

## 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 **Manchaca Volunteer Fire Department located at 665 W. FM 1626, Austin, TX**, on **Thursday, February 12, 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 January 29, 2015 Regular Meeting. **Not for public review at this time**
3. Approval of out-of-state travel for District Senior Hydrogeologist, Brian Hunt, to attend workshops, fieldtrips, and present a paper at the International Conference on Groundwater in Karst; 20-26 June 2015, Birmingham, UK. **Pg. 15**

**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. 17**
- 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 area wastewater projects
- v. 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. 22**
- b. Discussion and possible action related to the Electro Purification Trinity well field located just outside of the District’s boundaries including options for inclusion of the area in a Groundwater Conservation District. **Pg. 80**
- c. Discussion and possible action related to a request for an Attorney General opinion on regulatory authority of the District. **Pg. 89**
- d. Discussion and possible action related to considering options to allow permit transfers. **Pg. 96**
- e. Discussion and possible action related to the contract with Hicks and Company, Inc. for environmental document preparation purposes. **Pg. 101**
- f. Discussion and possible action related to pursuit of the District’s legislative agenda. **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](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 January 29, 2015 Regular Meeting.**
- 3. Approval of out-of-state travel for District Senior Hydrogeologist, Brian Hunt, to attend workshops, fieldtrips, and present a paper at the International Conference on Groundwater in Karst; 20-26 June 2015, Birmingham, UK.**





**Barton Springs  
Edwards Aquifer**  
CONSERVATION DISTRICT

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MEMORANDUM

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**TO:** BOARD OF DIRECTORS  
**FROM:** BRIAN B. HUNT, P.G. AND JOHN DUPNIK, P.G.  
**SUBJECT:** OUT OF STATE TRAVEL  
**DATE:** 2/6/2015

Brian Hunt is requesting permission to attend the International Conference on Groundwater in Karst 20-26 June 2015, Birmingham, UK. This is a high quality conference that is a very good balance of technical talks, workshops, and field trips. The opportunity to exchange information, ideas, and techniques with some of the foremost experts in groundwater makes this a valuable event to the District. Specifically, there is a workshop of on natural fluorescence, which had direct bearing on the new instrument in our lab. In addition, Brian plans to present a paper at the conference.

The District has established a respected reputation as regional experts on Karst hydrogeology. Through participation in these conferences and our collaboration with the University of Malaga, we are expanding our technical network and reputation as experts to the international scale.

The entire cost of the event (travel, lodging, conference etc) is within our budget for conferences, training, and professional development. The cost of this conference is similar to previous trainings we have attended. For example, this is about 10% more than a training course in San Francisco that Brian attended in 2005. Below is an estimated breakdown of costs.

**Estimated budget**

Registration	\$ 385	
2 workshops	\$ 385	
3 field trips	\$ 200	
Airfare	\$ 2,000	United, 1 stop
Hotel (8 nights)	\$ 700	
Meals (8 days)	\$ 200	breakfast included in hotel and lunches included at conference
	\$ 3,870	

**GM Recommendation:** The GM recommends approval of the travel request.



## **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 area wastewater projects**
- v. Update on the status of the City of Kyle's remanded permit application**



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

Prepared by District Team Leaders

		Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
<b>GENERAL MANAGEMENT TEAM</b>		John Dupnik			
Summary of Significant Ongoing Activities		JD	06-Feb-15	Meetings, Training, Presentations, and Conferences	External Meetings Attended: Travis County Commissioners Court SH45 agreement; Region K; GCD coordination meeting on Trinity management; Hicks and Co. on EIS contract; City of Buda Council meeting; with Kenneth Williams (Buda City Manager); with Electro Purification and area GCDs; with Rep. Isaac on EP; with CTRMA on TxDOT agreement; with of Austin on TxDOT agreement; with Travis County of TxDOT agreement; with Abengoa on Desal; Region K water supply strategy committee; with Rep. Workman; with Phil Wilson (LCRA GM); with Angela Kennedy (City of Buda council member); Hays County Commissioners Court round table. Other Meetings: Austin Hydrophilic; with Kirk Holland on EIS comments; Presentations: None; Conferences/Training: None
					Ongoing Special Projects: 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; Electro Purification. Committees and Workgroups: 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; Region K water supply strategy subcommittee.
		JD	06-Feb-15	Ongoing Special Projects, Committees, and Workgroups	
		JD	06-Feb-15	Routine Activities and Day-to-Day operations	Routine Activities/Day-to-Day Operations: 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; serve as liaison between Board and staff; support Board committees; serve as primary contact for District lobbyist; bill tracking; responding to legislators requesting information; respond to media requests; disseminate media reports and journal articles of possible interest. Consultation with Attorney on: Kyle hearing/settlement agreement, SH 45 supplemental agreement; Annexation options; AG opinion request on Trinity authority. Other Activities: work on order for City of Kyle Hearing; review HCP EIS; work on draft supplemental SH45 agreement; work on TWDB desal grant application; research Electro Purification well field; prepare materials for directors' meeting.
<b>GENERAL SERVICES TEAM</b>		Dana Christine Wilson			
Accounts Receivable - A		DCW	08-Jan-15	Permittee accounts carrying a past due balance:	All permittees in good standing.
Accounts Receivable - B		DCW	12-Dec-14	January billings for February water use fees mailed out on 1/15/15.	Total billed \$ 25,301.
Accounts Receivable - C Drought Management Fees		DCW	08-Jan-15	December is the 1st month to charge DMFs.	One DMF for \$250 applied to MOYSC's account. Second report - 2 DMFS applied (Creedmoor for \$500 and Aqua-Bliss Spillar for \$250).
Financial Reporting - Annual Audit with Annual Report		DCW	30-Dec-14	Filed Audit, Annual Report, and Annual Financial Dormancy Affidavit with TCEO as required by TWC Section 49.194.	Annual submission.



	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Financial Reporting - Website	DCW	26-Jan-15	Most current, available financial reports are posted.	Profit and Loss Statements and Balance Sheets through December 31, 2014. Also posted the 2014 Annual Report, and the Annual Financial Audit Report.
Tax Reporting	DCW	06-Feb-15		W-2s mailed out on 1/20/2015. W-3 and SSA red W-2s mailed on 1/15/2015. 10922 and 1096 mailed out XXX. Additionally, filed quarterly C-3 with the Texas Workforce Commission, and quarterly 941 with the IRS.
REGULATORY COMPLIANCE TEAM				
Kendall Bell-Enders				
Willie Ranch Partnership	KBE, VE	05-Feb-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 Coastal 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. -- After an extensive analysis and speaking to foraging and livestock experts from A&M, staff has concluded the hay is likely being grown just to feed the livestock on the property; and therefore the well is deemed exempt based on the rules that were in place when the well was drilled (2001). Staff will draft a letter explaining the conclusion and stating that if anything changes in the future the well could still be deemed non-exempt and require a permit.
City of Buda	KBE, VE	05-Feb-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.
No-Drought Conditions declared	KBE, VE	05-Feb-15	Drought Compliance Monitoring and Enforcement	No-drought was declared on January 29, 2015. Staff sent out email and letter to all permittees notifying them of no-drought status.
Industrial Asphalt	KBE, VE	05-Feb-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 had a meeting about Industrial Asphalt using the original production well which has high sulfates and TDS. Staff is still trying to figure out the details and to determine if the special provisions need to be revised.
Lonestar Soccer Club	KBE	05-Feb-15	Historic Freshwater Edwards Permit	A PUD is going in at the location of Lonestar Soccer Fields off W. Slossney 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 but the owas have not submitted a permit amendment to retire the permit, so staff will draft a "right sizing" or permit retirement letter stating that the permit is no longer commensurate with reasonable demand and that they can request a hearing within 30-days.



	Lender, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Onion Creek Golf Club	KBE, VE	05-Feb-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.
Rulemaking	KBE, VE	05-Feb-15	District Rules and Bylaws	Staff has initiated the rulemaking process and determined a timeline, with the goal of having a concept document to the Board by June or July.
T.J. Higginbotham	KBE, VE	05-Feb-15	Class C Conditional Freshwater Edwards Application	T.J. 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.
<b>EDUCATION &amp; OUTREACH</b>				
Central Hays County Groundwater Evaluation	RG, BH, BAS, AA	05-Feb-15	Mapping and well information compilation	Tracking well locations for landowners volunteering well information. Compiling available well data and processing to get it ready for interpretation. Various maps have been created to address questions the Board, staff, and collaborators have asked. A spotlight has been set up to aid in dissemination of this information.
Groundwater to the Gulf	RG	05-Feb-15	Planning	Website has been transferred to Colorado River Alliance, the new funding coordinator. Registration is now open.
No-Drought Conditions declared	RG	05-Feb-15	Notifications	Website updated. Press release released to press and permittees.
Scholarship contest opens	RG	05-Feb-15	Continued promotion	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	05-Feb-15	Planning	Robin has field tested new meter for in-house analysis of TDS, pH, and temperature. Supplies are in and experts have been contacted 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, tds, and pH results after a short wait. Bacteria will be processed at an off-site lab. Experts will be available from 1-1 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 an increase in the number of page views from last month. There were 4,958 page views from 2,062 unique visits—over double from last month's numbers. Top pages viewed (in order of hits) are the home page (1,407 views), drought status (475), scholarships (284 views), and maps (248 views). On the District Facebook page we have 270 people who have signed up to 'Like' us—a dramatic increase due to a low-cost ad campaign focused on the scholarships.
<b>AQUIFER SCIENCE</b>				
Dye Tracing	BS, BH	06-Feb-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.
Central Hays County Groundwater Evaluation	RG, BH, BAS, AA	06-Feb-15	Well and hydrogeology characterization	Began discussions about a technical program to assess the impacts of the Electro Purification pumping on the groundwater in Central Hays County.
Antioch Cave	BS, BH, AA	06-Feb-15	Onion Creek Recharge Enhancement Project	The system is open an allowed recharge into the cave from the wet January period.
Water-Quality Studies	BS, BH, AA	06-Feb-15	Sampling and analysis of groundwater and surface water	District staff, in cooperation with the TWDB, have begun sampling wells and springs. In addition, the staff will sample wells and springs as part of the Magellan Pipeline monitoring effort.



	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Saline Zone Studies	BS, BH	06-Feb-15	Installation of multipoint monitor well	Plans are moving forward for installation of a saline Edwards multipoint 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 was submitted to TWDB at the end of January and we expect to hear back at the end of February.
Drought and Water-Level Monitoring	BH, BS, AA	06-Feb-15	Drought status, monitor wells, and synoptic water level events	January 30, the District Board declared non-drought conditions. The District had been in drought since August 15, 2014.
Information Transfer	BS, BH, AA	06-Feb-15	Presentations, conferences, reports, and publications	District staff are working on a paper to be published by Springer on surface-groundwater interactions. Staff are working on the Vol. 2 of the Hydrogeologic Atlas.
AD-HOC TEAMS				
Technical Team	BA S	06-Feb-15	Current areas of discussion	Topics of discussion at the technical team meeting in January were the Electro Purification well field, the TWDB grant application, and the draft EIS for the HCP.
Planning Team	JD	06-Feb-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: Region K water strategies; TWDB grant; TxDOT EIS; BSEACD EIS
UPCOMING ITEMS OF INTEREST				
GMA 10		9-Feb-15	EAA offices, San Antonio	
Townhall on EP project		10-Feb-15	Wimberley Community Center	
TAGD Quarterly Meeting		11-Feb-15	thru 2-12, Austin Crowne Plaza	
1st February Board Meeting		12-Feb-15		
2nd February Board Meeting		26-Feb-15		
TWCA Annual Convention		4-Mar-15	thru 3-6, Sheraton Austin Hotel, Austin TX	
1st March Board Meeting		12-Mar-15		
NGWA Groundwater Summit		16-Mar-15	thru 3-18, San Antonio, Texas, TX	
Scholarship applications due		24-Mar-15		
2nd March Board Meeting		26-Mar-15		
Water Well Checkup		26-Apr-15	District Office	



## **Item 4**

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

- a. Discussion 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).**



**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 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: \_\_\_\_\_



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**APROVED AS TO FORM:**

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

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





January 26, 2015

Board of Directors  
Barton Springs Edwards Aquifer Conservation District  
Austin, Texas

Via Email

Re: January 15 draft of proposed agreement between BSEACD and TxDOT concerning SH 45 SW, Mopac, and US 290

Dear Members of the Board:

Please accept these initial written comments on the January 15, 2015 draft of a proposed agreement between the District and TxDOT. SOS Alliance may well have other comments in the days ahead as we hear the perspectives of other interested parties. If any of you have any questions about these comments, please let us know.

In summary, we respectfully request that the Board be extremely cautious in taking any action at this time, considering what, in our view, has been the bad faith shown by both TxDOT and the CTRMA in the previous drafts.

This bad faith is also shown by TxDOT and CTRMA, in essence, hiding the ball on its proposed road and water quality designs, leaving the District and other concerned parties to guess at what might be "equal or better"

There is a way to draft an agreement to match the stated intent of District representatives, while avoiding the potential pitfalls of ending up with less, not more, aquifer protection. Such an agreement would (a) include the CTRMA as a full party, (b) specifically identify the exact subsections of the 1990 "Consent Decree" that are being "updated" concerning "water quality controls" and further stating explicitly that all other sections remain in full force and effect, (c) for those limited subsections concerning design of water quality controls, the proposed substituted, detailed designs are fully disclosed and vetted with stakeholders well in advance of any agreement approval and are attached to any such agreement.

In other words, a far better approach would be to wait (and insist) that TxDOT and CTRMA produce detailed designs on the controls that are contemplated to be "updated" from the 1990 Consent Decree and remove all guess work. At this point, TxDOT and CTRMA have been working on the proposed design for the proposed SH 45 SW toll road for several years – starting with a "green challenge" to design what was promised to be the greenest road ever. The EIS process has been actively under way since 2013. Yet still TxDOT and CTRMA have refused to show their plans – instead just continuing to say "trust us: we will protect the aquifer." Its time to force their plans into the open so that all the vague language and guessing can be removed.



As to the current proposed January 15 draft, it is fatally flawed on many levels. Please consider the following:

**1. The document is still fundamentally unenforceable.**

**A. It's too vague and critical terms are not defined to be enforceable:**

The stated intent is 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 water quality than comparable methodologies required in the Consent Decree, and which represent best available technology. “

\*None of these terms are defined – inviting continuous disagreement over what is “equally or more protective,” what is “comparable,” and what is “best available technology.”

\*With only a few exceptions, the contemplated equal or more protective methods are NOT in fact “described in this Agreement,” leaving the argument that ONLY those actually described in the Agreement are required. (e.g. increasing hazardous material trap capture volumes from 8,000 gallons to 10,000 gallons)

\*Just one other example (there are many): Are setbacks from caves described in the Consent Decree still required or can TxDOT claim a certain control “technology” is equal or better to the setback requirement?

\*Absent a definition of “parkway” in the agreement, the commitment to build SH 45 SW as a parkway is arguably not enforceable. TxDOT is currently building the “Oak Hill Parkway” with full frontage roads, insisting that “parkway” doesn’t really mean “parkway” as it has been defined in the past by TxDOT.

\*Without defining the specific locations, size, and design and maintenance procedures of the promised “structural BMPs” in paragraph 3c, it is not possible to assure that these are actually built and maintained in a way to protect the aquifer.

\*Some terms appear, on their face, to suggest weaker standards: e.g. “grassy swales” allowed in paragraph 3c versus the concrete or compacted clay requirement of the Consent Decree; “periodic inspections of hazardous material traps” as required by TCEQ Edwards Rules versus provisions in the Consent Decree for annual inspections. Similarly, during construction the Consent Decree requires daily inspection of silt fences and immediate inspection and repair of all controls during and immediately after every rain event.

\*While “phased construction practices, where feasible” could potentially be very important, without defining what this means, and considering that TxDOT will face limits on construction during endangered songbird breeding and fledging seasons, the promise means almost nothing.

\*Do the provisions listed under paragraph 3e, “Protection of Karst Features and Flint Ridge Cave” substitute for or add to provisions in the Consent Decree? If they substitute, then they are considerably weaker in that the Consent Decree calls for TxDOT working jointly with



BSEACD to locate recharge features and assess their significance, and then protect those that are significant by routing around or bridging over them.

