

## NOTICE OF OPEN MEETING

Notice is given that a **Regular Meeting and Work Session** of the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District will be held in the District office, 1124 Regal Row, Austin, TX, on **Thursday, February 13, 2014**, 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. **Work Session.**

The Board will hold a work session to hear an overview of the Habitat Conservation Plan (HCP) process and review Chapters 1 through 4 of the review draft of the District's Regional HCP.

4. **Routine Business.**

- a. **Consent Agenda.** *(Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as a separate item of Regular Business on this agenda.)*

1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000. **Not for public review**
2. Approval of minutes of the Board's November 21, 2013 Work Session and Special Called Meeting and January 23, 2014, Regular Meeting. **Not for public review at this time**
3. Approval of execution of a contract with Bryan Brooks to provide services related to supporting the District's ongoing work to finalize a Regional HCP and apply for a federal Incidental Take Permit from the U.S. Fish & Wildlife Service for the endangered salamander species at Barton Springs.

- 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. 117**
- 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 the progress of area roadway projects,
- v. Update on Senate and House Natural Resource Committee interim charges.  
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- c. Directors' Reports.** *(Note: Directors' comments under this item cannot address an agenda item posted elsewhere on this agenda and no substantive discussion among the Board Members or action will be allowed in this meeting. Communications reported under this item may be used to support Performance Standard 4-1 of the District's Management Plan related to demonstration of effective communication with District constituents.)*

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

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

**5. Discussion and Possible Action.**

- a. Discussion and possible action related to initial direction or input to staff on the District's review draft of the Regional HCP. **NBU**
- b. Discussion and possible action related to the Hill Country Priority Groundwater Management Area (PGMA). **Pg. 137**

**6. Adjournment.**

Came to hand and posted on a Bulletin Board in the Courthouse, Travis County, Texas, on this, the \_\_\_\_\_ day of February, 2014, 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**

#### **Work Session**

**The Board will hold a work session to hear an overview of the Habitat Conservation Plan (HCP) process and review Chapters 1 through 4 of the review draft of the District's Regional HCP.**

## **Item 4**

### **Routine Business**

#### **a. Consent Agenda**

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

- 1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000.**
- 2. Approval of minutes of the Board's November 21, 2013 Work Session and Special Called Meeting and January 23, 2014, Regular Meeting.**
- 3. Approval of execution of a contract with Bryan Brooks to provide services related to supporting the District's ongoing work to finalize a Regional HCP and apply for a federal Incidental Take Permit from the U.S. Fish & Wildlife Service for the endangered salamander species at Barton Springs.**

## **Item 4**

### **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 the progress of area roadway projects,**
- v. Update on Senate and House Natural Resource Committee interim charges.**



**STATUS REPORT UPDATE FOR FEBRUARY 13, 2014, BOARD MEETING**

Prepared by District Team Leaders

		Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
<b>GENERAL MANAGEMENT TEAM</b>					
John Dupnik					
	JD	05-Feb-14	Meetings, Conferences, and Presentations	<p><b>External Meetings Attended:</b> Region K meeting; with City of Austin, Watershed Protection to receive input on stormwater controls for SH 45 SW; with Kent Butler Symposium planning committee; with Region K Chairman, John Burke; with Tommy Mathews on Industrial Asphalt WPAP modification; with Texas State GPP to discuss work on SH 45 SW; with Lucas Short on TXDOT consent decree; with Kevin Connolly (USFWS) to discuss HCP; GMA 10 meeting; with Texas Desal. Assoc./TAGD. <b>Other Meetings Attended:</b> with Board president to discuss Board meeting and other District business; with Director Dorsett to discuss boundary question; Webinar on "The Promise of Desal"</p>	
	JD	05-Feb-14	Ongoing Special Projects, Committees, and Workgroups	<p><b>Ongoing Special Projects:</b> Internal review of draft HCP; Wastewater Management Study coordination; Kent Butler Summit planning; Risk Management Plan development; Revising Seller's Disclosure Notices; supervise solicitation for review of irrigation demand methodology; District Boundary Review. <b>Committees and Workgroups:</b> Regional WQ Plan workgroup; TAGD legislative subcommittees on Brackish groundwater; Permitting, and ASR; Texas Desalination Association Brackish groundwater committee; GMA 10 committee on DFC explanatory reports; Region K committee on Legislation and Policy.</p>	
	JD	05-Feb-14	Routine Activities and Day-to-Day operations	<p><b>Routine Activities/Day-to-Day Operations:</b> provided general oversight of staff incentive projects and activities, and oversight of day-to-day operations; 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; supervised permitting and regulatory compliance staff and duties. <b>Consultation with Attorney on:</b> boundary question, Oyster enforcement case; TXDOT consent decree; PGMA Hearing and response. <b>Other Activities:</b> coordinate office closure due to inclement weather; supervise and coordinate with consultant on draft HCP comment and review; work with AS team leader on saline zone monitor well siting; interviews with media on Dripping Springs wastewater plans.</p>	
<b>GENERAL SERVICES TEAM</b>					
Dana Christine Wilson					
Accounts Receivable - A	DCW	07-Feb-14	Permittee accounts carrying a past due balance:	Jackie's with recurring nonpayment issues. Update: Previously reported as moved but that was in error. Jackie's has not moved. Just no longer in front building where there is now a church, but	
Accounts Receivable - B	DCW	07-Feb-14	January 16th billings for February monthly paying permittees mailed out January 13, 2014.	\$25,301.21.	
Accounting - General	DCW	06-Feb-14	Upgrade to Quickbooks 2014 from 2103	Dual user license.	
Banking - Citibank Accounts	DCW	07-Feb-14	Have been informed that Citibank has sold to BB&T and we will have to make this transition May.	This will affect many processes including District credit card, physical checks, direct deposits, to name just a few.	
Elections	DCW	07-Feb-14	Initializing RFQ process in search for an election consultant	In preliminary stage still. Having no luck on finding consultants prior to RFQ so back to RFQ process.	

