

STATE OF TEXAS

§

RESOLUTION #03102022-02

COUNTIES OF CALDWELL,
HAYS, AND TRAVIS

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A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BARTON SPRINGS/EDWARDS AQUIFER CONSERVATION DISTRICT, APPROVING THE REDISTRICTING OF THE DISTRICT'S SINGLE-MEMBER DIRECTOR PRECINCTS AND ESTABLISHING NEW PRECINCT BOUNDARY LINES FOR BOARD OF DIRECTOR ELECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the District's enabling legislation codified at § 8802.053 of the Texas Special District Local Laws Code, provides that as soon as practicable after the publication of each federal decennial census, the board shall revise the single-member districts; and,

WHEREAS, the 2020 federal decennial census was released in August 2021; and,

WHEREAS, the § 8802.053 of the Texas Special District Local Laws Code provides that the District is divided into five numbered, single-member districts for electing directors; and,

WHEREAS, Water Code § 36.059(b) provides that if any part a municipal corporation is part of one director precinct, then no part of the municipal corporation shall be included in another director precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two precincts. In a multicounty district, not more than two of the five precincts may include the same municipal corporation or part of the same municipal corporation; and,

WHEREAS, The Cities of Austin, San Marcos, Buda, and Kyle are within the District, but only the City of Austin may be split between two director precincts because it has a population over 200,000; and,

WHEREAS, the Board existing director precincts were adopted on May 26, 2016; and,

WHEREAS, subsequent to May 26, 2016 adoption of the District's current director boundaries, the City of Austin annexed into portions of Director Precinct 3; and,

WHEREAS, subsequent to May 26, 2016 adoption of the District's current director boundaries, the Cities of San Marcos, Buda, and Kyle have annexed territory into more than one director precinct; and,

WHEREAS, Special Districts Local Law Code § 8802.053(b) provides the Board may revise the single-member districts as necessary and appropriate; and,

WHEREAS, the Board finds it is necessary and appropriate to revise the boundaries of all five director precincts to comply with Special Districts Local Law Code § 8802.053(c), which provides that when the board revises the single member precincts, two of the precincts are to be

entirely within the boundaries of the City of Austin, as those boundaries exist at that time; or within the boundaries of the City of Austin, as those boundaries exist at that time, but also including unincorporated areas or other municipalities that are surrounded wholly or partly by the boundaries of the City of Austin if the areas or municipalities are noncontiguous to the territory of any other single-member district; and

WHEREAS, the principle of “one-person, one-vote” (equal population) established by the U.S. Constitution is not implicated in this instance because the purpose and powers of the District are specialized and narrow. The U.S. Supreme Court in *Sayler Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 728 (1973) has established an exception to the one-person-one vote principle for special purpose governmental entities exercising narrow governmental function and operating to the burden or benefit of one group of constituents more than others. This exception was recently found to apply to the Edwards Aquifer Authority in *League of United Latin American Citizens v. Edwards Aquifer Authority*, 937 F.3d 457 (5th Cir. 2019); and,

WHEREAS, the District was established for the special purpose to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater within its boundaries; and,

WHEREAS, with the population distribution including the municipal corporations of the Cities of San Marcos, Kyle, and Buda, of which each has a population of less than 200,000, there is no configuration of single-member director precinct numbers 1, 2 and 3 that can be sufficiently balanced to comply with “one-person, one-vote” (equal population) principle; and

WHEREAS, the established director precincts 1, 2 and 3 have always contained disproportionate populations when compared to precincts 4 and 5, which is unavoidable to comply with Special Districts Local Law Code § 8802.053(c) and disproportionate population among precinct 1,2, and 3 is unavoidable to comply with Water Code § 36.059(b); and,

WHEREAS, the District lacks the general powers of a county or municipality such as the powers to impose ad valorem or sales taxes, and the District’s funding is derived from production fees imposed on non-exempt wells and a fee paid by the City of Austin; and,

WHEREAS, by far the greater burden of the regulatory activity of the District falls on rural water users who take water from regulated aquifers rather than on residents of the City of Austin who are on the City water system, which is not solely dependent on any aquifer; and,

WHEREAS, the 70th Texas Legislature found in the passage of SB 988, which ratified the creation of the District, that the City of Austin received by way of the discharge of Barton Springs, contribution to its municipal water supply in an overall volume roughly equivalent to existing usage by other non-exempt users of the Barton Springs segment of the Edwards Aquifer thus justifying the City of Austin’s election of two directors; and,