\*Calling for an “independent environmental compliance manager” (paragraph 3g) is a good idea, but is virtually meaningless without (a) protective standards to assure compliance with, and (b) a definition of what is truly “independent,” (c) specifically defined enforcement procedures (that include the power to halt construction where necessary to assure full compliance), and (d) full and continuous access by BSEACD representatives to observe construction and engage with the “independent” compliance manager.

B. TxDOT retains all of the authority to determine compliance or noncompliance.

There is nothing in the agreement that gives BSEACD any forum or power to dispute TxDOT’s interpretation and implementation of the agreement. By asserting in paragraph 4 that there is agreement by both TxDOT and BSEACD that the “provisions” of this new agreement are “equally or more protective of the Edwards Aquifer than the 1990 Consent Decree” the effect of the new Agreement is to throw away any possibility that a federal court would actually enforce the original Consent Decree, despite the following sentence insisting that the new agreement does not affect the enforceability of the 1990 Consent Decree.

There is not a federal judge in the country willing to take time to enforce a Consent Decree that the parties to the Consent Decree have already affirmed and agreed is WEAKER than a more “updated” agreement that is a basic contract subject only to state contract law and state court jurisdiction.

**The net effect of this language is to throw out the original Consent Decree as anything more than a reference for interpreting the new agreement and to relinquish the right of the District to enforce the terms of the Consent Decree in federal court.**

C. TxDOT’s promise to agree in the future with CTRMA to include the new agreements terms in “any PDA between TxDOT and CTRMA” assures that the terms of the agreement are largely unenforceable by BSEACD.

\*Promises to agree in the future are generally unenforceable under the law. Promising to agree in the future, only between CTRMA and TxDOT, means that BSEACD has no direct commitment to it from CTRMA. This places BSEACD in the position of trying to cojole TxDOT to enforce something that the District (not TxDOT) wants the CTRMA to undertake – when CTRMA’s only goal is to start generating toll revenues as soon as possible.

\*The “whereas” language says CTRMA intends to “design and construct” SH 45 SW, suggesting that TxDOT has no real intent or authority to dictate “design” or construction practices that the District might believe is essential to compliance with the contemplated agreement: the parties to this proposed agreement are agreeing that it is someone else’s duty, not TxDOT’s, to design and construct the proposed toll road as if CTRMA is independent and not subject to TxDOT’s control and direction.

\*The provision in paragraph 5 “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”



guarantees that the District, by agreement, will not receive the protections that it thinks it is going to receive at this time. **This provision also strongly suggests that the contemplated agreement is premature and should be shelved until the details can be filled in.**

\*There is no time frame stated to assure that TxDOT “will” agree with CTRMA in a timely fashion, before CTRMA’s contractors have already designed the road and are not willing to re-design it. (CTRMA contracted last fall to design the roadway, and according to the schedule announced by TxDOT and CTRMA, that design is moving forward as fast as possible.

**2. Under the proposed agreement, the District would not obtain the highest current environmental standards, as promised, and in fact would be agreeing to weaker standards. In other places, the contemplated agreement only incorporates standards that TxDOT must already meet.**

\*Since 1992, community standards call for nondegradation of water quality. The proposed agreement specifically calls for a much weaker standard – only 90% removal of the incremental increase in total suspended solids (TSS) after completion of construction. This standard has several problems:

--The vast majority of TSS pollution to ground and surface water will occur during the construction phase.

--The standard ignores a long-list of pollutants (heavy metals, nutrients, and pesticides and herbicides) that are known to result from highways.

--Specific details on how to meet nondegradation standards are well established – yet the District and TxDOT would be specifically calling for less protective measures – while suggesting they are “best available” technologies: this would set a terrible precedent for other roadway projects in the Edwards Aquifer watershed.

\*The best methods for protecting water quality are nonstructural – reducing impervious cover and routing around or bridging over recharge features. Arguably, the proposed agreement would allow TxDOT to avoid compliance with these most important requirements in the Consent Decree.

\*The Endangered Species Act Section 10a permit for the BCP, jointly held by the City of Austin and Travis County, and binding on the CTRMA through an Interlocal Agreement between CTRMA, Travis County and Hays County, requires protection for and setbacks from Flint Ridge Cave that are significantly more protective than those measures called for by the proposed agreement. **In fact, the proposed agreement specifically contemplates building a road that violates the BCP Permit (as well as ESA protection for listed aquatic salamanders).**

**3. Other Problems with the Draft Agreement:**

A. No real partnership contemplated: Language that is vague (or “neutralized”), leaving one party to interpret it one way and another party a different way, provides no good faith basis for a meaningful agreement. Given the discrepancy in resources between TxDOT and the District, and the disclosure that, in fact, TxDOT and the CTRMA were seeking to avoid compliance with the Consent Decree, the agreement as proposed provides no real basis for assuring meaningful



protection for the Barton Springs Edwards Aquifer during the construction and operation of the proposed SH 45 SW toll road. Rather, it assures the opposite: more pollution.

B. Suggests approval by the BSEACD of TxDOT and CTRMA's woefully deficient draft EIS: Paragraph 2 of the draft agreement calls for TxDOT to "complete" the EIS and prepare "the" Record of Decision. This language strongly suggests that the District is okay with the current draft EIS, even though detailed, science-based comments by the City of Austin, U.S. Fish & Wildlife Service, Save Our Springs Alliance, many others, and even the District's own staff have exposed countless misrepresentations and shortcomings in the draft EIS and in the subsequently released "technical" reports. The City Manager of Austin called for withdrawal and a complete rewrite of the draft EIS because it was so woefully deficient and in conflict with current science and TxDOT's own rules for draft "state" EISs. The District should in no way be endorsing TxDOT and CTRMA's excursion into "junk" aquifer science.

D. Vague and general approach to something that should, by now, be very, very specific: The document is written in vague and general terms, as if TxDOT and CTRMA might be designing and constructing the proposed SH 45 SW toll road many years in the future. Instead, TxDOT and CTRMA are rushing forward, hoping to initiate construction in late 2015. CTRMA contracted for detailed design of the road last fall. Significant detail and routing of the road should have been completed and analyzed in the draft EIS, which was released last summer. Instead, the draft EIS was rushed ahead, with vague promises by TxDOT to do the right thing. They are still making those same vague promises today, in the draft proposed agreement. The TCEQ required Geological Assessment should have been completed and incorporated into the draft EIS. If it was complete – or is today complete – TxDOT is hiding it from all concerned parties. Yet, this is the most important document for understanding the likely impacts to the aquifer and taking actions to minimize and mitigate those impacts.

E. Absence of current compliance audit: TxDOT is likely in significant noncompliance with the Consent Decree. Given the passage of time, and the importance of the issues, BSEACD should partner with the City of Austin, Travis County, SOS Alliance, and any other interested party to carry out a compliance audit of the current status of TxDOT actions under the Consent Decree. This would include a close look at TxDOT construction and operation of South Mopac, US 290, and SH 45 SW between South Mopac and FM 1826.

E. Looks to TxDOT, instead of the City of Austin, as the District's primary partner. The City of Austin owns Barton Springs, pays a very large share of the District's budget, has a vast amount of technical expertise related to protecting the aquifer, and has spent large sums of money to protect the aquifer and the springs. The City owns watershed protection lands up and down the proposed SH 45 SW right of way, which will be harmed by the proposed action. City lands are better situated for long-term monitoring of effects on the aquifer than using the SH 45 SW right of way (as contemplated by the draft agreement). The City and County both face liability for noncompliance with their federal Endangered Species Act permit if the project goes forward as currently contemplated. Both the City and District have pledged to the U.S. Fish & Wildlife Service that they will collaborate on measures to protect the aquifer -- pledges that will be broken if the current draft agreement rushes forward. For all of these reasons, the District should rule out approving any agreement with TxDOT that is not endorsed by the City and the County.



4. **How to fix the draft proposed agreement:**

- A. Don't do it. No agreement is far better than an agreement that compromises or discards the original Consent Decree, that embraces standards weaker than non-degradation or other currently applicable standards.
- B. Only do an agreement that includes all relevant parties. At a minimum, that includes CTRMA, but should also almost certainly include the City.
- C. Be specific and clear. Only consider an agreement that specifies exactly and precisely those detailed designs, construction, and operations practices, such that there is no (or extremely little) room for any disagreement by the parties of what is intended.
- D. Require effective procedures and remedies for noncompliance. The must be clear and procedures for monitoring compliance in real time and enforceable remedies (most importantly, immediately halting construction until compliance is obtained).
- E. Don't Guess: Don't do anything until TxDOT puts all of the details on the table, including but not limited to a completed and detailed Geological Assessment, detailed proposed designs and routing, and detailed operation and maintenance plans.
- F. Only act AFTER the City, County, interested citizens, and other concerned parties have had plenty of time to review and comment on ANY draft agreement put forward as a potential final agreement.

Thank you in advance for your consideration.

Sincerely,



Bill Bunch  
SOS Alliance

Cc: All interested parties





# City of Austin

Founded by Congress, Republic of Texas, 1839  
Watershed Protection Department  
P.O. Box 1088, Austin, Texas 78767

January 30, 2015

John Dupnik  
General Manager  
Barton Springs/Edwards Aquifer Conservation District  
1124 Regal Row  
Austin, Texas 78748

Re: Draft Agreement Between BSEACD and TXDOT Regarding SH45SW

At the January 15, 2015 meeting of the Barton Springs/Edwards Aquifer Conservation District (BSEACD) Board, the Board received comments regarding the proposed agreement between BSEACD and the Texas Department of Transportation (TXDOT). The Board then postponed action on the agreement and requested that written comments on the draft agreement be provided to BSEACD by January 30, 2015 for consideration at the February 12, 2015 meeting.

The City of Austin has reviewed the draft agreement dated January 15, 2015. Broadly, the City supports clarifying in writing the applicability of the 1990 Consent Decree to SH45SW and addressing the issue of outdated water quality control methods that are described in the Decree. The City offers more specific comments below for consideration by the BSEACD Board and staff.

- Item 1 – The City suggests clarifying that the agreement should not be taken as the District “approving” the SH45SW project and that the District is not waiving its right to comment on or address with TXDOT or CTRMA any concerns regarding the environmental impact analysis, design, construction, or analysis of the roadway.
- Item 2 – We suggest better defining what is meant by “fully evaluates and discloses.” For example, the document could define full evaluation as incorporating and considering the best available science in determining environmental impacts and conducting any additional studies necessary to quantify the environmental impacts of the project.
- Item 3.a – We suggest that the agreement define a sufficient notification timeframe for BSEACD to consider and comment on requests for connections to SH45SW. We also suggest that the Board consider revising this section to include a clear prohibition on additional connections to the roadway.



- Item 3.b – The Statement of Intent notes that it is the intent of both parties to use pollution control methods “which represent the best available technology.” However, 3.b states that SH45SW will be designed to achieve a removal rate of 90% of the increase in total suspended solids (TSS) loading. Removal of 90% of the increase in TSS is not “best available technology”, is not comparable to the existing standard that much of the private development in the vicinity of the proposed roadway is required to meet, and is not a good surrogate for other primary pollutants from highway runoff: City analysis shows that treatment of TSS to background levels will still result in nutrient and heavy metal loads up to three times background conditions.

Private development in the area is required to show no increase in TSS as well as no increase in phosphorous, nitrogen, chemical oxygen demand, lead, cadmium, E. coli, volatile organic compounds, total organic carbon, pesticides, and herbicides. The City believes that this accepted standard would be an appropriate starting point for discussions regarding stormwater management and water quality protection. In fact, TxDOT and the City previously collaborated on an analysis of stormwater treatment options for an earlier version of the proposed project, which indicated the technical feasibility of achieving a level of pollutant removal significantly greater than the 90% reduction in TSS.

- Item 3.e.ii – The draft agreement notes that significant recharge features will be protected in a manner that “will minimize impact...to the extent practicable.” The City recommends revising this to “will avoid or minimize impact...to the maximum extent practicable,” as is common in similar agreements and state or federal regulations when addressing protection requirements in environmentally sensitive areas.
- Item 3.e.ii – We also remain concerned that it appears the project will be designed without consideration of the results of the City’s subsurface drainage study for Flint Ridge Cave. Since TxDOT is already re-routing some drainage areas to compensate for lost surface drainage to Flint Ridge Cave, the agreement should state that features will be protected in a manner that will eliminate impacts to surface catchment areas by routing an equivalent area of undisturbed ground to any sensitive karst feature identified in the GA.
- Item 3.g.i – We recommend adding a specific definition of the term “independent.” Also, the City would like to note that the proposed environmental compliance manager for the project is just one element of a comprehensive Environmental Commissioning process. The City has previously spoken with TxDOT and CTRMA about the City’s Environmental Commissioning process for Water Treatment Plant No. 4, which applied rigorous and independent science and engineering analysis and construction management practices to achieve a superior level of environmental protection during planning, design and construction. The City has urged TxDOT and CTRMA to use a similarly robust third party environmental oversight process during design and construction and has offered to assist with the development of that process.

The City greatly appreciates the opportunity to provide input to the District Board and staff as part of our continuing partnership to protect the Edwards Aquifer and Barton Springs. If you



would like to discuss our comments or have any questions please contact me at your convenience at 512-974-2699 or by e-mail to [chuck.lesniak@austintexas.gov](mailto:chuck.lesniak@austintexas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'C Lesniak', with a stylized flourish at the end.

Chuck Lesniak  
Environmental Officer  
Watershed Protection Department

Cc: Sue Edwards, Assistant City Manager, City of Austin  
Robert Goode, Assistant City Manager, City of Austin  
Victoria J. Li, P.E., Director, Watershed Protection Department  
Mike Personett, Assistant Director, Watershed Protection Department  
William Conrad, Austin Water Utility



**Travis County's Comments on the  
Proposed Agreement Between the  
Barton Springs Edwards Aquifer Conservation District (BSEACD)  
and the Texas Department of Transportation (TxDOT)**

1. Resolving Uncertainty Regarding Enforceability Issues and the Environmental Impact Statement.

- a. Questions linger about the enforceability of the Consent Decree and the proposed agreement. The proposed agreement would require that its terms be carried forward into the project development agreement (PDA) for SH 45 SW between TxDOT and the Central Texas Regional Mobility Authority (CTRMA). However, what if TxDOT and the CTRMA cannot agree on the language of the PDA or, even worse, the CTRMA simply refuses to include one or more of the proposed agreements' terms in the PDA?

The best way to eliminate this pratfall and the lingering concerns about enforceability is for the CTRMA simply to become a party to the proposed agreement. Travis County requests the BSEACD to request the CTRMA to become a party to the proposed agreement.

- b. The proposed agreement should state outright that the Consent Decree applies to the SH 45 SW project and the CTRMA. Revise the fourth recital as follows:

“WHEREAS, the consent decree, a copy of which is attached as Exhibit ‘A,’ contains judgment terms that are binding on TxDOT, the CTRMA, and BSEACD and that assign...”

- c. If the CTRMA doesn't become a party to the proposed agreement, TxDOT should agree in the proposed agreement both to bind the CTRMA to the terms of the Consent Decree and to provide in the subsequent PDA that the Barton Springs Edwards Aquifer Conservation District (BSEACD) is a third party beneficiary of the PDA, thus entitling the BSEACD to enforce both the Consent Decree itself and the related terms of the PDA directly against the CTRMA.
- d. There is widespread agreement that water quality protection practices and technology have improved since the Consent Decree was approved, and that obsolete requirements of the Consent Decree should be supplanted with new requirements. However, it is unclear which provisions of the Consent Decree will be supplanted. Since the obsolete requirements will no longer be the operative requirements for SH 45 SW, the proposed agreement should specifically identify them by section number and state that all other requirements of the Consent Decree are unaffected by the proposed agreement.

Not doing so leaves the door open to misunderstandings down the road. In reviewing the design for the road, or during inspection of construction or maintenance, BSEACD may



discover things the BSEACD believes to violate one or more requirements of the Consent Decree. Upon notifying the CTRMA and TXDOT about it, the BSEACD may well be told that the Consent Decree requirements in question are ones CTRMA and TXDOT will not comply with because they believe them to have been supplanted by new requirements. This is a pratfall easily avoided simply by adding a measure of specificity to the proposed agreement.

