

CAUSE NO. _____

TRINITY EDWARDS SPRINGS §
PROTECTION ASSOCIATION, §

Plaintiff §

VS. §

ELECTRO PURIFICATION L.L.C., §
BRIDGES BROTHERS FAMILY LP NO. §
1, §
BRIDGES BROTHERS, L.L.C., §
ROY GENE ODELL, §
EDDIE RAY ODELL, and §
JUANITA MARIE LIENNEWEBER, §
ALSO KNOWN AS NITA §
LIENNEWEBER §

Defendants.

IN THE DISTRICT COURT OF

HAYS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION
REQUEST FOR INJUNCTIVE RELIEF
AND JURY DEMAND**

TO THE HONORABLE JUDGE OF THE COURT:

1. Humans have many wants; they have but very few true critical needs – food, water, and shelter. This case goes to these core critical needs required to support life and maintain the habitability of family homes in this county. “Indeed, the State has the responsibility under the Texas Constitution to preserve and conserve water resources for the benefit of all Texans.” Supreme Court Justice, and now Governor, Greg Abbott.¹

¹ *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 623 (Tex.,1996)(authored by Justice, now Governor, Abbott).

2. Plaintiff, Trinity Edwards Springs Protection Association (“TESPA”), brings this action against Defendants, ELECTRO PURIFICATION L.L.C., BRIDGES BROTHERS FAMILY LP NO. 1, BRIDGES BROTHERS, L.L.C., ROY GENE ODELL, EDDIE RAY ODELL, and JUANITA MARIE LIENNEWEBER, also known as, NITA LIENNEWEBER seeking to enjoin the operation of massive commercial water wells, which will severely adversely impact members’ domestic water wells on which they rely for their homes. The defendants propose to drill massive commercial water wells that will remove over 5 million gallons of water a day.

3. The Defendants propose to drill water wells through but not withdraw water from the Edwards Aquifer, which is protected by the Edwards Aquifer Authority, thus evading regulation by that entity. The wells drill down into and withdraw water from the Trinity Aquifer, which in Hays County is protected by the Hays Trinity Groundwater Conservation District. As discussed below, Defendants have failed to obtain the required permits from this Groundwater Conservation District. There also is a question whether the long-term operation of these wells will impact the waters protected by the nearby Barton Springs/Edwards Aquifer Conservation District “BSEACD.” Yet, Defendants claim to be beyond the reach of any governmental entity or any other law regulating or limiting their conduct. They are wrong.

DISCOVERY LEVEL 3

4. Plaintiffs intend to conduct discovery pursuant to Level 3, Texas Rule of Civil Procedure 190.4.

STATUTORY CASE PRIORITY

5. This case is brought under the TEXAS WATER CODE, Chapter 36, and in the alternative under common law. The Legislature has mandated that cases under Chapter 36 shall have priority on the Court's docket. "(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court." TEX. WATER CODE § 36.119(f).

JURISDICTION, VENUE & NOTICE

6. As this action involves interests in real property, and conduct related to that real property, located in Hays County, Texas, venue is mandatory in Hays County, Texas, pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 15.011, and the Court has both general and specific jurisdiction over the parties and subject matter of the case. Plaintiff has provided the statutorily notice required to initiate this action. TEXAS WATER CODE § 36.119(h) provides: "An aggrieved party may sue a well owner or well driller to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the district and without the need to wait for a hearing." See, Exhibit 14, Notice Letter with affidavit of service.

PARTIES AND SERVICE

7. Plaintiff, the Trinity Edwards Springs Protection Association ("TESPA"), is a Texas non-profit, organized to protect the health of the Trinity Aquifer, Edwards Aquifer, and their groundwater among other purposes. As discussed more in the section on standing, members of TESPAs are directly impacted by defendants' proposed actions.

8. Defendant Electro Purification L.L.C. is a Texas limited partnership with its principal place of business in Houston, Harris County, Texas. It may be served through its registered agent for service of process at its office:

Tim Throckmorton
4605 Post Oak Place Dr.
Houston, TX 77027, USA

9. Defendant Bridges Brothers Family LP No. 1 is a Texas limited partnership, with its principal place of business in Hays County, Texas. It may be served through its registered agent for service of process:

Robert A. Bridges
1108 Claire Avenue
Austin, Texas 78703

10. Defendant Bridges Brothers, L.L.C., is a Texas general partnership. It may be served through its registered agent for service of process:

Robert A. Bridges
1108 Claire Avenue
Austin, Texas 78703

11. Defendant Roy Gene Odell is a resident of Hays County, Texas. He may be served with process at his home address: 220 Bonnie, Driftwood, Texas, 78620.

12. Defendant Eddie Ray Odell is a resident of Hays County, Texas. He may be served at: 1194 Rutherford Lane, Driftwood, Texas, 78619, or his place of business Rutherford Ranches, 9155 FM 967, Buda, Texas, 78610.

13. Defendant Juanita Marie Lienneweber, also known as Nita Lienneweber, is a resident of Texas. She may be served at her place of business: 1000 Wayside Dr., Wimberley, Texas, 78676.

