

NOTICE OF OPEN MEETING

Notice is given that a **Regular Meeting** of the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District will be held at the **District office**, located at 1124 Regal Row, Austin, Texas, on **Thursday, February 25, 2016**, commencing at **6:00 p.m.** for the following purposes, which may be taken in any order at the discretion of the Board.

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

1. Call to Order.

2. Citizen Communications (Public Comments of a General Nature).

3. Routine Business.

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

1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000. **NBU**
2. Approval of minutes of the Board's February 11, 2016 Regular Meeting. **Not for public review at this time**
3. Approval of the out-of-state travel for Justin Camp, Staff Hydrogeologist Technician, to attend the Princeton Groundwater Pollution and Hydrology Course in San Francisco, California, from March 7-11, 2016. **Pg. 12**

b. General Manager's Report. *(Note: Topics discussed in the General Manager's Report are intended for general administrative and operational information-transfer purposes. The Directors will not take any action unless the topic is specifically listed elsewhere in this agenda.)*

1. Standing Topics.

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

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

- i. Update on Team activities and highlights
- ii. Update on regulatory and enforcement activities
- iii. Update on current Aquifer Science Team projects

- iv. Update on ongoing District grant projects
- v. Update on the activities related to the SH 45 SW roadway project
- vi. Update on activities related to the HCP and the associated draft EIS

4. Discussion and Possible Action.

- a. Staff briefing and discussion related to the planning and coordination of the District's Well Water Checkup and Ask-an-expert Open House event on April 13, 2016. **Pg. 15**
- b. Discussion and possible action related to prospective amendments and changes to the District's Rules and Bylaws for implementation of HB 3405, other legislation from the 84th Legislative Session, and other changes to be the subject of a workshop on March 1, 2016 and a public hearing on March 24, 2016. **NBU**
- c. Discussion and possible action related to authorizing the General Manager to enter into an agreement with Texas Disposal Systems (TDS) to allow the District to drill and have future access to a monitor well on TDS property. **Pg. 22**
- d. Discussion and possible action related to approval of contributing to the cost of preparation of an Amicus Brief in support of the pleas filed by Lone Star Groundwater Conservation District and its officials in *City of Conroe, et al, v. Lone Star Groundwater Conservation District*. **Pg. 33**

5. 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;
- Commendations; and
- Issues or problems of concern.

6. Adjournment.

Came to hand and posted on a Bulletin Board in the Courthouse, Travis County, Texas, on this, the _____ day of February, 2016, at _____ .m.

_____, Deputy Clerk

Travis County, TEXAS

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

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 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.**
- 2. Approval of minutes of the Board's February 11, 2016 Regular Meeting.**
- 3. Approval of the out-of-state travel for Justin Camp, Staff Hydrogeologist Technician, to attend the Princeton Groundwater Pollution and Hydrology Course in San Francisco, California, from March 7-11, 2016.**

By: _____
Blayne Stansberry, President

Attest: _____
Blake Dorsett, Secretary



**Barton Springs
Edwards Aquifer**
CONSERVATION DISTRICT

MEMORANDUM

TO: JOHN DUPNIK
FROM: JUSTIN P. CAMP
SUBJECT: OUT OF STATE TRAVEL
DATE: 2/18/2016

I am requesting permission to attend the Princeton Groundwater Pollution & Hydrology Course March 7-11 2016, in San Francisco, CA. This high quality training provides an opportunity to enhance my working knowledge of concepts, principles, and professional practices underlying hydrogeology, groundwater pollution and remediation. As a hydrogeologic technician, this will increase my value to the District. The course will also fulfill my personal incentive project that specifies I take some technical professional development training.

The entire cost (estimated below) is within the District's and Aquifer Science budget for conferences, training, and professional development and is similar to previous trainings Aquifer Science staff members have attended. Brian Hunt attended this training course in San Francisco in 2005 and recommended I take this course.

I hope you will consider this request to enhance my value to the BSEACD.

Estimated budget

Registration	\$ 1,595
Airfare	\$ 900
Hotel (4 nights)	\$ 920
Per Diem (5 days)	\$ 370
	<hr/>
	\$ 3,805

Item 3

Routine Business

b. General Manager's Report.

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

1. Standing Topics.

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

2. Special Topics.

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

- i. Update on Team activities and highlights**
- ii. Update on regulatory and enforcement activities**
- iii. Update on current Aquifer Science Team projects**
- iv. Update on ongoing District grant projects**
- v. Update on the activities related to the SH 45 SW roadway project**
- vi. Update on activities related to the HCP and the associated draft EIS**

Item 4

Board Discussions and Possible Actions

- a. Discussion and possible action related to the planning and coordination of the District's Well Water Checkup and Ask-an-expert Open House event on April 13, 2016.**



**Barton Springs
Edwards Aquifer**
CONSERVATION DISTRICT

MEMORANDUM

Date: 2/19/2016

To: Board of Directors

From: Robin Gary

Re: Open House and Well Water Checkup Outreach Effort

As a way to introduce ourselves to residents and well owners in the new area, we are planning to highly promote the upcoming Ask-An-Expert Open House and Well Water Checkup. We invite all the Directors to participate in the event and will post it as an open meeting, if a quorum will be present. We are targeting two separate groups with our outreach efforts.

Well Owner-focused post card:

The US Postal Service offers a reduced mail rate on Every Door Direct Mail. Through this service, the mail carrier will deliver an info piece to each door on a specified route. We've identified the routes that best coincide with high density Trinity Aquifer well owners in the recently annexed area (see included map and Every Door Direct Mail summary sheet). Neighborhoods that fall outside of a selected route can be targeted through direct mail. Well owners on our High Volume Water User list and the Limited Production Permit holders (formerly known as Nonexempt Domestic Use-NDU) will also receive the well checkup-focused piece.

Community-focused post card:

For wider appeal to residents and community groups that are not within a high density well owner area, we developed a post card that highlights the Ask-An-Expert Open House. Through contacts at Clean Water Fund, San Marcos Water Utility and Kyle Water Utility, we have a list of HoAs and will contact them and offer hardcopies for their members. Groups like Rotary/Lions/Kiwanis clubs, and chambers of commerce will also be included.