- e. Like all interested parties, the BSEACD has not had sufficient time to review and digest the contents of TxDOT's recently released final environmental impact statement (EIS) on SH 45 SW to determine its adequacy. Therefore, the BSEACD should include the following in Section Two of the proposed agreement.

"Execution of this agreement is not a finding of adequacy by the BSEACD regarding TxDOT's final environmental impact statement for SH 45 SW."

- f. The EIS lacks specificity regarding exactly which water quality protection measures will be employed on SH 45 SW. The ultimate decisions on these measures will be made during the engineering design of the project by the CTRMA, which is now underway. Under the proposed agreement, any issues the BSEACD has regarding the adequacy of the final measures are ultimately decided by TxDOT.

It would behoove the BSEACD to review the engineering design for the water quality protections before executing the proposed agreement. Again, not doing so leaves the door open to misunderstandings down the road and risks the pratfall of the BSEACD, the CTRMA, and TxDOT discovering they believed differently about the meaning or intent of certain terms of the proposed agreement.

## 2. Mitigation Strategies in the Event That the Agreed Water Quality Protections Fail.

- b. The BSEACD's goal under both the Consent Decree and the proposed agreement is to employ all water quality measures necessary to protect the Barton Springs/Edwards Aquifer and its karst features. If the measures BSEACD and TxDOT agree to fail, the BSEACD's goal will not have been achieved. The issue then becomes what must be done to remedy the problem.

The BSEACD, the CTRMA, and TxDOT should not wait for a failure to occur to start figuring out how to address the resulting problems. They should provide for this contingency in advance by including in the proposed agreement specific mitigation strategies in case the agreed water quality protections fail.

How is it determined when there is enough of a problem to warrant a remedy, though? One karst features specifically protected by the Consent Decree and the proposed agreement is Flint Ridge Cave. It is habitat for species protected under Endangered Species Act (ESA) and



the Balcones Canyonlands Conservation Plan (BCCP) §10 ESA incidental take permit held by Travis County and the City of Austin.

A clear indicator that the agreed water quality protections have failed would be that pollution from SH 45 SW has damaged karst habitat enough that the U.S. Fish and Wildlife Service (USFWS) finds a “take” of a protected species has occurred. This creates a “bright line” test that avoids disagreements over whether there is a problem or not.

The proposed agreement should include specific mitigation measures, agreed to in advance by the BSEACD, the CTRMA, TxDOT, and other stakeholders, spelling out how TxDOT or the CTRMA will remedy the problem of the USFWS finding a “take” has occurred. One such mitigation strategy could be for the CTRMA to set aside toll revenue from SH 45 SW in a fund that could be tapped to pay for mitigation in the event of a “take.”

- c. Apart from providing for specific mitigation strategies, §3.g.4 of the proposed agreement stating that TxDOT or the CTRMA will remedy and mitigate “to the extent possible” should be deleted. New language should be contained both in the proposed agreement and the subsequent PDA providing that TxDOT or the CTRMA are liable for remedying any damage from stormwater, hazardous substance spills, or other forms of environmental damage from SH 45 SW to the degree required by applicable law.

3. The BCCP and the Possibility That More Stringent Water Quality Protections Are Warranted.

- a. The USFWS recently took a position on a road project similar to SH 45 SW. Leander Independent School District (LISD) has proposed to build a road through a BCP preserve in northern Travis County and filed an application with the USFWS for a §10 ESA incidental take permit. The water quality controls LISD proposed for its road are almost identical to those TxDOT proposes for SH 45 SW in terms of percentage of pollutants removed. In response to the application, USFWS wrote a letter to LISD stating that these water quality controls may result in “take” of species protected by the ESA and requested LISD to show how it would mitigate that “take.”

This is relevant to the BSEACD because it indicates that the type of water controls proposed for SH 45 SW and LISD’s road may well be inadequate to avoid “take” of BCCP-protected resources. As stated above, a “take” clearly indicates that these types of water quality controls are failing to achieve the goal of protecting aquifers, karst features, and creeks. In other words, USFWS’s position indicates that LISD’s road and SH 45 SW are equally likely to pollute karst features, creeks, and aquifers unless more stringent water quality controls or other forms of mitigation are employed. Consequently, it would further the BSEACD’s goal of protecting the Barton Springs/Edwards Aquifer and its karst features to explore with



TxDOT and the CRMA the use of more stringent water quality controls than those currently proposed for SH 45 SW and LISD's road.

- b. Since Travis County is contributing \$15,000,000 towards SH 45 SW, Travis County may violate the terms of the BCCP permit if SH 45 SW damages Flint Ridge Cave. Travis County has contractually obligated the CTRMA to develop, design, construct, and maintain the project in a manner that does not result in noncompliance with the BCCP permit, as determined by the USFWS. If USFWS requires it, more stringent water quality controls will be required for SH 45 SW than those set out in the proposed agreement. This would impact the proposed agreement, depending on the BSEACD's position regarding this possibility, it may be beneficial for the BSEACD to address this contingency in the proposed agreement.



11546 Arbor Downs Road  
Austin, TX 78748  
January 26, 2015

Ms. Blayne Stansberry  
Member of BSEACD Board of Directors  
1124 Regal Row  
Austin, TX 78748

Dear Ms. Stansberry:

Re: Amended Agreement between Barton Springs/Edwards Aquifer Conservation District  
(BSEACD) and Texas Department of Transportation (TxDOT) Regarding State Highway 45  
Southwest

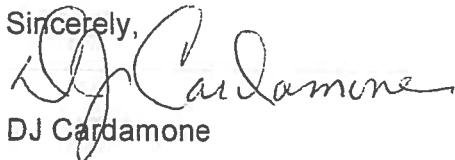
SH 45 SW is in the spotlight again. The delay of building this road spans nearly 30 years. The denial of this road has affected our community in a negative manner. My family and I have lived in Shady Hollow for nine years and we continue to feel the negative impact first hand. It's not just the unavoidable gridlock we experience two times a day but the frustration and loss of time that the congestion brings to our lives.

I would like to express my support for the BSEACD Board to take action and approve the amended agreement between BSEACD and TxDOT regarding SH 45 SW.

I recognize that you have been elected to the Board to provide balance between development and protection to our environmentally sensitive areas. As I read through the agreement, I found it to be very thoughtful, thorough and intentional in providing that protection to our environment. This agreement brings the BSEACD Board into the process of overseeing the development of this road from the very beginning, even before construction starts, throughout the building process until the end and well after its completion.

I urge the Board to take action on February 12, 2015 without further delay and to accept this amended agreement because it empowers you to fulfill your responsibility in the position you hold.

Sincerely,



DJ Cardamone

cc:

Mr. Bob Larsen, President

Ms. Mary Stone

Mr. Craig Smith

✓ Mr. Blake Dorsett



There were several different options TxDot could have chosen but after several interactions with Don Nyland and other TxDot engineers, as well as meetings with the Travis Co. Manager of "Transportation and Natural Resources"- can you believe that- no conflict there! Bill and I continued to be stonewalled, put off, told there was no way the engineers could change even small parts of the hiway route. Yet none of it was yet set in stone and it could have been changed.

One of the most egregious things TxDot has already done is to have taken 1/2 of the land owned by Diana Tomlinson (sp ?), and putting a barbed wire fence right through the middle of her barn, thus preventing her any access, even to empty to barn!! Forcing her out and off her land! With little effort on the part of the hiway people, they could have bumped the roadway plan slightly to the West, thus missing her property.

Again, several meetings with TxDot proved to be unproductive and seemed to fall on deaf ears! I found this absolutely appalling.

I could go on but I think all of the readers will get the gist of what has been going on. And I'm sad to say that the city and county were of little to no help. Yes, they land has been walked and surveyed and checked numerous times, however no consideration to even small changes has been accepted without a great deal of difficulty.

Unfortunately I am out of state and will not be able to attend this open meeting to ask my questions, state my observations and to beg TxDot to look at a different way to build a road I know is coming whether we like it or not. And that the consideration of the karst and water is just a pain in the rear for the engineers.

Please let me know if I can help in any way. I'm not opposed to the "want" for this road by many, I understand wanting an easier way to get into Austin from the south but, the truth of the matter is, that SH45 can be built in a way that will still allow the natural water flow and all the benefits that come with not completely destroying this large section of Public Lands that the Citizens of Austin voted to Protect for Water Quality.

Ok, I'm getting off my soapbox, now. Many thanks to those who took the time to read my email.

Very Sincerely, with a passionate love for our Karst, Caves, and Water

Julie Jenkins (jules)

caver and lover of our beautiful and endangered Barton Springs segment of the Edwards Aquifer

Sent from my iPad- Chicago=20

On Feb 4, 2015, at 6:08 PM, "dick kallerman [Cedartex@aol.com](mailto:Cedartex@aol.com) [SaveBartonCreekAssociation]" <[SaveBartonCreekAssociation@yahoo.com](mailto:SaveBartonCreekAssociation@yahoo.com)> wrote:

=20

On Saturday, February 7, from 2:00 till 4:00 at the Twin Oaks Library, 1800 South Fifth, TxDOT and CTRMA will present to the environmental community thei=



## Tammy Raymond

---

**From:** Devaney, JesseS [jesses.devaney@amd.com]  
**Sent:** Monday, February 02, 2015 8:50 PM  
**To:** Tammy Raymond  
**Subject:** In favor of SH45SW Aquifer District Re: SH45

I support the completion of SH45SW.

I'm in support of the Board taking action without further delay and accepting the draft agreement.

Thanks,

**Jesse DeVaney** 

Senior Systems Designer | AMD Client Platform Development and Debug

---

7171 Southwest Parkway, Austin, TX 78735 USA

O +(1) 512-602-7925 M +(1) 512-653-8912

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## Tammy Raymond

---

**From:** James Smith [jsmith12875@att.net]  
**Sent:** Monday, February 02, 2015 12:41 AM  
**To:** Tammy Raymond  
**Subject:** SW45

Please take whatever action necessary to get this road built. Austin has to acknowledge that the area is going to continue to explode....roadways must be built sensibly and as quickly as possible to accommodate the projected growth for our area. .

SW45 should have been built ten years ago...the right of way is in place...the funds originally approved by Travis County citizens went away because of all the delays...and now there is a chance to get it done....so please DO IT. Southwest Austin desperately needs it!

Thank you!

Patricia Smith  
SW Austin resident for 35 years!



## Tammy Raymond

---

**From:** Al Bates [arb34@austin.rr.com]  
**Sent:** Sunday, February 01, 2015 2:03 PM  
**To:** Tammy Raymond  
**Subject:** BSEACD will be having a meeting on Feb. 12 meeting

Hello,  
My wife, Marion, and I are residents of The Villages Of Shady Hollow. We have lived here since September 2001. We, along with thousands of other South Austin/Northern Hayes County residents, daily experience the horrific traffic on Brodie Lane.

We support the Board taking action without further delay to accept the draft agreement that will provide more environment protection than was in the consent decree agreement of 1990.

SH45SW should be built as quickly as possible.

Sincerely yours,

Alvin R. Bates  
2628 Niemann Drive  
Austin, TX 78748



## **Tammy Raymond**

---

**From:** Tina Linsalata [txnyli@att.net]  
**Sent:** Sunday, February 01, 2015 12:31 PM  
**To:** Tammy Raymond  
**Subject:** SH45

Please build this roadway. It is needed to alleviate traffic on our current roadways and to promote growth and prosperity throughout Travis and Hays counties. Environmental studies have already been produced and show little to no impact to our environment. Please clear the path for SH45 to be built. Thank you.

Phil Linsalata  
11806 Allwood Path  
Austin Texas 78748



## Tammy Raymond

---

**From:** Kathleen Hymes [khymes@austin.rr.com]  
**Sent:** Sunday, February 01, 2015 11:34 AM  
**To:** Tammy Raymond  
**Subject:** SH45

PLEASE! go ahead with SH45. I live off Brodie and it's becoming impossible to get out of my street onto Brodie and it's taking a ridiculous amount of time to travel anywhere on Brodie. This road was promised to us a long time ago and we've waited too long already. SH45 is necessary and anyone who lives along Brodie have lived with the hassle and headaches for long enough. Please vote in favor of SH45.

Thank you  
Kathleen Hymes



## Tammy Raymond

---

**From:** Vivienne Workman [raew@austin.rr.com]  
**Sent:** Sunday, February 01, 2015 10:11 AM  
**To:** Tammy Raymond  
**Subject:** SW45- Do not delay!

Please finally take action to build SW 45. No more delays!!  
The Workman's



## Tammy Raymond

---

**From:** Mark Rollins [mrollins959@gmail.com]  
**Sent:** Sunday, February 01, 2015 9:25 AM  
**To:** Tammy Raymond  
**Subject:** SW 45 Draft Agreement

Please accept the draft agreement from TX DOT to move ahead on plans for building SW 45 highway.

Thanks,  
Mark Rollins



## Tammy Raymond

---

**From:** Pat [patbarry@yahoo.com]  
**Sent:** Sunday, February 01, 2015 8:14 AM  
**To:** Tammy Raymond  
**Subject:** 45 draft agreement - accept

Please accept the draft agreement without delay..  
Thanks,  
Pat Barry off frate barker

Sent from my iPhone



## Tammy Raymond

---

**From:** Chris Nappi [cnappi@gmail.com]  
**Sent:** Saturday, January 31, 2015 9:58 AM  
**To:** Tammy Raymond  
**Subject:** SH-45SW

Hello,

I am writing in support of BSEACD working with TxDOT to construct SH-45SW in an environmentally responsible manner.

To not build the road should not be an option. With 1626 expanding to a full highway, and Kyle and Buda continuing to grow, it is irresponsible to force traffic onto Brodie - a road through a neighborhood with three schools not designed for high traffic, and not designed with any environmental protections.

I find some of the discourse against the road disheartening. Mis-information regarding the route of the road to garner opposition from those unfamiliar with the project (often depicted as connecting to 35) and dismissal of a well-funded environmental study as simply 'junk science' are uncalled for.

SH-45SW can be built in an environmentally safe manner, and be beneficial to the environment by reducing the number of idling cars on Brodie.

Regards,  
Chris Nappi  
78739



## Tammy Raymond

---

**From:** Tabitha Cardamone [tditto19@gmail.com]  
**Sent:** Saturday, January 31, 2015 12:46 AM  
**To:** Tammy Raymond  
**Subject:** The Road

Hello,

My name is Tabitha Ditto and I live in Shady Hollow. I would like to express my support for the BSEACD Board to take action as soon as possible and accept the draft agreement. Sorry I'm a little late with the e-mail!

Thank you,  
Tabitha Ditto



## **Tammy Raymond**

---

**From:** Laurie [lawmfw@att.net]  
**Sent:** Friday, January 30, 2015 5:41 PM  
**To:** Tammy Raymond  
**Subject:** build SH45

Please move forward with building SH45.

The continued growth in South Travis County and in Hays County needs an improved infrastructure.

Michael Waldman  
Vice President Bauerle Ranch Board of Directors



## Tammy Raymond

---

**From:** Laureen Chernow [laureen.chernow@gmail.com]  
**Sent:** Friday, January 30, 2015 4:12 PM  
**To:** Tammy Raymond  
**Subject:** SH SW45

Dear BSEACD Board and Staff,

I encourage you to move forward with the improvements suggested by TxDOT to the original Consent Decree (enviro protections have only gotten better and more advanced since 1990) and fully support having SH SW45 built.

As a resident of Shady Hollow since 1990, I can tell you that traffic has increased dramatically along Brodie and Slaughter Lanes, thanks to new subdivisions authorized by the City of Austin and Travis and Hays Counties. Brodie and Slaughter are not environmentally sound roads, while SW45 will be. I am concerned that while some are opposed to SW45 based on perceived damage to the Edwards Aquifer, they are not taking into account runoff from Brodie and Slaughter Lanes that are entering the aquifer, nor the damage being done to Brodie Wild.

Thank you,

Laureen Chernow & Wally Reeves  
11717 Silmarillion Trail  
Austin, TX 78739



## Tammy Raymond

---

**From:** Peter Varteressian [petervarter@yahoo.com]  
**Sent:** Friday, January 30, 2015 4:04 PM  
**To:** Tammy Raymond  
**Subject:** SH45SW parkway

I want to thank you for your past support of this road and I will appreciate your continued support. As you know from the information already available, this road will be constructed at high environmental standards. As an environmentalist myself, I support this proposed road and I hope you will continue as well. Thank you for listening to me.

