

## 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 in the District office, 1124 Regal Row, Austin, TX, on **Thursday, January 15, 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. **Not for public review**
    2. Approval of minutes of the Board's November 18, 2014 Special Called Meeting and December 11, 2014 Regular Meeting. **Not for public review at this time**
    3. Approval of a resolution authorizing the General Manager to execute certain contracts. **Pg. 16**
    4. Approval of a resolution memorializing the Board action in the December 11, 2014 Board meeting appointing a Deputy Secretary and designating an Assistant Secretary. **Pg. 18**
    5. Approval of a resolution to: 1) authorize the General Manager to submit a Research and Planning Grant Application to the Texas Water Development Board to perform a Regional Water Supply Plan that would potentially serve to provide alternative water supplies to entities within the District and 2) commit District resources to support the grant. **Pg. 20**
    6. Approval of an interlocal agreement with the Cow Creek Groundwater Conservation District for purposes of Joint Planning within Groundwater

Management Area 9 and preparation of and payment for the Desired Future Condition Explanatory Report. **Pg. 22**

- 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. Review of Status Update Report – at directors' discretion **Pg. 25**
- ii. Update on activities related to GMA and regional water planning
- iii. Update on efforts to characterize the saline zone of the Edwards Aquifer
- iv. Update on activities related to the HCP
- v. Update on activities related to area roadway projects
- vi. Update on activities related to area wastewater projects
- vii. Update on the status of the City of Kyle's remanded permit application

**4. Discussion and Possible Action.**

- a. Discussion and possible action related to approval of an agreement with TxDOT 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. 30**
- b. Discussion and possible action related to the Electro Purification Trinity well field located just outside of the District's boundaries. **Pg. 39**
- c. Discussion and possible action related to pursuit of the District's legislative agenda including possible formation of a legislative subcommittee. **NBU**
- d. Discussion and possible action related to a request for an Attorney General opinion on regulatory authority of the District. **Pg. 44**
- e. Discussion and possible action related to the annual election of the officers of the BSEACD Board of Directors. **NBU**

**5. Adjournment.**

Came to hand and posted on a Bulletin Board in the Courthouse, Travis County, Texas, on this, the \_\_\_\_\_ day of January, 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](http://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 November 18, 2014 Special Called Meeting and December 11, 2014 Regular Meeting.**
- 3. Approval of a resolution authorizing the General Manager to execute certain contracts.**
- 4. Approval of a resolution memorializing the Board action in the December 11, 2014 Board meeting appointing a Deputy Secretary and designating an Assistant Secretary.**
- 5. Approval of a resolution to: 1) authorize the General Manager to submit a Research and Planning Grant Application to the Texas Water Development Board to perform a Regional Water Supply Plan that would potentially serve to provide alternative water supplies to entities within the District and 2) commit District resources to support the grant.**
- 6. Approval of an interlocal agreement with the Cow Creek Groundwater Conservation District for purposes of Joint Planning within Groundwater Management Area 9 and preparation of and payment for the Desired Future Condition Explanatory Report.**

STATE OF TEXAS

COUNTIES OF HAYS, TRAVIS  
AND CALDWELL

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RESOLUTION #011515-01

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BARTON  
SPRINGS / EDWARDS AQUIFER CONSERVATION DISTRICT  
AUTHORIZING THE GENERAL MANAGER TO  
EXECUTE CERTAIN CONTRACTS**

**WHEREAS**, the Barton Springs/Edwards Aquifer Conservation District (BSEACD) is a groundwater conservation district (GCD) created by an act of the 70<sup>th</sup> Legislature and subject to various requirements of State Law governing GCDs, including Texas Water Code Chapter 36; and

**WHEREAS**, Texas Water Code section 36.057(f) provides the Board of Directors may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district; and

**WHEREAS**, District Rule 4-8.1 provides that, the Board of Directors may authorize the President or, if authorized by resolution, the General Manager to enter into any contract or to execute and deliver any instrument or document in the name of and on behalf of the District; and

**WHEREAS**, Mr. John Dupnik is the General Manager of the District; and

**WHEREAS**, the Board of Directors desires to authorize the General Manager to execute certain contracts on behalf of the District;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District:

Without further action of the Board of Directors, the General Manager is authorized to execute contracts on behalf of the District that are (a) for an expenditure less than \$5,000; (b) for expenses included within the current fiscal year budget approved by the Board of Directors; and; (c) for goods or services that have been obtained in a manner consistent with the District's purchasing and procurement policies.

In Favor \_\_\_\_\_

Opposed \_\_\_\_\_

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF JANUARY 2015.**

\_\_\_\_\_  
Dr. Robert Larsen, Board President

ATTEST:

\_\_\_\_\_  
Craig Smith, Secretary



STATE OF TEXAS

COUNTIES OF HAYS, TRAVIS  
AND CALDWELL

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**RESOLUTION #011515-02**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BARTON  
SPRINGS / EDWARDS AQUIFER CONSERVATION DISTRICT  
APPOINTING A DEPUTY SECRETARY AND  
DESIGNATING AN ASSISTANT SECRETARY**

**WHEREAS**, the Barton Springs/Edwards Aquifer Conservation District (BSEACD) is a groundwater conservation district (GCD) created by an act of the 70<sup>th</sup> Legislature and subject to various requirements of State Law governing GCDs, including Texas Water Code Chapter 36; and

**WHEREAS**, Texas Water Code section 36.054(d) provides that the board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district; and

**WHEREAS**, District Rule 4-8.1 provides that, in the absence of the Board Secretary, the Assistant Secretary to the Board, as designated by Board resolution, is authorized to attest the signature of execution on a contract; and

**WHEREAS**, Ms. Tammy Raymond is an employee of the District; and

**WHEREAS**, at its December 11, 2014 Regular Board of Directors Meeting the Board of Directors appointed Ms. Tammy Raymond as Deputy Secretary of the Board; and

**WHEREAS**, the Board of Directors desires to memorialize its appointment by written resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District:

1. Ms. Tammy Raymond is appointed Deputy Secretary and designated Assistant Secretary to the Board; and
2. As Deputy Secretary and Assistant Secretary to the Board Ms. Raymond may take all actions authorized by the Texas Water Code and District Rules.