	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
<b>Retirement Plan</b>	DCW	07-Feb-14	Our local representative, Jason Maxey, has moved up with the company and we will have a new account representative, Ernie Garcia.	Jason was an outstanding and very knowledgeable and helpful representative, and I will miss his presence.
<b>Financial Reporting - Website</b>	DCW	07-Feb-14	Most current, available financial reports are posted.	Transaction Detail by Account, Balance Sheet, and Profit and Loss Statement through December 31, 2013.
<b>Tax Reporting</b>	DCW	07-Feb-14	Completed end of year tax reporting.	1099s and 1096 for W-9s, C3 and 941, W-2s and W-3, W-2s due to employees by Jan 31 (completed 1/16/14), and due to SSA February 28 (mailed 1/17/14), 941 due Jan 31 (completed 1/17/14), 1099s due to vendors by Jan 31 (completed Jan 23). All have been submitted.
<b>Tax Reporting</b>	DCW	07-Feb-14	New reporting requirements from Texas Workforce Commission for quarterly unemployment insurance beginning with 1st quarter of 2014.	Reporting wages now must be done electronically ONLY, and payments also required to be made electronically so will be setting this up for next reporting period - April 2014.
<b>REGULATORY COMPLIANCE TEAM</b>				
John Dupnik				
<b>Enforcement</b>	JD, KBE, VE	13-Feb-14	Stephen Oyster (1825 Fortview Management LLC) dba Dons Grass	On 9/17/13 District staff conducted a site visit and inspection at Dons Grass located at 6240 Hwy 290 Austin, TX 78735. An inspection was conducted to inquire about the unpermitted well use and to touch base with the property owner. The well and operators of Don's Grass were previously the subject of a District enforcement action, which was informally resolved when the operators of Don's Grass rendered the well inoperable and declared their intent to relinquish the permit. The permit has since expired at which time the District continued to monitor the well's status. Staff has the determined the legal owners of the property ( Stephen Oyster and Jimmy Nassour) and has recommended enforcement. The District has made attempts to notify both owners of the pending investigation and has received no response from either. The NOAV was mailed on Nov 1st. On Nov 13, 2013 staff received a letter from Mr Nassour that acknowledged the receipt of the NOAV and their intentions to contest the allegations. No conversations have taken place to date. A meeting took take place on 1/9/14 between Mr. Nassour and District Staff. Mr. Nassour provided a followup response on 1/20/14. District Board approved the issuance of a final revised order on 1/23/14. The final revised order will be mailed to Mr. Nassour on 2/7/14.
<b>Drought Management</b>	JD, KBE, VE	13-Feb-14	Drought Compliance Monitoring and Enforcement	The District is not in drought. Enforcement efforts will focus on Tier 1 permittees permitted for over 2 million gallons will be reserved for those occurrences that are egregious and recurrent in nature (6 months or more and level B or greater).
<b>Wildflower Center</b>	JD, KBE, VE	13-Feb-14	Middle Trinity Well	District staff is still working with the WFC to bring the existing Middle Trinity well into compliance with the District's well construction standards. The WFC completed a two phase cleanout process which resulted in an improved flow rate of 30-40gpm. They have decided to proceed with further repairing the well annular seal and installing new liner casing. They plan to submit a production permit application in a few weeks.
<b>Industrial Asphalt</b>	JD, KBE, VE	13-Feb-14	Middle Trinity Well	Industrial Asphalt (Tommy Matthews) held a meeting with staff on 1/27/14 to inform the District that they will be requesting a WPAP modification and intend to start storing fuel onsite instead of trucking it in daily. During an audit it was determined that a parking lot and stock pile had been placed within the buffer area, therefore requiring the modification. District staff intends to look at EAAs storage tank rules for guidance and mentioned the need for more frequent sampling of Total Petroleum Hydrocarbons (TPH) once the fuel tanks are installed. Staff also inquired about the storage of the fine sediment from the dry process and were informed that most of it is incorporated back into road base or solid as select fill. However, staff intends to look at this more closely during the permittee inspection.