Peter Varteressian

Sent from my iPhone



## Tammy Raymond

---

**From:** Pamela Baggett [pam@pamelabaggett.com]  
**Sent:** Friday, January 30, 2015 3:50 PM  
**To:** Tammy Raymond  
**Subject:** SH 45 SW

Dear BSEACD Board:

Thank you for the work you do to protect the aquifer. Supporting SH 45 SW and taking traffic off the unprotected Brodie Lane is the more environmentally responsible action. Thanks to your efforts, this road is being designed and will be built with the best available environmental engineering. As we still have unprotected karst features along Brodie Lane and people on Wyldwood use well water, it stands to reason that supporting SH 45 SW and accepting TxDOT's efforts to ensure the best available engineering is the reasonable decision.

Again, thank you for your work on behalf of the aquifer and the people.



*Pamela Baggett-Wallis*  
512.292.3439  
512.925.9492 cell  
pam@pamelabaggett.com



## Tammy Raymond

---

**From:** arlinhall@gmail.com on behalf of Arlin Hall [arlinhall@austin.rr.com]  
**Sent:** Friday, January 30, 2015 3:46 PM  
**To:** Tammy Raymond  
**Subject:** SH 45 SW

I Live in Shady Hollow. SH 45 SW is needed. You know all the reasons. Please accept the draft agreement and keep this project moving.

Thanks,

Arlin Hall  
4104 Tecate Trail  
Austin, TX 78739



## Tammy Raymond

---

**From:** Maryann Riordan [riordanmmm@gmail.com]  
**Sent:** Friday, January 30, 2015 3:43 PM  
**To:** Tammy Raymond  
**Subject:** Re:SH45SW

I am writing in favor of the building of SH45SW. I live off Brodie Lane, and luckily I do not have to travel during rush hours. As it is if I leave the house at 9:00 am, I am still faced with traffic. The amount of cars in the morning and evening is huge. This can not be good for the aquifer, since we have no protection on Brodie Lane. And with all of the construction going on in Hays county, this problem will only grow.

Please build SH45SW.

Thank you,  
Maryann Riordan



## Tammy Raymond

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**From:** Hillary Cosgrove [cozbrooks@yahoo.com]  
**Sent:** Friday, January 30, 2015 3:24 PM  
**To:** Tammy Raymond  
**Subject:** SH45 draft agreement - in favor

Hi -

I am writing to you to let you know that I am in favor of SH45SW and I support the acceptance of the draft agreement.

I have been a resident of Shady Hollow since 1997. This road needs to be built sooner rather than later!

Sincerely,

Hillary Cosgrove  
3007 Festus Drive



## Tammy Raymond

---

**From:** Stapley, Diane [diane.stapley@amd.com]  
**Sent:** Friday, January 30, 2015 3:14 PM  
**To:** Tammy Raymond  
**Subject:** Support for SH45SW

I'm writing today to note my support for the building of SH45SW. I live on the south end of Brodie Lane, in Barker Ranch. Every morning from about 7am to 855am at least it's impossible to get up the three miles between my home and Slaughter Lane in under 30-40 minutes. Coming home in the evening is worse. The pollution from cars backed up and the danger of the road being blocked with an accident, or even worse a school bus full of children being involved in an accident or a school in need of emergency responders who cannot get through, makes the offloading of cars from Brodie onto SH45SW IMPERATIVE. Please make it happen; widening the road, installing speedbumps or traffic circles, and all the other suggested triage measures will not offload the traffic onto a state highway where it BELONGS instead of a neighborhood street!

Best regards, Diane

**Diane C. Stapley-Southern**   
Senior Team Manager, Alliances

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7171 Southwest Parkway, Austin, TX 78735 USA  
O +(1) 512.602.3429 | M +(1) 512.587.8595

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## **Tammy Raymond**

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**From:** Denis Cowhig [dcowhig@gmail.com]  
**Sent:** Friday, January 30, 2015 3:10 PM  
**To:** Tammy Raymond  
**Subject:** SH-45 SW

Board:

I would request that the Board move to accept the draft agreement in moving forward with the regards to the S.H-45 toll road. It is my understanding that the proposed construction will be built with considerable greater environmental protections than currently exist on Brodie Lane which currently handles the traffic.

While it may not be in the purview of the Board, I believe that the traffic backed up on Brodie, at least several hours twice a day, presents a significant hazard in delaying emergency vehicles.

I urge you to accept the agreement.

--

**Denis M. Cowhig**

Cell: 512-865-8141



## **Tammy Raymond**

---

**From:** Cindy Cowhig [ccowhig@yahoo.com]  
**Sent:** Friday, January 30, 2015 2:49 PM  
**To:** Tammy Raymond  
**Subject:** SH 45

Please do not delay the construction of SH 45. Brodie Lane is now carrying most of the traffic in this area and is also in an environmentally sensitive area with no protection. SH 45 has been designed to protect the environment and will do much less damage than traffic on other area roads which were built many years ago and are not designed to carry so much traffic.

Thank you for your consideration of this matter,

Cindy Carpenter Cowhig  
512-865-8165



## Tammy Raymond

---

**From:** Vikki Goodwin [vikki@vikkigoodwin.com]  
**Sent:** Friday, January 30, 2015 3:04 PM  
**To:** Tammy Raymond  
**Subject:** SH45 and approval of agreement

Dear BSEACD Board,

I spoke briefly at your previous Board meeting in favor of you finalizing the agreement between BSEACD and TXDoT in order to move forward with the design and construction of SH45 SW. I would like to reiterate my hope that this issue will not be delayed further and the professionals who design and build roads can do their jobs. The professional attorneys, politicians and laymen who fight growth should be forced to drive on Brodie Lane on a daily basis.

Thank you,  
Vikki Goodwin  
Shady Hollow resident since 1993  
512-426-9090



## Tammy Raymond

---

**From:** beckybroderick@aol.com  
**Sent:** Friday, January 30, 2015 3:04 PM  
**To:** Tammy Raymond  
**Subject:** SH45

Dear Sir,

I greatly appreciate the actions you have take to ensure SH45 continues to go forward. The enviromental studies show that it is safe to go forward.

It feels like grandstanding from the SOS and and latest board members to keep that organization alive. I don't believe they speak for the majority, they don't speak for me.

Growth and change will come it can't be stopped. It can't be ignored, but there were recommendations approving the go ahead with this project.

Regards  
Becky Broderick



## Tammy Raymond

---

**From:** Joanne Brininstool [joleebrin@aol.com]  
**Sent:** Friday, January 30, 2015 2:55 PM  
**To:** Tammy Raymond  
**Subject:** Sh45

As a resident of Shady Hollow, my husband and I object to any delay in Sh45. Brodie Lane does NOT have any environmental safeguards whereas SH45 does and the fact that there is such heavy traffic in Shady Hollow on Brodie Lane is the fault of the environmentalists for delaying a project that would have more safeguards. They fondly hope people will be content to use Brodie. It is not happening, we have way too much traffic from Hays County. We think the SOS has greatly exaggerated the dangers since there is already so much development.

Carl and Joanne Brininstool

Sent from my iPad



## Tammy Raymond

---

**From:** Ron Mueller [rmueller@insurancecouncil.org]  
**Sent:** Friday, January 30, 2015 2:53 PM  
**To:** Tammy Raymond  
**Subject:** SH45SW support

Ladies and Gentlemen:

I live in Buda and travel to Austin every day for work. I do not use IH 35. I drive FM 1626 to Brodie Lane and north to Ben White. The time waiting in traffic on Brodie throughout Shady Hollow subdivision is a daily slow crawl. I would encourage you to accept the draft agreement so that this long anticipated and needed road can be built. **It is way past time to build it.**

Ronald Mueller  
206 Dewberry Cove  
Buda, 78610



## Tammy Raymond

---

**From:** Jim Mann [jim.mann@sbcglobal.net]  
**Sent:** Friday, January 30, 2015 2:50 PM  
**To:** Tammy Raymond  
**Subject:** Support SH45SW

BSEACD Board Members:

I encourage the District to support and facilitate the implementation of SH45SW. It's important to both the immediate area and the larger regional area.

There is no reasonable alternative to SH45SW.

It is patently irrational for there to not be one single traffic artery into Austin from Hays County all the many miles from RR1826 (Camp Ben McCullough Rd.) to residential Brodie Lane.

Sincerely,  
Jim Mann



## Tammy Raymond

---

**From:** Joel Seffel [jseffel@austin.rr.com]  
**Sent:** Friday, January 30, 2015 2:50 PM  
**To:** Tammy Raymond  
**Subject:** TXDOT-BSEACD SH45 SW Draft Agreement

Dear Mr. Chairman and BSEACD Board Members:

I urge you to support the draft agreement without further delay. We in Shady Hollow have waited too long for this road to be built and there is no reason to not go forward with it. Opponents to the agreement have no case.

Thank you for your time and consideration.

Joel and Beverly Seffel  
11721 Silmarillion Trail  
Shady Hollow



## Tammy Raymond

---

**From:** Lawrence Clark [larsclark@austin.rr.com]  
**Sent:** Friday, January 30, 2015 2:31 PM  
**To:** Tammy Raymond  
**Subject:** SW-45 Project

I am resident living on the southern end of Brodie Lane. I think my neighbors and I have been very patient in waiting for the SW-45 extension to be built. As the area South of Shady Hollow has been developed, Brodie has become increasingly more congested during "rush-hour," not only from our local residents, but also traffic from Hays County. In the evening, the intersection of Slaughter and Brodie is getting very "dicey." We need relief – NOW!!!

I fully understand the environmental concerns, and the concerns of Circle C residents, but I think the opposition to the extension is more political than it is environmental. If SOS or other factions are not willing to help us get the extension, then perhaps they can offer a solution to our congestion issues. To date, all I have read is opposition and delaying tactics, but no alternative solutions. The only option I see is sealing-off Brodie at the intersection of 1626 and funneling the North-bound traffic to a wider Manchaca Road. This may pose a safety issue near Manchaca School. To make the Manchaca solution successful, access to west bound Frate Barker would need to be shunted also. (The improvements to Frate Barker are currently at a stand-still, so maybe the blocking of Brodie is already in the works? )

I appreciate your dilemma, but we need the SW-45 project to commence, or an alternate proposal rendered soon.

Thank you.

Col Lawrence D Clark, USAF(Ret)  
3015 Sunland Dr



## **Tammy Raymond**

---

**From:** Barbara Schoenfeld [bschoenfeld@insurancecouncil.org]  
**Sent:** Friday, January 30, 2015 2:11 PM  
**To:** Tammy Raymond  
**Subject:** Please Build SH 45 SW

**Please accept the draft agreement that will ensure that SH45SW is built responsibly and let's please get it built!!**

*Barbara Schoenfeld  
Insurance Council of Texas  
512-637-5437*

**ICT On Facebook**

*Save the Date: July 9, 2015 Mid-Year P & C Insurance Symposium  
Sheraton Austin Hotel*



## Tammy Raymond

---

**From:** K Todd [ksr3todd@gmail.com]  
**Sent:** Friday, January 30, 2015 11:22 AM  
**To:** Tammy Raymond  
**Subject:** SH45SW - please proceed

Board members:

Please accept and proceed with the current Draft agreement that will build SH45SW responsibly. There is no reason for further delays. The current Draft agreement already provides more environmental protection than did the original agreement from 1990.

Thank you,  
Kevin Todd



## **Tammy Raymond**

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**From:** Ymelda Morales [ymorales@hslawmail.com]  
**Sent:** Friday, January 30, 2015 10:40 AM  
**To:** Tammy Raymond  
**Subject:** In Favor of SH45SW

**Importance:** High

Good morning,

I understand there is an upcoming meeting regarding a draft agreement that will allow for more environment protection than was in the consent decree agreement of 1990 to ensure that SH45SW is built responsibly. We support the board and believe in going forward with SH45SW. South Austin appreciates all you do. There are so many upcoming ways to help north Austin traffic. However, there is not much in the way for south Austin. Please help.

Thank you,

**Ymelda Morales**



## Tammy Raymond

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**From:** Stephanie McRae-Segura [smcraesegura@yahoo.com]  
**Sent:** Friday, January 30, 2015 8:56 AM  
**To:** Tammy Raymond  
**Subject:** SH45 Support

To Whom It May Concern:

I just wanted to send an email to show support for the expansion of SH 45 from 1626 to Mopac. I lived in Shady Hollow from 2000-2011 and still own that property as a rental. The traffic, as you know, is very heavy due to drivers going to and from Hays county. Seems it would be safer for the community of Shady Hollow, which also has an elementary and middle school, to have drivers utilize a hwy system rather than a neighborhood to get to Austin. It took on average at least 15 minutes during the time I lived in the community to get from Frate Barker to Brodie Ln during morning rush hour and even longer returning home in the afternoons. Multiple apartments, homes, schools, and businesses on Slaughter Ln between Mopac and Brodie have substantially added to the congestion in this area of SW Austin. I currently live in Circle C and would enjoy being able to get to south I 35 easier than currently having to utilize hwy 71, which is several miles out of the way, or via Slaughter Ln, which is very time consuming due to multiple lights and traffic. I believe I speak for many people when I ask that you build SH45 rather than continue to delay moving forward as well as wasting time and money on endless environmental studies. This highway can be built responsibly to minimize any impact to our springs. Thank you for your time.

Stephanie Segura  
512-650-6455



## Tammy Raymond

---

**From:** Richard Harris [rharris18@sbcglobal.net]  
**Sent:** Friday, January 30, 2015 8:45 AM  
**To:** Tammy Raymond  
**Subject:** SH45SW

We live in the Villages of Shady Hollow. Assuming there is sufficient environmental protection in the new draft agreement, we are in favor of building SH45SW.

Richard & Lyndia Harris  
11700 Arbor Downs Rd.



## Tammy Raymond

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**From:** Kelly Daddeo [daddeos@yahoo.com]  
**Sent:** Friday, January 30, 2015 8:26 AM  
**To:** Tammy Raymond  
**Subject:** SH45

Dear Board,

First, let me thank you and express my appreciation for the many hours you spend making decisions and listening to comments from the citizens of our dear city.

With regards to SH45, may I express our support for the completion of this proposed road. The residents of South Austin, such as myself enjoy an amazing quality of life, which is indeed hindered by the traffic problems in our area. An example of this impact can be found within my own family. My children are grown, successful young adults, however, they say they wouldn't move back to Shady Hollow because it takes too long to get out of the neighborhood. It is a wonderful part of town, but you can see, traffic is a major consideration.

Additionally, the road has been under discussion for so many years, taken in many taxes for it's purpose and deemed hours of meetings. It would be most diligent and of good stewardship for the board to approve the road at this time.

Enough hours of deliberations and tax dollars have been spent on SH45 and now we urge you to bring the project to the approval stage and most importantly to completion.

Thank you,  
Kelly D'Addeo  
Shady Hollow Resident  
512-799-1788



## Tammy Raymond

---

**From:** Danica Geeslin [dmgeeslin@sbcglobal.net]  
**Sent:** Friday, January 30, 2015 7:51 AM  
**To:** Tammy Raymond  
**Subject:** Please build SH45SW

We have lived in Shady Hollow for 15 years, and have watched as traffic had mounted to intolerable levels.

We need relief! Please build SH45SW.

Danica



## **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 including options for inclusion of the area in a Groundwater Conservation District.**





## Jason Isaac

State Representative  
House District 45

For Immediate Release: February 6, 2015  
Contact: Michael Brown - (512) 463-0647

### **Rep. Isaac Gives Required 30-Day Notice to Change Groundwater District** *Files Priority Groundwater Management Protection Bill*

AUSTIN, TX - State Representative Jason Isaac (R-Dripping Springs) announced plans to file up to five bills relating to extending groundwater protection districts in Hays County, adding limited regulation to portions of otherwise unregulated aquifers, and changing household water usage laws to better protect Texas water resources.

