled to produce water from the Edwards Aquifer or any other
22 aquifer in the territory described by Section 8802.003.

23 SECTION 2. As soon as practicable after the effective date
24 of this Act, and in conformance with the requirements of Section

1 8802.053, Special District Local Laws Code, the board of directors
2 of the Barton Springs-Edwards Aquifer Conservation District shall
3 revise the single-member districts as the board considers
4 appropriate to reflect the changes in territory made by Section
5 8802.0035, Special District Local Laws Code, as added by this Act.

6 SECTION 3. (a) The legislature validates and confirms all
7 acts and proceedings of the board of directors of the Barton
8 Springs-Edwards Aquifer Conservation District that were taken
9 before the effective date of this Act.

10 (b) Subsection (a) of this section does not apply to any
11 matter that on the effective date of this Act:

12 (1) is involved in litigation if the litigation
13 ultimately results in the matter being held invalid by a final
14 judgment of a court; or

15 (2) has been held invalid by a final judgment of a
16 court.

17 SECTION 4. (a) The legal notice of the intention to
18 introduce this Act, setting forth the general substance of this
19 Act, has been published as provided by law, and the notice and a
20 copy of this Act have been furnished to all persons, agencies,
21 officials, or entities to which they are required to be furnished
22 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
23 Government Code.

24 (b) The governor, one of the required recipients, has
25 submitted the notice and Act to the Texas Commission on
26 Environmental Quality.

27 (c) The Texas Commission on Environmental Quality has filed

1 its recommendations relating to this Act with the governor, the
2 lieutenant governor, and the speaker of the house of
3 representatives within the required time.

4 (d) All requirements of the constitution and laws of this
5 state and the rules and procedures of the legislature with respect
6 to the notice, introduction, and passage of this Act are fulfilled
7 and accomplished.

8 SECTION 5. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2015.

Item 4

Board discussions and possible actions

e. Discussions and possible action related to an update on progress towards a regulatory mechanism to allow permit transfers.

Item 4

Board discussions and possible actions

f. Discussion and possible action related to implementation of District rule 3-6.1 encouraging conservation-oriented rate structures.

MEMORANDUM

Date: 2/20/15
To: Board of Directors
From: John Dupnik and Vanessa Escobar
Re: Implementation of Rule 3-6.1 Conservation – Oriented Rate Structure

Background

Rule 3-6.1 Conservation –Oriented Rate Structure was added to the District Rules in October 2012. This measure was recognized by the Stakeholder group convened to advise the Board on strategies to preserve the DFCs as an effective tool that would encourage demand reduction, especially during drought. During the rule making process there was much debate over the appropriate role of District and it was determined that conservation-oriented rates should be encouraged rather than required. Rule 3-6.1 was adopted by the Board at which point staff began making preparations to implement the rule as directed by the Board.

District Rule 3-6.1, as adopted by the Board, applies to all Public Water Suppliers (PWS) who are permitted for groundwater production within the District. The Conservation rule encourages but does not compel the use of conservation-oriented rate structures and states all permitted PWSs are required to provide information about their water rate structures to the District for a qualitative evaluation. This Rule affects approximately 20 Permittees who range in size from small rural water systems to large municipal systems. This rule helps to assure that this category of groundwater permittees are demonstrating their ability and good faith efforts to encourage water conservation amongst their customers and to meet District required curtailments during drought. This rule had an informational requirement deadline of October 11, 2014.

Summary of Rule Implementation

September 2013 – General Manager assigned staff incentive projects for which the Board of Directors reviewed and approved as part of the Annual Review and implementation of the District’s Management Plan goals. As part of staff’s incentive project, Vanessa Escobar was assigned a series of tasks, deadlines, and deliverables to implement Rule 3-6.1. The timeframe for this project effort was a 12-month span of Sep 2013 – Aug 2014.