In Favor \_\_\_\_\_

Opposed \_\_\_\_\_

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF JANUARY 2015.**

\_\_\_\_\_  
Dr. Robert Larsen, Board President

ATTEST:

\_\_\_\_\_  
Craig Smith, Secretary

STATE OF TEXAS

COUNTIES OF HAYS, TRAVIS  
AND CALDWELL

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**RESOLUTION #011515-03**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
BARTON SPRINGS / EDWARDS AQUIFER CONSERVATION DISTRICT  
TO 1) AUTHORIZE THE GENERAL MANAGER TO SUBMIT A  
RESEARCH AND PLANNING GRANT APPLICATION TO THE TEXAS  
WATER DEVELOPMENT BOARD TO PERFORM A REGIONAL WATER  
SUPPLY PLAN THAT WOULD POTENTIALLY SERVE TO PROVIDE  
ALTERNATIVE WATER SUPPLIES TO ENTITIES WITHIN THE DISTRICT  
AND 2) COMMIT DISTRICT RESOURCES TO SUPPORT THE GRANT**

**WHEREAS**, the continued drought has presented significant challenges and potential water supply shortages to municipal, commercial, and industrial water supplies within the region;

**WHEREAS**, these water supply challenges have required a reassessment of traditional water supply strategies within the region;

**WHEREAS**, other municipal and industrial water utilities in the region have recognized the need to identify new strategies to provide additional water supplies during critical drought periods;

**WHEREAS**, the Barton Springs Edwards Aquifer Conservation District (the "District") recognizes the need to address these water supply issues on a regional basis in a cost sharing arrangement with other water suppliers within the region to develop a regional plan to address these critical issues;

**WHEREAS**, the District along with the partners/participants, will partner in this planning effort; and

**WHEREAS**, the District has agreed to act as the applicant for regional planning funds through the Texas Water Development Board.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the Barton Springs Edwards Aquifer Conservation District:

1. The General Manager is authorized to submit an application, substantially in the form attached hereto as Exhibit "A," with changes to be approved by the District's attorney, to the Texas Water Development Board to perform a Regional Water Supply Plan that would serve entities in Hays, Travis and Caldwell Counties, Texas.

2. The District will commit an amount not to exceed \$250,000 of local matching funds in cash and in-kind services; and
3. This resolution shall become effective immediately upon adoption.

In Favor \_\_\_\_\_

Opposed \_\_\_\_\_

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF JANUARY 2015.**

\_\_\_\_\_  
Dr. Robert Larsen, Board President

ATTEST:

\_\_\_\_\_  
Craig Smith, Secretary

# **INTERLOCAL AGREEMENT**

## **GROUNDWATER MANAGEMENT AREA 9**

### **DFC EXPLANATORY REPORT**

This Interlocal Agreement (Agreement) is entered into between the undersigned Groundwater Conservation District (District) and the Cow Creek Groundwater Conservation District (CCGCD) for purposes of Joint Planning within Groundwater Management Area 9 (GMA9) in accordance with Chapter 36.108 of the Texas Water Code and specifically in regard to the preparation of and payment for the DFC Explanatory Report (the Report).

Each District in GMA9 shall adopt this Agreement and forward a copy of the signed agreement or minutes approving the agreement to the CCGCD.

- 1.01** The undersigned District shall agree to share equally in the expenses incurred in the preparation of the Report which is \$65,000 total for GMA9. All GMA9 Districts will have access to all the documents that are a result of the Report. The total contract amount divided equally by each GCD for each fiscal year is as follows:

<b>Groundwater Conservation District</b>	<b>Project Budget Estimate</b>			
	<b>FY 15</b>	<b>FY 16</b>	<b>Totals</b>	<b>%Total</b>
Bandera County River Authority and Groundwater District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Barton Springs/Edwards Aquifer Conservation District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Blanco-Pedernales Groundwater Conservation District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Cow Creek Groundwater Conservation District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Edwards Aquifer Authority	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Hays Trinity Groundwater Conservation District*	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Headwaters Groundwater Conservation District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Medina County Groundwater Conservation District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
Trinity Glen Rose Groundwater Conservation District	\$5,533.35	\$1,688.90	\$7,222.25	10.81%
<b>TOTALS</b>	<b>\$49,800</b>	<b>\$15,200</b>	<b>\$65,000</b>	<b>100.00%</b>

\*For the Services to be funded by the Hays Trinity Groundwater Conservation District (HTGCD) and paid through the CCGCD, the Contractor will issue three separate invoices to the CCGCD, one each for Fiscal Year 2015, Fiscal Year 2016 and Fiscal Year 2017. Each invoice will be for one-third of the HTGCD's share of the total contract fee to be paid to the Contractor.

- 1.02** If the number of Districts funding the contract is reduced from nine to eight, the total amounts will be adjusted as follows:

For FY 15 – the per GCD amount then becomes \$6,225, for a total of \$49,800 for that year.

For FY 16 – the per GCD amount then becomes \$1,900, for a total of \$15,200 for that year.

- 1.03** The CCGCD has been appointed by GMA9 as the contracting District for the preparation of the Report. CCGCD will invoice the undersigned District for its share of costs as the expenses are incurred. The undersigned District will pay the invoiced amount to the CCGCD within 45 days from the invoice date.

- 1.04** By execution of this Agreement, the Participating Districts agree to comply with and abide by this Agreement.

- 1.05** The term of this Agreement shall commence on the 1<sup>st</sup> day of February, 2015, and shall continue in full force and effect until the Explanatory Report contract is completed and the final invoice is paid.