"Protecting the groundwater of the Hill Country region and the entire State has been a top priority of mine since I was first elected to serve House District 45," said Rep. Isaac. "These bills will address the immediate concerns of my constituents in Hays County, and will also help in bringing innovative water saving solutions to Texas by increasing graywater usage and encouraging rainwater collection systems."

**House Bill 1191**, filed today, would create a buffer zone of 5 miles beyond the boundaries of a priority groundwater management area and give additional groundwater protection authority to the Texas Water Development Board. Another proposal will extend the Barton Springs Edwards Aquifer Conservation District and another would extend the Hays Trinity Groundwater Conservation District, which both require a 30-day posting notice prior to filing. Additional legislation will help bring Texas to the forefront of water policy by reducing the tax burden on homeowners who install rainwater collection systems and allow for new domestic uses of graywater.

"In the middle of 2014 I first learned that there was an area of Hays County where the Trinity aquifer wasn't protected. Immediately, I began conversations with local elected officials, charged with protecting our groundwater, about solutions that would cover the unprotected area of the Trinity," said Rep. Isaac. "The recent discovery of a proposal by a Houston-based company to pump 5 million gallons per day from an area just outside the boundary of a priority groundwater management area increased the urgency to find a solution."



Rep. Isaac also praised this week's resolution by the Hays County Commissioners Court in support of legislation to establish local protection of the Trinity aquifer. Rep. Isaac will host a town hall to address water concerns at 6:30 p.m. on Tuesday, February 10, in the Johnson Hall at the Wimberley Community Center.

The Wimberley Community Center is located at 14068 Ranch Road 12, Wimberley, TX 78676.  
For more information please call (512) 463-0647.

###

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A BILL TO BE ENTITLED

AN ACT

relating to the regulation of commercial development of groundwater in certain areas.

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

SECTION 1. Chapter 35, Water Code, is amended by adding Section 35.021 to read as follows:

Sec. 35.021. COMMERCIAL DEVELOPMENT OF GROUNDWATER IN CERTAIN ZONES. (a) In this section, "buffer zone" means an area that extends five miles from the boundaries of a priority groundwater management area.

(b) Notwithstanding an exemption from permitting that might apply under the rules of a groundwater conservation district under Section 36.117, a person who seeks to drill or operate a well located in a buffer zone to produce groundwater for commercial purposes must submit an application for approval to drill and operate the well to the Texas Water Development Board and to any groundwater conservation district in whose territory the well is located.

(c) The Texas Water Development Board shall schedule, post notice for, and conduct a public hearing for comments before making a decision to approve or deny an application received under Subsection



(b) .

(d) In deciding whether to approve or deny an application under this section, the Texas Water Development Board shall consider the likely effects of the well's proposed production amounts over the 25-year period that would begin on the expected date of first production from the well including:

(1) potential adverse effects on the desired future condition adopted by a groundwater conservation district for the relevant aquifer under Section 36.108;

(2) population growth predicted for the surrounding area;

(3) shortages of surface water or groundwater resulting from a long-term drought;

(4) potential land subsidence;

(5) possible contamination of groundwater supplies; and

(6) other issues the water development board considers relevant.

(e) A well may be drilled and operated under this section only if the application is approved:

(1) by the Texas Water Development Board; and

(2) by any applicable groundwater conservation district, unless the well is exempt from permitting under the district's rules.

(f) The Texas Water Development Board shall adopt rules and procedures for the consideration of an application under this section, including procedures for the conduct of a public hearing.

SECTION 2. Not later than March 1, 2016, the Texas Water



Development Board shall adopt rules required under Section 35.021, Water Code, as added by this Act.

SECTION 3. This Act applies only to a groundwater well for which the drilling is begun on or after the effective date of this Act. A well for which the drilling is begun before the effective date of this Act is governed by the law in effect on the date the drilling was begun, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.





**RESOLUTION OF THE HAYS COUNTY COMMISSIONERS COURT**

STATE OF TEXAS  
COUNTY OF HAYS

WHEREAS, Chapter 36 of the Texas Water Code states groundwater conservation districts may be created "in order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution"; and

WHEREAS, it is recognized that the boundaries of groundwater conservation districts, counties, and other jurisdictions are not consistent with the hydrogeology of the area, creating ineffective regulations which are further complicated by the existence of multiple aquifers and geological conditions within certain groundwater conservation districts; and

WHEREAS, in order to protect the private property rights of individuals, the Texas Legislature amended Chapter 36 of the Texas Water Code in 2011 by adding language which includes, "the legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property"; and

WHEREAS, Chapter 36 of the Texas Water Code further confirms that a landowner, including a landowner's lessees, heirs, or assigns, is entitled to produce groundwater below the surface of real property, "without causing waste or malicious drainage of other property"; and

WHEREAS, the existence of aquifer areas not regulated by local groundwater conservation districts, creates the possibility that landowner property rights may be infringed upon by the commercial production of groundwater that results in the malicious drainage of the landowner's real property; and

WHEREAS, these unregulated areas of aquifers further create inconsistencies in rules and regulations for commercial production of groundwater which can detrimentally affect market principles and create barriers to competition; and

WHEREAS, the ability to produce groundwater for domestic and agricultural uses is paramount to the individual rights of all Texans;

NOW, THEREFORE, BE IT RESOLVED, that the Hays County Commissioners Court supports legislation to establish the proper local regulation of commercial and non-exempt groundwater production in aquifer areas currently outside of the respective groundwater conservation districts in Hays County

PASSED AND APPROVED this 3rd day of February, 2015.

*Bert Cobb*

Judge Bert Cobb, M.D.  
Hays County Judge

*Debbie Ingalsbe*  
Debbie Ingalsbe  
Commissioner, Precinct 1

*Mark Jones*  
Mark Jones  
Commissioner, Precinct 2

*Will Conley*  
Will Conley  
Commissioner, Precinct 3

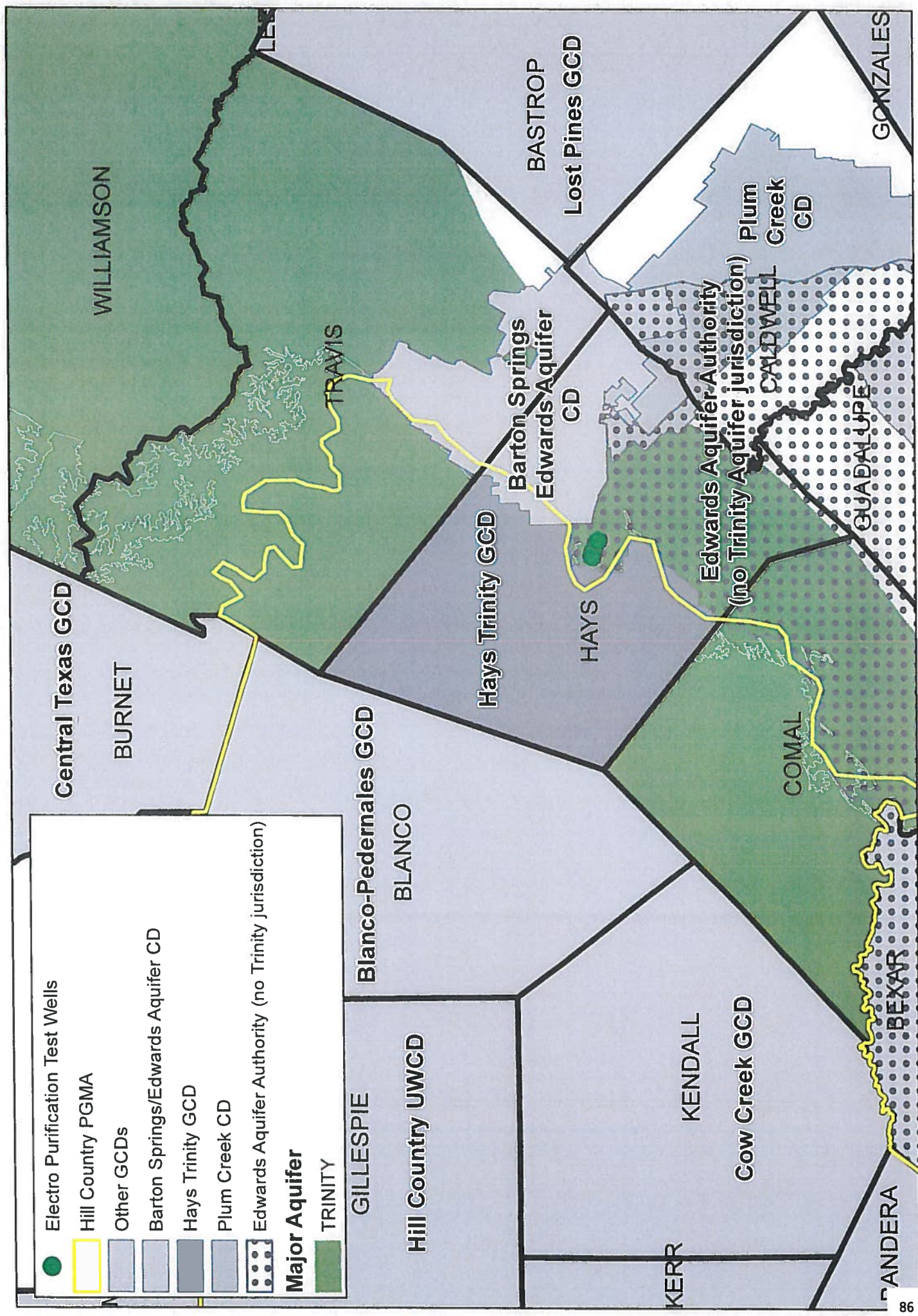
*Ray Whisenant*  
Ray Whisenant  
Commissioner, Precinct 4

Attest  
*Liz O Gonzalez*  
Liz O Gonzalez  
County Clerk



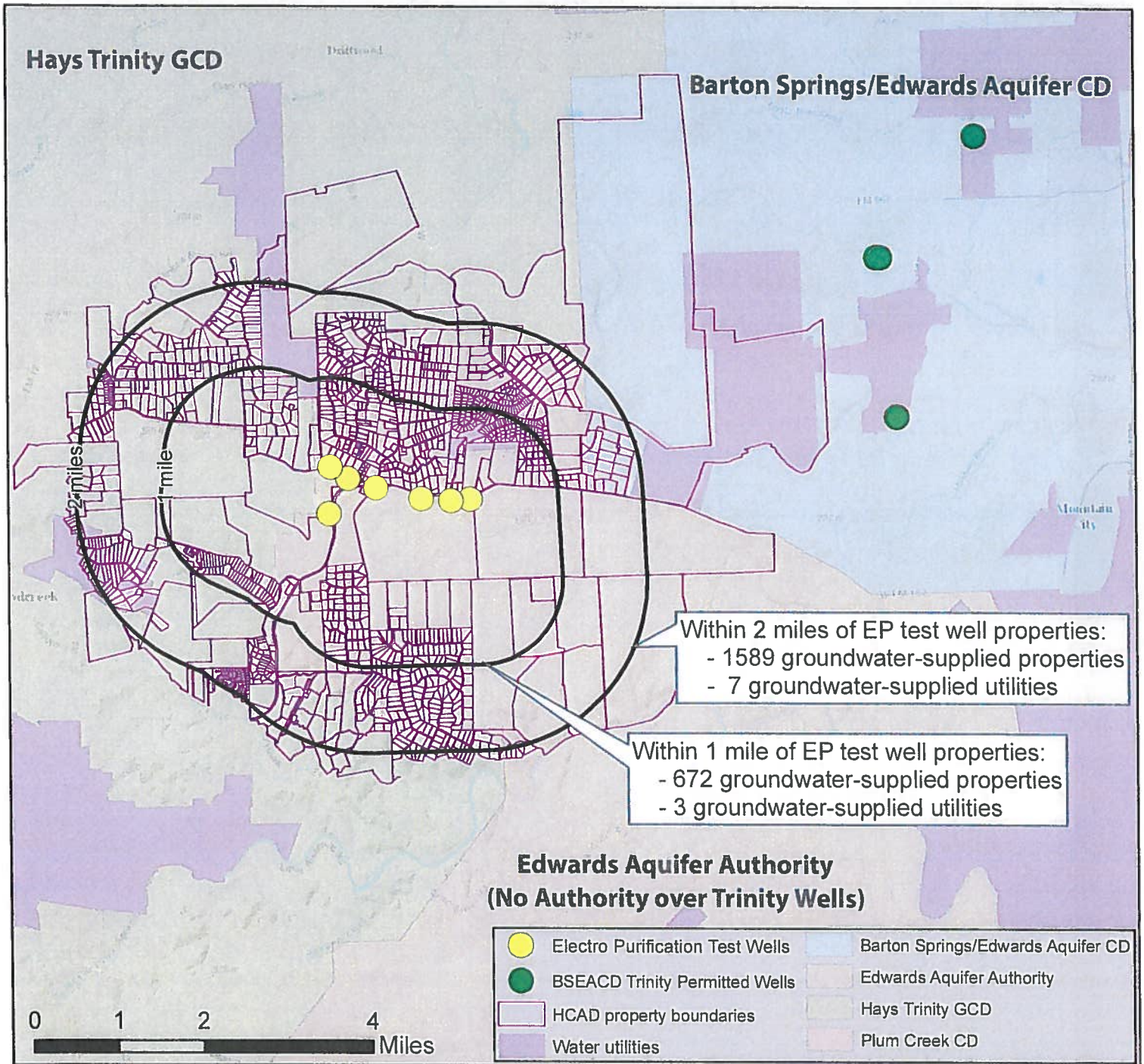


# Groundwater Conservation Districts covering Trinity Aquifer





# Properties near Proposed Electro Purification Well Field



Basedata: GCD Boundaries from TCEQ, Property boundaries from Hays County Appraisal District (2014). Water utility boundaries from TCEQ (2014). Electro Purification test well locations estimated. No surface water supplied water utility serves the area surrounding the Electro Purification wells. It is assumed landowners rely on groundwater as their sole source of water.

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 January, 2015



## **Item 4**

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

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



# TEXAS HOUSE OF REPRESENTATIVES

## CAPITOL OFFICE:

P.O. Box 2910

AUSTIN, TEXAS 78768-2910

(512) 463-0528

(512) 463-7820 FAX

## RECEIVED

JAN 05 2015

## OPINION COMMITTEE



## 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 # ML-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





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



## **Item 4**

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

**d. Discussion and possible action related to options to allow permit transfers.**



## Preliminary Report Excerpts

**Preliminary Report:** Strategies for Preserving Desired Future Conditions in the Northern Subdivision of Groundwater Management Area 10 (the Barton Springs Segment of the Edwards Aquifer)

### **Excerpt:** 6.2 Market-Based Strategies

#### ***Cap and Trade:***

There was limited support for a full scale tradable permits program. The cons identified by the District were generally related to the lack of factors that would be suitable for an active market but also the general reticence to break District precedent by severing the permits from the land. This call for caution was shared by several of the stakeholders. There was a suggestion that a market be allowed to open up for a finite time period. Such a program with the proper parameters, aquifer commission on all transactions, and defined time to allow for trading could be effective, but not assuredly so.

**Recommendation:** Staff does not recommend this strategy in Phase I. A market may be considered but only on a temporary basis if needed in Phase II.

#### ***Expanded TTPs:***

The current TTP program was aimed specifically at providing an option for non-PWS permittees to secure additional pumping rights from PWS permittees when extreme pumping curtailments were triggered during an ERP. District rules have since been revised such that those greater curtailments are not likely to have much effect; therefore, the TTP now provides limited utility. Because of the limited utility coupled with the associated regulatory complexity, the current TTP program is virtually ineffective. And similar to cap and trade, the likelihood that transactions would provide any reduction in authorized or actual pumpage is low even with expanded parameters.

**Recommendation:** Staff does not recommend this strategy. Further, staff recommends that the current TTP program be abolished.

#### ***Cap and Retire:***

There was considerable support for providing a mechanism to allow for the purchase of permitted pumpage (either pumpage under all conditions or only in extreme drought) for the purpose of retirement. This strategy is already possible under the existing rules. That is, a permittee can voluntarily relinquish their permit or request that their permitted amount be reduced. However, such a program is currently not formally recognized by the District.

**Recommendation:** Staff recommends a rule change in Phase I to recognize amendment requests for reduced permitted pumpage volumes or complete retirement. Further, staff recommends that the Board direct staff to identify prospective buyers and sellers with factors (location and water supply portfolio) that would be amenable to transactions and facilitate those transactions.