November 2013 - BSEACD collaborated with UNC Environmental Finance Center and requested staff to provide free rate and finance one-on-one assistance to our public water supply system permittees. We organized a series of advisory sessions in our offices between some of our permittees (*San Leanna, City of Kyle, Oak Forest, Creedmoor Maha, Arroyo Doble*) and the UNC-EFC. During these sessions Jeff Hughes reviewed pricing and finance information from our permittees and made recommendations on how to improve financial sustainability in an environment with recurring mandatory water use curtailments and the associated restriction on water sales. In addition, BSEACD staff and some of our permittees attended a workshop session featuring Jeff Hughes that focused on strategies for maintaining financial resilience. The Central Texas Water Efficiency Network hosted a Rates and Revenues Workshop on Nov. 13, 2013 at LCRA's office

January 2014 to September 2014

Planning Process - Staff developed a project timeline to identify a series of tasks, deadlines, and deliverables that would be necessary to communicate, collect and meet the rule requirement. With approval from the GM, staff's approach to meeting the Rule's informational requirement was to mail a notice letter to all PWS permittees and request that they submit to District a survey form, their utility rate structure, and a rate description. Information and details were posted on dedicated webpage on the District's website. The mailed notice letters explained that their information would be used by the District to provide an assessment of the relative effectiveness of their rate structure in reducing water demand during declared drought. An initial deadline was set for all and then a second deadline was set for the non-reporters. There were no non-reporters, all 20 PWS permittee responded.

Review Process - The compiled responses would be provided to UNC-EFC for review and analysis. As part of the analysis, their in house conservation rate experts will complete a qualitative evaluation tool/report that each individual Permittee can utilize as a tool to stabilize revenue and manage rate with conservation planning and drought compliance. Utilities would be provided and individualized report to help guide them in their future efforts of designing and preparing their rate structures for promoting conservation and handling extreme drought. The report will also become a part of each permittee's file and will be referenced as a management tool when assessing any non-compliance with monthly pumping curtailments during District-declared drought.

The District elected to partner with Jeff Hughes, Director of Environmental Finance Center (EFC) - University of North Carolina as a sole source contractor. Jeff is a conservation rate expert who previously partnered with the District to organize a series of advisory sessions in our offices between some of our permittees and the EFC. During these sessions, Jeff Hughes reviewed pricing and finance information from our permittees and made recommendations on how to improve financial sustainability in an environment with recurring mandatory water use curtailments and the associated restriction on water sales. The EFC has done a lot of work in Texas evaluating the conservation signals and pricing structures for a large number of water systems in Texas. They have partnered with The Lone Star Chapter of Sierra Club to host a workshop for utilities and develop a publication that was Texas specific and addressed water rate structures for conservation and revenue stability. The Texas specific report is entitled, *Designing Water Rate Structures for Conservation and Revenue Stability*. With approval of the GM, staff determined that it would be most efficient to utilize the EFC as contracted consultants and recognized experts for the rate structure analysis required by rule.

September 2014 – An article was written in the BSEACD quarterly newsletter summarizing the upcoming project plans for this project effort.

October 2014 – A formal contract and scope of work was drafted and scheduled as an agenda item for an upcoming Board meeting. The Board of Directors expressed concern regarding the intent of the District Rule and tabled the agenda item.

Possible Board Action: Staff is requesting confirmation from the Board to continue with efforts to implement Rule 3-6.1 or direction to cease efforts and revisit the intent of and need for the rule in the next round of rule making.

DISTRICT RULE 3-6.1

RULE 3-6. CONSERVATION.

3-6.1. CONSERVATION-ORIENTED RATE STRUCTURE.

The District encourages all water utilities to employ conservation-oriented rate structures as a matter of course.

A. Certification.

On or before October 11, 2014, or upon the next water utility rate hearing, whichever is earlier, and then upon approval of each ensuing amendment of rates or rate structure, all permittees with wells classified for public water supply use shall provide a certification to the District that describes in detail either their then-approved existing rate structure or, for investor-owned utilities, the proposed rate structure in an application then-pending with TCEQ. Such certification shall include an explanation of why the utility considers that their selected design of the rate structure for selling water to their customers is effective in reducing water demand for that customer base, especially during District-declared drought stages. This information will be evaluated qualitatively by the District as to the relative effectiveness of various components of the rate structure on a case-by-case basis, using actual pumpage and drought compliance history, widely accepted utility guidelines, and applicable TCEQ standards. The District's findings in this assessment shall be timely conveyed to the permittee for their future use, and at their discretion.