WHEREAS, little to none of the District’s regulatory burden will fall on the residents of the City of San Marcos because the City of San Marcos does not rely on any groundwater

production from the aquifers that would be regulated by the District and already prohibits the drilling of water wells that otherwise would be regulated by the District and, therefore, little to no regulation or production fees will be imposed upon wells within San Marcos; and,

WHEREAS, the Cities of Kyle and Buda produce water from, but are not solely dependent on, the groundwater produced from the Barton Springs segment of the Edwards Aquifer and each rely on sources in addition to the Barton Springs segment of the Edwards Aquifer and the Trinity Aquifer and, therefore, will bear less of the District's regulatory and financial burden than residents of rural areas that rely solely on groundwater produced from aquifers regulated by the District; and,

WHEREAS, the Cities of San Marcos, Kyle, and Buda, have multiple sources of water supply, including substantial supplies of surface water from the Guadalupe Blanco River Authority; and

WHEREAS, exempt well owners who rely solely on groundwater and are located in less densely populated rural areas are dependent upon District's regulations to preserve and protect groundwater; and,

WHEREAS, the Board believes an urban precinct 2 that contains the Cities of San Marcos, Kyle, and Buda which rely on conjunctive (groundwater and surface water) water supplies; a rural precinct 1, which contains users who rely mainly on Trinity Aquifer groundwater supplies from exempt wells and a rural precinct 3, which contains many nonexempt users that rely mainly on Edwards Aquifer groundwater supplies, justifies disproportionate populations among Director Precinct 1, 2, and 3; and,

WHEREAS, the District engaged the law firm of Bickerstaff Heath Delgado Acosta LLP to act as the District's redistricting consultant, including advising and assisting the Board in preparation of a new redistricting plan in compliance with applicable requirements of state and federal law; and,

WHEREAS, on January 13, 2022, the Board of Directors adopted redistricting criteria to assist the District and the public in developing redistricting plans which comply with applicable federal and state laws, and the adopted redistricting criteria were applied in the development of the District's new redistricting plan; and,

WHEREAS, on January 13, 2022, the Board of Directors also adopted redistricting guidelines regarding the submission of comments and proposed plans by the public to ensure the ability of the District to timely receive and adequately consider them; and,

WHEREAS, during the redistricting process, the District provided notice to the public of its proposed discussions and development of a redistricting plan through meeting agendas posted in compliance with the Texas Open Meetings Act, notices on the District's website, and publication of newspaper notices, as well as providing certain individual notices regarding public hearings; and,

WHEREAS, the Board of Directors has considered the proposed redistricting plan at its Board meeting on February 10, 2022 and at a public hearing held on March 10, 2022, and no written comments were received on or by March 3, 2022. The Board has considered oral testimony, reports from the District's redistricting consultant, and various proposed plans regarding the appropriate reconfiguration of the director precincts; and,

WHEREAS, the attached director precinct redistricting plan satisfies the adopted redistricting criteria of maintaining the rural Trinity Aquifer users (proposed Precinct 1), the urban conjunctive water supply users (proposed Precinct 2), and the rural Edwards Aquifer users (proposed Precinct 3), as communities with aligned interests in groundwater management; and

WHEREAS, the Board of Directors finds that the attached director precinct redistricting plan is in the best interest of the citizens of the District, complies with the adopted redistricting criteria, has the support of the majority of those providing comments, and complies with all state and federal requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BARTON SPRINGS/EDWARDS AQUIFER CONSERVATION DISTRICT, TEXAS:

A. That the existing single-member director precinct boundary lines for the Barton Springs/Edwards Aquifer Conservation District are hereby amended, and the new districting plan depicted on the map attached hereto as Exhibit A, defining new director precincts, as such new director precincts are further described in the tables attached hereto as Exhibit B reporting populations and demographic statistics for each such new director precinct, is hereby adopted and designated to define the District's five single-member director precincts from and after the Effective Date; that Exhibits A and B are incorporated by reference in and made a part of this resolution, and shall be kept on file in the District Office.

B. That this resolution shall take and be given effect immediately and that thereafter, all Barton Springs/Edwards Aquifer Conservation District elections shall be held under and in accordance with the new single-member director precinct districting plan here adopted by the Board of Directors, until such time as a subsequent lawfully-enacted districting plan shall be adopted to replace this plan.

PASSED AND APPROVED by the Board of Directors of Barton Springs/Edwards Aquifer Conservation District, Texas this 10th day of March 2022.

BARTON SPRINGS/EDWARDS AQUIFER
CONSERVATION DISTRICT



Blayne Stansberry
President, Board of Directors

ATTEST:



Christy Williams
Secretary, Board of Directors