STANDING OF THE ASSOCIATION

14. An association has standing to bring suit on behalf of its members when (1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977); *Tex. Ass'n of Bus.*, 852 S.W.2d 440, 447 (Tex. 1993). Applying this three prong test, the Austin Court of Appeals found that a similar group, the Save Our Springs Alliance, met the requirement for associational standing. “The SOS Alliance's petition alleges that its members are residents of Travis and Hays counties who are concerned with water quality in the Edwards Aquifer and Barton Springs Watershed. Under *Groves*, individual members living in the affected area have standing to sue. The interest that the SOS Alliance seeks to protect by this suit—water quality in the Edwards Aquifer and Barton Springs Watershed—unquestionably reflects the organization's expressed purpose.” *Save Our Springs Alliance, Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App. 1996)(orig. proceeding)(internal citation omitted).

A. The First Prong: The Members of TESPAs Have Standing to Sue in Their Own Right

15. The association must show that its members “have standing to sue in their own right”. *Tex. Ass'n of Bus.*, 852 S.W.2d at 447 explains that the first prong of the associational standing test “should not be interpreted to impose unreasonable obstacles to associational representation.... [T]he purpose of [the first prong] is simply to weed out plaintiffs who try to

bring cases, which could not otherwise be brought, by manufacturing allegations of standing that lack any real foundation”.

16. Citizens have standing and a right to bring an action to halt the illegal drilling and/or operation of a water well pursuant to the TEXAS WATER CODE § 36.119, Illegal Drilling and Operation of Well; Citizen Suit, which provides as follows.

- (a) Drilling or operating a well or wells without a required permit or producing groundwater in violation of a district rule adopted under Section 36.116(a)(2) is declared to be illegal, wasteful per se, and a nuisance.
- (b) Except as provided by this section, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which a well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of a district rule adopted under Section 36.116(a)(2), or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the well or wells, may sue the owner of the well or wells in a court of competent jurisdiction to restrain or enjoin the illegal drilling, operation, or both. The suit may be brought with or without the joinder of the district.
- (c) Except as provided by this section, the aggrieved party may also sue the owner of the well or wells for damages for injuries suffered by reason of the illegal operation or production and for other relief to which the party may be entitled. In a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) is prima facie evidence of illegal drainage.
- (d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.
- (e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.
- (f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.

- (g) Before filing a suit under Subsection (b) or (c), an aggrieved party must file a written complaint with the district having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a district rule. The district shall investigate the complaint and, after notice and hearing and not later than the 90th day after the date the written complaint was received by the district, the district shall determine, based on the evidence presented at the hearing, whether a district rule has been violated. The aggrieved party may only file a suit under this section on or after the 91st day after the date the written complaint was received by the district.
- (h) Notwithstanding Subsection (g), an aggrieved party under Subsection (b) may sue a well owner or well driller in a court of competent jurisdiction to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the district under Subsection (g) and without the need to wait for a hearing on the matter.

17. Associational standing is not based on an association's direct, independent standing; it is derived from the standing of the individual members of the association. *See Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211, 45 L.Ed.2d 343 (1975) (explaining that “[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members”); *see also Hunt*, 432 U.S. at 340–42, 97 S.Ct. at 2440–41 (rejecting contention that the association lacked standing because challenged statute had no impact on the association—the Washington State Apple Advertising Commission—but only upon Washington apple growers and dealers). To hold that only an association directly aggrieved possesses standing is inconsistent with the concept of associational standing articulated by the United States Supreme Court. *See Hunt*, 432 U.S. at 342–43, 97 S.Ct. at 2440–42. The fact that the association does not possess direct, independent standing is not relevant to a determination of associational standing so long as the three prongs of the associational standing test are met. *See id.*

TESPA MEMBERS – INDIVIDUAL EXAMPLES FOR STANDING

18. Here are examples of members of TESPAs explaining in their own words the impacts of the well if it is allowed to go forward. They provide their address, the depth of their water well, and how they will be impacted in their lay understanding.

19. Jacquelin Hyman
301 Limestone Lane
Driftwood, TX 78619

“Location: Within 1/4 of mile (just 3 lots North of Bridges Test Well #2 - at center of well field - two 10-acre lots between my property line and Bridges’)

Water Well: Well Depth Approx. 400 feet

Concerns about EP well project:

- “Drilling of at least two of the Test wells interfered with my ability to work effectively from home because of the shaking of the earth (we obviously share the same bedrock plates) and excessive noise pollution
- Actual production wells would most probably create additional noise pollution and excessive lighting at night with addition of generators and security lights and anything else different they might need for actual production wells
- The threat of drying up my well water supply which is a precious and vital resource and one that I work hard to conserve and not abuse
- Additional problems with water quality as each new well is drilled. (New wells dug nearby always seem to stir up my water and make it cloudier, darker, and stinky for several weeks/months before things seem to settle down again.)
- Infringement upon my property rights as a conservation-minded property owner for over 15 years, as well as upon the rights of my like-minded and wonderfully talented neighbors
- This is my homestead and my entire family lives here and is affected by this issue. We’ve all settled here because we highly value and LOVE this area and have nowhere else to go. We chose this area specifically to raise our children and to have this land and the wonderful associated attributes to pass on to them. Though I am a successful self-employed entrepreneur who works primarily from home, I have no surplus of money to purchase additional land or build a second home elsewhere, nor do I want to as this is the ideal land for me and my family and that is why we invested in it.”