B. Requests for Extension or Exception.

Within six months of the expiration of the applicable certification period, a water utility may make a request to the District for either a time extension for making the certification or an exception to the need to utilize conservation-oriented rates. These requests must include the rationale for such requests and why such requests should be granted. The request will be granted by the Board if the Board finds the circumstances merit such consideration.

C. Use of Effectiveness Assessment.

At the end of the two-year certification period plus any extension period requested by the utility and granted by the Board, the assessed degree to which any non-excepted utility is or is not using an effective conservation-oriented rate structure may be a consideration in determining whether the utility permittee is making a good-faith effort to comply with drought management rules.

Contractual Agreement for Services
Between
Barton Springs/Edwards Aquifer Conservation District
And
Environmental Finance Center – University of North Carolina

This service agreement (the "Agreement") is between **Barton Springs/ Edwards Aquifer Conservation District** ("Client" or "BSEACD"), and **The University of North Carolina at Chapel Hill for its School of Government's** ("EFC- SOG" or "SOG") (each a "Party" and collectively "Parties").

WHEREAS, as part of its mission, the UNC SOG provides services to local governments. The Environmental Finance Center, as a program of the UNC SOG, provides technical services related to financial sustainability.

WHEREAS, SOG is able to provide technical services relating to the University of North Carolina at Chapel Hill's research, teaching, and public service missions; and

WHEREAS, Client desires for SOG to perform such services, and doing so is consistent with the University of North Carolina at Chapel Hill's research, teaching and public service missions.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, and for other good and valuable consideration the receipt of which is hereby acknowledged, Client and SOG agree as follows:

1. **Scope of Services.** SOG will perform the services described in in the scope of work, which is attached as Schedule A (the "Scope of Work"). SOG will provide Client with the deliverables as described in the Scope of Work. The deliverables will be due on the dates specified in Schedule A and Schedule B (the "Project Timeline"). The tasks and deliverables are derived from the client's District Rule as described in Schedule D (the "District Rule").
2. **Term.** The term of this Agreement is entered into on October 23, 2014 (the "Effective Date") and will terminate upon the Deliverable Date of March 1, 2015, unless sooner terminated as provided herein. The Parties may extend the term upon written agreement.
3. **Termination.** In the event either Party breaches any material terms of this Agreement, then upon ten (10) days' written notice of such breach, the non-breaching Party may terminate if the breaching Party fails to cure such breach within the notice period. In the event of such termination by Client, SOG shall deliver to Client any Results or unfinished work product prepared under this Agreement.
4. Either Party may terminate this Agreement for any reason upon thirty (30) days prior written notice.
5. In the event of termination under either Sections 3 or 4, Client agrees to pay SOG all reasonable costs and non-cancellable obligations incurred by SOG up to the date of termination, not to exceed the maximum amount specified in Section 6.