- 1.06** This Agreement is entered into and executed in the State of Texas and all questions pertaining to its validity or construction shall be determined in accordance with laws of the State of Texas.

- 1.07** In case any provision of this Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Agreement.

This Interlocal Agreement has been approved and adopted by the Board of Directors of the undersigned District; the adoption of which is so indicated by the undersigned Board President or the President's Designee.

\_\_\_\_\_  
Board President or President's Designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
District Name

## **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. Review of Status Update Report – at directors' discretion**
- ii. Update on activities related to GMA and regional water planning**
- iii. Update on efforts to characterize the saline zone of the Edwards Aquifer**
- iv. Update on activities related to the HCP**
- v. Update on activities related to area roadway projects**
- vi. Update on activities related to area wastewater projects**
- vii. Update on the status of the City of Kyle's remanded permit application**

**STATUS REPORT UPDATE FOR JANUARY 15, 2015 BOARD MEETING**

Prepared by District Team Leaders

	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
GENERAL MANAGEMENT TEAM				
	John Dupnik			
	JD	09-Jan-15	Meetings, Training, Presentations, and Conferences	<b>External Meetings Attended:</b> City of Buda, with Rep. Jason Isaac on EP wellfield; Charles Porter on Seller's Disclosure; <b>Other Meeting:</b> with Kirk Holland on HCP EIS; Austin Hydrophyllis; Sharlene Leurig, TAGD Legislative Subcommittee; with Bill Walters/George Colfer; with Tiffany Curmutt (Mountain City Mayor); with Christy Muse (HCA); with Rep. Lyle Larson on alt. supply efforts; <b>Presentations:</b> None; <b>Conferences/Training:</b> None
Summary of Significant Ongoing Activities	JD	09-Jan-15	Ongoing Special Projects, Committees, and Workgroups	<b>Ongoing Special Projects:</b> TDS saline zone investigation/alternative saline zone access agreement; HCP EIS review; TxDOT supplemental agreement; City of Kyle Rehearing; GMA 10 nonvoting advisory committee framework; track Wimberley and Dripping Springs TPDES permit applications; TWDB desal grant application; New Mountain City development (Anthem); Electro Purification investigation <b>Committees and Workgroups:</b> Region K, voting member; GMA 10, voting member; Regional WQ Plan workgroup and wastewater subgroup; TAGD legislative subcommittees on Brackish groundwater, Permitting, and ASR; Texas Desalination Association Brackish groundwater committee; Region K committee on Legislation and Policy; Region K strategy prioritization committee.
				<b>Routine Activities/Day-to-Day Operations:</b> provided general oversight of staff incentive projects and activities, and oversight of day-to-day operations; approved purchase orders and expenditures; approved timesheets; prepared agendas and backup for and attended Board meetings; prepared GM report and summary notes of meetings and assigned tasks in response to Board commitments; held regular one-on-one meetings with Team Leads; presided over Planning Team meetings; <b>Consultation with Attorney on:</b> Kyle hearing/settlement agreement, SH 45 supplemental agreement, Willie Partnership; Elections; Board meeting notices in Caldwell County; AG opinion request on Trinity authority <b>Other Activities:</b> work on order for City of Kyle Hearing; review HCP EIS; work on draft supplemental SH45 agreement; work on TWDB desal grant application; Mountain City/Anthem development agreement; research Electro Purification well field; review draft TAGD bills; prepare for Rep. Lyle Larson meeting; resolve Caldwell County notice errors.
		14-Nov-14	Routine Activities and Day-to-Day operations	
GENERAL SERVICES TEAM				
	Dana Christine Wilson	09-Jan-15		
Accounting - Taxes	DCW	08-Jan-15	Filed quarterly C-3 with the Texas Workforce Commission, quarterly and annual 941....	A couple new permittees have already been issued late fees due to nonpayment of minor water use fee invoice. (WFC paid and now waiting on Ladybird Montessori School who was initially billed on October 14. Two months of late fees have been applied but no response from permittee. Will not with District team to be resolved.)
Accounts Receivable - A	DCW	08-Jan-15	Permittee accounts carrying a past due balance:	Total billed \$ 25,301.
Accounts Receivable - B	DCW	12-Dec-14	December billings for January water use fees mailed out on 12/12/14.	One DMF for \$250 applied to MOYSC's account.
Accounts Receivable - C Drought Management Fees	DCW	08-Jan-15	December is the 1st month to charge DMFs.	Annual submission.
Financial Reporting - Annual Audit with Annual Report	DCW	30-Dec-14	Filed Audit, Annual Report, and Annual Financial Dormancy Affidavit with TCEQ as required by TWC Section 49.194.	