20. Lindsey Lamont Lewis
Deborah Jo Lewis
262 Wolf Creek Pass
Wimberley, Tx 78676

“Well 1: 450 ft (came with the property in 1989)

Well 2 770 (Drilled in June of 2011)

We moved to the property with the wells in August, 1989 and purchased the adjacent lot in 1993.

We are deeply concerned about the impact of this action on our well, the quality of life and future value of our home. If our well goes dry or drops significantly, this will have an obvious impact on our quality of life. We have always been conservation minded. We have approximately 7500 gallons of non-potable rain water collection that is used for landscaping and other non-household related uses. We installed the first tank in the early nineties. Approximately 1000 gallons of that has been dedicated to feeding a solar distiller that we have used for many years to provide the bulk of our drinking water. Part of the use of the rain collection is to offset the evaporative losses associated with our pool. The pool was added partly as a hedge against fire danger. We have additional pumps and a generator available to for this purpose. The volunteer fire department is aware of this water supply if they needed it elsewhere. With all of that we are still dependent on our well to provide the water for household uses. The value of a home is directly connected to availability of potable water. There doesn't appear to be anyone not profiting from this venture that would suggest that this action won't deplete or significantly lower our well.”

21. Walter Ian Green
8601 Ranch Road 3237
Driftwood Texas 78619

“I am within half a mile from the test wells being drilled by EP

My well is 480 ft

This whole project has come to this local area based on a loophole in ancient Texas law and has no bearing or reference to the community of families who reside in the area and whose livelihood and survival depends on having an adequate fresh water supply. The ridiculous intentions of pumping 5.6 million gallons of water per day will without doubt impact current wells threatening these residents let alone causing property values to decline a, serious situation whose savings and retirement funds are wrapped up in the value of their residence. It is almost a travesty that this action should be allowed to be even considered irrespective of sale of water deals being made with distant towns. It is beyond common sense that opportunists can even attempt to do this irrespective of ancient laws without full investigation and permission and reference from the lawmakers responsible to the people in the area. The people of this area will beyond any doubt fight these actions to the very end and EP should be very wise indeed to reconsider their intentions, and consider withdrawal.”

22. Dan and Cynthia Pickens
851 Jennifer Lane
Driftwood, Texas, 78619

“We are 0.47 miles from the nearest test well on the O’Dell property off CR 183

Our well is 400 feet deep

Our concern:

Our well, and many of our neighbors’ wells have temporarily gone dry in the summertime, due to weak flow in the aquifer. If Electro Purification is allowed to pump 5.3 million gallons a day from a fault zone in an already stressed aquifer, it will cause my well to go completely dry. The fault zone permits communication between all layers within the aquifers – both the Edwards Aquifer and the Trinity Aquifer – thus, by drilling down 1000 feet, they intend to reach the bottom of the glass and drain all the formations of water.

Without water, my home is worth far less than it is with water. By pumping my well dry, EP will harm my property value and my life’s investment. A dry well caused by their pumping is an infringement of my property rights and would cause me severe financial harm.

Additionally, I am concerned that such excessive pumping will reduce the overall moisture content in the topmost strata and soil, leading to a die off of the vegetation and a reduction in surface waters and springs on which wildlife depends. We lost approximately 15 % of our trees in the severe drought year of 2011. If EP’s pumping is allowed, I fear the ecology of the whole region was harmed. Trees, other plant species and wildlife add to the value of my property. Their loss, due to EP’s pumping, would be harmful to my property value and an infringement on my property rights.”

23. Terry W. Raines
471 Limestone Lane
Driftwood, Texas 78619

My property is within 1/2 mile of an EP well

My well is 360 feet deep, water stands at 100 feet when not pumped, and it was drilled in 1972

I know our well will go dry if EP starts pumping in such close proximity

24. Nancy Weaver
515 Limestone Lane
Driftwood TX 78619

“.5 of property (last right on Limestone) is within the .5 circle including the well
Aside from being very concerned about the viability of my own well and those of my neighbors, I am concerned about the precedent being set. What is to stop more leases, more wells, more pipelines, until the water is gone, along with the springs, creeks, wildlife that depend on water sources? And what becomes of all the people who unwittingly moved to this area with expectations of available water? Most of us homeowners have only the value of our homes and property as our greatest resource. What becomes of all these people when the few who profit turn this region into a desert and vamoose with the money?”

25. The Rolling Oaks Club, Inc. is a community organization representing and protecting the interests of a neighborhood of over 200 homes almost all of which have water wells within two miles of Defendants’ well and as will be shown by the evidence at trial, the Defendants’ well will impact wells two miles away or more. The ROCI board of directors approved this statement:

“Our members and neighbors depend on their wells for their lives. We cannot calculate the cost of the disruption to their lives if EP pumps their wells dry. In addition, their property values will plummet.

