

## NOTICE OF OPEN MEETING

Notice is given that a **Regular Meeting** of the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District will be held in the **District office**, 1124 Regal Row, Austin, TX, on **Thursday, June 9, 2011, 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 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 from the May 26, 2011, Regular Meeting and Public Hearing. **Not for public review at this time**
    3. Approval of setting a Special Called Meeting and Work Session on June 20, 2011, and the postponement of the election of Board Officers until then. **NBU**
    4. Approval of a proposed dye-trace in the vadose zone of the Barton Springs segment (testing cave drip waters) to be conducted by Zara Environmental under contract to the City of Austin. **Pg. 16**
  - 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 on them in this meeting, unless the topic is specifically listed elsewhere in this as-posted agenda.
    1. Personnel matters and utilization;
    2. Upcoming public events of possible interest;
    3. Aquifer conditions and status of drought indicators;
    4. Discussion related to current staff work areas and specific activities of staff teams and directors. 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 recent Team activities.
- ii. Update on discussions with potential co-sponsors concerning the Kent S Butler Memorial Symposium on Sustainability in the Barton Springs Zone.
- iii. Update on District technical staff's review of TWDB's MAG estimates and development of recommendations.

**4. Board Discussion and Possible Actions**

- a. Discussion and possible action on changes that may be required concerning the HCP project, including revised approach, schedule, and contractors, and on approving related contracts. **NBU**
- b. Discussion and possible action concerning probable changes for the District arising from legislation that passed in the recently concluded regular session. **Pg. 24**
- c. Discussion and possible action related to the mediation of the Jeremiah Venture TLAP contested-case. **NBU**
- d. Discussion and possible action related to progress with the negotiated rulemaking with Centex. **NBU**
- e. Discussion and possible action relating to *City of Kyle v. Goodman et al. and the Barton Springs Edwards Aquifer Conservation District*, Cause No. 10-1267, 22<sup>nd</sup> District Court, Hays County, Texas. **NBU**

**5. Adjournment.**

Came to hand and posted on a Bulletin Board in the Courthouse, Travis County, Texas, on this, the \_\_\_\_\_ day of June, 2011, at \_\_\_\_\_ .m.

\_\_\_\_\_, Deputy Clerk

Travis County, TEXAS

**Please note:**

This agenda and available related documentation have been posted on our website, [www.bscacd.org](http://www.bscacd.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 3**

### **Routine Business**

#### **a. Consent 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 from the May 26, 2011, Regular Meeting and Public Hearing.**
- 3. Approval of setting a Special Called Meeting and Work Session on June 20, 2011, and the postponement of the election of Board Officers until then.**
- 4. Approval of a proposed dye-trace in the vadose zone of the Barton Springs segment (testing cave drip waters) to be conducted by Zara Environmental under contract to the City of Austin.**

**BACK UP MATERIAL FOR**

**Routine Business 3a. Consent Agenda**

**Items 1 and 2 are**

**NOT FOR PUBLIC REVIEW AT THIS TIME**

# ZARA

## ENVIRONMENTAL LLC

1707 West FM 1626  
Manchaca, TX 78652  
(512) 291-4555  
[www.zaraenvironmental.com](http://www.zaraenvironmental.com)

### **Re: Operations Plan for Soil Tracing to Goat Cave, Maple Run Cave, and Blowing Sink Caves and Request for BS/EACD Authorization to Proceed**

24 May 2011

Prepared for:  
Kirk Holland, PG.  
General Manager  
The Barton Spring Edwards Aquifer Conservation District  
1124 Regal Row  
Austin, TX 78748

Mr. Holland:

Zara proposes to perform a soil tracing study under contract by the City of Austin Public Works Department and is working cooperatively with City of Austin Watershed Protection Department (CoA WP). This study will involve injecting tracers in undisturbed soil sites and monitoring for their breakthrough in cave drips in three Balcones Canyonland Preserve caves: Maple Run Cave (MR), Goat Cave (GC) and Blowing Sink (BS). This information was requested by CoA WP hydrogeologist Nico Hauwert to define subsurface catchment areas for three federally permitted caves in association with potential impacts of the widening of Deer Lane (from Brodie Lane to Davis Lane). The caves are included on a federal permit held by the City of Austin and Travis County for the preservation of karst species. Potential tracer sites for MR and GC include an unlined drainage ditch running along the western border of the Goat Cave Karst Preserve, directly over GC and very near MR. An unlined storm water retention pond that overlies portions of MR is also a potential tracer site. City of Austin and Zara Environmental staff may select additional tracer sites on the Goat Cave Karst Preserve. Potential tracer sites for BS include two nearby sinks identified by City of Austin staff; City of Austin and Zara Environmental staff may select additional tracer sites on the Blowing Sink Preserve. This study is intended as a vadose groundwater study and not an aquifer-wide trace of the phreatic zone. The tracers were specifically selected for their safety and lack of interference with your aquifer-wide studies.