	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Farmland Operating Company - David Trotter	JD, KBE, VE	13-Feb-14	Middle Trinity Well	District staff determined the Farmland Operating System application to drill a well and produce from the Middle Trinity Aquifer, to be administratively complete on 9/17/13. The application details were presented to the Board of Directors on 10/24/13. The Board indicated concerns related to calculated volume and proposed use and recommended that the application be postponed to allow for a public hearing. A public hearing was held on 1/14/13. The applicant indicated that he would like to amend his application and requested to be permitted for a volume that would be commensurate with a new residential property on the vacant lot. The Board decided that because new information was being presented at the hearing that no action could be taken on the application at this time. The Board directed staff to further review the new application material and to communicate with the applicant on his options. Staff held a meeting to discuss options on how to proceed. The application was presented with new special provisions and was approved at the 12/12/13 Board meeting. Staff sent Mr. Trotter a followup email to provide him a recap about the details of the permit. Staff also informed him that when he has his application materials ready that can submit a minor amendment application.
Roy Seiders - Irrigation Well	JD, KBE, VE	13-Feb-14	Middle Trinity Well	Roy Seiders submitted an application for a Historic Trinity Production Permit to authorize withdrawals from a new nonexempt Middle Trinity Aquifer irrigation well. Staff is currently reviewing the application materials. The 180 application review period ends on 2/16/14.
Current Active Applications	JD, KBE, VE	13-Feb-14	Mike Kelly NDU; Daniel Triston Class C Conditional; Joseph Burke NDU; Roger Martinez NDU; Mr. Rangel NDU; Manchaca Methodist Church (Conversion to District Monitor Well); Roy Seiders - Middle Trinity Irrigation	Mr. Kelly intends to drill the second well soon. Staff has informed Daniel Triston that the District is no longer in drought and that the well drilling authorization will expire on 4/1/14. Mr. Triston has expressed interest in asking for an extension of the well drilling authorization. All other applications are not administratively complete and are currently under review.
<b>EDUCATION &amp; OUTREACH</b>				
Career Day	AA	30-Jan-14	What is Geology and Geo-Careers	Alan presented with John Mikels at Great Oaks Elem School in Pflugerville for their career day. The topic was "What is Geology & Geo-Careers"
Texas State SH 45 Project Overview & Data Meeting	RG, JD, BS, BL	29-Jan-14	Overview and Data References	Bob Larsen, John Dupnik, Brian Smith, and Robin Gary met with the Texas State University Governmental Partnership Program (GPP) staff working on the No Build Scenario for the SH 45 project to help direct them to possible data sources to use in their analyses. They have been tasked to analyze growth patterns, population estimates water quality, water demand, etc as if SH 45 were not built. This will allow CAMPO or TXDOT to compare statistics between a Build and a No Build scenario for the contravercial highway project. The GPP staff were very appreciative of the help to find data sources to use in their analysis. They said they would share their draft report with the District when it is completed in May of this year.
HoA Landscaping Codes Workshop	RG, AA, VE, GF, CS	25-Jan-13	BSEACD Area HoA Workshop	In collaboration with the Clean Water Fund, the District hosted a workshop to discuss the need for conservation and the how-to's for HoAs to incorporate more drought tolerant landscape design into their codes and ordinances. Approximately 20 people from 8 different HoA's attended. Discussion and questions showed a very engaged participants group.
LCRA Water Quality Advisory Committee	RG	21-Jan-14	Water Quality Advisory Committee Meeting	Formerly, these meetings have been referred to as Clean Rivers Program Steering Committees. Robin attended as the Aquifer District stakeholder. Meeting Topics were Regional water quality overview, impact of drought on water quality, Nuisance aquatic vegetation and invasive species, Improving Austin Streams - update on TMDL and Implementation Plan.

	Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Science Mill Water Exhibit Brainstorming Meeting	RG	31-Jan-14	3D Visualization Examples and Brainstorming meeting	In Johnson City, there is an effort to rehabilitate a old cotton gin and feed mill into a Science Museum. One aspect will be a converted silo that will cover water topics. The current brainstorm is to have it be a virtual theater capable of covering contamination, drought, flood, and water conservation scenarios.
Internet Traffic Report	RG	02-Jan-13	Page views and visits to the District Website	On the District website over the past month, we've had a increase in the number of page views from last month. There were 2,620 page views from 1,055 unique visits. Top pages viewed (in order of hits) are the home page (673 views), Drought Status (190), Irrigation Demand Calculation Review SOQ Spotlight (180 views), and Maps (118 views). On the District Facebook page we have 178 people who have signed up to 'Like' us.
<b>AQUIFER SCIENCE</b>				
Dye Tracing	BS, BH	06-Feb-14	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.
319(h) Grant	BS, BH, AA	06-Feb-14	Onion Creek Recharge Enhancement Project	The grant officially ended on August 31, 2011, but the District is committed to continuing upkeep and improvements to the system at Antioch and Sky Ranch. We have installed (7/15/13) a shallow monitor well near the recharge vault to help us monitor recharge. Flooding in Onion Creek on October 31 caused some minor damage to equipment at Antioch.
Water-Quality Studies	BS, BH, AA	06-Feb-14	Sampling and analysis of groundwater and surface water	District staff sampled 14 wells and springs for background levels of petroleum hydrocarbons prior to the operation of the Longhorn Pipeline. Summer sampling started on June 20 with funding from the TWDB with over 30 sites sampled. The FY2013 sampling budget from the TWDB was expanded from 1.5k to 45k.
Saline Zone Studies	BS, BH	06-Feb-14	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 TD and we are currently working on an access agreement. Walton Development has drilled a deep test well east of Kyle to study the middle and lower Trinity and the saline Edwards. They are still testing the well. A report on the Walton well to PCCD is expected by April.
Drought and Water-Level Monitoring	BH, BS, AA	06-Feb-14	Drought status, monitor wells, and synoptic water level events	Heavy rains on October 12 and 13 and again on October 30 and 31 led to flooding and good aquifer recharge. The Board voted to change drought status from Alarm Drought to No Drought effective November 19. As of February 6, discharge from Barton Springs was 65 cfs and the water level in Lovelady on February 6 was 491.1 ft msl. Water levels in the Lovelady monitor well are now dropping.
Information Transfer	BS, BH, AA	06-Feb-14	Presentations, conferences, reports, and publications	Aquifer Science staff presented 3 abstracts or posters at the Geological Society of America, South-Central Section that was held in Austin in early April. Papers were presented at the Sinkhole Conference in Carlsbad New Mexico in May.
<b>AD-HOC TEAMS</b>				
Technical Team	BAS	06-Feb-14	Current areas of discussion	Key topics of discussion for February were attendance at recent conferences and meetings, saline zone studies status, saline boundary delineation, and ArcGIS Collector app for smartphones.
Planning Team	JD	05-Feb-14	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: Risk Management Plan, HCP commitments and deliverables
<b>UPCOMING ITEMS OF INTEREST</b>				
1st February Board Meeting		13-Feb-14	1st HCP Work session on draft Ch. 1-4	