We will not be able to maintain the Rolling Club swimming pool if our well is pumped dry. We built the swimming pool to be a source of water to fight fires in our neighborhood as well as recreation during our hot summers. Again the loss of our well would be an incalculable cost.”

B. Second Prong: The interests it seeks to protect are germane to the organization's purpose.

26. This action is well within the express purposes of TESPAs. The Certificate of Formation contains TESPAs’ stated purpose.

“Section 5.01. The Corporation is organized exclusively for charitable and educational purposes as defined in Section 501(c)(3) of the Internal Revenue Code, *including, but not limited to*, research, development and publication of proposals *to protect the health of the Trinity Aquifer, Edwards Aquifer, their groundwater*, and Hill Country artesian springs including the San Marcos Springs in San Marcos, Texas. These activities include

monitoring and protecting endangered and threatened species in the San Marcos Springs and other Hill Country artesian springs; increasing public awareness and understanding of environmental issues in and around Hill Country artesian springs including the San Marcos Springs, such as the hydrologic connectivity of the Trinity Aquifer system and the Edwards Aquifer system via geologic faulting, through media and other educational programs; *participating in common law or statutory based litigation designed to further these activities*; researching and publishing information about these issues to inform the public; and reviewing and commenting upon existing practices which may or do impact these issues.”

C. Third Prong: (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members.

27. In this action, TESPAs seeks only prospective relief to enjoin the development of this well and pipeline project. As no harm has yet occurred, there are no claims for damages asserted. Thus, the individuals are not necessary parties. *See Tex. Ass'n of Bus.*, 852 S.W.2d at 448 (recognizing associational standing under third prong when association sought only prospective relief and did not need to prove the individual circumstances of its members to obtain that relief); *see also Hunt*, 432 U.S. at 343–44, 97 S.Ct. at 2441–42.

ADDITIONAL FACTS

28. This case arises from a developer, Electro Purification LLC, leasing a 1,000 acre ranch from the other defendants, and now proposing to install massive commercial water wells to remove over 5 million gallons of well water a day for 50 years or even longer. Then, the developer proposes to put a pipeline across other people’s properties without their consent, to move the water and sell it for its private profit, benefitting a small group of partners to the

detriment of hundreds of adjacent families whose water wells are threatened. Initial rough projections estimate that pumping at 5.3 million gallons a day for just one year will drop the existing water level by 197 feet at a distance two miles away. At a distance of one mile from the well, the water level is projected to drop by over 300 feet – after just one year. During a pumping of a small test well by the developer for just 30 minutes, **a nearby neighbor's water well dropped 8 feet – in just 30 minutes!**

29. The conduct of the defendants will directly and adversely impact hundreds of households in the impact zone, leaving people, homes, and animals without water from their own water wells on which they rely for their own homes and families. If the developer/partners' plans go through, the families who already live in the area will be left without functioning water wells, with uninhabitable homes, even though few can afford to pack up and leave, and their homes will become unsellable for human habitation. Simply put, the developer/investors install big pumps and collect big dollars for themselves, while they are consciously indifferent to rendering potentially hundreds of families' wells unusable and ultimately homes uninhabitable, losing their lifetime investments in their homes and receiving nothing from the money paid for the water.

30. The Defendants propose to drill water wells through but not withdraw water from the Edwards Aquifer, which is protected by the Edwards Aquifer Authority, thus evading regulation by that entity. The wells will be bottomed in and withdraw water from the Trinity Aquifer, which in Hays County in this area is protected by the Hays Trinity Groundwater Conservation District. As discussed below, Defendants have failed to obtain the required permits from this Groundwater Conservation District. There also is a question whether the long-

term operation of these wells will impact the waters protected by the nearby Barton Springs/Edwards Aquifer Conservation District “BSEACD.” Yet, Defendants claim to be beyond the reach of any governmental entity or any other law regulating or limiting their conduct. They are wrong.

CAUSE OF ACTION - TEXAS WATER CODE, CHAPTER 36

CITIZEN SUIT - HAYS TRINITY

GROUNDWATER CONSERVATION DISTRICT

31. The wells in question are within the jurisdiction of and subject to permitting authority of the Hays Trinity Groundwater Conservation District. Yet, Defendants have neither provided the required notice of intent to drill nor obtained the required permit to produce from the well. For this reason and as further explained below, **Plaintiff requests the Court to enjoin any further drilling and production of water from these wells until Defendants comply with the statutory mandates and obtain the required permits from the Hays Trinity Groundwater Conservation District.**

32. The wells in question penetrate through the Edwards Aquifer formation, but are bottomed in and will withdraw from the Trinity Aquifer in Hays County. The Edwards Aquifer Authority has stated that it has no jurisdiction over the waters of the Trinity Aquifer. Similarly, the Barton Springs Edwards Aquifer Groundwater Conservation District “BSEAGCD”, which is just to the north of the wells in question, neither asserts nor claims jurisdiction over the area of the Trinity Aquifer from which the wells in question will withdraw groundwater.