	Lender, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Financial Reporting - Website	DCW	12-Dec-14	Most current, available financial reports are posted.	Profit and Loss Statements and Balance Sheets through November 30, 2014.
<b>REGULATORY COMPLIANCE TEAM</b> Kendall Bell-Enders				
Willie Ranch Partnership	KBE, VE	08-Jan-15	Edwards Agricultural Irrigation Well	District staff started receiving calls about a landowner irrigating in the middle of the day off Bliss Spillar road. Staff went to investigate and confirmed the Willie Ranch Partnership is irrigating Constar Bermuda hay that is being sold. Staff is working with the landowner and have asked that they try to stop irrigating in the middle of the day until we can resolve the issue and figure out a path forward. Staff conducted a site inspection and is the process of determining if hay being grown on the property is being sold for commercial sales or is just being used to feed the livestock on the property. Staff is very close to finalizing this assessment and should have a conclusion by the January 29th Board meeting.
City of Buda	KBE, VE	08-Jan-15	Test well - New Edwards PWS well	The City of Buda submitted a test well application. The City plans to drill approximately 4 test wells in the Garlic Creek area to determine a location for a new PWS well for their aggregate system. There will not be an associated production permit/amendment; not requesting an increase in permitted pumpage. Buda has submitted three more test well applications which are still under review. Staff has site inspections scheduled for January 14th regarding well locations and possible variances.
Drought Management	KBE, VE	08-Jan-15	Drought Compliance Monitoring and Enforcement	The District declared Stage II Alarm Drought on August 14, 2014. September was the first full month of drought, so December was the 4th consecutive month of drought. As per the District's drought enforcement protocol, enforcement efforts for 4-6 months of drought will expand to include Tier 2 permittees while still including Tier 3 permittees and irrigators with Level C (> 100%) and B (> 25% and 100%) overpumpage. Compliance evaluations will be assessed at the January 29th Board meeting.
Industrial Asphalt	KBE, VE	08-Jan-15	Middle Trinity Well	District staff sent WPAP modification comment letter to TCEQ and had a meeting with TCEQ staff to discuss. Options for using the observation well (the original production well) as the designated production well and to schedule a more thorough inspection of the well and quarry were also discussed. Staff needs to follow up with Tommy Matthews and Doug Wilcox to determine next steps forward. Staff is waiting on requested information and documentation from TCEQ pertaining to the Industrial Asphalt WPAP and compliance investigation, this documentation is expected any day now. Staff also has a meeting with the consultants on January 22nd.
Lonestar Soccer Club	KBE	08-Jan-15	Historic Freshwater Edwards Permit	A PUD is going in at the location of Lonestar Soccer Fields off W. Stassney Lane. Lonestar Soccer club holds an historic Edward permit for 12 M gallons a year. COA planning department and the developer informed staff that there is a note in the ordinance that states "use of the existing water well on Lot 2 will cease and the historic pumping permit will be retired when it is no longer being used for the soccer fields". District staff has been in contact with Milestone Builder (new owners) about plugging the well and retiring permit. Staff expects a plugging application and change of owner application any day now. Once retired, 12 M gallons of historic Edwards will go towards the General Conservation Permit and is included in the Ecological Flow Reserve. The well has been plugged and the owners are expected to submit a permit application in the form of a permit amendment to retire the permit any day now.
Onion Creek Golf Club	KBE, VE	08-Jan-15	Middle Trinity Well	Onion Creek Golf Club has submitted an application to drill a Middle Trinity well. The application is still under review and we are waiting for them to determine the well location and ownership.
TJ Higginbotham	KBE, VE	08-Jan-15	Class C Conditional Freshwater Edwards Application	TJ Higginbotham has submitted an incomplete production permit application for a Class C Conditional Freshwater Edwards Permit for 270,000,000 gallons/year. He has an existing Edwards well that is completed per TCEQ standards for PWS.

	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
<b>EDUCATION &amp; OUTREACH</b>				
Robin Gary				
Texas State Environmental Economics lecture	RG	25-Nov-14	GCD Overview and Hot Topics	Robin presented to about 40 students in the Texas State Environmental Economics class. For many, it was the first time they were introduced to groundwater management strategies. Several had term paper topics involving groundwater resources or conservation.
South Central Texas Water Resource Interest Group	RG, BH	04-Dec-14	Technical talks	Brian gave an overview of planned updates to the Trinity Groundwater Atlas and Geology Georeferencing projects currently underway. Robin presented on well drilling trends in GMA 9. Approximately 60 GCD representatives, state, federal and NGO's were in attendance. Both presentations were very well received and generated lots of questions and interest.
Groundwater to the Gulf	RG	18-Dec-14	Planning	Planning has started for the 10th Anniversary of G2G. We're revamping the structure and activities to allow alumni to come back for more!
Scholarship contest opens	RG	01-Jan-15	Applications and info updated	Scholarship info and applications are up-to-date and the program is being actively promoted. Pass along the word! Check out the banners on the home page!
Water Well Check-up	RG et al	01-Jan-15	Planning	We're starting to line up supplies and experts to help staff our in-house water well check-up. The date has been set for Thursday, April 16, 2015 (the day after tax day). Well owners will be able to drop off water samples and receive preliminary nitrate, ids, and pH results after a short wait. Bacteria will be processed at an off-site lab. Experts will be available from 11-1 to answer questions. Experts could include water treatment, landscaping/tree care, water analysis, septic systems, and hydrogeology.
Internet Traffic Report	RG	07-Jan-15	Page views and visits to the District Website	On the District website over the past month, we've had a slight increase in the number of page views from last month. There were 1,886 page views from 949 unique visits. Top pages viewed (in order of hits) are the home page (635 views), drought status (209), reports (99 views), and maps (98 views). On the District Facebook page we have 235 people who have signed up to 'Like' us.
<b>AQUIFER SCIENCE</b>				
Brian Smith				
Dye Tracing	BS, BH	08-Jan-15	Dye tracing	Discussions are underway with the EAA and CoA about potential dye tracings in the upcoming months. Locations include sinkholes and wallets in the Blanco River. Following rains in late May that brought flow to Onion Creek, dye was injected into Antioch Cave for a local trace.
Antioch Cave	BS, BH, AA	08-Jan-15	Onion Creek Recharge Enhancement Project	Flooding in Onion Creek on October 31, 2014 caused some minor damage to equipment at Antioch, but the system is currently operational and ready for some flow in the creek.
Water-Quality Studies	BS, BH, AA	08-Jan-15	Sampling and analysis of groundwater and surface water	The District's summer sampling program was conducted in June and July of 2014. Samples for the Magellan project were collected in March.
Saline Zone Studies	BS, BH	08-Jan-15	Installation of multiport monitor well	Plans are moving forward for installation of a saline Edwards multiport well in conjunction with a test well installed by TDS. We are currently working on an access agreement with TDS. District staff are working with RPS on a TWDB feasibility study grant. The grant application will be submitted to TWDB by the end of January.
Drought and Water-Level Monitoring	BH, BS, AA	08-Jan-15	Drought status, monitor wells, and synoptic water level events	Alarm State II drought was declared by the Board on August 14. As of January 8 the water level in Lovelady well was 473.1 ft above sea level. Flow from Barton Springs on January 8 was 64 cfs. Moderate rains in December and early January have caused flow from Barton Springs to increase and for the water level in Lovelady to fluctuate slightly.
Information Transfer	BS, BH, AA	08-Jan-15	Presentations, conferences, reports, and publications	District staff presented two papers at the Geological Society of America, South-Central Section meeting in Fayetteville, Arkansas in mid March 2014. Brian Smith served on a panel to discuss aquifer storage and recovery at the TAGD Groundwater Summit on August 26.