Per BS/EACD Rules and Bylaws 3-1.2 Authorizations, we respectfully submit this Operation Plan for your review and approval prior to any tracer injection. Note the pertinent paragraph of your rules state:

#### **3-1.2. AUTHORIZATIONS.**

*Prior to performing any type of dye-tracing or other form of groundwater tracing operations within the District's jurisdictional boundary where materials are*

*introduced into surface water or groundwater, the person proposing such operations must submit an operations plan for the proposed tracer study to the District for approval at least 30 days before the proposed starting date of the study. This plan must describe the entire proposal including: the responsible party; type of tracer and any visual, taste, chemical, or health considerations; rationale or need for the proposed study; injection and recovery points; methods to be employed; expected flow paths; expected project term; method of notification of affected well, spring, and property owners; any contingency plans; and any other information involving the proposed study. These studies must not conflict with any part of Rule 3-3 concerning pollution. District approval of any tracing plan may be denied if the District determines that the proposed plan is in conflict with other ongoing tracing studies.*

### **Tracing Protocol**

The general protocol for soil tracing to cave drips was applied in a 2007 study approved by BS/EACD and completed on the Tabor Water-Quality Protection Land tract in 2007 (<http://www.ci.austin.tx.us/watershed/publications/files/Tabor%20guidebookfinal20100519.pdf>, p. 23-26; Figure 1). Tracing will occur in four rain-initiated phases in simultaneous traces on both the Goat Cave Karst Preserve (Figure 2) and Blowing Sink Karst Preserve (Figure 3). The numbers on figures 2 and 3 correspond to injection phase numbers and show approximate injection locations. Phase 0 will be a background event and will not include the introduction of tracers. During this phase, water quality in surface drainages will be compared to drip water quality to measure attenuation of a wide variety of constituents within the subsurface drainage basins. This background event will also establish the naturally occurring concentration of the tracers in the study area. Such a determination is critical for determining if tracer breakthrough has occurred in later phases. During Phases 1 through 3, tracers will be applied to undisturbed soil sites near the caves so that the natural hydraulic properties of the soils and the potential role of the soils in mitigating spills can be examined. Storm events will be used to flush the tracers under natural recharge conditions. Significant precipitation (two inches of rain or more within 24 hours) will be required for a cave drip response suitable for tracing to occur. The chemical tracers used in this study, iron standard solution, potassium bromide and ammonium carbonate, were chosen for their low toxicity, particularly at the concentrations expected at cave drip breakthroughs. Organic dyes and optical brighteners, including Pyranine, Direct Yellow 96, and Tinopal, will be paired with chemical tracers for verification of tracer breakthrough. These tracers were chosen because they are not typically used in the Barton Springs Segment for long distance, phreatic tracing. A maximum of five pounds of each tracer will be used for each trace. The tracer masses injected may be adjusted based on responses from previous soil injection. For the first pair of injections (injections in several sites over BS and identical tracers in drainage over GC and MR) the following injection masses are proposed:

- 4 kg potassium bromide
- 4 kg ammonium carbonate
- 500 ml 10,000 mg/L Fe standard solution
- 11 lbs DY96 optical brightener (presence/absence with UV light and OUL lab quantification)
- 11 lbs Pyranine (visual color and OUL lab quantification sub visual levels).
- 11 lbs Tinopal optical brightener (presence/absence with UV light and OUL lab quantification)

These masses will be the maximum used in the study, per injection, without further discussion with and approval from BS/EACD.

Drips within each cave will be selected for monitoring with one or more of the following: ion selective probes, tipping bucket rain gages, automatic samplers, collection basins and dye receptors. Additionally, receptors will be placed in the lowermost passage sumps of BS and in a well located on the BS tract and owned by the City of Austin. The monitoring method for each drip will be dependent on the physical limitations on transporting monitoring equipment through the caves, hydrologic conditions and safety concerns. A final report will be coauthored by Zara Environmental hydrogeologist Brian Cowan and City of Austin Watershed Protection and Development Review Department hydrogeologist Nico Hauwert. This final report will include a comparison of pre-construction surface water and cave dripwater chemistry, tracing results and a discussion of the potential impacts of the widening of Deer Lane on the hydrology of the caves. A copy of the report will be submitted to BS/EACD upon completion.

### **Project Timeline**

An exact timeline cannot be specified, as this project relies on natural rain events. If cleared by the City of Austin and the Barton Springs Edwards Aquifer Conservation District, the tracing phases of the project could proceed as early as August 2011. With sufficient rainfall, Phase 0 (background event) could be completed by the end of May 2011 and Phase 1 (tracer application) could begin in June 2011. At minimum, a waiting period of four weeks is needed after tracing events to allow the tracers to flush. Four weeks is required because LCRA-ELS provides analytical results within seven to 10 working days and the results will then need to be processed and interpreted before proceeding with the next phase of tracing. It is important to note that dry conditions could extend the project timeline significantly.