Additional Outreach (typical methods include):

- eNews
- website banner and spotlight
- Facebook and Facebook ad
- Press release

Every Door Direct Mail through USPS

<https://eddm.usps.com/eddm/customer/routeSearch.action>

San Marcos Post Office
210 S STAGECOACH TRL
SAN MARCOS, TX 78666

78666-R002	Hilliard Rd	739	\$135.24
78666-J073	RR12, Hugo, Falconwood, Summer Mt Ranch	553	\$101.20

WIMBERLEY Post Office
111 JOE WIMBERLEY BLVD
WIMBERLEY, TX 78676

78676-R002	River Mt. Ranch, Las Lomas, Deer Lake, Lone Man Mt., Red Hawk	514	\$94.06
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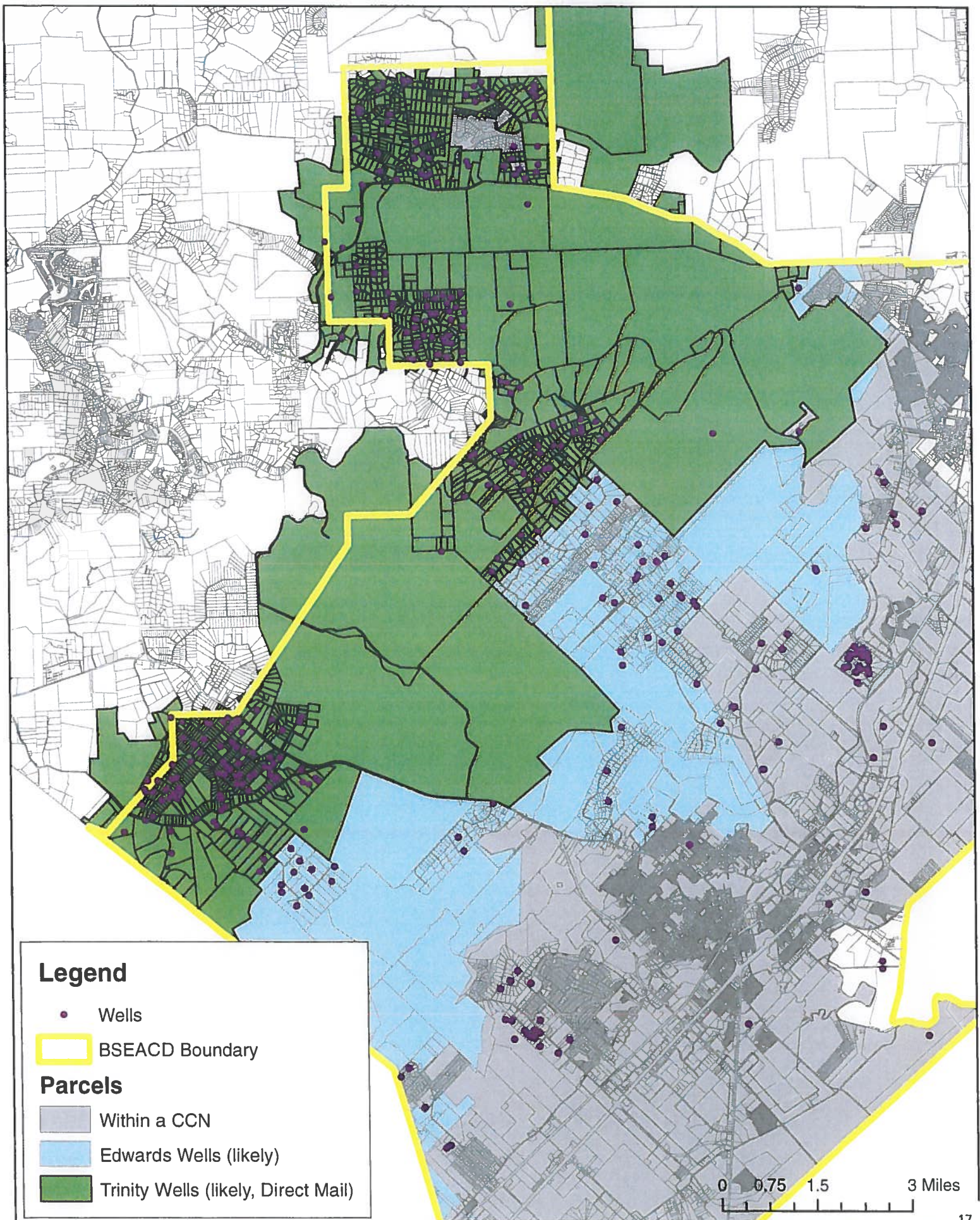
*this may be an area better to direct mail and pull addresses from Hays CAD. There are a lot of addresses outside our District on the Route.

DRIFTWOOD Post Office
100 ELDER HILL RD
DRIFTWOOD, TX 78619

78619-R001	Rolling Oaks, FM 150 to Driftwood, and west of Driftwood	618	\$113.09
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* May want to exclude area west of Driftwood on Elder Hill Rd.

Shared Territory Direct Mail



WELL WATER CHECKUP & ASK-AN-EXPERT OPEN HOUSE

WEDNESDAY, APRIL 13, 2016

SAMPLE DROP OFF BEFORE 2PM

OPEN HOUSE: 11AM-1PM

**FREE BACTERIA, SALINITY, AND NITRATE SCREENING
LIMITED TO FIRST 75 WELL OWNERS TO PRE-REGISTER**

For full details visit:

www.bseacd.org/checkup



Barton Springs
Edwards Aquifer
CONSERVATION DISTRICT

WELL WATER CHECKUP & ASK-AN-EXPERT OPEN HOUSE Wednesday, April 13, 2016

Barton Springs/Edwards Aquifer Conservation District
1124 Regal Row, Austin, 78748
512-282-8441 * www.bseacd.org/checkup

US EPA recommends that drinking water wells should be checked and tested ANNUALLY for mechanical problems, cleanliness, and the presence of certain contaminants, such as coliform bacteria, nitrates/nitrites, and salinity. The District offers an annual free water sample screening and open house for its well owners. Pick up supplies and instructions before Apr. 12, then bring in the water sample on Apr. 13 and visit with experts while the sample is screened.