	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
<b>AD-HOC TEAMS</b>				
Technical Team	BAS	08-Jan-15	Current areas of discussion	Topics of discussion at the technical team meeting in January were the Electro Purification well field, the TWDDB grant application, and the draft EIS for the HCP.
Planning Team	JD	09-Jan-15	Strategic and tactical planning and discussion topics	Routine items: reviewed current Board agenda items and identified possible future agenda items, reviewed status of current Board commitments, New Business: HCP EIS
<b>UPCOMING ITEMS OF INTEREST</b>				

## **Item 4**

### **Board discussions and possible actions**

- a. Discussion and possible action related to approval of an agreement with TxDOT 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).**

**DECEMBER 23, 2014 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, 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, CTRMA was not a party to and is not subject to 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 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,

**DECEMBER 23, 2014 DRAFT  
SUBJECT TO BOARD/MANAGEMENT APPROVAL**

operation, and maintenance of SH 45 SW, which are equally or more protective of 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 20<sup>th</sup> 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: \_\_\_\_\_

**DECEMBER 23, 2014 DRAFT  
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**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
William D. Dugat III  
Attorney

Date: \_\_\_\_\_

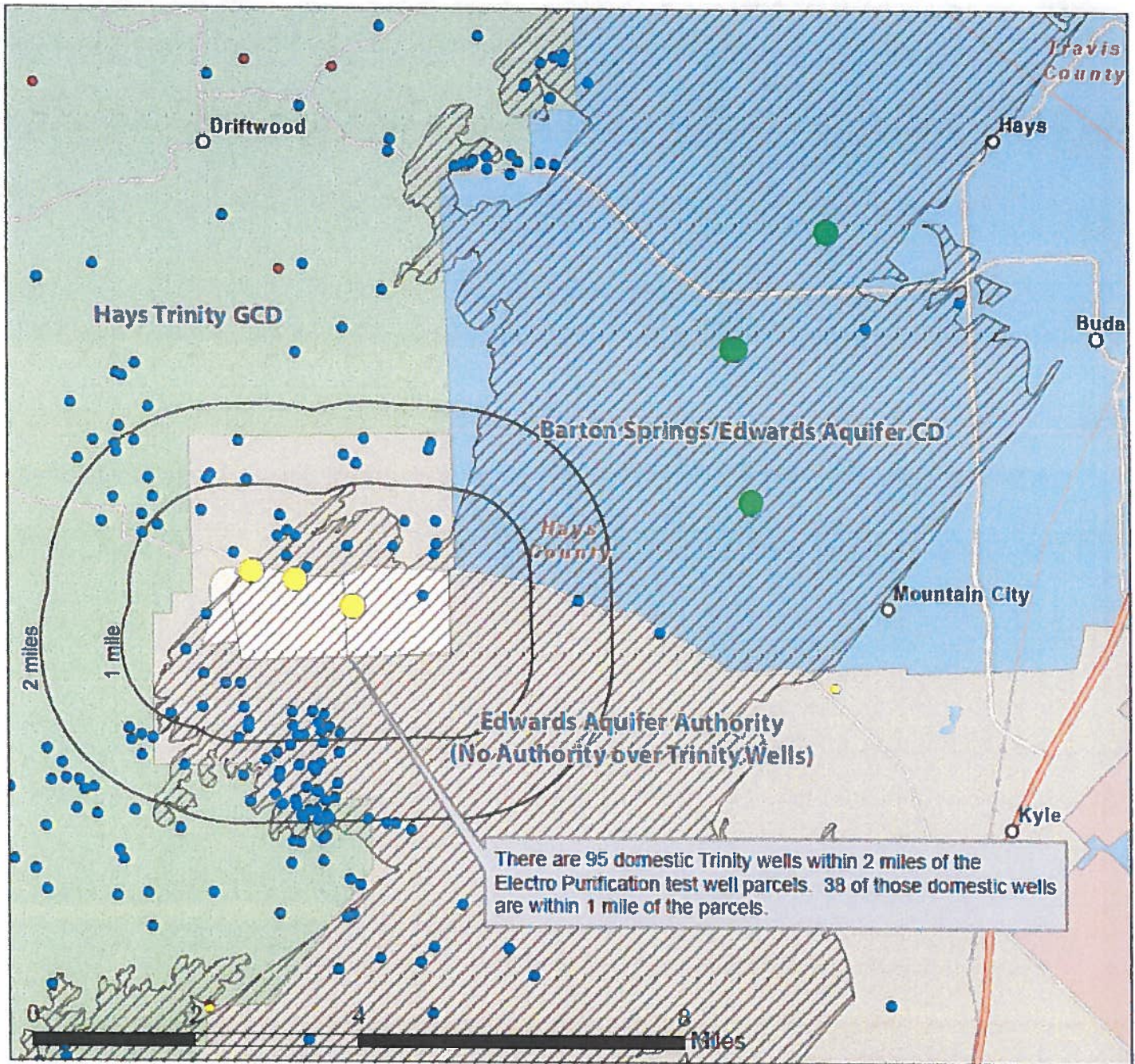
## **Item 4**

### **Board discussions and possible actions**

- b. Discussion and possible action related to the Electro Purification Trinity well field located just outside of the District's boundaries.**



# Trinity Wells near Proposed Electro Purification Well Field



Basedata: GCD Boundaries from TCEQ, Wells locations and depths from TWDB Submitted Well Drillers Reports Dataset (accessed Nov. 2014). Parcel boundaries from Hays County Appraisal District. Parcels where Electro Purification test wells are located labeled as Electro Purification parcels (may not be owner). Wells over 600 feet deep are likely completed in the Trinity Aquifer.