### **Safety of the Tracers**

The study will be accomplished safely for local well users, karst invertebrates, local wildlife, and aquatic organisms such as the Barton Springs salamanders (*Eurycea sosorum* and *Eurycea waterlooensis*). The chemical and organic tracers were selected primarily for their relative safety in drinking water systems. The organic dyes selected for this study have been found to be safe for human and aquatic consumption at the low levels typically encountered downstream of injection sites. Hauwert et al., 2004, summarized the safety of organic dyes, and although specifically referring to a different set of organic tracers, the referenced studies (Smart, 1984; Field, Wilhelm, Quinlan, and Aley, 1995) apply also to pyranine, direct yellow 96, and tinopal:

“The potential adverse properties of the tracers used were discussed in two reports (Smart, 1984 and Field, Wilhelm, Quinlan, and Aley, 1995) that examined the existing toxicological research. No acute problems were identified as a result of the high short-term concentrations associated with injections of the tracers. Smart (1984) recommended that persistent tracer concentrations not exceed 100 ug/l (about 100 ppb). Field and others (1995) also found that none of the dyes referenced in this report presented significant concern for the health considerations of humans and aquatic biota, but recommended that concentrations at points where water was withdrawn for use should not exceed two mg/l (2,000 ppb) for durations in excess of 24 hours. This assessment was based on a specialized chemical evaluation, utilizing structure activity relationships (SARs) developed by the EPA.”

Cave invertebrates within the permitted caves are the most immediate concern. Based on previous soil traces to Barker Ranch #1 and Flint Ridge Cave on the Tabor WQPL tract, followed by periodic faunal surveys by Mark Sander of CoA BCP, no impacts to the cave ecosystem was detected from the use of the same tracers. In this study, the initial tracer injection phase (which is more directly overlying the three cave drips) will be followed by faunal surveys by Zara USFW-permitted karst biologists. Any impacts to the cave ecosystem after the first injection will allow re-evaluation and modification of tracer types or injection masses. Since this study is solely intended to protect karst invertebrates, we will monitor and seriously weigh any impacts to the karst ecosystem.

All of the chemical tracer constituents (bromide, potassium, ammonia, and iron) are naturally occurring at detectable concentrations in both drip waters and phreatic groundwater. At Barker Ranch #1, in three tracer phases in 2007, we injected up to 3 kg of potassium bromide and ammonium carbonate and saw maximum Br and NH<sub>3</sub> concentrations less than 0.2 ppm in a cave drip 100 feet away. Injections of 4.5 g of iron in solution resulted in maximum cave drip concentrations of less than 0.01 ppb. With dilution at the water table, no detectable concentrations are expected downgradient and during previous phreatic traces, dyes have not been detected in wells downgradient of the study site. Further information on the safety of potassium bromide, ammonium carbonate, and iron are provided in Appendix A.

The organic dyes are expected to be heavily sorbed by the soil. Up to 2 pounds of direct yellow 96, sulforhodamine b, and pyranine were injected in soil features over three trace phases in 2007 and never detected in the cave drips, using Ozark Underground Laboratory for analysis, even though associated chemical tracers were detected.

With the small masses of chemical and organic tracers used, the application to soils, and absorptive characteristics of the organic dyes selected, we do not expect detection in wells. Our objective is to use sufficiently low tracer masses applied to soil features that there are no impacts to wells or springs. We recognize that it is possible, with the injection volumes proposed and variability of macropore and solution cavity development, that a well could be impacted (even an unknown undocumented well). Because aquifer-wide traces since 1996 have not recovered large masses of injected dyes in downgradient wells from nearby sites such as Wildflower Cave (2007 and 2010 injections) or Brodie Sink (1998), it is highly unlikely that detectable concentrations of our tracers will be found in any wells. Last year, tracers that were injected at Wildflower Cave, about a mile west of this study site, were detected in Blowing Sink cave stream under the study site, as well as Barton Springs sites that discharge from the Manchaca groundwater basin. To date it has been difficult recovering tracers from wells between this study area and Barton Springs. One exception is the onsite well, 58-50-417, where tracers were recovered at low levels following the Brodie Sink injection. This well will be monitored for the organic tracers using charcoal and unbleached cotton receptors. No other wells are intended for monitoring in our study, unless specific wells are identified by BSEACD to be of concern; in that case we can monitor those using charcoal and cotton receptors at three-week intervals following injection. If requested, we can contact well owners between the adjacent neighborhood and Sunset Valley and make them aware of potential upgradient tracer injections. To avoid confusion, we could rely on previously established communication between BSEACD and well owners/operators to make them aware of potential upgradient tracer injections. If a well is impacted by tracers (more than a brief pulse, or if BS/EACD believes it is appropriate), the CoA



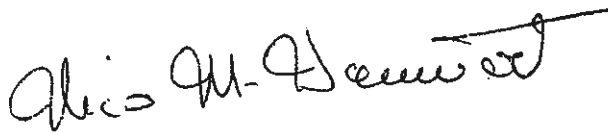
spill tracing CIP project manager, Nico Hauwert, has offered to immediately install pre-purchased filtration systems for domestic water wells under their CIP funding. The discovery of a well downgradient through this study would ultimately be highly advantageous, both for the well owner who could potentially be exposed to worse contamination than relatively non-toxic tracers, and to water resource protection agencies, which need to know what sensitive sites may be downgradient of accidental spill sites.

We appreciate your consideration. Please contact us if you have any questions or comments. Please provide us with your written authorization to proceed along with any conditions or comments you have.