6. **Payment.** Client agrees to pay SOG a total of \$4,925.00 which shall be paid at such times and under such conditions as set forth in the payment schedule, which is attached as Schedule C. Total cost to Client shall not exceed \$4,925.00 without Client's written approval.
7. **Confidential Information.** Any information disclosed by Client to SOG pursuant to this Agreement that Client considers confidential or proprietary ("Confidential Information") shall be disclosed in writing and marked as confidential, or if disclosed orally, shall be confirmed in writing and designated confidential within five (5) days of such disclosure. SOG agrees to use the same degree of care it uses to protect its own confidential information to maintain for a period of three (3) years the Confidential Information. SOG's obligations hereunder do not apply to: (1) information in the public domain, (2) information independently known or obtained by SOG; or (3) information required to be disclosed pursuant to applicable law or judicial order, including the North Carolina Public Records Act and the Texas Public Information Act.
8. **Ownership Rights.** The Results and Confidential Information shall belong solely to Client; provided, however, SOG shall be free to use the Results for its own educational, research, and publication purposes, consistent with the obligations set forth in Section 5 above.
9. **Entire Agreement.** This Agreement constitutes and expresses the entire agreement of the Parties hereto with reference to the subject matter hereof, with all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto having been herein merged into this Agreement.
10. **Warranties.** SOG in no way guarantees the Services performed and makes no warranties, express or implied, regarding the quality of the Results, although all reasonable efforts will be made. Each Party waives its rights to recover from the other Party any consequential, indirect, or incidental damages (including but not limited to, loss of use, income, profits, financing, or reputation), arising out of, or relating to, this Agreement.
11. **Independent Contractors.** The relationship of the Client and SOG established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to (i) give either Party the power to direct and control the day-to-day activities of the other, (ii) constitute the Parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking, or (iii) allow a Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever. Personnel of each Party shall not be considered an employee or agent of the other Party nor shall such personnel be entitled to any employee benefits including, without limitation, vacation pay, leave, retirement benefits, social security, workers compensation, disability, or unemployment benefits that may be provided to the other Party's employees. Each Party shall be exclusively responsible for compensating its personnel and subcontractors and paying all taxes, withholding payments and any other fees or payments related to its personnel and subcontractors.
12. **Modification; Waivers.** No waiver, amendment, or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both Parties. Failure by either Party to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.
13. **Force Majeure.** SOG shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond SOG's control, or by reason of any of the

following: acts of God, acts or threats of terrorism, civil disorders, severely inclement weather, disease, accidents, failure of utilities, failure of any required governmental approval, or similar occurrences.

14. **Retention of Intellectual Property.** It is expressly agreed that neither SOG nor the Client transfers by operation of this Agreement or shall transfer by operation of this Agreement to the other Party any patent right, trademark right, or copyright right either Party now owns in the performance of this Agreement.
15. **Advertising.** Client shall not use the existence of this Agreement or the name, logo, images or trademarks of The University of North Carolina at Chapel Hill, or any of its constituent schools or departments, as a part of any marketing or commercial advertising without prior written approval of SOG.
16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one instrument.
17. **Notices.** Any notice to be given hereunder shall be in writing and shall be given by delivery in person or by depositing the notice in United States Certified Mail, Return Receipt Requested, postage prepaid, in an envelope addressed to the Parties to be notified at such Party's address as follows:

If to Client:

John Dupnik P.G.
Barton Springs/Edwards Aquifer District
1124 Regal Row
Austin, TX 78748

If to SOG:

June Tirpak
The University of North Carolina at Chapel Hill
Knapp-Sanders Building
Campus Box 3330
Chapel Hill, NC 27599-3330

18. **Indemnification.** SOG agrees to indemnify and hold harmless the District and its officers, employees, members of its governing body, agents, and representatives from any damages, liability, or claim of liability, causes of action, takings, loss, injury, expenses, and costs, including court costs and reasonable attorney's fees, arising out of, or in connection with SOG's performance of this Contract, to the extent permitted by the North Carolina Tort Claims Act.
19. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party hereto. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.
20. **Survivability.** Those terms that by their nature necessarily survive termination of this Agreement shall survive, including but not limited to those provisions dealing with confidentiality, intellectual property, and payment.
21. **Liaisons.** Vanessa Escobar shall serve as liaison for the Client for issues concerning work under this Agreement. June Tirpak shall serve as liaison for SOG. Their contact information is as follows:

Vanessa Escobar
512-282-8441
vescobar@bseacd.org

June Tirpak
919-962-2762
jmtirpak@sog.unc.edu

IN WITNESS WHEREOF, the Parties by their duly authorized officers have executed this Agreement on the dates set forth below, to be effective on the Effective Date.