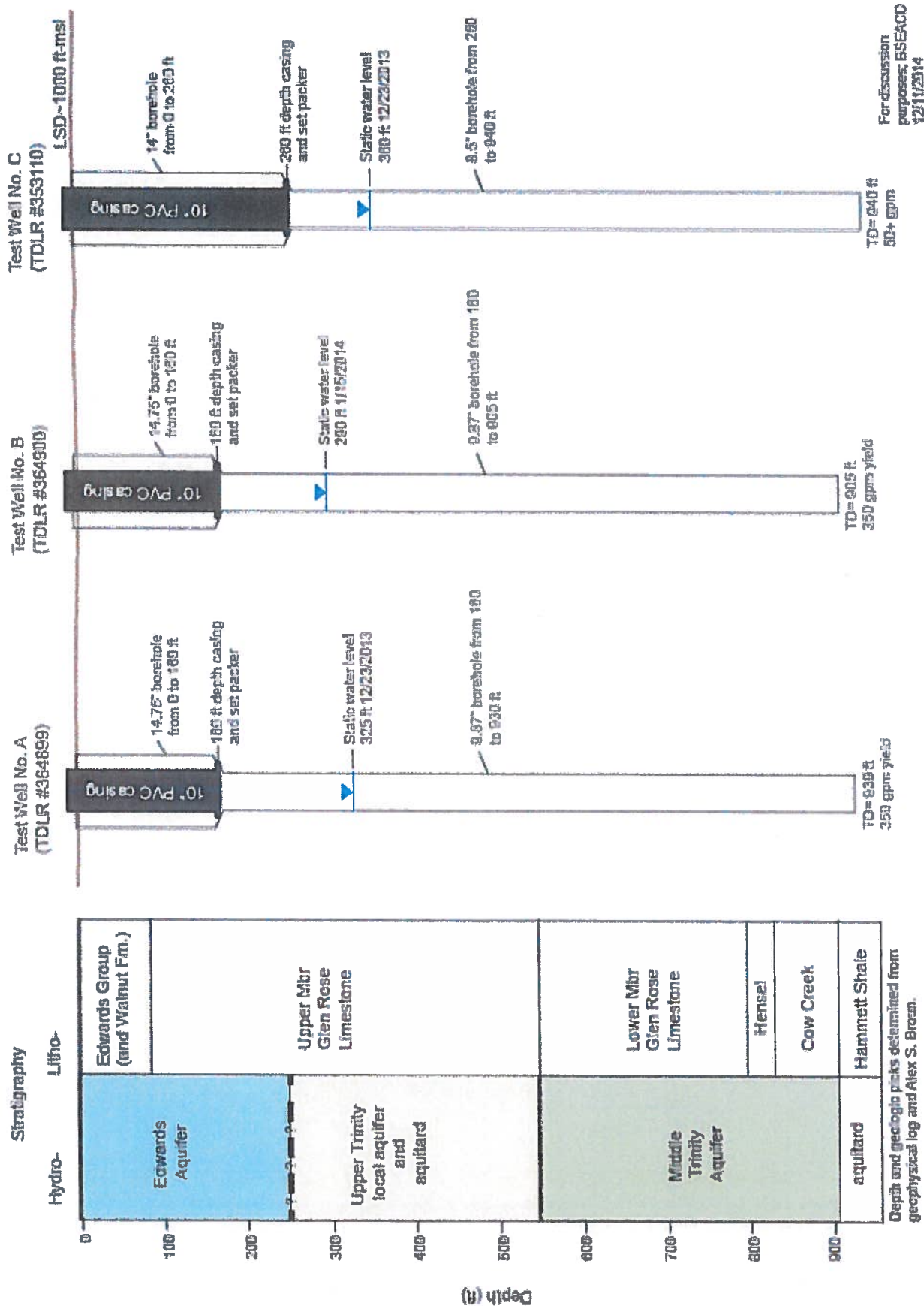
This map is for graphic display purposes only. It is not intended for engineering, surveying or construction purposes. The information depicted has been digitized from various sources and only represents the relational accuracy of design elements. The Barton Springs/Edwards Aquifer Conservation District is not responsible for the use, display or interpretation of this map by any other person, agency or organization.

Robin H. Gary, BSEACD December, 2014





# Electro Purification Well Field Hydrostratigraphy FM 3237, Hays County, Texas



**Proposed Production from Electro Purification vs. Modeled  
Available Groundwater**

	<b>MGD</b>	<b>Gallons/year</b>	<b>Acre-ft /year</b>
<b>Electro-Purification</b>	5	1,825,000,000	5,601
<b>BSEACD-Trinity MAG (GMA 10)</b>	1.15	419,696,088	1,288
<b>BSEACD-Trinity, 2013 Unpermitted MAG</b>	0.80	290,681,088	892
<b>HTGCD-Trinity MAG (GMA 9)</b>	8.13	2,965,244,100	9,100
<b>HTGCD-Trinity, 2013 Unpermitted MAG</b>	2.39	872,954,829	2,679



## **Item 4**

### **Board discussions and possible actions**

- c. Discussion and possible action related to pursuit of the District's legislative agenda including possible formation of a legislative subcommittee.**

## **Item 4**

### **Board discussions and possible actions**

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



January 7, 2015

The Honorable Bill Callegari  
Chair, Committee on Pensions  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

**Via E-Mail**

Re: Regulatory authority of the Barton Springs-Edwards Aquifer Conservation District  
(RQ-0003-KP)

Dear Representative Callegari:

We have received your request for an attorney general opinion and have designated it as Request No. 0003-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180<sup>th</sup> day after the date that an opinion request is received, unless before that date the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE ANN. § 402.042(c)(2) (West 2013). We received your request on January 5, 2015, setting a due date for your opinion of July 6, 2015.