#### ***Water Use Fees/Rates:***

There was general agreement among the stakeholders that groundwater is undervalued relative to other sources and that this price discrepancy generally creates the perverse incentive to utilize groundwater preferentially. This further complicates any initiative that may involve conversion of groundwater dependent systems to other sources.

**Recommendation:** Staff recommends continued efforts to support legislation that would raise the current historical water use fee cap (\$0.17/1,000 gallons) to a price more commensurate



with other raw water supplies. Additionally, staff recommends a concerted effort to encourage or compel the District's PWS permittees to adopt conservation-oriented rate structures with meaningful rate blocks that would encourage conservation.

#### **Excerpt: 6.4 Summary of Staff Recommendations:**

**Phase I** - Includes all measures that have the most potential, would be the simplest to implement, and that are now believed possible under the District's current Management Plan. These measures include:

- Include 50% curtailment requirements in the next rule change to be implemented 3 years after the new rule effective date.
- Include cap and retire provisions in the next rule change that outline the procedure for recognizing transactions that result in the retirement of historical permitted pumpage.
- With Board direction, perform an analysis of permitted systems relative to surface water supplies (namely the COA) to identify the potential for emergency interconnections and cap and retire approaches.
- With Board direction, work with the potential buyers in a cap and retire program (namely the COA) to assess opportunities and obstacles to retiring permits.
- Include provisions in the next rule change that allow for retired historical permitted (un-curtailed) pumpage to be re-permitted as Class C conditional pumpage, and the Class C conditional allotment be increased commensurately.
- Continue effort to support legislation that would raise the current non-agricultural historical water use fee cap (\$0.17/1,000 gallons) to a price more commensurate with other raw water supplies (or at least the maximum fee rates that other new GCDs now have stipulated in their enabling legislation.)
- With Board direction, provide guidance on, and encourage the District's PWS permittees to adopt conservation-oriented rate structures with meaningful rate blocks that would encourage conservation.
- Abolish the current TTP program.
- With Board direction, define and make additional revisions to the Management Plan that would be required to implement the Phase II measures below.

**Phase II** – Includes measures that involve the most complexity, would required the most effort, or would best be implemented after more explicit inclusion in the management objectives and strategies of the District's Management Plan. The following measures will only be considered as needed after considering reductions accomplished in Phase I:

- Consider implementing proportional adjustments to all historical permits by only the additional amount necessary to comply with the MAG. Adjusted volumes could be converted to conditional permitted pumpage that may be available during non-drought times only.
- Consider allowing permit trading with an "aquifer commission" taken from every transaction for an announced and finite period of time to impose a deadline (or alternatively to be held open until the MAG is reached.)
- Consider right sizing based on established per capita efficiency standards where all permits will be evaluated to compare actual (and possible projected) demand to permitted volumes and adjusted accordingly.
- Reinforce current District rules that require that District PWS systems to adopt a conservation-oriented rate structure and use enforcement authority to compel new rate structures. (This also implies either voluntary or legislatively-compelled support by TCEQ.)



## White Paper Excerpts

### **White Paper: Strategies for Preserving Desired Future Conditions in the Northern Subdivision of Groundwater Management Area 10 (the Barton Springs Segment of the Edwards Aquifer)**

#### **Excerpt: Market-Based Strategies**

Retirement of or reductions in existing Historical permitted pumpage will be difficult to accomplish without the availability of some mechanism to enable permittees to receive some compensation, particularly when water use fees of District permits are so low relative to other sources and therefore, are an economic disincentive to supply switching. Market-based strategies involve transactions between willing buyers and sellers and can be advantageous because transactions are voluntary and can, in the right situation, facilitate resource management objectives without overly burdensome and complex regulatory approaches. The main advantage is that this strategy allows the use of markets to redistribute resources from low value uses to high value uses (e.g. from agricultural use to public water supply) while providing compensation by third parties for permit relinquishment. This reallocation is intended to allow for resources to be priced in accordance with true value which has the concomitant benefit of encouraging more efficient use because waste would be felt as lost value.

Such market-based strategies, however, require certain critical factors to be successful including: transferable permits, sufficient market-size, allowance of trade with limited impediments, and a proper accounting of transactions, among others. Markets typically involve certain trade rules to prevent unintended consequences but not to the extent that they significantly impede the workings of a free and active market. Market strategies are not appropriate where complicated rules are required and should be considered before implementation. Resource managers must also exercise caution in creating a market because such markets are not easily undone once permits are allowed to become commodities, particularly when these commodities take on substantial monetary value.

#### Cap and Trade

Cap and trade as the concept applies to resource management involves first, the capping of allocations of a resource and then, the creation of a market to allow trade of permits within the confines of the cap. Such a market has been established in the San Antonio segment of the Edwards Aquifer to facilitate the redistribution of relatively low value resources in the western agricultural areas to the public water supply needs of the San Antonio area. It has been implemented with a reasonable amount of success but has also created impediments to certain resource management objectives (e.g. maintaining environmental flows and endangered species habitat).

The District has the first necessary condition in place with the existing cap on Historical firm-yield permitted pumpage. In order to allow for trade, however, a cap and trade program would by necessity require the District to allow permits to be transferable within the confines of the District boundaries. Historically, all District permits were permanently attached to the land and were non-transferable. To allow trade would require an unprecedented change in District Rules and in a long-standing policy of non-transferable permits.

The District's role could range from merely recording transactions that occur in a free-market to being an administrator with approval authority to ensure that any transactions are compliant with any trade rules. As a practical matter, certain trade rules would have to be in place to



address potential unintended consequences and to provide the intended benefit to the aquifer, particularly during extreme drought. At minimum, trade rules would have to be in place to govern spatial aspects of trade, such as movement of permitted pumpage from less vulnerable to more vulnerable parts of the aquifer and the prevention of high concentrations of pumpage or “hot spots”. Additionally, the District would likely require an “aquifer commission”, or a percentage of the pumpage from every transaction (e.g. 25%) to be committed to the Conservation General Permit to provide the intended benefit to the aquifer through permitted pumpage reductions.

#### Pros

- Allows reductions of permitted pumpage from retirement of a percentage of the pumpage involved in all transactions
- Allows voluntary transactions initiated by willing buyers and sellers
- Avoids the time, expense, and resource allocation needed for more conventional regulatory approach
- Commoditization of permits and the appreciating value would discourage waste and encourage efficiency
- Rewards permittees that have surplus permitted pumpage as a result of reductions in demand, efficiency improvements, or diversified water supplies.

#### Cons

- Requires permits to be transferable which would be unprecedented for the District.
- Commoditization of permits and the increased value could impede and complicate future District efforts to manage or reduce authorized pumpage by more conventional regulatory means (such efforts may be viewed as affecting commodity value)
- Active trade necessary for achieving objectives will not likely occur because:
  - Trade rules necessary to prevent unintended consequences and provide permitted pumpage reductions may be overly complicated and burdensome to allow a relatively active market
  - Market would be too small because of limited area and population of permit holders
  - There is not sufficient “room for a deal” because there is not the requisite variety of uses to allow low value (e.g., agricultural) to high value (e.g., public water supply) trade
- Requires District resources to record, track, account for transactions, and enforce trade rules
- Could be administratively burdensome when involving potentially complicated permit adjustments
- Voluntary nature of transactions limits reliability and timing of pumpage reductions
- Permanent permitted pumpage retirement would reduce District revenue and operating budget, at least under the existing fee structure.



## **Item 4**

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

- e. Discussion and possible action related to the contract with Hicks and Company, Inc. for environmental document preparation purposes.**



**Agreement for Environmental Document Preparation Services  
Between  
Barton Springs/Edwards Aquifer Conservation District  
And  
Hicks & Company, Inc.**

This Contract by and between the Barton Springs/Edwards Aquifer Conservation District (hereinafter "District"), 1124 Regal Row, Austin Texas 78748, Tel 512.282.8441; and Hicks & Company, Inc., 1504 West 5th Street, Austin, TX 78703, Tel 512.478.0858, a Texas corporation, as contractor (hereinafter "Contractor"); is made with an effective date of July 1, 2011, and will terminate no later than August 31, 2014, subject to the Term provisions of Section III below.

**Section I  
Engagement of Contractor**

The District is a political subdivision of the State and is responsible for the protection, conservation, and management of groundwater within its jurisdictional boundaries in the Austin/Central Texas area. The Contractor is a professional services firm, registered to practice in the state of Texas, that provides a variety of technical, environmental, and archeological services related to natural and cultural resources, municipal and other public infrastructure, private development, and environmental management. The District agrees to engage Contractor to supply certain services under terms and conditions set forth in this Contract, and the Contractor agrees to perform such services under the terms and conditions set forth in this Contract, and in accordance with the applicable professional standard of care.

**Section II  
Scope, Compensation and Deliverables**

**Scope**

The scope of services to be provided by the Contractor, elaborated in Exhibit A, includes 1) consulting on the NEPA process and content in completing the Environmental Impact Statement associated with a Section 10(a) permit issued to the District for Incidental Take (ITP) of certain listed endangered species under the District Regional HCP; 2) completing the preparation of draft and final NEPA statements and related documentation required by the US Fish & Wildlife Service (Service) for issuing the ITP and approving the HCP; 3) participating in advisory committees and public hearings, and assisting in responding to comments; and 4) providing certain document production services. These services do not include the provision of



additional technical services and analysis, except as required to complete the documentation. The services are offered and will be provided on a best-efforts basis, and are expressly understood to assist the cooperating parties of the District and the Austin Ecological Services Field Office of the Service in completing the NEPA obligations of the Service for issuing the ITP, as articulated in the tri-partite Responsibilities Agreement included in Exhibit B. Contractor will receive technical direction from and through the Service's designated representative, and the Service will be the final determinant of the content of the NEPA documents. Contractual, financial, and administrative matters will be resolved solely by the District. Work beyond either the scope or the term of this Contract is at Contractor's risk. Any amendments to this contract must be approved by the District, and any changes in the scope of work, especially but not only those that have cost impact, must be approved by both the District and the Service.

### **Compensation**

The Contractor will be paid on a time-and-materials basis. The total fee for all tasks, inclusive of all direct and indirect costs and fee/profit, including labor, sub-consultants, telephone charges, travel, certain copying and printing costs, but exclusive of publication cost of the final version of the Draft EIS and final version of the Final EIS, shall not exceed \$137,408, without the expressed, prior, written agreement of the District. Contractor is authorized to perform work through August 31, 2012, but District is not obligated to compensate Contractor for billable costs greater than \$58,000 in District FY 2012, ending August 31, 2012. Billable work in FY 2012 greater than \$58,000 shall be at Contractor's risk. Fees for labor expenses will be based on hours actually worked to the direct benefit of this particular project, and will be billed according to the labor rates in Exhibit C, which Contractor warrants are the most favorable rates offered to governmental entities. Contractor will invoice the District monthly, along with summary information on project-hours expended and other direct costs incurred, and the District agrees to promptly pay Contractor at its office in Travis County, Texas, the full amount of each such invoice that is not in dispute. The District shall have the right to request and receive additional information to support any invoiced charges. The date upon which the invoice becomes due and payable and the interest rate to be paid by the District for an overdue payment shall be determined by Chapter 2251 of the Texas Government Code. Should this Contract be extended beyond August 31, 2013, then District and Contractor may re-negotiate the hourly rates of Exhibit B, to reflect the then-prevailing hourly rates for similar work. -

### **Deliverables**

In connection with the provisions of services hereunder, the Contractor shall provide to the Service and the District both electronic and camera-ready copies of the administrative review version of the draft EIS (dEIS), the dEIS, the administrative review version of the final EIS, including responses to public comments (fEIS), and the fEIS. In addition, the Contractor will provide such oral, digital, or written notices, reports and other documentation that the project implementation effort may require and/or as the District and Service may reasonably request from time to time.



### **Section III**

#### **Term**

The Contractor will commence work on or before July 1, 2011, and the work will be completed in accordance with the provisions in Section II. The Agreement shall remain in full force and effect until August 31, 2014, unless terminated earlier by either party upon 15 days written notice. However, in no event may this agreement be terminated by the Contractor before August 31, 2011. Further, Contractor expressly acknowledges that the funds for this work are budgeted and authorized by the District only on a single fiscal-year basis, and continuing work under this Contract must be re-authorized as of each September 1. Under this initial contract, work is authorized and budgeted through August 31, 2012, subject to the FY cost limitation in the Compensation subsection of Section II of this Agreement. In the event of termination Contractor will deliver to the District, all notes, memoranda, reports, maps, digital files, studies, plans, written analysis and other work in whatever form it may then exist, performed and paid for under this Contract, and District will pay Contractor for all work performed or irrecoverably committed as of the date of termination of the Agreement. All work performed and paid for under this Agreement shall be the property of the District.

### **Section IV**

#### **Relationship of Parties**

The parties intend that Contractor, in performing the specified services, will act as an independent contractor and will retain control of the work and manner in which it is performed. The above notwithstanding, because of the nature of the services in this agreement, Contractor agrees that it has not and will not contract for or perform work for other clients related to the ITP NEPA process at the center of this agreement. Contractor further warrants that it knows of no existing or prospective conflict of interest with its providing the services under this Contract and Agreement. Contractor is not to be considered an agent or employee of the District and is not entitled to participate in any pension plans, bonus, or similar benefits that the District provides its employees. Mr. W F (Kirk) Holland will be the District's representative for overall contractual oversight to and administrative liaison with the Contractor. The Services's Mr. Kevin Connally will provide the technical direction of the Contractor's work, pursuant to the Responsibilities Agreement of Exhibit B.

### **Section V**

#### **Miscellaneous Provisions**

**Assignment and Subcontracting.** This Contract may not be assigned to any other entity, and no additional subcontracting is allowed without the express consent of the District and approval of the Service. Use of standard fulfillment and production services (e.g., printing, assembly, couriering) is not considered subcontracting under this provision.



**Safety and Protection.** Contractor must maintain and supervise all necessary safety precautions and programs in connection with the performance under this Contract.

**Title to and Management of Equipment.** In the event any funds provided under Agreement are for the purchase or acquisition of any equipment, such equipment will be returned to the District at the end of the Contract.

**Intellectual Property.** Grant of License. With respect to such Intellectual Property *produced* by the Contractors, or Contractor's employees related to and during the course of performance under the Contract, Contractor hereby grants to the District and the Service (i) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use documentation, and (ii) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for the District's and Service's purposes, to the extent Contractor possesses and has the legal right to convey such license.

**Intellectual Property.** Modification; Derivative Works. The District shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for the District's own purposes and use, through the services of its own employees or independent contractors. The District shall own all Intellectual Property Rights to such modifications. The Contractor shall not incorporate any such modifications into its Intellectual Property for distribution to third parties unless it first obtains a license or other approval from the District. Contractor will comply with all Laws and Regulations relating to Intellectual Property.

**Data and Publicity.** Data and other information developed under this Contract shall be furnished to the District and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code §552 ("Act"). Upon termination of this Contract, copies of data and information shall be furnished upon request, to include data bases prepared using funds provided under this Agreement, and become the property of the District.

**Venue.** This agreement will be construed according to the laws of the State of Texas, and will be adjudicated as necessary in a court of competent jurisdiction in Travis County, Texas.

The parties have executed this agreement in Austin, Texas, to be effective on the 1st day of July, 2011, without regard to the actual date signed below.