Pre-register: Mar. 12-Apr. 12.

Limited to first 75 well owners to pre-register and pick up sampling supplies.

Sample dropoff: Apr. 12 after 5:00pm to Apr. 13 by 2pm

Samples must be less than 24 hrs old at time of analysis.

Ask-An-Expert Open House: Apr. 13, 11am-1pm

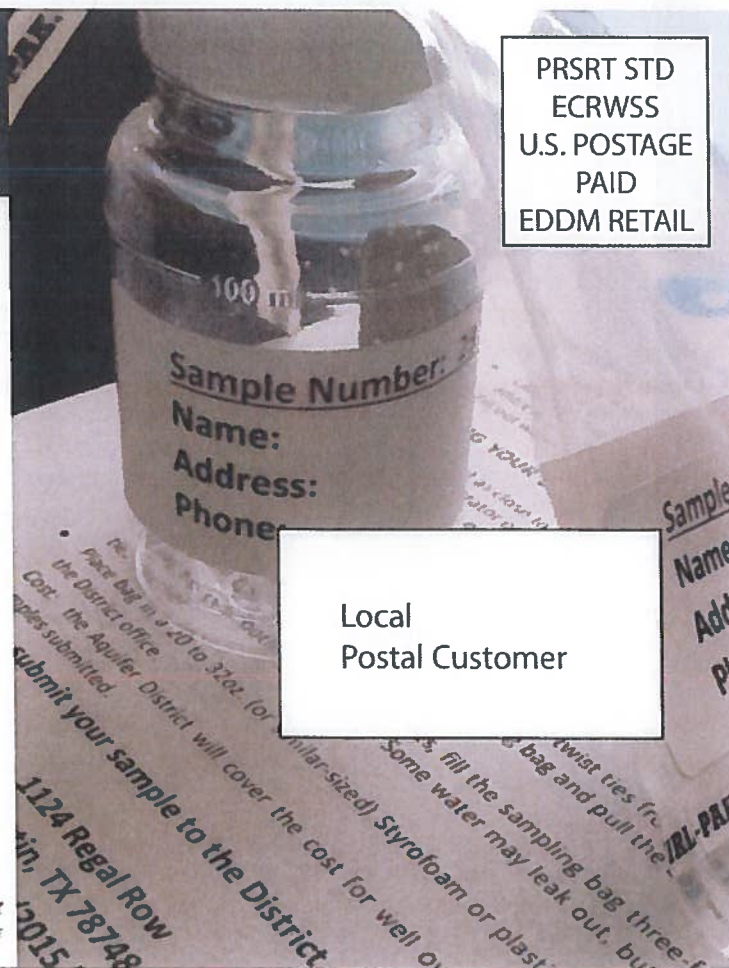
- District staff (local groundwater resources)
- Texas Well Owner Network (well maintenance and info)
- John Gleason, LLC (landscape management)
- Glenrose Engineering (gray water options)
- Lakota (rainwater and renewable energy)
- Tentative (pool and spa water conservation)



Barton Springs
Edwards Aquifer
CONSERVATION DISTRICT

PRSR STD
ECRWSS
U.S. POSTAGE
PAID
EDDM RETAIL

Local
Postal Customer



ASK-AN-EXPERT OPEN HOUSE & WELL WATER CHECKUP

WEDNESDAY, APRIL 13, 2016

OPEN HOUSE: 11AM-1PM

SAMPLE DROP-OFF: BEFORE 2:00PM

Visit with Experts:

Groundwater Resources (*BSEACD staff*)

Well Maintenance and Water Treatment (*TWON*)

Landscape Management (*John Gleason, LLC*)

Gray Water Options (*Glenrose Engineering*)

Rainwater Harvesting and Alternative Energy (*Lakota*)

Pool and Spa Water Conservation (*tentative*)



**Barton Springs
Edwards Aquifer
CONSERVATION DISTRICT**

For full details visit:

www.bseacd.org/OpenHouse

ASK-AN-EXPERT OPEN HOUSE & WELL WATER CHECKUP Wednesday, April 13, 2016

Barton Springs/Edwards Aquifer Conservation District
1124 Regal Row, Austin, 78748
512-282-8441

The District hosts an annual Open House residents as a way to meet staff and learn tips and tricks that can help conserve and protect local groundwater resources. The Open House accompanies a free water sample screening for well owners. Well owners should pre-register, pick up supplies and instructions before Apr. 12, then bring in the water sample on Apr. 13.

Ask-An-Expert Open House: Apr. 13, 11am-1pm

- District staff (local groundwater resources)
- Texas Well Owner Network (*well maintenance and info*)
- John Gleason, LLC (*landscape management*)
- Glenrose Engineering (*gray water options*)
- Lakota (*rainwater and renewable energy*)
- Tentative (*pool and spa water conservation*)

Full details:

www.bseacd.org/OpenHouse



**Barton Springs
Edwards Aquifer
CONSERVATION DISTRICT**



Item 4

Board Discussions and Possible Actions

b. Discussion and possible action related to prospective amendments and changes to the District's Rules and Bylaws for implementation of HB 3405, other legislation from the 84th Legislative Session, and other changes to be the subject of a workshop on March 1, 2016 and a public hearing on March 24, 2016.