Leader, Staff	Date	PROJECT / ACTIVITY DESCRIPTION	STATUS/COMMENTS
Central Texas Water Conservation Symposium. "Keeping Your Head Above Water: Maximizing Alternative Water Sources	25-Feb-14	8:30am - 3:30 pm, San Marcos Activity Center, 501 E. Hopkins, San Marcos, \$30	
2nd February Board Meeting	27-Feb-14	2nd HCP Work session on remaining Chapters thru 3-7, The Woodlands, \$\$, Early bird registration by 2-10-14	
TWCA 2014 Annual Convention	5-Mar-14		
Spash it Up: Waters of Austin Festival	12-Mar-14	1pm - 4pm, Barton Springs Pool	
1st March Board Meeting	13-Mar-14		
GMA 10 Meeting	17-Mar-14	11:30am - 2:00pm, EAA offices, San Antonio, Texas	
South-Central Geological Society of America	17-Mar-14	thru 3-18, Fayetteville, Arkansas.	
Scholarship Applications Due	18-Mar-14		
2nd March Board Meeting	27-Mar-14	TxDOT Briefing on SH 45	
2014 Kent Butler Summit	4-Apr-14	8am - 5pm, Wildflower Center	
Region K meeting	9-Apr-14	10am - 3pm, LCRA montopolis offices	
1st April Board Meeting	10-Apr-14		
2nd April Board Meeting	24-Apr-14		

## Interim Charges Relating to Natural Resources

***The Lieutenant Governor today (01/16/2014) released interim charges for the Senate Committee on Natural Resources:***

### **Natural Resources**

- Study and make recommendations to encourage the use of brackish water including but not limited to Aquifer Storage and Recovery and Desalination.
- Study and make recommendations on what state and federal environmental regulations most affect implementation of water supply strategies in the State Water Plan, including recommendations to reduce state barriers.
- Examine current processes for environmental permitting, including the impact of permitting delays on economic development. Consider what environmental regulations and permitting procedures are most challenging for small businesses and make recommendations to reduce those burdens. Study and make recommendations on changes to the permitting process that could speed job creation while continuing to protect the environment.
- Monitor implementation of legislation passed during the 83rd Legislative Session including monitoring implementation of House Bill 4, creating the state water implementation fund.

### House Committee on Natural Resources

1. Monitor the implementation of HB 4 (83R) and SJR 1 (83R) and the progress of the Texas Water Development Board and other entities in implementing this legislation to provide a stable, long-term funding source for the State Water Plan.
2. Evaluate the availability, management, and development of groundwater in the state. Consider the economic, environmental, and social impacts of groundwater usage and production in the agricultural, municipal, and energy sectors. In particular, examine methods to facilitate further development of brackish groundwater resources and to improve the consistency and certainty of permitting by groundwater districts without undercutting reasonable regional and local regulation of groundwater.
3. Explore opportunities to encourage voluntary protection and stewardship of privately owned lands in support of the state's water supply and to protect environmental flow needs in Texas rivers. Examine methods in which state agencies, water rights holders, and non-governmental organizations can work together through programs like the Texas Farm and Ranch Lands Conservation Program and the Texas Water Trust.
4. Examine strategies to enhance the use of aquifer storage and recovery (ASR) projects, including a review of existing ASR facilities in Texas and elsewhere.
5. Monitor the use of funds provided or made available to Texas in relation to the 2010 Deepwater Horizon oil spill, and make recommendations on the appropriate use of these funds in the future. *(Joint charge with the House Committee on Appropriations)*
6. Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 83<sup>rd</sup> Legislature. In conducting this oversight, the committee should:
  - a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
  - b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
  - c. determine whether an agency is operating in a transparent and efficient manner; and
  - d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.

## Item 4

### Routine Business

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

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

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

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



## **Item 5**

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

- a. Discussion and possible action related to initial direction or input to staff on the District's review draft of the Regional HCP.**

## **Item 5**

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

**b. Discussion and possible action related to the Hill Country Priority Groundwater Management Area (PGMA).**

**SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS**

<b>GROUNDWATER CONSERVATION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>DISTRICT CREATION</b>	§	
<b>RECOMMENDATION FOR THE HILL</b>	§	
<b>COUNTRY PRIORITY</b>	§	<b>OF</b>
<b>GROUNDWATER MANAGEMENT</b>	§	
<b>AREA: TRAVIS AND COMAL</b>	§	
<b>COUNTIES</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**ORDER NO. 13**

**GRANTING EXECUTIVE DIRECTOR'S REQUEST TO WITHDRAW THE PETITION  
AND CANCEL THE HEARING ON THE MERITS**

On January 7, 2014, the Executive Director of the Texas Commission on Environmental Quality (Commission) filed a request to withdraw its petition, cancel the hearing on the merits, and remand the petition to the Executive Director. On January 14, 15, and 21, 2014, parties filed responses, some in support and some in opposition to the Executive Director's request. On January 21, 2014, the Executive Director filed a reply. The Executive Director's request is granted.

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On October 11, 2010, the Executive Director filed its petition at the State Office of Administrative Hearings (SOAH). Although the Executive Director filed a request to withdraw its petition, the Executive Director needs no order from the administrative law judges (ALJs) to take the requested action. Nonetheless, the ALJs grant the request.

With the withdrawal of the petition, the ALJs are no longer presented with a contested case on which to issue a proposal for decision. Specifically, there is no dispute in which to determine "the legal rights, duties, or privileges of a party," Tex. Gov't Code § 2001.003(1), and no basis upon which the ALJs could issue proposed findings of fact or conclusions of law. 30 Texas Administrative Code § 80.6(d). SOAH is a state agency created to serve as an independent forum for the conduct of adjudicative hearings. Texas Government Code § 2003.021(a). Because no issue is left for the ALJs to adjudicate, the matter is now moot.

SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS

ORDER NO. 13

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The hearing on the merits, scheduled for May 5 through 9, 2014, in San Marcos, Texas, is canceled, and this matter is dismissed from the SOAH docket. The petition is remanded to the Executive Director for further action.

SIGNED January 27, 2014.