**Barton Springs/Edwards Aquifer  
Conservation District:**

  
W F (Kirk) Holland  
General Manager of District

8/30/11  
Date

**Hicks & Company, Inc.  
Contractor:**

  
Roy Frye  
Principal of Contractor

8-1-2011  
Date




Attest:

  
\_\_\_\_\_  
Craig Smith  
Board Secretary

8/31/11  
Date

Approved as to Form:

  
\_\_\_\_\_  
William D. Dugat, III  
Counsel

Aug 31, 2011  
Date



**Exhibit A**  
**Detailed Scope of Work**



**Scope of Work to Complete an EIS for the  
Barton Springs – Edwards Aquifer  
Conservation District Habitat Conservation Plan  
July 11, 2011**

*This Scope of Work (SOW) identifies Tasks and Subtasks required to complete a Draft and Final Environmental Impact Statement for the Barton Springs – Edwards Aquifer Conservation District (District) Habitat Conservation Plan and assist the U.S. Fish and Wildlife Service (FWS) in the preparation of a Record of Decision for the issuance of a Section 10(a)1(B) Incidental Take Permit under the Endangered Species Act of 1973.*

*The DEIS and FEIS documents will be prepared in consultation with the Austin office of the U.S. Fish and Wildlife Service to assure compliance with Service policies and guidelines, and provisions of the National Environmental Policy Act. Preparation of the District's HCP will be completed as a separate document and is not included in this scope of work. This scope of work assumes environmental consequences for three alternatives will be evaluated in the EIS: a No Action Alternative, the Preferred HCP Alternative, and another alternative that is reasonable, and could be adequately evaluated with the other two alternatives. Format of the draft and final EIS will generally follow the format of the "Draft Habitat Conservation Plan and Preliminary Draft Environmental Impact Study dated August 2007, except that the District's HCP will not be included as an EIS chapter. The content and format of information presented in the DEIS and FEIS will be revised and updated in consultation with the FWS and to maintain compatibility with the District's preferred HCP.*

*The following Tasks and Subtasks are described as follows.*

**Task 1. Project Management and Coordination**

**Subtask 1.1 Meetings with Fish and Wildlife Service and District Staff**

*Occasional meetings will be required with District staff and FWS to identify status of project work, documentation needs, issues, and information requests that require attention by either District staff or FWS. Notes concerning work items of discussion will be prepared for each meeting under this subtask. Assumes a total of 20 billable hours for meeting discussions (Assumes 5 meetings @ 2 hrs per meeting attended by two Hicks & Company staff members).*

*Subtask 1.2 Project Coordination and Management. The Hicks & Company Project Manager (PM) will serve as the primary point of information transfer for Hicks & Company in development of the EIS. The PM will coordinate meetings, establish schedules, and gather and distribute information pertinent to specific project activities and team member needs. A schedule depicting completion of a Draft and Final EIS will*



be developed for the project. This task will also include coordination to assure completion of tasks and subtasks according to the established schedule, and approved budget; quality control of approved write-ups; and supervision of monthly invoicing.

*Subtask 1.3 Project Scoping.* The FWS indicates that additional scoping may be needed. This subtask will include coordination, preparation, attendance, and documentation associated with additional scoping to document any new issues identified subsequent to the previous scoping in 2005. This will include assisting the FWS in the preparation of legal notices, meeting preparation, and attendance at one scoping meeting. A memorandum summarizing the Scoping Meeting will be developed, as may be required for NEPA compliance in consultation with the FWS.

## **Task 2. Preparation of the Initial DEIS**

*Subtask 2.1. Review Preliminary Documents Prepared in 2007 to Identify Required Updates.* The "Draft Habitat Conservation Plan and Preliminary Draft Environmental Impact Study dated August 2007 with appendices will be reviewed by selected staff. The review will be conducted to identify contents that will require changes, revisions, or updates.

*Subtask 2.2 Revise Purpose and Need (Chapter 1) Revise according to updated developments as needed or required and incorporate results of additional scoping.*

*Subtask 2.3 Revise Descriptions of Alternatives and Alternative Comparisons (Chapter 2). This subtask will be completed with guidance and consultation provided by FWS.*

*Subtask 2.4 Revise Baseline Descriptions of Existing Conditions (Chapter 3*  
*Components of the affected environment will be updated from the original preliminary draft and will include the following sections:*

- a. Physical Environment*
  - (1) Climate and Climate Change*
  - (2) Geology*
  - (3) Soils*
- b. Water Resources*
  - (1) Surface Water*
  - (2) Groundwater*
  - (3) Water Demand*
- c. Biological Resources*
  - (1) Regional Flora and Fauna*
  - (2) Animal & Plant Species in the Edwards Aquifer, Barton Springs, and Karst Ecosystems*
  - (3) Species Addressed by the Section 10(A) Permit*



*(4) Other Species of Concern*

- d. Demographics - includes population growth, population projections, and population density*
- e. Economics – includes government, services, trade, transportation and utilities, manufacturing, natural resources and mining, recreation and tourism*
- f. Land Use – includes residential, commercial, office, industrial, civic, open space, transportation and utilities, underdeveloped and growth potential.*
- g. Agriculture – includes production and irrigation water use.*
- h. Cultural Resources – Includes regulatory compliance and cultural history of Barton Creek and Barton Springs*
- i. Air Quality – Includes pollutant dispersal characteristics, regional compliance standards, pollutant data, and prescribed burning.*

*Subtask 2.5 Team Review of Existing Conditions Documents*

*All revised baseline sections will be internally reviewed to assure consistency with scope of work, applicability to baseline conditions, and elimination of duplication of information and/or effort within EIS document sections.*

*Subtask 2.6 Corrections to Existing Conditions Documents*

*Corrections will be made to the baseline description revisions and updates according to comments and edits noted in the Subtask 2.5 Review.*

*Subtask 2.7 Revise Environmental Consequences (Chapter 4)*

*Impacts of each of the evaluated alternatives will be updated and revised according to the specific environmental components described under Subtask 2.4 and will include:*

- a. Physical Environment*
  - (1) Climate and Climate Change*
  - (2) Geology*
  - (3) Soils*
- b. Water Resources*
  - (1) Surface Water*
  - (2) Groundwater*
  - (3) Water Demand*
- c. Biological Resources*
  - (1) Regional Flora and Fauna*



*(2) Animal & Plant Species in the Edwards Aquifer, Barton Springs, and Karst Ecosystems*

*(3) Species Addressed by the Section 10(a) Permit. Evaluation of this component assumes open communication with scientific investigators who have conducted recent studies and follow-up to any scientific reports that have been prepared for the project.*

*(4) Other Species of Concern*

*d. Demographics*

*e. Economics*

*f. Land Use*

*g. Agriculture*

*h. Cultural Resources*

*i. Air Quality*

*Subtask 2.8 Indirect and Cumulative Impact Assessment*

*An assessment of indirect and cumulative impacts will be prepared according to latest guidance provided by the FWS and Council on Environmental Quality (CEQ). Includes implications and potential effects of climate change on other impacts.*

*Subtask 2.9 GIS Support of Initial Draft*

*This subtask involves the production of maps and graphics to support narrative descriptions.*

*Subtask 2.10 Word Processing Support for the Initial Draft*

*Subtask 2.11 Team Review of Revisions to Environmental Consequences (Chapter 4).*

*Impact assessments for each environmental component subsection will be reviewed by the Program Director of the originating program (ecology, archeology, urban planning) and project manager for accuracy, completeness, and applicability to the scope of work.*

*Subtask 2.12 Revise and Update Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity (Chapter 5).*

*Subtask 2.13 Complete revisions and updates to the remaining EIS chapters.*

*Updates will be completed for Coordination and Consultation (Chapter 6), List of Preparers (Chapter 7), References Cited (Chapter 8), Glossary of Terms and Acronyms (Chapter 9), and Index (Chapter 10).*

*Subtask 2.14 Internal Quality Review. Completed narrative text with referenced figures and tables will be reviewed for quality control and assurance.*



*Subtask 2.15 Submit initial DEIS to the FWS.*

### **Task 3. Review by the FWS**

*Subtask 3.1 this subtask will include coordination and communication to discuss and address FWS comments on the Initial Draft EIS.*

### **Task 4. Public Review of DEIS**

*Subtask 4.1 Prepare and Submit DEIS to FWS. A complete DEIS document for will be assembled for public review based on revisions and comments provided by the FWS.*

*Subtask 4.2 Prepare Notice of Availability of Draft EIS/Federal Register Notice. Assistance will be provided to the FWS in preparing the NOI and Federal Register Notice for the availability of the DEIS.*

*Subtask 4.3 Project Meeting to Discuss Public Review Comments Received*

### **Task 5. Prepare Draft Responses to Public Comments**

*Designated staff will prepare draft responses to public comments received according to the type of response and subject matter discussed.*

*Subtask 5.1 Review of Draft Responses by FWS.*

*Subtask 5.2 Revisions of Draft Responses. Draft responses to public comments will be revised as needed according to comments, corrections and suggestions provided by the FWS and internal review by team members.*

### **Task 6. Preparation of FEIS.**

*This task involves assembling a Final EIS document reflecting approved changes and revisions to the DEIS document and all appropriate response to public comment.*

*Subtask 6.1 GIS Support for the FEIS. This subtask involves the production of maps and graphics to support narrative descriptions will be included in this subtask.*

*Subtask 6.2 Word Processing Support for the FEIS is included in this subtask.*

*Subtask 6.3 Notice of Availability/Federal Register Notice. Assistance will be provided to the FWS in preparing the NOI and Federal Register Notice for the availability of the Final HCP/EIS.*

*Subtask 6.4 Thirty Day Waiting Period*

### **Task 7.0 Prepare Record of Decision/Federal Register Notice**

*Assistance will be provided to the USFWS in preparing a Record of Decision and Federal Register Notice for the Section 10(A)(1)(b) Application*



*Subtask 7.1 Finalize Section 7 Consultation. Assistance will be provided in completing any required coordination or action involving Section 7 Consultation.*



**Exhibit B**  
**Tripartite Responsibilities Agreement**



**STATEMENT OF RESPONSIBILITIES  
REGARDING PREPARATION OF EIS  
FOR THE BARTON SPRINGS/EDWARDS AQUIFER  
CONSERVATION DISTRICT REGIONAL HCP**

A. Purpose

1. THIS STATEMENT OF RESPONSIBILITIES (Agreement) is between Barton Springs/Edwards Aquifer Conservation District, a local agency of the State of Texas, authorized and operating under Texas Water Code, Chapter 36, and Special District Local Laws Code, Chapter 8802, hereinafter referred to as "BSEACD", the United States Fish and Wildlife Service "USFWS", and Hicks & Company, an environmental and archaeological consulting firm, hereinafter referred to as "Contractor." The BSEACD and USFWS are hereinafter referred to collectively as the "Lead Agencies."
2. The BSEACD is developing a Regional Habitat Conservation Plan for its jurisdictional area, including southern Travis, northern Hays, and western Caldwell Counties, Texas, (HCP), and intends to apply to the USFWS for permits under Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (ESA).
3. The USFWS has determined that an Environmental Impact Statement (EIS) must be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) (NEPA). This process is necessary prior to making a decision on the Section 10 permit action for the BSEACD HCP, in accordance with 50 CFR parts 13, 17.22, 17.32, and 222.307. The EIS must comply with all provisions of NEPA and all implementing regulations for the USFWS.
4. An EIS can be prepared by the USFWS or a consultant acting under the direction of the USFWS in accordance with 40 CFR 1506.5(c) and 516 DM 6, Appendix 1.3. When a consultant prepares an EIS, the consultant shall prepare a disclosure statement for inclusion in the draft and final EIS to ensure the avoidance of any conflict of interest.
5. The Contractor reports directly to the Chief of the Consultation and Habitat Conservation Planning Branch of the USFWS in the Austin Ecological Services Field Office. The requirements of 40 CFR 1506.5(c) relating to conflicts of interest must be followed.
6. The Lead Agencies require services for the preparation of the BSEACD HCP EIS; and the Contractor is willing to perform these services pursuant to the terms and conditions set out in this Agreement.
7. It is the purpose of this Agreement to establish an understanding between the parties regarding the procedures to be followed and the responsibilities of the parties in the preparation of the EIS.

B. Requirements for Preparation of the EIS



1. *General Requirements.* A number of requirements are set forth in 40 CFR 1500-1508, Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA relating to USFWS compliance with NEPA for their own actions. Additional requirements are set forth in 516 DM 1-8, Department of the Interior's (Departmental) Manual, 032 FW 5, Fish and Wildlife Service Manual, and 550 FW 1-3, relating to USFWS compliance with NEPA for its own actions, including the preparation of a joint permit EIS by a consultant chosen by the Lead Agencies. The parties agree to satisfy each of these requirements as set forth below.
2. *Control of Contractor.* Contractor agrees to report directly to the USFWS. Although the Consultant will be paid by Applicant (BSEACD in this case), Contractor is obligated to follow the directions of the USFWS in regards to NEPA. The USFWS shall make the final determination on the inclusion or deletion of any material in the EIS for purposes of satisfying NEPA requirements. The USFWS is ultimately responsible for assuring compliance with the requirements of NEPA. The BSEACD agrees to enter into an Agreement for Professional Services (Contractor Agreement) with the Contractor that is consistent with the terms of this Agreement. The Contractor Agreement will specify work tasks and deliverables to complete the EIS.
3. *Disclosure Statement.* Contractor cannot have a financial or economic interest in the outcome of the Project. Contractor agrees to execute the Disclosure Statement attached hereto as Attachment.
4. *Payment of Contractor.* BSEACD agrees to pay Contractor for all services rendered in the preparation of the EIS. Contractor agrees that the USFWS is not obligated in any manner to pay for the services rendered by Contractor in relation to the Project. The Lead Agencies will jointly authorize changes in the scope of work. The BSEACD will pay any additional costs for changes in the scope of work.
5. *Scope of EIS.* The general scope of the EIS will be determined through the scoping process. This scope may be amended from time to time in order to better satisfy the requirements under NEPA and their implementing regulations. Contractor will be responsible for organizing public meetings, compiling scoping comments and providing scoping updates to the Lead Agencies.
6. *Schedule of EIS Preparation.* The anticipated schedule for the preparation of the EIS will be set forth in coordination with all parties. The parties agree to use their best efforts to meet this schedule. The schedule may be revised from time to time as necessary to reflect changes in conditions and requirements.
7. *Draft EIS.* Contractor will have the primary responsibility for writing and revising the EIS at the direction of the Lead Agencies. The Lead Agencies will be given the opportunity to comment on and make changes to the EIS at agreed upon stages of its development and completion as set forth in the Schedule of EIS Preparation described in section (B)6 above. The



requirements for production of the Administrative Drafts, Draft, and Final EIS and deliverables are specified in the Contractor Agreement. The Contractor will be responsible for providing sufficient copies of the documents on a timely basis to meet the Lead Agencies' circulation requirements. The USFWS will be responsible for filing the draft EIS with the Environmental Protection Agency (EPA) for publication of its Notice of Availability in the Federal Register.

8. *Public Meetings and Comments.* The Contractor will be responsible for compiling all public comments. Upon completion of the Draft EIS, the Contractor will be responsible for organizing any necessary public meetings and/or hearings. The Lead Agencies will receive all comments on the draft EIS resulting from public review and comment period(s), and will refer them to the Contractor for development of responses. The Contractor will be responsible for drafting initial responses to public comments.

9. *Final EIS.* After the close of the draft EIS review and comment period, the Lead Agencies will identify the issues and comments that will require response in the final EIS. The Lead Agencies will refer to Contractor these comments for analysis and reply. The Lead Agencies will determine the necessary modifications to the draft EIS. The Contractor will incorporate the comments, responses and modifications into the final EIS. The Lead Agencies will review the completed document and file the final EIS with EPA.

10. *Decision.* Not less than 30 days after the final EIS is filed with the EPA, the USFWS will prepare a Record of Decision (ROD) and render a decision on the permit application

C. Termination and Modifications

1. This Agreement remains in effect until a decision is made on the Section 10(a)(1)(B) permit or until the permit requests are withdrawn.

2. Any party may terminate this Agreement at any time by giving written notice to the other parties.

3. This Agreement may be modified or amended only by written instrument signed by all of the parties hereto.

D. Notice

Any notice or communication that any party desires or is required to give to the others shall be in writing and be served personally or sent by first class mail, postage prepaid, addressed as follows:

APPLICANT: Barton Springs/Edwards Aquifer Conservation District  
1124 Regal Row  
Austin TX 78748

USFWS: U.S. Fish and Wildlife Service



Austin Ecological Services Field Office  
10711 Burnet Road, Suite 200  
Austin, Texas 78758

CONTRACTOR: Hicks & Company  
1504 W. 5<sup>th</sup> Street  
Austin, TX 78703

The parties have executed this Agreement on June 30, 2011. If the Contractor is a corporation, documentation must be provided that the person signing below for the Contractor has the authority to do so.