Item 4

Board Discussions and Possible Actions

- c. Discussion and possible action related to authorizing the General Manager to enter into an agreement with Texas Disposal Systems (TDS) to allow the District to drill and have future access to a monitor well on TDS property.**

**Agreement for
Hydrogeologic Investigations Related to Brackish Groundwater Development
Between
Barton Springs/Edwards Aquifer Conservation District
and
Texas Disposal Systems Landfill, Inc.**

This **Agreement for Hydrogeologic Investigations Related to Brackish Groundwater Development** ("Agreement") is made by and between **Barton Springs/Edwards Aquifer Conservation District**, a groundwater conservation district and political subdivision of the state created by an act of the 70th Legislature and subject to various requirements of State Law governing groundwater districts, including Texas Water Code Chapter 36 ("BSEACD") and **Texas Disposal Systems Landfill, Inc.** ("TDS"), a Texas corporation. BSEACD and TDS are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

Whereas, the Parties to this Agreement intend to combine and utilize their own internal funding, supplemented with additional funding from one or more third-parties, to foster needed research and investigations that will assess the feasibility of using brackish groundwater, including evaluating the potential development as a desalination resource and as part of a storage location in an engineered Aquifer Storage and Recovery ("ASR") facility, including the effects on the fresh water aquifers, with the goal of facilitating timely and cost-effective commercial development of brackish groundwater desalination as a new water supply for the Central Texas region consistent with the requirements of S.B. 1532, 83rd Regular Session, which adds Section 27.0516 to the Texas Water Code effective September 1, 2013;

Whereas, having determined that cooperation between the Parties in implementing the Project (as hereafter defined) is mutually beneficial to each of the Parties, BSEACD and TDS agree to collaborate on a small-scale desalination/ASR research project feasibility study consistent with Texas Water Code Section 27.0516(h), subject to being able to commit the minimum sufficient funds to execute the initial stage of the investigation, comprising one multi-port Monitor Well in the saline portion of the Edwards Aquifer, as defined by Texas Water Code Section 27.0516(a)(1), on or within the vicinity of TDS' property (the "Project");

Whereas, BSEACD has secured grant funds from the Texas Water Development Board that will be used to assist fund~~ing~~ the Project;

Whereas, TDS owns property located west of an operational landfill in southeast Travis County more specifically known by TDS as the West Kleberg tract, 368.09 acres, Property ID Number 352534 and other property ("TDS Property) a drawing of which is attached as Exhibit A), which contains brackish groundwater suitable to carry out the Project and possibly suitable as a concentrate disposal stratum;

Whereas, subject to the terms and conditions of this Agreement, TDS will allow reasonable access to BSEACD for the Project, provide site preparation and water handling facilities, will

provide environmental regulatory support for the Project, and will provide cash and in-kind contributions provided for herein;

Whereas, subject to the terms and conditions of this Agreement, BSEACD will provide field project technical assistance as needed for the implementation and operation of the Project, will install one multiport Monitor Well as agreed to by the Parties that will be drilled to a depth to locate and monitor potential extraction and injection zones within the saline portion of the Edwards Aquifer below any underground source of drinking water ^{AIJ}, ~~and~~ will monitor other wells in accordance with the scope of the feasibility study as mutually agreed to by the Parties under this Agreement, will assess water availability and potential impacts, if any, to other aquifers, will provide environmental regulatory support for the Project, and will provide cash, equipment, and in-kind contributions provided for herein;

Whereas, BSEACD has determined that although the TDS property is outside of, but completely surrounded by its jurisdictional area, the Project will provide a public benefit as the information and technology that will be available from the Project will provide valuable directly transferable information on the development potential of the saline portion of the Edwards Aquifer as a source of water for desalination and/or as a storage reservoir for an ASR system, and will allow an evaluation of the effect of pumping saline Edwards water on the fresh water zone of the Edwards;

Whereas, BSEACD has determined that development of this underutilized resource potentially could lead to a usable source of drinking water in an otherwise poor drinking water quality area and potentially relieve users of groundwater within BSEACD from the increasing demand for water pumped from wells located within the BSEACD jurisdiction by providing high quality water in significant quantities from wells outside the BSEACD jurisdiction;

Whereas, the Parties have considered previously completed and ongoing research and have determined the proposed Project does not duplicate research such as that contemplated in this Project;

Whereas, the Parties individually and collectively desire that, if the results of the feasibility study are positive, the implementation of a desalination facility will be diligently pursued in accordance with good business practice, and potential users will be identified and involved in that implementation; and

Whereas, the costs and obligations associated with the Project are more efficiently borne through cooperative efforts between the Parties;

Now, therefore, the Parties hereto, in consideration of these promises and mutual obligations herein undertaken, do agree as follow:

Section 1. Purpose and Public Benefit

This Agreement is for the funding and operations associated with the field investigations to evaluate the saline portion of the Edwards Aquifer, i.e., the implementation of the Project. The Project will provide a public benefit as the information and technology that will be available

from the Project will provide valuable information on the saline portion of the Edwards Aquifer and on the effect of pumping saline Edwards water on the fresh water Edwards, and could lead to a usable source of drinking water in an otherwise poor quality drinking water area and potentially relieve users of groundwater within BSEACD and adjacent areas from the increasing demand for water pumped from wells located within the BSEACD jurisdictions by providing high quality drinking water in greater quantities from wells outside the BSEACD jurisdiction.

Section 2. Agreement Term

The initial term of this Agreement shall be for ~~one~~ five year, to commence on the date this Agreement is signed by the last of the Parties (Effective Date), and upon written mutual agreement this Agreement may renew each year for annual extension terms. Either Party may give one month written notice to the other in writing of its intent to terminate this Agreement with ~~or without~~ cause. ~~Notwithstanding the foregoing, in the event the Parties are unable to mutually agree on various aspects of the Project or collectively commit sufficient funds within the initial one year term of this Agreement to complete the Monitor Well investigation, this Agreement may be terminated and shall then be of no further force and effect unless extended according to this section.~~