33. As will be explained below, because the Trinity Aquifer at the location of the proposed EP well field is otherwise unregulated and lies within Hays County, the Trinity Aquifer

at this location by statutory definition by default falls within the jurisdiction of the Hays Trinity Groundwater Control District.

34. TEXAS SPECIAL DISTRICTS CODE § 8843.003, the enabling legislation creating this groundwater conservation district, provides:

- (a) The district is created to serve a public use and benefit.
- (b) All land and other property included in the district will benefit from the works and projects accomplished by the district under the powers conferred by Section 59, Article XVI, Texas Constitution.

35. **The Legislature evidenced an intent that all groundwater in Hays County be protected by a groundwater conservation district. If no other groundwater conservation district has jurisdiction, then the jurisdiction goes to the HTGCD by default. Again from the chapter creating the HTGDC:**

“The district's boundaries are coextensive with the boundaries of Hays County, excluding any area that on September 1, 2001, was within another groundwater conservation district with authority to require a permit to drill or alter a well for the withdrawal of groundwater, unless the district's territory has been modified under:

- (1) Subchapter J, Chapter 36, Water Code; or**
- (2) other law.**

TEXAS SPECIAL DISTRICTS CODE § 8843.004. This reading of the scope of jurisdiction is confirmed by the HTGCD’s own understanding and notice of jurisdiction submitted to the Texas Commission on Environmental Quality. See, Exhibit 13. Thus, these proposed wells are subject to the jurisdiction of the Hays Trinity Groundwater Conservation District.

36. “The district has the rights, powers, privileges, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater

conservation districts created under Section 59, Article XVI, Texas Constitution. (Acts 77th Leg., R.S., Ch. 966, Sec. 3.0304(a) (part).)” TEXAS SPECIAL DISTRICTS CODE § 8843.101.

37. “Notwithstanding Section 8843.104, **a landowner must** notify the district before the construction of a new well that is to be completed after September 1, 2013.” TEXAS SPECIAL DISTRICTS CODE § 8843.103. Texas Special Districts Code § 8843.104 (emphasis added) requires:

(a) Groundwater withdrawals from the following wells may not be regulated, permitted, or metered by the district:

(1) a well used for domestic use by a single private residential household and incapable of producing more than 25,000 gallons per day; and

(2) a well used for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, or poultry operations.

(b) The district may not charge or collect a well construction fee for a well described by Subsection (a)(2).

(b-1) A well owner must obtain a permit and pay any required fees, including a well construction fee, before using any groundwater withdrawn from a well for purposes other than those exempted by this section.

(c) A well used for dewatering and monitoring in the production of coal or lignite is exempt from permit requirements, regulations, and fees imposed by the district.

(d) The district may not enter property to inspect an exempt well without the property owner's permission.

38. The issuance of a permit is a substantive process, not ministerial, and involves a science and policy driven decision, as the Supreme Court of Texas explained in 2008.

Groundwater conservation districts are “the state's preferred method of groundwater management.” Tex. Water Code § 36.0015. Chapter 36 of the Texas Water Code grants these districts broad authority to manage, conserve, and protect groundwater resources

through rulemaking and permitting. *Id.* §§ 36.101(a), 36.113(a). Under this chapter, each groundwater conservation district is required to develop a comprehensive management plan with stated goals, such as, promoting the most efficient use of groundwater, preventing waste and subsidence, and addressing conjunctive surface water management issues, natural resource issues, drought conditions, and conservation. *Id.* § 36.1071(a)(1)-(7).

When adopting its plan, the district must consider all groundwater uses and needs to develop rules that are fair and impartial. *Id.* § 36.101(a). Part of the plan must include a permitting system “for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps.” *Id.* § 36.113(a). A district may also regulate well spacing and water production. *Id.* § 36.116(a)(1)-(2). When regulating production, a district may consider: setting production limits; limiting the amount of water produced based on acreage or tract size; limiting the amount of water produced from a defined number of acres assigned to an authorized well site; limiting the maximum amount of water produced on the basis of acre-feet per acre or gallons per minute per well site per acre; managed depletion, or a combination of any of those. *Id.* § 36.116(a)(2)(A)-(F). When promulgating rules that limit groundwater production, a district may preserve historic or existing uses of groundwater in the district to the maximum extent practicable consistent with its comprehensive management plan. *Id.* § 36.116(b). Finally, the district must develop its plan using the best available data and must forward its plan to the regional water planning group for consideration in its planning process. *Id.* § 36.1071(b). The district's plan must also be certified by the Texas Water Development Board. *Id.* § 36.1072(d).

Guitar Holding Co., L.P. v. Hudspeth County Underground Water Conservation Dist., 263 S.W.3d 910, 912-13 (Tex., 2008).

39. Those impacted by a decision in this case seek only to continue to be able to inhabit in their homes. They seek no damages from this action if relief is granted now, and it is unclear that even if and when injury occurs, whether they will have an action or adequate remedy at law. Thus, they request the court to exercise its powers of equity and enjoin Defendants from drilling and operating these proposed wells without the permits required by the Texas Legislature through the Hays Trinity Groundwater Conservation District.