PAUL D. KEEPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE/MEDIATOR  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS**

<b>GROUNDWATER CONSERVATION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DISTRICT CREATION</b>	<b>§</b>	
<b>RECOMMENDATION FOR</b>	<b>§</b>	
<b>THE HILL COUNTRY</b>	<b>§</b>	<b>OF</b>
<b>PRIORITY GROUNDWATER</b>	<b>§</b>	
<b>MANAGEMENT AREA:</b>	<b>§</b>	
<b>TRAVIS AND COMAL</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**BARTON SPRINGS/EDWARDS AQUIFER CONSERVATION DISTRICT'S  
REQUEST FOR REFERRAL TO MEDIATION**

COMES NOW, the Barton Springs/Edwards Aquifer Conservation District (District) and files this its Request for Referral to Mediation in the above-styled cause.

**INTRODUCTION**

Over the course of the last five years, the Executive Director (ED) of the Texas Commission on Environmental Quality and the numerous parties named in this docket have focused on what each believe is best for protection of the groundwater resources in Western Comal and Southwestern Travis Counties. The matter has been abated on and off over the course of two legislative sessions during which attempts were made to pass legislation creating a groundwater district. Disclosures have been filed which reveal several constructive ideas towards successful regulation of the affected groundwater resources. The ED now asks to withdraw his petition to allow local and legislative efforts to continue to resolve the complex issues involved.

One effort that has not been pursued is mediation. The District believes that the appropriate stakeholders necessary to resolve this matter are the parties named in this Docket.

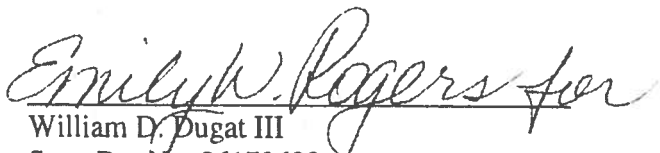
No better opportunity will exist to bring the interested parties together in a focused fashion, with the assistance of a mediator, to resolve some and, hopefully all, of the issues in connection with groundwater district regulation over the Hill Country PGMA. This final effort should be pursued before dismissal of this docket.

**REQUEST FOR REFERRAL TO MEDIATION**

The District believes that a mediation before a SOAH mediator could be beneficial to finally resolving all or a substantial portion of this case. Therefore, the District respectfully request that the ALJs issue an order referring this case to mediation before a SOAH mediator, and that the mediation be conducted upon a mutually agreeable date and time within the next thirty (30) days or later, if necessary, based upon the availability of the mediator.

Respectfully submitted,

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By:   
William D. Dugat III  
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**SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS**

<b>GROUNDWATER</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>CONSERVATION DISTRICT</b>	§	
<b>CREATION RECOMMENDATION</b>	§	
<b>FOR THE HILL COUNTRY</b>	§	<b>OF</b>
<b>PRIORITY GROUNDWATER</b>	§	
<b>MANAGEMENT AREA; TRAVIS</b>	§	
<b>AND COMAL COUNTIES</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

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**EXECUTIVE DIRECTOR’S REPLY TO WIMBERLEY VALLEY WATERSHED  
ASSOCIATION, EUGENE LOWENTHAL, SHIELD-AYRES FAMILY, AND  
SHIELD RANCH’S RESPONSE TO THE EXECUTIVE DIRECTOR’S MOTION  
TO WITHDRAW AND CANCEL THE HEARING**

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES, Paul D. Keeper and Hunter Burkhalter:

THE EXECUTIVE DIRECTOR of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Reply to Wimberley Valley Watershed Association, Eugene Lowenthal, the Shield-Ayres Family, and Shield Ranch’s Response to the Executive Director’s Motion to Withdraw the Petition and Cancel the Hearing, and would respectfully show the following:

**I. As the petitioner, the Executive Director has the burden of proof.**

The Executive Director has the duty to prepare a report petitioning the Commission for the creation of a groundwater conservation district and the burden of proof in proving up his recommendation. In his report, the Executive Director is required to recommend whether one or more districts should be created in the identified areas, whether the identified areas should be added to an existing district, or whether a combination of these actions should be taken. 30 Tex. Admin. Code

§ 293.19(b)(1). As the party with the burden of proof, it is within the Executive Director's discretion on how to prosecute that recommendation; therefore, the manner in which the Executive Director wishes to revise and go forward with the report rests with the Executive Director. Since efforts are being made to resolve the issues legislatively and locally, and the competing interests, the Executive Director would like to further evaluate the recommendations contained in the report. The Executive Director will continue to seek input and further study the matter. Therefore, at this time the Executive Director would like to withdraw his petition and his recommendations in the July 2010 Groundwater Conservation District Recommendation for Hill Country Priority Groundwater Management Area - Western Comal and Southwestern Travis Counties.

**II. When the Executive Director takes action in this PGMA is within his discretion.**

Wimberley Valley Watershed Association and Eugene Lowenthal incorrectly allege that "TCEQ is subject to a February 1, 2003, statutory deadline by which it was required to recommend either the creation of the new districts in the areas at issue in this case, or the expansion of existing districts to cover these areas." Because this Priority Groundwater Management Area (PGMA) was designated before September 1, 2001, the two year deadline requirement in Texas Water Code Section 35.012(b) is not applicable. The deadline stated in Texas Water Code Section 35.012(b) is applicable to those PGMA's designated by order of the Commission after September 1, 2001. Since this PGMA was designated prior to September 1, 2001, and was originally designated a



Critical Area<sup>1</sup>, the requirements in Title 30, Section 293.19, Subsection (b) apply to this case. Section 293.19(b) lays out the process in which the Executive Director shall petition the Commission for the creation of a district, and does not specify a deadline. As this PGMA was not created by Commission Order and was designated as a PGMA before September 1, 2001, the alleged two year deadline is not applicable to this case.