Section 3. Project Implementation and Operation

3.1 BSEACD Duties.

- a. BSEACD shall provide overall technical support for the Project, which shall include assisting field investigation contractors for the Project.
- b. The BSEACD shall design ~~and~~ install ~~and~~ one multiport Monitor Well on the TDS Property that will be drilled to and completed in the saline zone of the Edwards Aquifer. BSEACD will own the right to use the multiport Monitor Well during the term of the Project. TDS will continue to own the real property, water rights and other mineral rights adjacent to the Monitor Well. Except as otherwise described herein, BSEACD will not cause any damages to the surface of the TDS real property that will impair the use or value of the real property. The Monitor Well will be completed to a depth of about 1,200 feet and will include about 20 deep monitor zones. If sufficient additional funding is available as determined by BSEACD, the multiport Monitor Well will be completed into suitable lower zones.
- c. BSEACD together with a contractor will conduct aquifer tests, water availability, hydrological, and related environmental assessments of the saline zone accessed by the multiport Monitor Well. BSEACD will provide the results of these assessments to TDS for TDS' unrestricted use. BSEACD will allow TDS to review and comment within a reasonable amount of time on the results prior to the public release of the results.
- d. The BSEACD shall provide over the Project duration in-kind contribution of staff labor hours in an amount valued at \$25,000, as a minimum level of effort and a financial participation of \$155,000, which is available under the BSEACD's

Fiscal Year budget. The financial participation is for the design, installation and operation of the multiport Monitor Well.

- e. The BSEACD ~~will support expansion of the TDS Landfill if an application is filed and both parties have performed on the Project under this Agreement~~does not intend to use any of the data collected for aquifer characterization purposes to oppose the TDS Landfill or its expansion or to interfere with landfill operations.

3.2 TDS Duties.

- a. TDS will provide an area to install a Monitor Well on TDS Property with a fifty foot radius around the Monitor Well with access by an all-weather driveway to Bradshaw Road. TDS will provide a gravel pad sufficient to allow a drilling rig to operate under adverse weather conditions.
- b. TDS shall be responsible for managing and disposing of drilling fluids ~~and desalination brine water~~ produced during the installation of the Monitor Well. ~~If TDS is unable to secure satisfactory method for handling desalination brine water, this Agreement may be terminated.~~
- c. TDS shall provide the Parties and their invitees, contractors and employees reasonable access to the Monitor Well for monitoring activities during the Project, ~~as determined by the Parties~~ for the duration of this Agreement. Reasonable access under normal conditions is 7am until 7pm, Monday through Friday with occasional access required on Saturday and Sunday.
- d. TDS, at its own behest, may engage a consultant to make an assessment of using alternative energy sources to provide energy to operate an on-site desalination facility, TDS may engage a consultant or vendor, to acquire desalination treatment equipment and evaluate the effectiveness of one or more desalination technologies as to cost-effectiveness, operability, and reliability, TDS may engage a consultant to evaluate the commercial feasibility of a larger, commercial-scale Project , or evaluate any other issue related to desalination and/or ASR facility.
- e. TDS shall provide in-kind contributions of staff labor and materials required to install ancillary facilities associated with the Project ~~management facilities~~ if economically feasible.

Section 4. Ownership of the Project and/or Project Technology.

The Project is a feasibility study funded in substantial part by public funds, and even though proprietary technology may be used in conducting certain tests in the course of the Project, the data, results, findings, conclusions, and recommendations developed by or reported to the BSEACD arising from the Project shall be in the public domain at the conclusion of the Project, and no ownership or proprietary rights of those Project outcomes will be asserted by any Party or other entity. The above notwithstanding, TDS shall have the right to use all data, results, findings, conclusions, and recommendations developed by the Project for any purpose it deems appropriate.

Section 5. Access to Project Results.

The Parties agree that they shall have access to, and the right to audit, examine, or reproduce, any and all records, data and/or results in BSEACD's possession arising from the Project at any time during normal business hours during Project activity. Notwithstanding the foregoing, the Parties agree the records of the Project are subject to document retention and destruction policies of the Parties, provided the district, as a public-entity, is at a minimum in compliance with the State of Texas Records Retention Policy.

Information, documentation, and other material in connection with the Project and Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code.

Section 6. Independent Contractor

This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. The BSEACD and TDS are cooperating independent contractors.

Section 7. Additional Parties

The Parties contemplate that there may be other political subdivisions and non-profit organizations that may wish to participate in the funding of the Project. The Parties agree to cooperate in modifying this Agreement, as warranted and needed, to include adding one or more such additional Parties, to maximize the public interest and amount of funds available for Project use from other sources.

Section 8. Default

A Party to this Agreement shall be in default under the agreement if the Party fails to fully, timely and faithfully perform any of its material obligations under the Agreement, and, following notice of default as provided in Section 9 (Termination), fails timely to cure the alleged default as provided in Section 9.

Section 9. Termination

In the event of default by a Party, the other Party shall have the right to terminate the Agreement for cause, by written notice delivered to the Party alleged to be in default via certified mail. The notice shall be effective within thirty (30) days, unless otherwise specified, after the date of receipt of such notice. During this time period, the Party alleged to be in default may cure the event of default or provide evidence sufficient to prove to the other Party or Parties' reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the Party alleging the default. TDS may terminate this Agreement at any time after the initial five-year term it reasonably believes the Project is causing a negative impact on its operations within two miles of the Monitor Well.

Section 10. Survival of Obligations

All provisions of this Agreement that impose continuing obligations on the Parties, including but not limited to the Agreement purpose, shall survive the expiration or termination of this Agreement.

Section 11. Effective Date

The Effective Date of this Agreement shall commence upon the execution by the last of the Parties to this Agreement.

Section 12. Assignment

A Party to this Agreement may not assign or transfer its interests under this Agreement.

Section 13. Entirety of the Agreement

This Agreement constitutes the entire Agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, or representations concerning its subject matter. This Agreement may not be amended in whole or in part except in a written amendment executed by all Parties to this Agreement. Notwithstanding the foregoing, to the extent that the terms of new state law are inconsistent or conflict with this Agreement, the terms of the state law control. In such a case, the Parties will work together to amend the terms of this Agreement to be consistent with the terms of the new state law.

Section 14. Performance

The obligations arising under this Agreement shall be performed in Travis County, Texas.