Thank you,



Brian Cowan  
Hydrogeologist  
Zara Environmental LLC  
www.zaraenvironmental.com  
Mobile Phone: (512)632-8409



Nico M. Hauwert, Ph.D., P.G.  
Hydrogeologist, Senior Environmental Scientist  
City of Austin Watershed Protection Department  
(Mailing address) PO Box 1088  
Austin, Texas 78767  
(Physical address) 505 Barton Springs Road, 11th Floor  
Austin, Texas 78704  
(512) 974-2148; cell 695-4597  
nico.hauwert@ci.austin.tx.us

## **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. Personnel matters and staff utilization**
- 2. Upcoming events of possible interest**
- 3. Aquifer conditions.**
- 4. Discussion related to current staff work areas and specific activities of staff teams and directors** 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 recent Team activities.**
  - ii. Update on discussions with potential co-sponsors concerning the Kent S Butler Memorial Symposium on Sustainability in the Barton Springs Zone.**
  - iii. Update on District technical staff's review of TWDB's MAG estimates and development of recommendations.**

## **Item 4**

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

- a. Discussion and possible action on changes that may be required concerning the HCP project, including revised approach, schedule, and contractors, and on approving related contracts.**

## **Item 4**

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

- b. Discussion and possible action concerning probable changes for the District arising from legislation that passed in the recently concluded regular session.**





lose it); to require disclosure of certain appraisal information to a landowner; to require a bona fide offer to a landowner that is equal to or greater than the appraised value; to establish procedures for repurchase of property by a landowner when the condemned land is not used for its intended purpose in 10 years; etc.

**Last Action:** 9- 1-11 G Earliest effective date

SB 181      Shapiro  
-----      Laubenberg      Relating to the reporting of water conservation measures by municipalities and water utilities.

**General Remarks:** Chapter 16, Water Code, is amended, to require each regional water planning group to report on projected water use and conservation, and the implementation of planned projects. The legislature finds that gallons per capita per day is not an accurate measure of water use or conservation without adjustment for certain variables, and requires the TWDB and the TCEQ, in consultation with the Water Conservation Advisory Council, to develop a uniform, consistent methodology and guidance for calculating and reporting water use and conservation by a municipality or water utility. Rule-making is authorized as necessary. Timelines are established.

**Last Action:** 5-27-11 G Sent to the Governor

SB 313      Seliger  
-----      Price      Relating to priority groundwater management areas.

**Companions:**

HB 2112 Price      (Identical)  
4-19-11 H Laid on the table - subject to call - see SB 313

**General Remarks:** Chapter 35, Water Code, is amended to change the planning horizon for the priority groundwater management area (pgma) process to 50 years (current law is 25 years). Language is added to clarify that the TCEQ's rule-making authority for pgmas also applies to the critical area process that existed before September 1, 1997. Procedures are added to clarify how financing occurs when a pgma area is added to an existing district. Conforming changes are made to Chapter 36, Water Code.

**Last Action:** 5-30-11 G Sent to the Governor

SB 332      Fraser  
-----      Ritter      Relating to the vested ownership interest in groundwater beneath the surface and the right to produce that groundwater.

**Companions:** HB 1730 Ritter      (Identical)  
4- 5-11 H Committee action pending House Natural Resources

**General Remarks:** Chapter 36, Water Code, is amended to recognize that a landowner owns the groundwater below the surface as real property. The landowner is entitled to drill for and produce groundwater subject to the spacing requirements and production limits of a groundwater district. The existence of common law or other defenses to liability under the rule of capture are unaffected. This section does not affect the ability of the EAA or the subsidence districts to regulate in any manner authorized by enabling legislation.

**Last Action:** 5-30-11 G Sent to the Governor

SB 333      Fraser      Relating to election procedures and qualifications of members of

----- King, Tracy boards of directors for water supply or sewer service corporations.

**Companions:**

HB 310 King, Tracy (Identical)  
4-12-11 H Laid on the table - subject to call - see SB 333

**General Remarks:** Chapter 67, Water Code, is amended to establish qualifications and election procedures for board members of water supply corporations.

**Last Action:** 9- 1-11 G Earliest effective date

SB 360 Fraser Relating to the composition and use of money in the rural water  
----- Creighton assistance fund.

**General Remarks:** Amends Chapter 15, Water Code, to add other sources of revenue to the Rural Water Assistance Fund and expands the range of projects that can be financed through the fund. It also codifies TWDB rules that allow for securing a loan to a water supply corporation with a promissory note in lieu of requiring the WSC to issue bonds and hiring a bond counsel or financial advisor.

**Last Action:** 9- 1-11 G Earliest effective date

SB 370 Seliger Relating to the authority of the Texas Water Development Board to  
----- Ritter provide financial assistance for certain projects if the applicant has failed to complete a request for information relevant to the project.

**Companions:** HB 1734 Ritter (Identical)  
3-28-11 H Reported favorably from committee on House Natural Resources

**General Remarks:** Chapters 15 and 16, Water Code, are amended to prohibit the TWDB from providing financial assistance when the applicant has failed to complete a request for information about the project from the executive administrator or a regional planning group.

**Last Action:** 5-27-11 G Sent to the Governor

SB 449 Watson Relating to the appraisal for ad valorem tax purposes of open-space  
----- Ritter land devoted to water stewardship purposes on the basis of its productive capacity.