Section 402.045 prohibits the Attorney General from issuing an opinion to a person other than an authorized requestor. Tex. Gov't Code Ann. § 402.045 (West 2013). As the chair of a legislative committee, you are currently an authorized requestor; however, it is our understanding that you will vacate your office next Tuesday. Once your successor as Chair of the House Committee on Pensions has been appointed, we will notify him or her of your request for an opinion and seek confirmation that he or she also desires legal advice from the Attorney General on the questions posed. If your successor does not provide affirmative confirmation, we will close the request.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by February 13, 2015 to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to [opinion.committee@texasattorneygeneral.gov](mailto:opinion.committee@texasattorneygeneral.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/mma

Attachment: Request No. 0003-KP

cc: Mr. Tucker Royall, General Counsel, Texas Commission on Environmental Quality  
Mr. Rex Isom, Executive Director, Texas State Soil and Water Conservation Board  
Mr. Carlos Rubinstein, Chair, Texas Water Development Board  
Mr. Kevin Patteson, Executive Administrator, Texas Water Development Board  
Mr. Les Trobman, General Counsel, Texas Water Development Board  
Ms. Stacey Allison-Steinbach, Executive Director, Texas Alliance of Groundwater  
Districts  
Mr. John Dupnik, General Manager, Barton Springs-Edwards Aquifer Conservation  
District  
Mr. Robert Wagstaff, President, Texas Groundwater Association

# TEXAS HOUSE OF REPRESENTATIVES

## RECEIVED

JAN 05 2015

### OPINION COMMITTEE



#### CAPITOL OFFICE:

P.O. Box 2910  
AUSTIN, TEXAS 78768-2910  
(512) 463-0528  
(512) 463-7820 FAX

#### DISTRICT OFFICE:

1550 FOXLAKE DR., STE 120  
HOUSTON, TEXAS, 77084  
(281) 578-8484  
FAX (281) 578-1674

**BILL CALLEGARI, P.E.**  
STATE REPRESENTATIVE

## RQ-0003-KP

FILE # 112-47679-15

I.D. # 47679

The Honorable Greg Abbott  
Attorney General of Texas  
Attention: Opinion Committee  
PO Box 12548  
Austin, Texas 78711-2548

Opinion.Committee@texasattorneygeneral.gov

Re: Request for Opinion regarding authority of Barton Springs-Edwards Aquifer Conservation District to regulate aquifers other than the Barton Springs Segment of the Edwards Aquifer, including the Trinity Aquifer, within the District's Geographic boundaries

Dear General Abbott:

Pursuant to the authority to issue advisory opinions, Article IV Section 22, *Texas Constitution* and Section 402.041 *et seq.*, *Texas Gov't Code*, I am writing this request for an opinion regarding the authority of the Barton Springs/Edwards Aquifer Conservation District ("the District") to regulate aquifers other than the Barton Springs Segment of the Edwards Aquifer, including the Trinity Aquifer. It has come to my attention that the District either has extended, or is attempting to extend, its jurisdiction beyond the Barton Springs Segment of the Edwards Aquifer to other formations in excess of the language of its creation and enabling authorizations. Perhaps the simplest example of this is from the District's website under "History" which states in relevant part:

"While the jurisdictional area is defined by boundaries of the Edwards Aquifer, the District regulates groundwater from all aquifers in this area." (Copy of "History" and "Permitting" from the website are attached as Attachment A)

Further, according to the District's website, the District requires a permit for wells that are drilled into the Trinity Aquifer (including Middle Trinity and Lower Trinity formations) that are within the District's geographical boundary.

Other examples include "Management Plans" that the District has submitted to the Texas Water Development ("TWDB" or "the Board") where the District claims its authority exceeds the Barton Springs Segment of the Edwards Aquifer and extends to "... all other relevant groundwater resources located within the District's boundaries." (Relevant portions of 2013 District Management Plan attached as Attachment B) While the Board approved that Management Plan, its effect does not include the lawful expansion of the District's jurisdiction. The District's website indicates that it requires permits for pumping in aquifers other than the Barton Springs Segment of the Edwards. This includes Middle and Lower Trinity formations. (Attachment A "Permitting")

There are many, including myself, who believe that the District's jurisdiction is limited to the aquifer identified in its creation and enabling documents, *i.e.*, the Barton Springs Segment of the Edwards Aquifer. I believe that the District's creation documents limit the District's power to that particular segment. The Texas Legislature has not acted to expand the District's powers; nor has the Texas Commission on Environmental Quality, successor agency to the TWC. Any attempted expansion by the District amounts to a fine example of self-induced, illegal, "Mission Creep".

The question presented to you is "whether the Barton Springs/Edwards Aquifer Conservation District is authorized to regulate groundwater within its geographical boundaries other than the Barton Springs Segment of the Edwards Aquifer?"

### **Background and District's Creation**

A glaring error in the District's website under "History" is that the District claims that the 70<sup>th</sup> Texas Legislature created the District in 1987 pursuant to SB 988 as a groundwater conservation district "... under what is now Chapter 36, with a directive to conserve, protect, and enhance the groundwater resources in its jurisdictional area". This is not a correct statement of history. The Texas Water Commission ("TWC" or "Commission"), predecessor agency to the Texas Commission on Environmental Quality ("TCEQ"), created the District by TWC orders August 15, 1986 and November 19, 1986. This distinction is significant as will be discussed below. The Legislature's action in 1987 was a "nonsubstantive" codification of the TWC's creation of the District.