Section 15. Jurisdiction and Venue

The Parties agree that this Agreement is governed by the laws of the State of Texas and that venue for a dispute arising from this Agreement shall be in Austin, Travis County, Texas.

Section 16. Severability

If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

Section 17. Notices

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, addressed to the person designated for receipt of notice, postage prepaid and Return Receipt Requested. Notices delivered by any other means (fax, e-mail, courier) shall be deemed delivered upon receipt of a

~~112-1910~~-15

~~2:10 p.m~~8:00 a.m.

successful fax, e-mail, or courier confirmation report by the addressee; provided, that the notice is specifically directed to the attention of the person designated for receipt of notice; and provided, further, that any fax or e-mail notice shall be promptly followed by mailing or delivery by courier of a copy of the notice statement in hard-copy form, directed to the person designated for receipt of notice. Routine communication may be made by first class mail, facsimile, or other commercially accepted means. Notices shall be addressed as follows:

BSEACD:

Barton Springs-Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748
Attention: John Dupnik
Telephone: (512) 282-8441
Facsimile: (512) 282-7016
Email: jdupnik@bseacd.org

TDS:

Texas Disposal Systems Landfill, Inc.
Attn: Bob Gregory
P.O. Box 17126
Austin, Texas 78760-7126
12200 Carl Road
Creedmoor, Texas 78610-2184
Toll free: (800) 375-8375
Phone: (512) 421-1300
Fax: (512) 243-4123
Email: bgregory@texasdisposal.com

Section 18. Governmental Immunity

Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or equity to any of the Parties, nor to create any legal rights or claims on behalf of any other party. No Party to this agreement waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental (sovereign) immunity under the laws of the State of Texas, if applicable.

Section 19. Execution of this Agreement

Parties to this Agreement shall submit certified documentation of approval by its governing body authorized to execute this Agreement. This Agreement may be executed (by original or facsimile) by the Parties in one or more counterparts, each of which shall be considered one and the same agreement. Each individual signing this Agreement on behalf of a Party warrants that he or she is legally authorized to do so and that the Party is legally authorized to perform the

~~1112-1910~~-15

~~2:10 p.m~~8:00 a.m.

obligations undertaken.

The Parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

BSEACD:

Barton Springs-Edwards Aquifer Conservation District

By _____
Board President or Authorized Signatory

Date of Execution: _____

BARTON SPRINGS/EDWARDS AQUIFER
CONSERVATION DISTRICT

Mary Stone, President

ATTEST:

Blayne Stansberry
Secretary, Board of Directors

~~112-1910-15~~
~~2:10 p.m~~ 8:00 a.m.

TDS

Texas Disposal Systems Landfill, Inc.

By: _____

Name: Bob Gregory

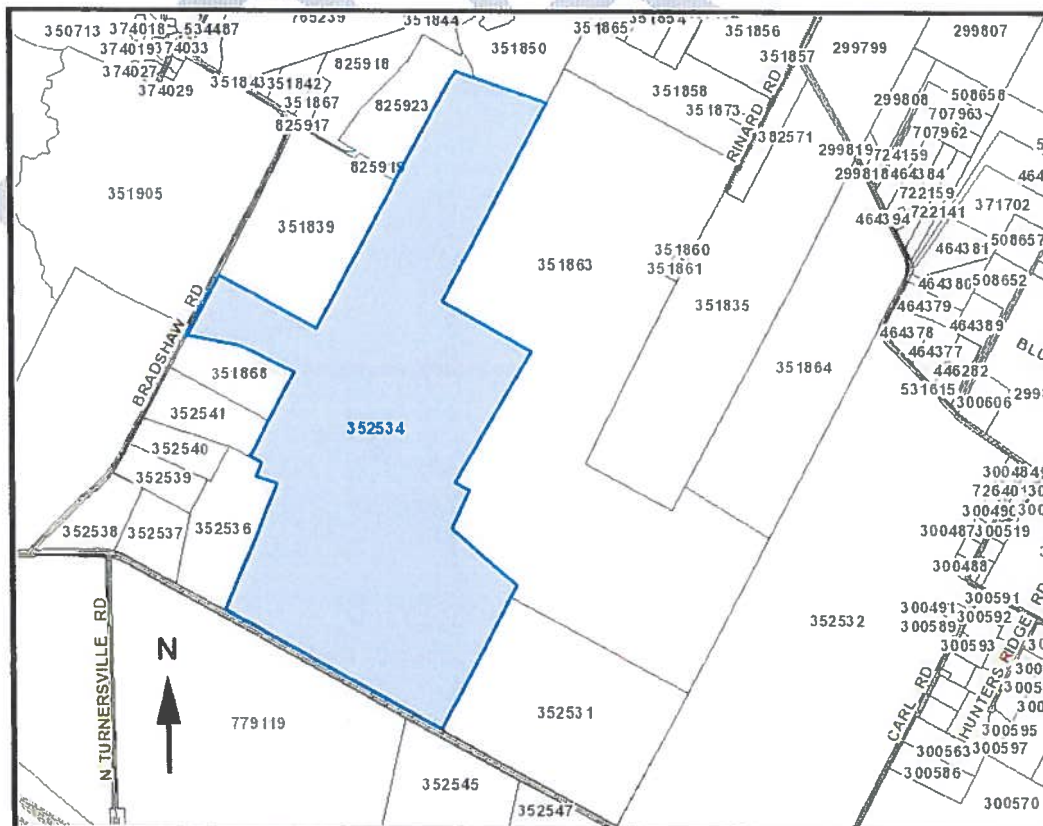
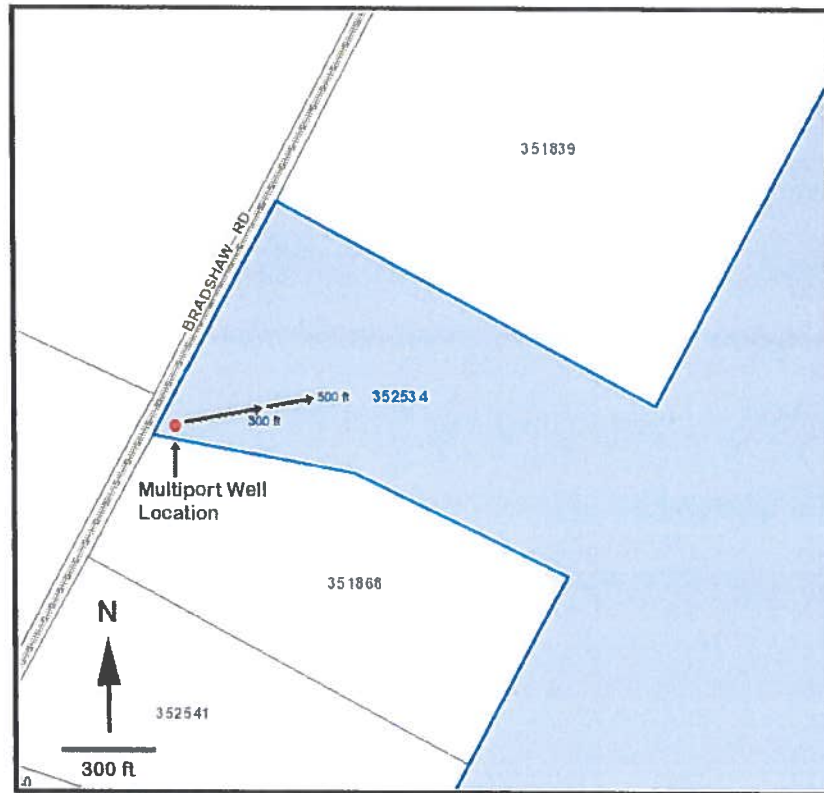
Title: Chairman and Chief Executive Officer