**General Remarks:** The Tax Code is amended to authorize the appraisal of open-space land on the basis of its productive capacity for water stewardship. Practices that may be implemented to promote and sustain water quality and conservation of water resources are designated. The TPWD, with the assistance of the Comptroller, is required to develop qualifying standards. See SJR 16 for the corresponding constitutional amendment.

**Last Action:** 5-26-11 G Sent to the Governor

SB 573 Nichols Relating to certificates of public convenience and necessity for water  
----- Creighton or sewer services.

**General Remarks:** Chapter 13, Water Code, is amended to establish procedures for the TCEQ to issue a CCN to a retail public utility within the ETJ of a municipality without the municipality's consent; to prohibit the TCEQ from issuing a CCN to a municipality beyond the municipality's ETJ over the objections of a landowner; and to require the TCEQ to grant a petition by the owner of a tract of 25 acres or more to release the tract from a CCN area when the tract is not receiving water or sewer service. The TCEQ may require compensation to the decertified retail public utility. Each of the



provisions are bracketed to include or exclude certain counties.

**Last Action:** 5-30-11 G Sent to the Governor

SB 660

Hinojosa  
Ritter

Relating to the review and functions of the Texas Water Development Board, including the functions of the board in connection with the process for establishing and appealing desired future conditions in a groundwater area

**Companions:** HB 3530 Ritter (Identical)  
4-26-11 H Reported from committee as substituted House Natural Resources

**General Remarks:** This is the comprehensive TWDB sunset bill. The provisions of HB1732, relating to the agency's bonding authority, and SB181, relating to a uniform, consistent method for calculating and reporting water use and water conservation, are incorporated. The bill also amends Chapter 36, Water Code, to define "desired future condition", to codify criteria districts must consider in establishing DFCs, and to establish procedural requirements for the DFC process. Appeals to the TWDB and the TCEQ are further clarified. Changes to the DFC process generally include recommendations of the TWCA Groundwater Committee.

**Last Action:** 5-29-11 H House adopted conference report (Vote: Y:147/N: 0)

SB 691

Estes  
King, Tracy

Relating to the exemption from permitting by groundwater conservation districts for certain water wells used for domestic, livestock, and poultry watering purposes.

**General Remarks:** Chapter 36, Water Code, is amended to clarify the language prohibiting a groundwater district from requiring a permit for a well used for domestic or livestock purposes if the well is located on a tract larger than 10 acres and incapable of producing more than 25,000 gallons per day. This legislation was recommended by TWCA's Groundwater Committee.

**Last Action:** 9- 1-11 G Earliest effective date

SB 692

Estes  
Miller, Doug

Relating to exemptions from groundwater conservation district permit requirements.

**Companions:**

HB 2311 Miller, Doug (Identical)  
4-26-11 H Laid on the table - subject to call - see SB 692

**General Remarks:** Provisions in Chapter 36, Water Code, that provide exemptions from permitting for certain wells seem to state that the exemption applies to the well rather than the groundwater use. This bill amends current law relating to permit exemptions to make it clear that the exemption applies to the use, and not the well itself. This legislation was recommended by TWCA's Groundwater Committee.

**Last Action:** 5- 9-11 G Earliest effective date

SB 693

Estes  
Price

Relating to permit application and amendment hearings conducted by groundwater conservation districts and the State Office of Administrative Hearings.

**Companions:**

HB 1825 Price (Identical)  
4-28-11 H Laid on the table - subject to call - see SB 693

**General Remarks:** Under current law, a groundwater district may contract with the

State Office of Administrative Hearings (SOAH) to conduct a contested case hearing. This bill amends Chapter 36, Water Code, to require a groundwater district to contract with SOAH to conduct a contested case hearing if requested by the permit applicant or other party to the case. The district may still make a final decision on the matter. The party requesting that SOAH conduct the hearing will be assessed all costs of the SOAH contract. This legislation was recommended by TWCA's Groundwater Committee.

**Last Action:** 5-12-11 G Earliest effective date

SB 727      Seligier      Relating to groundwater conservation district management plans.  
-----      Beck

**Companions:**

HB 1482 Beck                      (Identical)  
4-14-11 H Laid on the table - subject to call - see SB  
727

**General Remarks:** Chapter 36, Water Code, is amended to make all references to groundwater conservation district management plans consistent. This legislation was recommended by TWCA's Groundwater Committee.

**Last Action:** 4-29-11 G Earliest effective date

SB 737      Hegar      Relating to the management of groundwater production by  
-----      Price      groundwater conservation districts.

**Companions:**

HB 1824 Price                      (Identical)  
4-13-11 H Laid on the table - subject to call - see SB  
737

**General Remarks:** Chapter 36, Water Code, is amended to change the term "managed available groundwater" to "modeled available groundwater" and to address how a district may consider actual groundwater production, including exempt use, in making permitting decisions. This legislation was recommended by TWCA's Groundwater Committee.

**Last Action:** 9- 1-11 G Earliest effective date

SJR 4      Hinojosa      Proposing a constitutional amendment providing for the issuance of  
-----      Ritter      additional general obligation bonds by the Texas Water  
Development Board.