40. Defendants have failed to comply with the MANDATORY permit required by the Legislature through this groundwater conservation district, which is required to protect the groundwater for the public. In short, Plaintiff asks the Court to enjoin production of water from these wells until Defendants do comply and obtain the required permits. TESPAs are entitled to seek an injunction against the completion or operation of these illegal wells. TEX. WATER CODE § 36.119(b). TESPAs need not await the expiration of the full 90-day notice period before filing suit and seeking an injunction. TEX. WATER CODE § 36.119(h).

LAW REGARDING TEMPORARY INJUNCTIONS

41. This court now has before it a simple request - protect those who live in these homes – by maintaining the status quo pending a final determination. Rarely does a court have before it such a simple request of such magnitude for the fate of so many depending on the stroke of a pen with a single outcome either good or bad. The power of a simple pen stroke means families saved, or people, homes, and lives shattered.

42. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (op. on reh'g). To be entitled to a temporary injunction, the applicant for such must plead and prove the following three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.* The Texas Rules of Civil Procedure require that “[e]very order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained.” *See* Tex. R. Civ. P. 683. Whether to grant or deny a temporary injunction is within the trial court's sound discretion. *Butnaru*, 84 S.W.3d at 204. A reviewing court should reverse an order granting injunctive relief only if the trial court abused that discretion. *Id.*; *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993) (per curiam). The reviewing court must not substitute its judgment for the trial court's judgment unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion. *Butnaru*, 84 S.W.3d at 204 (citing *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex.1985) (orig. proceeding), and *Davis v. Huey*, 571 S.W.2d 859, 861–62 (Tex.1978)). A trial court abuses its discretion when it misinterprets or misapplies the law. *See Walker v. Packer*,

827 S.W.2d 833, 840 (Tex.1992) (orig. proceeding) (“A trial court has no ‘discretion’ in determining what the law is or applying the law to the facts.”); *see also In re M.N.G.*, 147 S.W.3d 521, 530 (Tex.App.-Fort Worth 2004, pet. denied) (op. on reh'g). More specifically, a trial court abuses its discretion in granting or denying a temporary injunction when it misapplies the law to the established facts or when the record fails to reasonably support the conclusion that the applicant has a probable right of recovery. *See State v. Sw. Bell Tel. Co.*, 526 S.W.2d 526, 528 (Tex.1975) (“recogniz[ing] the risk of injustice in the immobilization of a defendant from a course of conduct he may have the legal right to pursue”); *see also ICON Benefit Adm'rs II, L.P. v. Abbott*, 409 S.W.3d 897, 902 (Tex.App.-Austin 2013, pet. denied).

City of Lubbock v. Coyote Lake Ranch, LLC, 440 S.W.3d 267, 270-71 (Tex. App. 2014)(pet. filed).

43. “The Texas Water Code generally delegates the management and control of groundwater production and use to local groundwater conservation districts, vesting them with broad regulatory powers. Tex. Water Code §§ 36.001–.304. When exercising these powers to limit groundwater production, local districts may protect existing wells and production by continuing ‘historic or existing use’ to the extent possible under its comprehensive management plan. *Id.* § 36.116(b).” *Guitar Holding Co., L.P. v. Hudspeth Cnty. Underground Water Conservation Dist.*, 263 S.W.3d 910, 912 (Tex. 2008).

44. Thus, by issuance of a temporary injunction, the Court protects the status quo, the “historic or existing use” of the existing homeowners’ wells, which is a recognized and established policy of the State of Texas, until Defendants comply with the mandatory requirements of Texas Water Code, Chapter 36.

LAW REGARDING PERMANENT INJUNCTION

45. Upon final hearing, Plaintiff specifically requests the Court to enjoin Defendants from drilling and withdrawing water from their proposed wells until such time as they provide satisfactory proof to the Court that they have provided the statutorily mandated notice from the

landowners to the Hays Trinity Groundwater Conservation District of their intent to drill, and the well owner/operator obtains the statutorily mandated permit to operate the wells from the Hays Trinity Groundwater Conservation District.

46. Whether to grant a permanent or temporary injunction is ordinarily within the sound discretion of the trial court and, on appeal, review of the trial court's action is limited to the question of whether the action constituted a clear abuse of discretion. *Priest v. Tex. Animal Health Comm'n*, 780 S.W.2d 874, 875 (Tex.App.-Dallas 1989, no writ). Because an injunction is an equitable remedy, a trial court weighs the respective conveniences and hardships of the parties and balances the equities. *Hitt v. Mabry*, 687 S.W.2d 791, 795 (Tex.App.-San Antonio 1985, no writ) (citing *Lower Nueces River Water Supply Dist. v. Live Oak County*, 312 S.W.2d 696, 701 (Tex.Civ.App.-San Antonio 1958, writ ref'd n.r.e.)).