Date of Execution: _____

DRAFT

~~2:10 p.m~~ 8:00 a.m.

Exhibit A



Item 4

Board Discussions and Possible Actions

- d. Discussion and possible action related to approval of contributing to the cost of preparation of an Amicus Brief in support of the pleas filed by Lone Star Groundwater Conservation District and its officials in *City of Conroe, et al, v. Lone Star Groundwater Conservation District*.**

CITY OF CONROE, *et al.* v. LONE STAR GCD, *et al.*

I. LAWSUIT FILED AGAINST THE LONE STAR GROUNDWATER CONSERVATION DISTRICT

The City of Conroe and a group of investor-owned utilities (collectively, “Plaintiffs”) have sued the Lone Star Groundwater Conservation District (“Lone Star”) and its Directors and General Manager in their official capacities. Plaintiffs seek declarations under the Uniform Declaratory Judgment Act (“UDJA”) that (1) the “desired future conditions” (“DFCs”) for the aquifers within Lone Star and Lone Star’s rules, specifically the District Regulatory Plan, are outside Lone Star’s statutory authority; and (2) the process for adopting the DFCs failed to meet statutory requirements. Plaintiffs also seek declarations under the Texas Real Property Rights Preservation Act (“Private Property Act”) that (1) the DFCs and the District Regulatory Plan are invalid because Lone Star failed to prepare a “takings impact assessment” for them; and (2) the DFCs and the District Regulatory Plan will result in a “taking” under the Private Property Act. Lone Star feels confident that it will ultimately defeat the Plaintiffs’ claims if the judges follow the law. But Lone Star is also hopeful that the claims will never even go to trial because the claims are so fundamentally flawed that the entire case should be dismissed for lack of jurisdiction.

Governmental entities, including groundwater conservation districts (“GCDs”) such as Lone Star, and their officials are immune from suit and liability unless and except to the extent that the Legislature has expressly waived that immunity.¹ In this case, the Legislature has not waived immunity to authorize the claims asserted by the Plaintiffs against Lone Star and its officials. As a result, Lone Star and its officials filed two separate pleas to the jurisdiction, one on behalf of Lone Star and one on behalf of the Directors and the General Manager (“GM”) in their official capacities. While these pleas address all of the claims, there are specific jurisdictional challenges raised by Lone Star and its officials in this case, as summarized below, that if not sustained or upheld by the court will result in long-lasting and far-reaching legal implications for all GCDs.

II. SUMMARY OF JURISDICTIONAL CHALLENGES RELEVANT TO ALL GCDs

All of Plaintiffs’ UDJA claims against Lone Star should be dismissed because the UDJA does not waive Lone Star’s immunity from suit, so Plaintiffs’ claims are barred by governmental immunity.

Plaintiffs seek declaratory judgments under the UDJA that Lone Star (1) acted outside its statutory authority and violated statutory requirements when it “adopted” DFCs, and (2) acted outside its statutory authority when it adopted the District Regulatory Plan. However, the UDJA does not waive governmental immunity when the plaintiff seeks a declaration of his or her rights under a statute or other law.² And the UDJA does not waive immunity from an action seeking a declaration that the governmental entity has acted *ultra vires*, or outside of its statutory authority.³ Any such suits must be brought against the governmental officials in their official capacity and not against the governmental entity.⁴ Therefore, all of Plaintiffs’ UDJA claims against Lone Star are barred by governmental immunity and must be dismissed for lack of subject matter jurisdiction.

All of Plaintiffs’ claims against the Directors are barred by Texas Water Code Section 36.066(a).

Although governmental immunity bars UDJA claims that allege a governmental entity has acted outside of its statutory authority, immunity generally does not bar such UDJA claims against a

¹ See, e.g., *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006).

² *Texas Dept. of Transp. v. Sefzik*, 355 S.W.3d 618, 621–22 (Tex. 2011).

³ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009).