**Companions:** SJR 25 Hinojosa                      (Identical)  
3-17-11 S Meeting set for 11:00 A.M. OR ADJ., E1.036,  
Senate Finance

**General Remarks:** An amendment to the Texas Constitution is proposed to authorize the TWDB to issue certain development fund bonds on a continuing basis such that the aggregate principal amount outstanding does not exceed \$6 billion at any one time. Also see HB1732.

**Last Action:** 11- 8-11 G Election date

SJR 16      Estes      Proposing a constitutional amendment providing for the appraisal for  
-----      Ritter      ad valorem tax purposes of open-space land devoted to water  
stewardship purposes on the basis of its productive capacity.

**General Remarks:**

A constitutional amendment is proposed to support the appraisal of open-space land on the basis of its productive capacity for

water stewardship. See SB449.

**Last Action:** 11- 8-11 G Election date

	All	Track
<b>Total Bills:</b>	24	0

- End of Report -

**SUBJECT:** Moving the general primary election date, implementing the MOVE Act

**COMMITTEE:** Defense and Veterans' Affairs — committee substitute recommended

**VOTE:** 8 ayes — Pickett, Sheffield, Berman, Farias, Landtroop, Perry, Scott, V. Taylor

0 nays

1 absent — Flynn

**SENATE VOTE:** On final passage, April 14 — 29-1 (Nelson)

**WITNESSES:** For — None

Against — None

On — Ann McGeehan, Secretary of State

**BACKGROUND:** Members of the uniformed services and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).

In 2009, Congress overhauled UOCAVA by enacting the Military and Overseas Voter Empowerment (MOVE) Act. A major feature of the MOVE Act is its requirement that all states send absentee ballots to uniformed and overseas citizens at least 45 days before an election, unless a state has received a waiver from the federal government. In response to the MOVE Act, some states have moved their primary election date in order to meet the 45-day deadline.

MOVE also requires states to establish procedures to allow UOCAVA voters to request registration and absentee ballot applications electronically and by mail.

Texas Administrative Code, Title 1, Part 4, ch. 81 authorizes the secretary of state (SOS) to e-mail ballots to uniformed services voters, including their spouse and dependents, that are overseas during a federal election.

Election Code, ch. 101 sets forth the procedures for early voting by mail using federal postcard applications (FPCAs). Sec. 41.001 sets forth the uniform election dates. With certain exceptions, each general or special election in Texas is held on the second Saturday in May or the first Tuesday after the first Monday in November.

Election Code, sec. 41.007 stipulates that the general primary election date is the first Tuesday in March in each even-numbered year. The runoff primary election date is the second Tuesday in April after the general primary election, and the presidential primary election date is the first Tuesday in March in each presidential election year. Sec. 172.023 stipulates that an application for a place on the general primary election ballot must be filed no later than January 2 in the primary election year.

**DIGEST:**

CSSB 100 would move the general primary election date to the first Tuesday in April and the runoff to the third Tuesday in June. The presidential primary election date would move to the first Tuesday in April in each presidential election year.

The bill would require, with certain exceptions, each general or special election in Texas to be held on one of the following dates: the second Saturday in May in an odd-numbered year, the second Saturday in May in an even-numbered year for an election held by a political subdivision other than a county, or the first Tuesday after the first Monday in November. A county elections administrator would not be required to enter into a contract to furnish election services for an election held on the second Saturday in May in an even-numbered year.

The bill would extend the deadline to December 31, 2012, for a political subdivision other than a county that held its general election for officers on a date other than the November uniform election date to change the election date to the November uniform election date.

A political subdivision that before September 1, 2011, held its general election for officers on the uniform election date in May, or that was required by other law to hold its general election for officers on that date, would have to hold its general election for officers on the first Tuesday in

April in an odd-numbered year unless the governing body of the political subdivision changed the date.

CSSB 100 would authorize a home-rule city to implement the changes authorized by the bill by adopting a resolution. The change would supersede a city charter provision that required a different general election date. A holdover of a member of a city governing body, in accordance with state constitutional provisions requiring officers to serve until their successors were qualified, as the term of office could be conformed to a new election date, would not constitute a vacancy for purposes relating to vacancies in the Texas Constitution.

**Implementing the federal MOVE Act.** CSSB 100 would implement the federal MOVE Act and authorize the e-mail transmission of balloting materials to a member of the armed forces or merchant marines of the U.S., or their spouse or dependent, or a person domiciled in this state but temporarily living outside the U.S.

The SOS would be the designated state office to provide information about voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by individuals eligible to vote under the federal MOVE Act. The SOS would be the state coordinator between military and overseas voters and county election officials and could adopt any necessary rules, including rules for an alternate secure method of electronic ballot transmission other than e-mail.

County election officials would have to cooperate with the SOS to ensure that military and overseas voters timely received accurate balloting materials in time for the election

An application for a ballot to be voted by mail would have to be submitted on an official FPCA form and include certain eligibility information. An individual qualified to vote under these provisions could request from the early voting clerk e-mail transmission of balloting materials. The early voting clerk would have to grant this request if:

- the requestor had submitted a valid FPCA and was an overseas voter who provided a current mailing address located outside the U.S. or a military voter who provided a current mailing address outside of his or her county;

- the requestor provided an e-mail address that corresponded to the address on file with the FPCA or on a newly submitted FPCA;
- the request was submitted on or before the seventh day before the date of the election; and
- a marked ballot for the election from the requestor had not been received by the early voting clerk.