An applicant for injunctive relief must demonstrate (1) the existence of a wrongful act; (2) the existence of imminent harm; (3) the existence of irreparable injury; and (4) the absence of an adequate remedy at law. *Priest*, 780 S.W.2d at 875. The purpose of injunctive relief is not to grant relief for past actionable wrongs or to prevent commission of wrongs not imminently threatened. *Tex. Employment Comm'n v. Martinez*, 545 S.W.2d 876, 877 (Tex.Civ.App.-El Paso 1976, no writ). Persons seeking the extraordinary remedy of injunction must be specific in pleading the relief sought, and courts are without authority to grant relief beyond that so specified. *Computek Computer & Office Supplies, Inc. v. Walton*, 156 S.W.3d 217, 221 (Tex.App.-Dallas 2005, no pet.) (citing *Hitt*, 687 S.W.2d at 792).

The law demands clear and complete orders granting injunctions. *See* Tex.R. Civ. P. 683. "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained...." *Id.* An injunction must be as definite, clear, and precise as possible and, when practicable, it should inform the defendant of the acts he is restrained from doing without calling on him for inferences or conclusions about which persons might well differ and without leaving anything for further hearing. *Villalobos v. Holguin*, 146 Tex. 474, 480, 208 S.W.2d 871, 875 (1948); *Hellenic Inv. v. Kroger Co.*, 766 S.W.2d 861, 866 (Tex.App.-Houston [1st Dist.] 1989, no writ).

An injunction should be broad enough to prevent a repetition of the evil sought to be corrected. *Hitt*, 687 S.W.2d at 795. An injunction must not be so broad, however, as to enjoin a defendant from activities that are a lawful and proper exercise of his rights. *Id.* Where a party's acts are divisible, and some acts are permissible and some are not, an injunction should not issue to restrain actions that are legal or about which there is no

asserted complaint. *Id.* (citing *Hellenic*, 766 S.W.2d at 867). Thus, the entry of an injunction that enjoins lawful as well as unlawful acts may constitute an abuse of discretion. *Id.*

Webb v. Glenbrook Owners Ass'n, Inc., 298 S.W.3d 374, 383-84 (Tex. App. Dallas 2009, no pet.)

**ALTERNATIVE ACTION IN EQUITY –
PERMANENT INJUNCTION UNDER COMMON LAW**

47. If the Court finds that Texas Water Code, Chapter 36, does not apply to this situation, then Plaintiff requests the Court to issue a temporary and a permanent injunction based on the application of common law and the Court's powers sitting in equity. In this scenario, Plaintiff requests the Court to enjoin Defendants from operating their wells to produce any more than they need for their own "reasonable use" and enjoin the operation of their wells from producing for off premise use. While there is much conflicting law regarding the rule of capture, the core for consideration in this context to begin the analysis is with respect to the essence of the rule of capture, "It did not give an operator the 'right' to drain his neighbor's tract but merely refused to impose liability for doing so." 1 Ernest E. Smith & Jacqueline Lang Weaver, Texas Law of Oil & Gas § 1.1(A) (2d ed.2007)." *City of Del Rio v. Clayton Sam Colt Hamilton Trust*, 269 S.W.3d 613, 618 (Tex.App. - San Antonio 2008, pet. denied).

48. The time has come for the Court to recognize that the rule of capture, already bearing the weight of later added exceptions, is no longer valid under the rule of decision which recognizes: "The rule of decision in this state consists of those portions of the common law of England **that are not inconsistent** with the constitution or the laws of this state, the constitution of this state, and the laws of this state." TEX. CIV. PRAC. & REM. CODE § 5.001 (emphasis added).

49. The Supreme Court of Texas adopted the “rule of capture” through common law in *Houston & T.C. Ry. Co. v. East*, 98 Tex. 146, 151, 81 S.W. 279, 281-82 (1904). The Supreme Court has already engrafted significant limitations on the rule of capture in *Friendswood Development Co. v. Smith-Southwest Indus., Inc.*, 576 S.W.3d 21 (Tex. 1978) and *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814 (Tex. 2012). If the rule still exists at all in this context, which is questionable, it now is a tattered remnant of the original rule causing more harm than good. It is no longer worthy of the imprimatur of the Court further supporting it in direct opposition to the strong and concerted efforts of the other governmental entities trying to protect groundwater in this area as will be shown.

50. As a starting point to demonstrate that the common law rule of capture is “inconsistent with the constitution or laws of this state,” consider the direct conflict with the Constitution, Article XIV, section 59. After the Supreme Court adopted the rule of capture for groundwater in 1904, “The past droughts of 1910 and 1917 prompted the citizens of this state to approve the Conservation Amendment to the Texas Constitution, which provides that the conservation, preservation, and development of the state's natural resources are public rights and duties.” *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex., 1996). The voters in passing the constitutional amendment appear to have publicly rejected the rule of capture and opted for conservation instead. Since then, the Legislature in the Water Code in multiple places has altered the rule of capture. **Therefore, the 1904 common law rule of capture is inconsistent with the later adopted constitutional amendment and laws of this state, and therefore no longer common law in existence under the rule of decision.**

51. Here are some examples of statutory language from the Legislature, which are inconsistent with the rule of capture. To start, note the Legislature’s clearly stated intent, “It is the policy of the state to encourage public participation in the groundwater management process in areas within a groundwater management area not represented by a groundwater conservation district.” TEXAS WATER CODE § 35.020. Public Participation in Groundwater Management Process. Also, as the direct antithesis and in direct contradiction of the core concept of the rule of capture, “(a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.” TEXAS WATER CODE § 36.002. Ownership of Groundwater.