FOR UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL ON BEHALF OF ITS SCHOOL OF GOVERNMENT

By: _____ Date: _____

Name: Michael R. Smith

Title: Dean, School of Government

FOR Barton Springs/Edwards Aquifer Conservation District

By: _____ Date: _____

Name: Robert Larsen

Title: Acting Board President

Attest:

By: _____ Date: _____

Name: Craig Smith

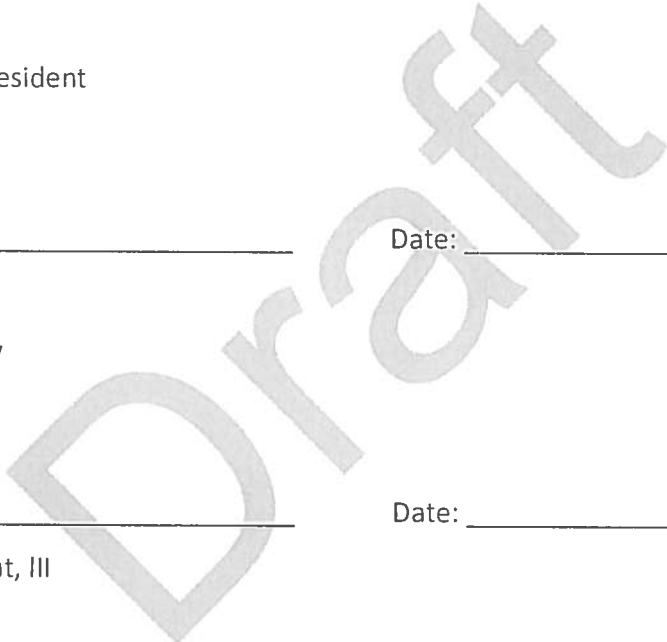
Title: Board Secretary

Approved as to Form:

By: _____ Date: _____

Name: William D. Dugat, III

Title: Counsel



Schedule A SCOPE OF WORK

The Environmental Finance Center – School of Government (EFC-SOG) at the University of North Carolina will work on behalf of the Barton Springs/Edwards Aquifer Conservation District (BSEACD) with the 21 public water suppliers permitted by the BSEACD to provide qualitative and evaluative tools and information on the effectiveness of the various components of the public water suppliers' rate structure. The tools and deliverables of this contract will provide qualitative information that can be utilized and referenced by the public water suppliers in rate setting for financial and resource sustainability. The project will be divided into the following tasks and deliverables.

Deliverable 1: Data Compilation and Standardization

Timeline: November 1 – November 14, 2014

Cost: \$859

- ❖ BSEACD will provide the EFC-SOG with the following data for each of the 21 public water suppliers:
 - Utility actual pumpage data for last 3yrs (Excel document)
 - Utility actual drought compliance for the last 3yrs (PDF document)
 - Utility rate tariffs (PDF document)
 - Survey response data which includes, customer water usage information, GPCD, rate pricing structures (Excel Document and PDF documents)
 - Financial reports from its public water suppliers (if available)
- ❖ The EFC-SOG will utilize and incorporate the provided data into either the individualized utility reports or the dashboard development of a customized peer group dashboard.
- ❖ The EFC-SOG will enter the rate parameters into its rate calculator to standardize comparisons and collect demographic data for the areas served by the District's water systems.

Deliverable 2: Dashboard Development and Dashboard Overview

Timeline: November 17 - December 8, 2014 – Provide BSEACD with draft dashboard for review
December 22 – January 16, 2015 – Provide BSEACD with final dashboard

February 1, 2015 - Dashboard Overview

Cost: \$2,357

- ❖ The EFC-SOG will develop a dashboard that will allow the District's public water suppliers to compare water pricing at various consumption points and view this pricing in the context of water demand and affordability indicators. (Parallel to this effort, the EFC-SOG will pursue a project to update the Texas statewide dashboard. If this pursuit is successful, BSEACD rate data will be incorporated into the statewide dashboard and the District will be identified as a customized peer group.)
- ❖ The EFC-SOG will provide BSEACD with a recorded web tour of the dashboard tool for BSEACD to reference as BSEACD corresponds and receives questions from its permitted public water suppliers.