An e-mail address would be confidential and would not constitute public information. An early voting clerk would have to ensure that a voter's e-mail address was excluded from public disclosure.

**Voter registration.** To register to vote under the bill, a person would be required to provide the address of the last place of residence in the state or the person's parent or legal guardian's last place of residence. The registrar would have to register the person at the address provided or assign them an address under prescribed procedures.

**Balloting materials.** Balloting materials could be e-mailed only for an election in which an office of the federal government was on the ballot, including a primary election or an election to fill a vacancy in the Legislature unless it was ordered as an emergency election or held as an expedited election or was a joint election under either of those circumstances.

Balloting materials sent by e-mail would have to include:

- the appropriate ballot;
- ballot instructions;
- instructions on how to print a return envelope from the federal voting assistance program website and how to create a carrier envelope or signature sheet for the ballot; and
- a list of certified write-in candidates.

Balloting materials could be provided in PDF format, through a scanned format, or by any other method of electronic transmission authorized by the SOS. The SOS would be required to prescribe procedures for the retransmission of materials following an unsuccessful transmission.

Military or overseas voters would have to be voting from outside the voter's county or from outside the U.S. A voter who received a ballot under these provisions would have to return it by mail, common or

contract carrier, or courier. A ballot could not be returned by electronic transmission, with certain exceptions.

The deadline for returning ballots would be the same as the deadline for returning a marked ballot voted by mail. If a ballot was late, it would not be sent to the early voting ballot board for processing. If a ballot was timely, the clerk would have to include in the jacket envelope a copy of the voter's FPCA and the signature cover sheet, if applicable.

For each FPCA registrant accepted to vote, the early voting clerk would have to note on the early voting poll list indicating the voter was an FPCA registrant. The clerk also would have to note on the early voting roster each e-mail of a ballot voted under these provisions. A ballot from an FPCA registrant would not have to be included on the precinct early voting list.

The SOS, in coordinating with local election officials, would be required to implement an electronic free-access system that a person could use to determine, by telephone, e-mail, or over the Internet, whether the FPCA or other registration or ballot application had been received or accepted and whether the person's ballot had been received and its status.

The SOS would have to create a tracking system under which an FPCA registrant could determine whether a voted ballot had been received by the early voting clerk. Each county that sent ballots to these individuals would have to provide information required by the SOS to implement the system.

If the early voting clerk had provided a voter a ballot to be voted by mail by regular mail and e-mail, the clerk could not deliver a jacket envelope containing the early voting ballot until both ballots were returned or the deadline for returning marked ballots had passed. If the ballots provided by regular mail and e-mail were returned before the deadline, the early voting clerk would have to deliver to the board only the jacket envelope containing the ballot provided by e-mail. The ballot provided by regular mail would be considered not timely returned.

In determining whether to accept an early voting ballot by mail when the signature on the carrier envelope certificate was determined to have been executed by someone other than the voter, the early voting ballot board would have to compare the signature on the carrier envelope or signature cover sheet with the signature on the FPCA.



The bill would require the early voting ballot board, when placing and sealing rejected ballots in a carrier envelope, to keep a record of the number of rejected ballots in each envelope. The bill would require a notation to be made on the carrier envelope of any ballot rejected after the envelope was opened and to include the reason the envelope was opened and the ballot rejected.

The presiding judge of the early voting ballot board, when providing written notice of the reason for the rejection, would also have to provide the notice to the e-mail address where the ballot was sent.

For ballots from military or overseas voters, the early voting ballot board would have to place the copy of the voter's FPCA or signature cover sheet in the same location as the carrier envelope.

The bill would require the SOS to prescribe procedures to allow a voter who qualified to vote by a federal write-in absentee ballot to vote through use of a federal write-in absentee ballot in an election for any office for which balloting materials may be sent by e-mail.

**Change of terms in municipalities.** By December 31, 2011, the governing body of the general-law municipality could adopt a resolution changing the length of terms of its members to two years. The resolution would have to specify how the transition from the length of the former term to the modified term was made. The transition would have to begin with the first regular election for members of the governing body that occurred after January 1, 2012, and a member who served on that date would serve the remainder of that term. This provision would expire January 1, 2015.

The bill's provisions would prevail over another act of the 82 Legislature to the extent of any conflict. The SOS would have to adopt rules to implement the bill's provisions, including the adjustment of any affected date, deadline, or procedure. The bill's provisions would not be in effect for an election held on November 8, 2011.

CSHB 100 would make a number of organizational and conforming changes to the Election Code and other statutes related to extending or shortening deadlines, where appropriate, as a result of amending the uniform election and primary election dates.

The bill would take effect on September 1, 2011.

**SUPPORTERS  
SAY:**

Texas must comply with the 2009 MOVE Act, which requires states to provide absentee ballots to military personnel and other citizens living overseas at least 45 days before a federal election and to establish rules for the electronic transmission of ballots and a free tracking system for military voters to use to track their ballots. CSSB 100 would be needed to align state election law with the new federal requirements in time for the 2012 elections, or else face possible sanctions from the federal government. Fourteen states or jurisdictions had federal intervention in 2010.