### III. Conclusion

For the foregoing reasons, the Executive Director respectfully requests to withdraw its petition and for the Court to cancel the hearing on this matter and remand the petition to the Executive Director.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Richard A. Hyde P.E.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

By 

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<sup>1</sup> The Trinity aquifer Hill Country area was initially studied by the Texas Water Commission and documented in a Critical Area report. The purpose of the report was to determine if the area was experiencing critical groundwater problems or was likely to experience them in the next twenty years, and whether a GCD should be created to address the problems. The report recommended that amongst other counties, parts of Comal, Hays, and Travis counties be designated as a Critical Area because of existing and projected water shortages and contamination. In 1997, SB 1 renamed the previously designated Critical Areas as PGMA's and changed the PGMA designation and studies process.

SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS

GROUNDWATER CONSERVATION	§	BEFORE THE STATE OFFICE
DISTRICT CREATION	§	
RECOMMENDATION FOR THE	§	
HILL COUNTRY PRIORITY	§	OF
GROUNDWATER MANAGEMENT	§	
AREA: TRAVIS AND COMAL	§	
COUNTIES	§	ADMINISTRATIVE HEARINGS

WIMBERLEY VALLEY WATERSHED ASSOCIATION AND EUGENE  
LOWENTHAL'S RESPONSE TO THE EXECUTIVE DIRECTOR'S REQUEST TO  
WITHDRAW THE PETITION AND CANCEL THE HEARING

I. Introduction

For the reasons set forth below, Wimberley Valley Watershed Association (WVWA) and Eugene Lowenthal ask that the administrative law judges (ALJs) deny the Executive Director's request to cancel the hearing. Cancellation of the immediate hearing would violate statutory directives requiring that TCEQ address the absence of groundwater conservation districts in the areas at issue in this case. Furthermore, the Executive Director has not shown any changed circumstances that would warrant cancellation of the hearing in light of any other actions to address the absence of groundwater conservation districts in the areas at issue.

II. As a result of previous delays, the Commission is already in violation of its statutory duty to create or expand groundwater districts within the uncovered areas of Comal and Travis Counties.

TCEQ is subject to a February 1, 2003 statutory deadline by which it was required to recommend either the creation of new districts in the areas at issue in this case, or the

expansion of existing districts to cover these areas. On February 1, 2001, the Texas Natural Resource Conservation Commission issued an order establishing the boundaries of the Hill Country Priority Groundwater Management Area (PGMA) in its current form.<sup>1</sup> Pursuant to Texas Water Code § 35.012(b), this designation triggered a deadline by which the agency had to take action:

[W]ithin two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, the commission **shall** create one or more new districts[.] [Emphasis added]

Since initial imposition of this statutory duty by Senate Bill 2 of the 77<sup>th</sup> Regular Session (2001), the Texas Legislature has had repeated opportunities to modify or remove this duty but has declined to do so. By the TCEQ Technical staff's recommendation of September, 2009, the staff had concluded that "Commission action is required under TWC, § 35.012 and 30 TAC § 293.19 in the western Comal and southwestern Travis territories of the Hill Country PGMA because local efforts to create a groundwater conservation district have not succeeded."<sup>2</sup> Nothing has changed since the time of that recommendation by the Executive Director's staff.

### III. The Executive Director's Motion should be denied

The Executive Director has not presented valid reasons for the ALJs to dismiss this matter from SOAH's docket, or to cancel the hearing. Since such a dismissal would be contrary to the statutory command of the Texas Water Code described above, the

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<sup>1</sup> Texas Commission on Environmental Quality, Groundwater Conservation District Recommendation for Hill Country Priority Groundwater Management Area – Western Comal and Southwestern Travis Counties. September 2009, p. 6.

<sup>2</sup> Id., p. 22.

Executive Director's request should be denied.<sup>3</sup> The TCEQ rules require that a contested case hearing be held by SOAH with regard to the Executive Director's petition.<sup>4</sup> Now that this matter is pending at SOAH, the Executive Director may exercise its advocacy rights, "in the same manner as any other party."<sup>5</sup> But, neither the Executive Director nor the TCEQ may direct SOAH to dismiss the matter.

As an initial matter, WVWA and Mr. Lowenthal note that the withdrawal of the Executive Director's Petition would not in itself justify dismissal of the immediate proceeding. Once SOAH has convened a hearing on a matter, SOAH retains jurisdiction and a live controversy remains so long as disputed issues exist between the parties. For example, in the matter of a Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 issued to Far Hills Utility District, TCEQ granted the hearing request of several individuals that had filed a petition to revoke a water quality permit.<sup>6</sup> During the pendency of the proceedings at SOAH, all petitioners reached a settlement with the permittee, and withdrew their petition.<sup>7</sup> The Executive Director and the Office of the Public Interest Counsel, however, filed a letter with the ALJ that contested issues

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<sup>3</sup> WVWA does not believe that a withdrawal of the Executive Director's petition would mandate dismissal of the current proceedings, as the alternatives set forth in the Executive Director's petition would remain under consideration in the immediate proceeding. To the degree that the ALJs find that the pending matter must be dismissed if the Executive Director is allowed to withdraw his petition, WVWA asks that the Executive Director's request to withdraw his petition be denied as untimely.

<sup>4</sup> 30 TAC § 293.19(b)(6). On July 30, 2010, this matter was directly referred to SOAH by the Executive Director in accordance with this rule, an act validated by the Texas Legislature during the 2011 Regular Session. Acts 2011, 82<sup>nd</sup> Leg., ch. 886 (S.B. 313) Section 8.

<sup>5</sup> Tex. Gov't Code § 2003.051.

<sup>6</sup> Texas Comm'n on Env. Quality, Interim Order Concerning the Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 Issued to Far Hills Utility District, TCEQ Docket No. 2009-0290-MWD, July 2, 2009, p. 2.