⁴ *Id.*

governmental official acting in his or her official capacity.⁵ However, in its 2015 session, the Legislature barred such claims, and any other claims, against GCD directors acting in their official capacities. Texas Water Code Section 36.066(a) now provides: “A district may sue and be sued in the courts of this state in the name of the district by and through its board. *A district board member is immune from suit and immune from liability for official votes and official actions.* To the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations, this subsection provides immunity for those actions.”⁶

In this case, the Directors have been sued in their official capacity only and the actions complained of by the Plaintiffs constitute official actions under this new provision of the law. As a result, Texas Water Code Section 36.066(a) bars not only the Plaintiffs’ UDJA claims against the Directors, but it bars the Plaintiffs’ Private Property Act claims against the Directors as well. Therefore, *all* of the Plaintiffs’ claims against Lone Star’s Directors must be dismissed for lack of subject matter jurisdiction.

Plaintiffs’ claims against Lone Star, the Directors, and the GM challenging the DFCs should also be dismissed for failure to exhaust administrative remedies.

The current DFCs for the Gulf Coast Aquifer system in Montgomery County were adopted on August 25, 2010. Contrary to Plaintiffs’ allegations, Lone Star did not adopt the DFCs, nor was it statutorily required to do so. Rather, the DFCs were adopted by a joint planning group, Groundwater Management Area 14 (“GMA 14”). Moreover, the Texas Water Code, as it existed when the DFCs were adopted in 2010, established an administrative process to appeal the DFCs to the Texas Water Development Board (“TWDB”).⁷ TWDB rules required persons seeking to appeal the DFCs to do so within one year of their adoption.⁸

There are numerous complaints raised by the Plaintiffs regarding the DFCs, including many that are simply in error regarding the failure of Lone Star in 2010 to comply with statutory criteria that didn’t even exist until 2011. Of interest are the claims that the GCDs in GMA 14 acted outside of their statutory authority by adopting different DFCs for different counties in GMA 14. But this issue, and other issues raised by the Plaintiffs, actually goes to the reasonableness of the DFCs – issues that could have and should have been raised in an appeal to the TWDB. If Plaintiffs had done so, and the TWDB had agreed with the Plaintiffs’ arguments, then GMA 14 would have re-evaluated the DFCs in light of the TWDB’s findings and recommendations, as the Legislature intended. However, because the Plaintiffs did not file a proper and timely petition to appeal the DFCs as required by the Texas Water Code, the Plaintiffs failed to exhaust the administrative remedies provided by the Legislature with respect to their complaints about the DFCs. As a result, the court must dismiss the Plaintiffs’ claims challenging the DFCs for lack of jurisdiction.

All of Plaintiffs’ claims under the Private Property Act against Lone Star, the Directors, and the GM should be dismissed because Lone Star’s actions complained of by Plaintiffs are exempt from the Private Property Act.

The Private Property Act only waives governmental immunity for those actions not expressly excluded from the Act.⁹ Said differently, a governmental body has immunity from suit related to those actions expressly excluded from the Private Property Act.

⁵ *Id.*

⁶ TEX. WATER CODE ANN. § 36.066(a) (West 2015) (emphasis added).

⁷ TEX. WATER CODE ANN. § 36.108(l) (West 2010).

⁸ 31 TEX. ADMIN. CODE § 356.43(a)(5) (2010).

⁹ TEX. GOV’T CODE ANN. § 2007.004 (West 2015).

The Private Property Act specifically excludes from its application a governmental action taken by a political subdivision “under the political subdivision’s statutory authority to prevent waste or protect rights of owners of interest in groundwater” or “to prevent subsidence.”¹⁰ GCDs, such as Lone Star, are the “state’s preferred method of groundwater management.”¹¹ Chapter 36 of the Texas Water Code provides for the creation of GCDs for the express purpose of preventing the waste of groundwater, and protecting interests therein, through conservation, preservation, protection, and recharge.¹² The Texas Supreme Court has held that this exemption for actions taken by political subdivisions to prevent waste or protect owners of groundwater should be construed broadly—and specifically held that the Private Property Act does not apply to a GCD’s adoption of well permitting rules.¹³ Accordingly, the DFCs, to the extent it can be argued that Lone Star adopted them in some way, and Lone Star’s rules, including its District Regulatory Plan, were clearly adopted under Lone Star’s broad statutory authority to prevent waste and protect the rights of owners of interest in groundwater.

The Private Property Act also excludes from its applicability “an action . . . of a political subdivision, that is . . . reasonably taken to fulfill an obligation mandated by state law.”¹⁴ Chapter 36 of the Texas Water Code obligates GCDs to adopt groundwater management plans addressing the following management goals: “(1) providing the most efficient use of groundwater; (2) controlling and preventing waste of groundwater; [and] (3) controlling and preventing subsidence”¹⁵ GCDs are required to adopt and enforce rules necessary to implement their management plans, including rules that limit groundwater production. Thus, the adoption of DFCs and the adoption and enforcement of rules constitute actions reasonably taken to fulfill Lone Star’s obligations mandated by state law.

All actions allegedly taken by Lone Star and its officials of which the Plaintiffs now complain violate the Private Property Act are expressly excluded from the Private Property Act’s application. This means that the Private Property Act does not waive Lone Star’s immunity from suit under the Act. Therefore, all of the Plaintiffs’ claims under the Private Property Act should be dismissed for lack of jurisdiction.

III. CONCLUSION

While Lone Star and its officials have challenged each and every claim made by the Plaintiffs, those described in this summary are the ones of greatest interest to GCDs in Texas. To review all jurisdictional arguments made by Lone Star and its officials in response to the Plaintiffs’ claims, please review the pleas to the jurisdiction filed by Lone and its officials.

¹⁰ *Id.* § 2007.003(b)(11)(C), (D).

¹¹ TEX. WATER CODE § 36.0015(a) (West 2015).

¹² *See id.*

¹³ *See Bragg v. Edwards Aquifer Auth.*, 71 S.W.3d 729, 730 (Tex. 2002); *Coates v. Hall*, 512 F. Supp. 2d 770, 787 n.7 (W.D. Tex. 2007).

¹⁴ TEX. GOV’T CODE ANN. § 2007.004(b)(4).

¹⁵ TEX. WATER CODE § 36.1071(a) (emphasis supplied).

Item 5

Director's Reports

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;
- Commendations; and
- Issues or problems of concern.

Item 6

Adjournment