In 1986, the TWC, in response to a petition filed in November 1985 by various entities, including five municipalities, issued two orders related to the District's creation. The relevant TWC Orders show that the agency bifurcated the hearing process—the first hearing and Order related to designation of an underground water management area. The second phase concerned whether to create a groundwater conservation district over the underground water management area.

The TWC, on August 15, 1986, designated the Barton Springs-Edwards Aquifer Management Area. A copy of the August 15, 1986 order, Order No. 86-304, is attached as "Attachment C". In issuing the order, the Commission specifically found that the Petition requested the Commission to "...delineate the boundaries of the Barton Springs-associated Edwards Aquifer, or underground reservoir, and to create an underground water conservation district for that Aquifer." (Finding of Fact No. 1, Attachment C) The Commission further found an underground reservoir exists in the Edwards and associated limestones in Southern Travis County and northern Hays County and that the area is approximately 155 square miles. This is known as Subdivision Number One of the Edwards Aquifer as designated by the Texas Board of Water Engineers in 1957. (Finding of Facts Nos. 11 and 12, Attachment C)

On November 19, 1986, the TWC created the Barton Springs-Edwards Aquifer Conservation District (Attachment D). In issuing its creation Order, the TWC found that the Barton Springs-

Edwards Aquifer Management Area is a hydrologically discrete underground reservoir (Finding of Fact No. 6, Attachment D). Decretal Provision No. 1 of Attachment D limited the boundaries to the Barton-Springs Edwards Aquifer Management Area designated by Order No. 86-304.

Among the significant points is that neither the Petition to create the District, nor the TWC orders, discussed or contemplated that the District would include, manage or regulate any formations other than the Barton Springs Segment of the Edwards Aquifer. Further, the fact that TWC expressly found that the Barton Springs segment is a specific subdivision of an aquifer system is likewise vital. Texas Water Code Section 35.002(7) defines a "subdivision" as follows:

"Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

The TWC clearly limited the Management Area and the District to Subdivision No. 1 of the Edwards Aquifer (also referred to the Barton Springs segment of the Edwards Aquifer). *See, also*, Attachment D, Finding of Fact 8c.:

"The District will regulate pumpage of the **Aquifer** and implement other means of conservation." (emphasis added)

Nowhere in the TWC Orders was the newly created Barton Springs-Edwards Aquifer Conservation District authorized to regulate waters *outside* of the hydrogeologically discrete underground reservoir known as "the Barton Springs Segment of the Edwards Aquifer." Importantly, the term "aquifer" in the TWC Orders does not include "other lower aquifer bodies" that might lie within the geographical boundaries of the Barton Springs-Edwards Aquifer Conservation District

Yet, as discussed at the outset, the District's website claims that the 70<sup>th</sup> Texas Legislature created the District as a Groundwater Conservation District. An examination of the facts tells another story. SB 988, 70<sup>th</sup> Legislature, did not create the District. Instead, SB 988 merely affirmed, ratified and validated the creation of the District under Chapter 52, *Water Code*, (now Chapter 36), pursuant to the TWC orders of April 9, 1986, August 15, 1986 and November 19, 1986. Of course, those orders refer only to the Barton Springs Segment of the Edwards Aquifer. (SB 988 is attached as Attachment E) Even assuming legislative creation in 1987 as a "Groundwater Conservation District" it would not give the District jurisdiction over aquifers other than the Barton Springs segment of the Edwards Aquifer.

Clearly, the TWC's focus was on the Barton Springs segment of the Edwards Aquifer and in managing that formation. The TWC expressly limited the management area to the area in its August 15, 1986 and November 19, 1986 orders. SB 988 did not extend or grant the District any

additional power or authority, nor did it expand the District's limited jurisdiction to include any groundwater formation beyond the Barton Springs segment of the Edwards Aquifer.

Since SB 988 in 1987, there have been several legislative enactments involving the District. None of that legislation granted the District more authority or jurisdiction than the TWC granted upon the District's creation. Further, the District's geographical surface boundaries have changed, but the fact that they were created to regulate one specific aquifer has not.

The issue might arise that the District's current statutory framework, Section 8802.001 *et seq*, *Special District and Local Laws Code*, grants the District the powers of a groundwater conservation district provided by Chapter 36, *Water Code* (Section 8802.101, *Special District Local Laws Code*). The point might further be argued that the TWDB has approved the District's Management Plan, which arguably shows that the District regulates or "manages" certain formations in the Trinity Aquifer.

Both arguments, if made, would ignore the fact that the State of Texas created the District for one reason—to manage the groundwater in the Barton Springs segment of the Edwards Aquifer. *See* Attachments C and D. The only issue involved in the District's creation was over that formation and that formation only. The jurisdiction of the District, if it was to be created, was never at issue – it was always express limited to the Barton Springs segment of the Edwards Aquifer. Further, the November 19, 1986 TWC Order creating the District gave it powers of a groundwater district but would have been limited to that segment of the Edwards Aquifer. Similarly, SB 988 in the 70<sup>th</sup> Legislature, validated the TWC creation. It did *not* add to, or expand the District's jurisdiction to include any other groundwater formation or aquifer.

Later bills, such as HB 2015, 79<sup>th</sup> Legislative Session, codified the District in the Special District and Local Laws Code. These additional legislative changes were all non-substantive and made with conforming changes. However, being non-substantive changes, there was not any additional power or expanded jurisdiction given to the District.

In summation, I request that you issue an opinion on the question of whether the Barton Springs/Edwards Aquifer Conservation District has the authority to regulate aquifers other than the Barton Springs Segment of the Edwards Aquifer, including the Trinity Aquifer. If you have any questions or would like additional information, please do not hesitate to contact me at 512-463-0528.

Sincerely,

  
W.A. Callegari



## **Item 4**

### **Board discussions and possible actions**

- e. Discussion and possible action related to the annual election of the officers of the BSEACD Board of Directors.**

## **Item 5**

### **Adjournment**