<sup>7</sup> State Office of Administrative Hearings, In Re: Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 Issued to Far Hills Utility District and Application for a Temporary Order Submitted by Far Hills Utility District, TCEQ Docket No. 2009-0290-MWD, SOAH Docket Nos. 582-09-5727 & 582-11-0471, Supplemental Proposal For Decision issued July 21, 2011 (p. 3).

remained between the other parties in the matter regarding the petition,<sup>8</sup> and thus the matter remained pending at SOAH until those issues were resolved and the ALJ issued a proposal for decision on the petition to revoke.<sup>9</sup> Just as a live controversy remained in the Far Hills petition to revoke matter even after all petitioners had withdrawn, so, too, the immediate hearing on the Executive Director's petition remains live so long as a dispute exists between persons who have been admitted as parties to the immediate proceeding.

Whether the Executive Director still supports his latest recommendation or not, SOAH still has before it the live question of how TCEQ should move forward in recommending the creation or expansion of one or more groundwater conservation districts in a manner that would include areas of Comal County and Travis County where no groundwater conservation district currently exists.

The Executive Director seeks to justify remand of the matter based, in part, on a claim that, "efforts are being made to resolve the issues legislatively or locally."<sup>10</sup> Yet, the Executive Director has not specifically identified any such efforts. Since designation of the area within the Hill Country PGMA as a "critical area" in 1990, local and legislative efforts have succeeded in the creation of groundwater districts in several portions of the Hill Country PGMA, but twenty-three years later such efforts have still been unsuccessful in addressing the absence of a groundwater district in the areas of Travis County and Comal County at issue in this case. The Executive Director has not identified any changed circumstances that would indicate that this matter will be resolved

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<sup>8</sup> Id. at p. 3.

<sup>9</sup> Id.

<sup>10</sup> ED's Motion p. 1.

legislatively or locally in the near future when such efforts have not been successful for more than two decades. If anything, it is the continued progress of the pending hearing that creates an incentive for local entities and the legislature to finally address the issue – an incentive wholly consistent with the Legislature’s imposition of a mandatory duty upon TCEQ after allowing two years for local and legislative efforts to resolve the issue after designation of a PGMA.

The Executive Director further claims that, “given the complexity of the case, further evaluation would be beneficial. . . the Executive Director will continue to seek input and study the matter.”<sup>11</sup> This statement says nothing that has not been true for the past twenty years, and remains true for the next 50 years. WVWA and Mr. Lowenthal have no objection to any effort to develop helpful information, but circumstances long-ago moved past the point where the benefits of further study outweighed the need to take action in order to protect the groundwater involved. The ALJs should not adopt the paralysis by analysis approach advocated by the Executive Director.

Notably, all available information indicates that the TCEQ’s technical staff still support the Executive Director’s petition and recommendation currently filed in this case. In August of 2013, when informing WVWA that discovery on the Executive Director would serve little purpose, legal counsel for the Executive Director claimed that:

The ED’s report and recommendations [have] already been provided to all the parties. Leon Byrd is the only witness. He will testify regarding the opinions in the report and the record at SOAH. The ED is completely transparent in this matter. . . . [T]he prefiled testimony will likely consist of

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<sup>11</sup> ED’s Motion p. 1.

not much more than putting the report into the record and summarizing the conclusions.<sup>12</sup>

The Executive Director has not filed any Rule 194 disclosures in this matter that would indicate that the position of its technical staff has changed since the time of this correspondence. The consideration of pre-filed testimony and the conduct of a hearing would allow the ALJs to benefit from the analysis of the Executive Director's technical staff even if the Executive Director does not have a definitive recommendation at this point.

Furthermore, the Executive Director's reliance on Order No. 7 issued by the ALJ's in this matter is unjustified. By that order, the ALJs state that the pending matter would be dismissed and then proceed at SOAH under a different docket number if the Executive Director submitted a second revised proposal. The Order did not provide for remand of the matter to the TCEQ, as the Executive Director now requests.

#### IV. Conclusion and Prayer

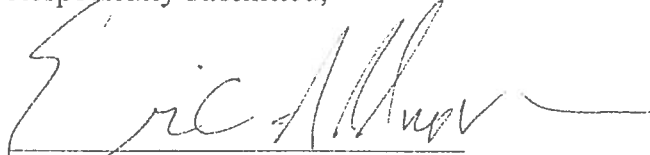
For the reasons set forth above, WVWA and Mr. Lowenthal respectfully pray:

- (1) That the ALJs deny the Executive Director's request to cancel the hearing;
- (2) Insofar as the ALJs find that the pending matter must be dismissed if the Executive Director's petition is withdrawn, that the ALJs deny the Executive Director's motion to withdraw his petition; and
- (3) That the ALJ's grant WVWA and Mr. Lowenthal all other relief to which they may show themselves justly entitled.

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<sup>12</sup> E-mail correspondence from Ross Henderson, counsel for the Executive Director, to Eric Allmon, counsel for WVWA, dated August 27, 2013.

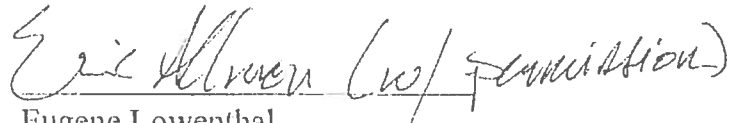
Respectfully submitted,



Eric Allmon

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**CERTIFICATE OF SERVICE**

This certifies that on this 14<sup>th</sup> day of January, 2014, a true and correct copy of the foregoing instrument was delivered to the parties on the attached Mailing List *via* e-mail, facsimile transmission, or deposit in the U.S. mail.