Deliverable 3: Individual Utility Reports

Timeline: December 22, 2014 -January 23, 2014 – Provide BSEACD with reports for review
Cost: \$1,663

- ❖ The EFC-SOG will develop 2-3 page individualized reports for each of the 21 public water suppliers. The reports will accomplish the following:
 - Provide a qualitative evaluation of the relative effectiveness of the various components of the rate structures using each utility's actual pumpage data, drought compliance history, widely accepted utility guidelines, and applicable TCEQ (effective September 1, 2014 water utility regulation transferred to Texas Public Utility Commission) standards. See Schedule D District Rule 3-6.1A
 - Address and explain how each utility's water rates and water demand compare to the rest of the utilities in the District.
 - Address how each utility's water rates are effective in reducing water demand for its customer base.
- ❖ BSEACD will send individual reports to each utility, in a packet with other printed resources on conservation and revenue stability, for their review and recordkeeping.

Deliverable 4: District Report

Timeline: January 17 – January 30, 2015
Cost: \$1,709

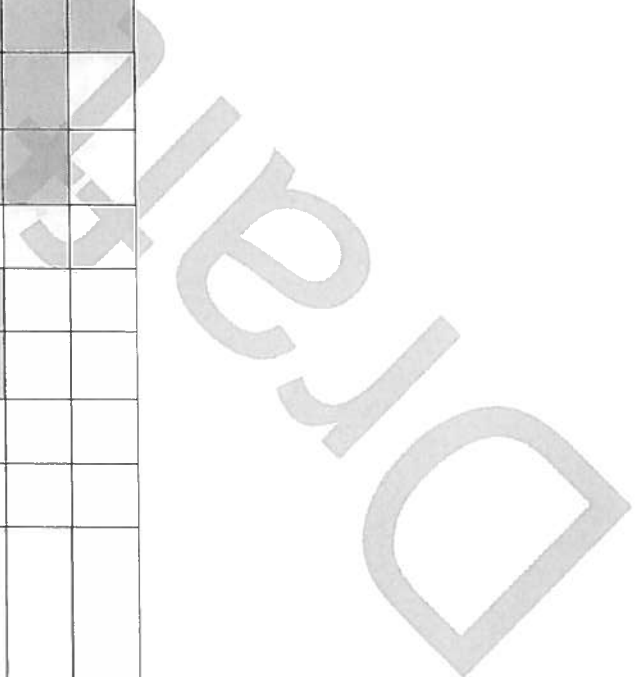
- ❖ The EFC-SOG will provide the BSEACD with a district-wide, 4-10 page report that summarizes the activities, performance, and the trends identified during the rate structure evaluations.
- ❖ The EFC will turn the report over to BSEACD in an electronic format and will be available for brief consultative phone calls between EFC-SOG staff, BSEACD staff, and representatives of public water systems during the months of February and March.

Total invoice to BSEACD: \$4,925

The total cost for the scope of work is \$6,588. Currently the EFC-SOG has funding to provide rate and financial management technical assistance to small drinking water systems with funding from the U.S. Environmental Protection Agency. This grant will cover the cost of the time the individual utility reports, leveraging \$1,663 of federal support. Thus, BSEACD is responsible for no more than \$4,925.00

Schedule B
PROJECT TIMELINE 2014-2015

Deliverable	November 2014	December 2014	January 2015	February 2015	March 2015
1. Data compilation and standardization	■				
2. Dashboard development and dashboard overview		■	■		
3. Individual utility reports			■		
4. District report and consultation			■	■	■



Schedule C
PAYMENT SCHEDULE

The Client will promptly pay the invoice price of \$4,925 at the completion of service and within 30 days of receipt of an undisputed invoice from EFC-SOG.

Draft

Schedule D
DISTRICT RULE 3-6.1

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Item 4

Board discussions and possible actions

- g. Discussion and possible action related to providing direction to the General Manager on scheduling and participation of Directors in District meetings.**

Item 5

Adjournment