Barton Springs/Edwards Aquifer Conservation District  
Kirk Holland  
General Manager

By:



Hicks & Company  
Contractor

By:



UNITED STATES FISH AND WILDLIFE SERVICE

By:



Adam Zerrenner  
Field Supervisor, Austin Ecological Services Field Office



**Exhibit C**  
**Hourly Labor Rates To Be Used In Billing**



## Hourly Rates of Billable Labor Categories

Billing Category	Hourly Rate
Senior Environmental Scientist II	\$157.25
Environmental Scientist II	128.13
Environmental Scientist I	116.48
Environmental Professional II	104.83
Environmental Professional I	101.92
Environmental Staff III	87.36
Biological Consultant, Senior	75.00
Environmental Staff II	69.88
Environmental Staff I	64.06
Environmental Technician III	58.24
Word Processing/Admin Support	<del>43.68</del> 55.33
Socioeconomics Consultant, Junior	40.00

RGF 11/14



**Amendment No. 2 to the Contractual Agreement for Environmental  
Document Preparation Services Between  
Barton Springs/Edwards Aquifer Conservation District  
and  
Hicks & Company**

This is Amendment No. 2 to the contract ("Agreement") between the Barton Springs/Edwards Aquifer Conservation District ("District"), and Hicks and Company ("Contractor") dated July 1, 2011 and amended January 9, 2014. This amendment, effective August 28, 2014 restates the fees and extends the term of the Agreement. All other provisions will remain as is in the existing Agreement, as amended.

Amendment No. 2 is entered into by the District and the Contractor as evidenced by the signatures below. Except as specified in this Amendment, all other provisions of the Contractual Agreement as previously amended continue. Sections II and III of the Agreement are amended as follows.

**Section II  
Scope, Compensation and Deliverables**

**Compensation**

The Contractor will be paid on a time-and-materials basis. The total fee for all tasks, inclusive of all direct and indirect costs and fee/profit, including labor, sub-consultants, telephone charges, travel, certain copying and printing costs, but exclusive of publication cost of the final version of the Draft EIS and final version of the Final EIS, to be incurred during the term of this Agreement, as amended shall not exceed \$32,748.33, without the expressed, prior, written agreement of the District. Contractor is authorized to perform work through August 31, 2015.

Fees for labor expenses will be based on hours actually worked to the direct benefit of this particular project, and will be billed according to the labor rates in Exhibit C, which Contractor warrants are the most favorable rates offered to governmental entities. Contractor will invoice the District monthly, along with summary information on project-hours expended and other direct costs incurred, and the District agrees to promptly pay Contractor at its office in Travis County, Texas, the full amount of each such invoice that is not in dispute. The District shall have the right to request and receive additional information to support any invoiced charges. The date upon which the invoice becomes due and payable and the interest rate to be paid by the District for an overdue payment shall be determined by Chapter 2251 of the Texas Government Code. Should this Contract be extended beyond August 31, 2015, then District and Contractor may re-negotiate the hourly rates of Exhibit B, to reflect the then-prevailing hourly rates for similar work.

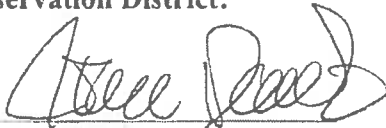


**Section III  
Term**

The Contractor will continue work under this agreement, as amended, which originally commenced on or before July 1, 2011, and the work will be completed in accordance with the provisions in Section II. The Agreement shall remain in full force and effect until August 31, 2015, unless terminated earlier by either party upon 15 days written notice. Contractor expressly acknowledges that the funds for this work are budgeted and authorized by the District only on a single fiscal-year basis, and continuing work under this Contract must be re-authorized as of each September 1. Under this amendment, work is authorized and budgeted through August 31, 2015, subject to the total not-to-exceed cost limitation in the Compensation subsection of Section II of this Agreement. In the event of termination Contractor will deliver to the District, all notes, memoranda, reports, maps, digital files, studies, plans, written analysis and other work in whatever form it may then exist, performed and paid for under this Contract, and District will pay Contractor for all work performed or irrecoverably committed as of the date of termination of the Agreement. All work performed and paid for under this Agreement shall be the property of the District.

The parties have executed this agreement in Austin, Texas, to be effective on the 28<sup>th</sup> day of August, 2014, without regard to the actual date signed below.

**Barton Springs/Edwards Aquifer  
Conservation District:**

  
John T. Dupnik  
General Manager of District

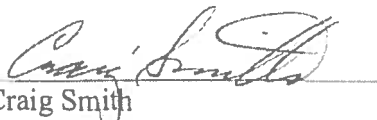
9/11/14  
Date

**Hicks & Company  
Contractor:**

  
Roy S. Frye  
Senior Project Manager


9-15-14  
Date

**Attest:**

  
Craig Smith  
Board Secretary

8/28/14  
Date

**Approved as to Form:**

  
William D. Dugat, III  
Counsel

9/11/14  
Date



## Chronology of Events, Tasks, and Activities to Develop the EIS

February 5, 2015

**Red Items are additional services that were performed, but not included in the original Scope of Work**

July 1, 2011	<p>Effective date of Contract with approved SOW dated July 11, 2011 and Fee (\$137,408), with work terminating no later than August 31, 2014.</p> <p>Specific tasks and associated cost estimates were based on making revisions and updates to an older draft Environmental Impact Study that was prepared by Hicks &amp; Co. for the BSEACD in combination with the District's HCP. This combined document was submitted to the USFWS in 2007. The 2007 combined draft HCP/EIS document included <u>three</u> evaluation alternatives and a study area covering portions of <u>five</u> counties. The Hicks &amp; Co. SOW dated July 11, 2011 specified three alternatives and assumed the study area would also remain the same by covering portions of five counties.</p>
July 2011	<p>Updates began on the environmental baseline information (Chapter 3) based on old (2007) study area boundaries. Some data for demographics, land use and water demand data had been compiled by Dr. Kent Butler's student associates who had been previously working on the HCP and EIS for the BSEACD.</p>
August 2011	<p>At the request of the BSEACD, subcontracts were developed with Dr. Wendy Gordon and Zac Stern (one of Dr. Butler's student associates) to complete updating climate change, water quality, biological, and socio-economic/demographic baseline data.</p>
September 2011	<p>Initial climate change and water quality updated drafts were received from Dr. Wendy Gordon, while demographics and land-use write-ups were provided from Zac Stern. Balance remaining by September 25, 2011 = \$132,516.36.</p>
January 2012 – April 2012	<p>Updates continued for affected environment baseline information (Chapter 3) as more current data became available. In addition, updates and revisions to Chapter 1, Purpose and Need were completed. Balance remaining by April 25, 2012 = \$114,937.46</p>
May 2012 – Oct 2013	<p>During this 17-month period, little work was performed as most updates to available baseline data were completed and we were waiting for a description of alternatives to be evaluated including the preferred HCP.</p>
Nov 6, 2013	<p>The first planning meeting occurred with the USFWS. At this meeting, the outline for the NEPA environmental document was provided by the</p>



USFWS indicating **four EIS alternatives were to be evaluated instead of three as stated in the SOW**. Evaluation of three alternatives was stated in the approved SOW dated July 11, 2011. Balance remaining by November 25, 2013 = \$110,452.91.

Nov 26, 2013

The USFWS requested that the NEPA analysis encompass the HCP planning area and any other areas that could be affected by the issuance of the Section 10A Permit. **The BSEACD had increased the size of the HCP planning area from portions of five counties described in the combined 2007 DHCP/EIS draft document to portions of seven counties in order to cover all of the contributing and recharge zones of the Barton Springs Segment of the Edwards Aquifer.** Because the 2011 SOW assumed the NEPA study area to be the same as the 5-county study area evaluated in the 2007, **the additional time needed to evaluate the enlarged NEPA study area was not included in the original fee estimate.**

November 2013 –  
July 2014.

**Additional work was performed for the affected environment (Chapter 3) to account for an enlarged study area from the old (2007) 5-county study area to the new 7- county study area. Due to passage of time, additional updates were also required to incorporate release of new biological information including updates to T&E listings by the TPWD and USFWS, and new available socio-economic data, from the Texas Water Development Board and Texas State Data Center.**

January 13, 2014

**Hourly billing rates were increased for Hicks & Co staff and Dr. Wendy Gordon as allowed per contract provisions.**

July 2014

Dr. Gordon completed 2<sup>nd</sup> round of updates to the 2011 climate change report to incorporate latest climate change literature findings (first round completed in September 2011).

July 2014

Dr. Gordon completed revisions to water quality write-ups. Discussions began in July to extend the contract agreement beyond August 31, 2014. An e-mail was sent from Roy Frye (PM) to John Dupnik dated July 21 indicating an estimated balance by the end of July of \$55,000, but the number of hours billed between June 25 and July 25 was higher than anticipated (\$12,966.28) leaving an actual balance by July 25 (\$48,451.05) that was much lower than expected.

August 2014

Updates of affected environmental baseline information remained on-going. Balance remaining by August 25 = \$32,748.33

Sept 15, 2014

Because completion of the Service's EIS was dependent on information provided in the District's HCP, delays in the HCP schedule affected



progress of the EIS. When it became apparent that the HCP would not be completed by August 31, 2014, the Hicks contract was extended from August 31, 2014 to August 31, 2015, with a not-to-exceed amount of \$32,748.33 (equivalent to the balance remaining by August 25, 2014).

- September 2014 Not until this time was sufficient biological information developed for the HCP to allow detailed analysis/documentation of environmental consequences from each of the four EIS alternatives (Chapter 4) on the Barton Springs and Austin blind salamanders. Descriptions of HCP measures (EIS Alternative 2) were updated as revised versions of the HCP were electronically posted on the District's website; and updates were completed for remaining EIS Chapters 5, 6, 7, and 8. Balance remaining by September 25, 2014 = \$11,677.07
- October 2014 Write-ups continued for Environmental Consequences (Chapter 4). Balance remaining by October 25, 2014 = \$2,734.71
- November 2014 Write-ups continued for Environmental Consequences (Chapter 4); **Quality Control (QC) reconciliations were required between HCP Appendix J (Projected frequencies of springflow levels and resulting dissolved oxygen concentrations) and the EIS Table 4-2 and associated text to ensure consistency and compatibility with the draft HCP. At least five versions of the data (versions dated 3-4-14, 3-17-14, 7-9-14, 8-7-14, and 8-20-14 were reviewed with subsequent reconciled EIS revisions.** (No invoice was submitted for November).
- December 2014 All DEIS write-ups were completed including required reconciliations between HCP Appendix J (Projected springflow and resulting Dissolved Oxygen concentrations [version 12-1-14]) and the DEIS environmental consequences sections. Final QC edits were made and draft document production was completed.
- December 8, 2014 Electronic files for the DEIS were delivered to the USFWS with copies to the BSEACD. Balance remaining by December 14, 2014 = 0.

**Billed time over contract amount (overhead) = \$2,734.71**

**Additional Estimated Unbilled time (unclaimed overhead) = 48 hours x \$133.26/hr = \$6,396.48**

The following table compares the number of revisions and updates that were expected or assumed for each of the EIS document sections in the SOW with the actual number of revisions and updates that were completed. Completed revisions and updates that were higher than those expected are highlighted in red. Additional revisions/updates were caused by an increase in the size of the study area, passage of time during the course of HCP development, and changes to HCP measures that required revisions to the EIS descriptions of biological effects.



<b>Task #</b>	<b>Task Name</b>	<b>Number of Revisions/Updates Assumed in Scope</b>	<b>Number of Revisions/Updates Completed</b>
2.2	Revise Chap 1, Purpose & Need	1	1
2.3	Revise Chap 2, Descriptions of Alternatives & comparisons	1	1
<b>2.4 Revise Chap 3, Affected Environment</b>			
2.4.a	Physical Environment	1	<b>2</b>
2.4.b	Water Resources	1	<b>2</b>
<b>2.4.c Biological Resources</b>			
2.4.c (1)	Regional Flora and Fauna	1	1
2.4.c (2)	Animal & Plant Species in Aquifer Sys	1	<b>2</b>
2.4.c (3)	Species Addressed by Section 10A permit	1	<b>3</b>
2.4.c (4)	Other Species of Concern incl. T&E	1	<b>3</b>
2.4.d	Demographics	1	<b>3</b>
2.4.e	Economics	1	<b>3</b>
2.4.f	Land Use	1	<b>2</b>
2.4.g	Agriculture	1	<b>2</b>
2.4.h	Cultural Resources	1	<b>2</b>
2.4.i	Air Quality	1	<b>2</b>
<b>2.7 Revise Environmental Consequences</b>			
2.7.a	Physical Environment	1	1
2.7.b	Water Resources	1	1
<b>2.7.c Biological Resources</b>			
2.7.c (1)	Regional Flora and Fauna	1	1
2.7.c (2)	Animal and Plant Species in Aquifer Sys	1	1
2.7.c (3)	Species Addressed by Section 10A Permit	1	<b>5</b>
2.7.c (4)	Other species of concern incl. T&E	1	<b>3</b>
2.7.d	Demographics	1	1
2.7.e	Economics	1	1
2.8	Indirect and Cumulative Impact Study	1	1

In summary, expenditure of the total approved budget resulted from a combination of the following factors:

- 1) The alternatives to be evaluated were changed from three as stated in the SOW to four.
- 2) The EIS study area was enlarged to include portions of seven counties rather than five assumed in the SOW.
- 3) Hourly billing rates were increased in January 2014 as allowed by contract provisions. Delays in development of the HCP required updated data compilation and additional



revisions to previously prepared EIS text and tables at higher billing rates than those used in the original fee estimate, while the total fee allowed by the contract was not adjusted.

- 4) At least five reviews of predicted springflow and dissolved oxygen data spreadsheets developed for the HCP were needed to ensure compatibility of the data between the DEIS and the DHCP and resulting potential affects to the Barton Springs salamander, which resulted in an equivalent number of text and graphics reviews and some required revisions.
- 5) The analysis of environmental consequences of the four EIS alternatives for the Barton Springs and Austin Blind Salamanders (the main component of the EIS document) could not be completed until September 2014. Because this required a substantial effort of staff time for text and graphics preparation and subsequent review, the remaining balance declined to \$11,677.07 by the end of September 2014.
- 6) Of the total approved budget (\$137,408), 45% (\$61,417.33) was billed during the months July – Dec 2014. Due to the high rate of billing occurring during this time it was difficult to predict accurately remaining balances until monthly invoicing was completed. Projected balance of remaining funds estimated in July 2014 proved to be substantially underestimated.



**Hicks & Company**  
**BSEACD Environmental Document Preparation Services**  
**Summary of Monthly Invoices for Project # 11047**

<b>Contract Total</b>		<b>\$137,408.00</b>		
Date	Invoice #	Amount	Balance Remaining	
9/25/2011	1	\$4,891.64	\$	132,516.36
10/25/2011	2	\$400.00	\$	132,116.36
11/25/2011	3	\$7,559.67	\$	124,556.69
12/25/2011	4	\$5,507.50	\$	119,049.19
1/25/2012	5	\$2,830.43	\$	116,218.76
3/25/2012	6	\$768.78	\$	115,449.98
4/25/2012	7	\$512.52	\$	114,937.46
3/25/2013	8-rev	\$1,153.17	\$	113,784.29
11/25/2013	9	\$3,331.38	\$	110,452.91
12/25/2013	10	\$5,192.07	\$	105,260.84
1/25/2014	11	\$6,780.20	\$	98,480.64
2/25/2014	12	\$17,226.72	\$	81,253.92
3/25/2014	13	\$12,158.91	\$	69,095.01
4/25/2014	14	\$4,835.94	\$	64,259.07
5/25/2014	15	\$1,139.74	\$	63,119.33
6/25/2014	16	\$1,702.00	\$	61,417.33
7/25/2014	17	\$12,966.28	\$	48,451.05
8/25/2014	18	\$15,702.72	\$	32,748.33
9/25/2014	19	\$21,071.26	\$	11,677.07
10/25/2014	20	\$8,942.36	\$	2,734.71
12/14/2014	21	\$2,734.71		\$0.00
<b>Total</b>		<b>\$137,408.00</b>		



## **Item 4**

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

- f. Discussion and possible action related to pursuit of the District's legislative agenda.**



## **Item 5**

### **Adjournment**