Eric Allmon



**SOAH DOCKET NO. 582-10-5643**  
**TCEQ DOCKET NO. 2010-1040-MIS**

<b>GROUNDWATER CONSERVATION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DISTRICT CREATION</b>	<b>§</b>	
<b>RECOMMENDATION FOR THE HILL</b>	<b>§</b>	<b>OF</b>
<b>COUNTY PRIORITY GROUNDWATER</b>	<b>§</b>	
<b>MANAGEMENT AREA: TRAVIS, HAYS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>AND COMAL COUNTIES</b>	<b>§</b>	

**SHIELD-AYRES FAMILY’S & SHIELD RANCH’S RESPONSE TO  
THE EXECUTIVE DIRECTOR’S MOTION TO  
WITHDRAW THE PETITION & CANCEL THE HEARING**

TO: Honorable Administrative Law Judges:

COMES NOW THE SHIELD-AYRES FAMILY AND THE SHIELD RANCH (“Shield Ranch”), and files this Response to the Executive Director’s Motion to Withdraw the Petition and Cancel the Hearing:

I.  
**RESPONSE**

Shield Ranch is among the Parties working on a local level to resolve the issues embodied in the Executive Director Petition to Create a Groundwater District within the remaining portions of the Hill Country Priority Management Area (“Hill Country PGMA”) not currently within the jurisdiction of a groundwater conservation district (“GCD”), pursuant to Chapter 35, Texas Water Code. Based upon the available hydrogeologic studies of the Edwards Trinity Aquifer (“Aquifer”) within the effected portion of the Hill Country PGMA, the reasonable, rational and realistic solution for the long-term sustainability of the Aquifer, is the establishment of an economically stable multiple county groundwater conservation district capable of uniformly regulating the Aquifer as described in the Position Paper entitled “A

*Regional Solution for the Trinity Aquifer of the Hill Country Priority Groundwater Management Area (Travis, Hays and Comal Counties) – September 30, 2013*”, previously filed in these proceedings and attached hereto as Appendix “A.”

Ideally, this solution would be accomplished through a Proposal for Decision to the TCEQ in these SOAH proceedings recommending the creation of a single new GCD reflecting the consolidation of the region overlying the remaining portions of the Aquifer located outside of the existing GCD’s. Dividing the Aquifer up into multiple districts based upon county lines, or worse county precinct lines, will not afford protection to the Aquifer on a hydrogeologic basis and likely will not result in the creation of economically viable new GCDs.

The ED’s Motion baldly asserts only an awareness of “efforts are being made to resolve the issues legislatively or locally.” The Motion is wholly unsupported by any supporting evidence or documentation of any probability of success.

Shield Ranch would ask the ALJs to take “Official Notice” of the following facts:

1. The Hill Country PGMA was established a quarter of a century ago by the TCEQ’s predecessor agency.
2. Efforts since then, locally and legislatively, including multiple failed bills during the past two legislative sessions have not resulted in the creation of any regulatory authority with jurisdiction over the remaining portions of the Aquifer outside of these existing GCD’s to date.
3. The “local efforts” referenced by the ED all contemplate the division of the Aquifer along local political boundaries, that (i) fail to accomplish the necessary uniform regulation of the effected Aquifer in a sustainable manner consistent with the precepts of Article XVI, §59, of our Constitution, and (ii) have no demonstrated capability to be financial stable over the long-term.

## II. CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Shield Ranch prays the ALJ rule on the ED’s Motion in a manner that will facilitate the timely creation of a regulatory authority with jurisdiction over the remaining portions of the Aquifer not currently regulated by one of the

State's existing GCD's that will (i) favor the best interests of the Aquifer's hydrogeologic characteristics over local political boundaries in order to facilitate the necessary uniform regulation of the effected Aquifer in a sustainable manner contemplated by Article XVI, §59, of our Constitution, and (ii) provide the requisite financial stability of that regulatory body to assure its success over the long-term.

Respectfully submitted,

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By: 

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ATTORNEYS FOR SHIELD-AYRES FAMILY  
& SHIELD RANCH

**SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS**

<b>GROUNDWATER CONSERVATION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DISTRICT CREATION</b>	<b>§</b>	
<b>RECOMMENDATION FOR THE HILL</b>	<b>§</b>	
<b>COUNTRY PRIORITY</b>	<b>§</b>	<b>OF</b>
<b>GROUNDWATER MANAGEMENT</b>	<b>§</b>	
<b>AREA; TRAVIS AND COMAL</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

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**EXECUTIVE DIRECTOR'S REQUEST TO WITHDRAW THE PETITION AND  
CANCEL THE HEARING**

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES, Paul D. Keeper and Hunter Burkhalter:

THE EXECUTIVE DIRECTOR of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Motion to Withdraw the Petition and Cancel the Hearing, and would respectfully show the following:

By Order No. 7, dated May 5, 2011, the ALJs notified the parties that "if the Executive Director files a second revised proposal, the ALJs intend to dismiss this case from the docket of the State Office of Administrative Hearings and order the Executive Director to file any revised proposal as a newly docketed matter."

The Executive Director is aware that efforts are being made to resolve the issues legislatively or locally and has determined that, given the complexity of the case, further evaluation would be beneficial. In the interim, the Executive Director will continue to seek input and study the matter. Because these efforts may obviate the need for the Executive Director's petition or may result in many of the current parties no longer having an interest, the Executive

Director has determined that the best course of action is to withdraw the petition and subsequently refile a new petition if local or legislative efforts are ultimately unsuccessful.

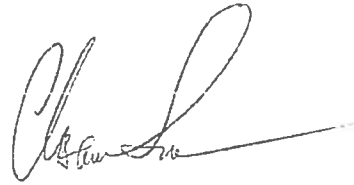
For the foregoing reasons, the Executive Director respectfully requests to withdraw its petition and for the Court to cancel the hearing on this matter and remand the petition to the Executive Director.

Respectfully Submitted.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Zak Covar, Executive Director

Robert Martinez, Director  
Environmental Law Division



By \_\_\_\_\_  
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**Item 6**

**Adjournment**