As it stands now, the dates of the filing deadline, presidential primary election, the primary runoff election, and nonpartisan city and school elections are too compressed to comply with the law. To keep the January 2 filing deadline and comply with the federal law, Texas has to shift the party primaries to later in the year.

Additionally, because of rules adopted by the national Republican Party, Texas would need to move its primary to April in order to remain a winner-take-all primary state. Under Texas Republican Party rules, candidates receiving over 50 percent of the presidential primary vote statewide or in a congressional district receive all of the delegates. If Texas retains this system for a March primary, it could risk losing half of its delegates to the national party convention.

Voting is quite often difficult for those on active duty. The distance of military personnel and individuals living temporarily overseas has made it difficult to comply with the elections timeline. The goal is to ensure that military members and their dependents are not disenfranchised when trying to cast a ballot. The federal government has acted in response to concerns that about a quarter of military and overseas ballots were not reaching voters in time.

The real issue is the amount of time needed to request, receive, and return a ballot by mail. It makes it virtually impossible for active military men and women serving overseas to vote in a timely fashion. The bill would authorize ballots to be e-mailed, printed, and returned, but the deadline for returning the ballots would be the same for ballots being voted by mail.

There were several options for moving election and filing dates, but the proposals in the bill would cause the least ripple effect. Keeping the current filing deadline for candidates to apply for a spot on the primary ballot of January 2 would not put candidates in jeopardy of the state's "resign to run" law. The Texas Constitution stipulates that a county officeholder must resign before seeking another office if more than a year is left on his or her term. Officeholders routinely file by January 2 because that leaves less than a year on their current term.

Moving the primary election date would give voters more time to get to know the candidates and to think about the issues. The bill would keep the ability to combine the general and local elections dates on the first Tuesday in November and maintain the May election date in odd-numbered years. Local entities still could hold elections in May of even-numbered years. If the county elections administrator refused to administer the election, the local entities could contract to hold their elections.

The bill would also allow for the adjustment of terms of office for certain cities, moving the terms from three years to two to enable them to comply more easily.

**OPPONENTS  
SAY:**

The vast majority of cities and school districts hold their nonpartisan elections on the May uniform election date. Schools want their elections held before summer, and cities want their elections before start their budgeting processes. The bill would allow these entities to have the May uniform election date in odd-numbered years or be forced to move these elections to the uniform election date in November.

The bill would authorize local entities to hold an election on the May election date in even-numbered years and although it would not require county election administrators to supply voting machines, this has been standard practice. County election administrators have said that it would be too difficult to supply electronic voting machines to local entities wanting to hold an election in May of even-numbered years. As a result, local entities that currently conduct an election every May because of staggered terms of office would be forced to switch to the November date.

In addition to cities and school districts, many other local entities hold elections on the May election date, including water districts, municipal utility districts, and community colleges. To coordinate the administration

and expense of holding a local election would be very difficult and expensive.

Under current law there are two election date options – May and November. Local election officials have the option to put propositions and bond proposals on the May ballot and other measures and member elections on the ballot in November. The proposals in the bill would give local officials less flexibility when responding to the needs of the community.

If the November uniform date was chosen, nonpartisan issues could be drowned out by the partisan ones, especially with straight-party voting, and the ballots would be very large. A November date could force a runoff election to occur during the holiday season, when resources and manpower are scarce.

Moving the primary election date later in the year would rob Texas of clout in the presidential primaries. It should remain a part of Super Tuesday in March.

**OTHER  
OPPONENTS  
SAY:**

A better alternative to changing the length of terms for general-law municipalities would be to allow for the election of all members of the governing body at the same election, rather than simply authorizing the entities to change the length of the terms to two years.

**NOTES:**

The House committee version of the bill differs from the Senate-passed version by establishing the runoff primary election date as the third Tuesday in June rather than the fourth Tuesday in May. The substitute also contains provisions relating to the general primary election date and the presidential primary election date that were not included in the Senate-passed version.

According to the bill's fiscal note, the fiscal implications cannot be determined at this time. It is assumed that if the primary runoff election date is moved from the second Tuesday in April to the third Tuesday in June, several public schools used for the elections would be closed for the summer and could charge a fee. This could cost the state about \$86,000 to \$260,000.

SB 100  
House Research Organization  
page 10

A similar bill, HB 2173 by Torres, which has many of the same provisions, including the implementation of the federal MOVE Act, passed the House by 142-1 on May 5 and passed the Senate on May 23.

## **Item 4**

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

- c. Discussion and possible action related to the mediation of the Jeremiah Venture TLAP contested-case.**

## **Item 4**

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

**d. Discussion, and possible action related to progress with the negotiated rulemaking with Centex.**

## **Item 4**

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

- e. Discussion and possible action relating to *City of Kyle v. Goodman et al. and the Barton Springs Edwards Aquifer Conservation District*, Cause No. 10-1267, 22<sup>nd</sup> District Court, Hays County, Texas.**



**Item 5**  
**Adjournment**