52. (b) The groundwater ownership and rights described by this section:

(1) entitle the landowner, including a landowner's lessees, heirs, or assigns, to drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence, ***but does not entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of that landowner's land; and***

TEX. WATER CODE § 36.002.

(c) Except as provided by this section, the aggrieved party ***may also sue the owner of the well or wells for damages for injuries suffered by reason of the illegal operation or production*** and for other relief to which the party may be entitled. In a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) is prima facie evidence of illegal drainage.

TEX. WATER CODE § 36.119 (Illegal Drilling and Operation of Well; Citizen Suit).

(4) “Beneficial use” means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when **reasonable intelligence and reasonable diligence are used** in applying the water to that purpose and shall include conserved water.

TEX. WATER CODE § 11.002 (this is the “reasonable use” standard with respect to surface water).

(21) “Conjunctive use” means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

TEX. WATER CODE § 36.001 (the common law should harmonize its rules with those created by the legislature).

In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

TEX. WATER CODE § 36.0015 (manifesting a public policy of conservation, which is the antithesis of the rule of capture).

TEX. WATER CODE § 36.113 (emphasis added) provides:

- (d) Before granting or denying a permit or permit amendment, the district shall consider whether:
- (1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;
 - (2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;***
 - (3) the proposed use of water is dedicated to any beneficial use;
 - (4) the proposed use of water is consistent with the district's approved management plan;
 - (5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;
 - (6) the applicant has agreed to avoid waste and achieve water conservation; and
 - (7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

53. The Supreme Court of Texas has already recognized the Legislature’s interest in water conservation as sufficiently compelling to override private property interests. “In fact, we have only twice recognized legislative interests of sufficient import to override vested private

rights: *Barshop*, 925 S.W.2d 618, and *In re A.V.*, 113 S.W.3d 355. At issue in *Barshop* was a statute regulating water use in the Edwards Aquifer basin. Before the enactment of the law, property owners were permitted, under the rule of capture, to extract as much water as they desired from the aquifer. Concerned that the rule of capture discouraged water conservation, the Legislature authorized local water districts to regulate water use through a permitting scheme that allocated use permits on the basis of historical use. Without conducting a vested rights analysis, we held that the Legislature's interest in water conservation trumped whatever interest landowners had in the continued existence of the rule of capture because “[c]onservation of water has always been a paramount concern in Texas, especially in times, like today, of devastating drought.” *Barshop*, 925 S.W.2d at 626.” *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 158 (Tex. 2010).

54. In going back to the seminal case in which the Supreme Court adopted the rule of capture, the rule of capture as articulated by the Supreme Court in that opinion actually did take into consideration “reasonable use” in reaching its determination. “The defendant here is making a **reasonable and legitimate use** of the water which it takes from its own land, which use is not, in quality, different from, or in its consequences to plaintiff more injurious than, many upheld in the decisions.” *Houston & T.C. Ry. Co. v. East*, 98 Tex. 146, 151, 81 S.W. 279, 281-82 (1904)(emphasis added)(note that the water was for the landowner’s own use). Review of this original language reveals that subsequent opinions oversimplified and omitted the qualifying consideration the Court in *East* gave to the “reasonable and legitimate” use.

55. *Sipriano* dealt with a landowner, Ozarka water, using the groundwater on its property for its own business purpose of bottling water as a refreshment drink. The bottled water

is a finished retail product the same as if it had been made into a sports drink or soda. As will be discussed more *infra*, the “reasonable use” doctrine draws a dichotomy between water used by the landowner on his or her own land for his or her own use subject to not committing waste, wanton or malicious conduct, and water exported for off premise use by others.

**Applying “Reasonable Use” in Addition to the Statutory Framework
Is Appropriate and Furthers the State’s Clear Intent**

56. It is an axiomatic principle of statutory construction that in effectuating legislative intent courts are to fill the inevitable statutory gaps by reference to the principles of common law. *Jackson v. Thweatt*, 883 S.W.2d 171, 175 (Tex. 1994)(construing a matter of federal law). Plaintiffs ask the Court to consider the Code Construction Act and rules of construction, and apply the same principles to the application of common law in support of the existing statutory framework.

In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

Tex. Gov't Code § 311.021 (Code Construction Act)

57. In construing this statute, our primary objective is to ascertain and give effect to the Legislature's intent. *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003)(citing, *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002)). We look first to the plain and ordinary meaning of the statute's words. *Id.* (citing, *State Dep't of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002)). A statute that uses the term “shall” imposes a duty “unless the context in which the word or phrase appears necessarily requires a different construction.” TEX. GOV'T CODE § 311.016. “[W]e presume that every word of a statute has been included or excluded for a reason” *Old Am. County Mut. Fire Ins. Co. v. Sanchez*, 149 S.W.3d 111, 115 (Tex. 2004). “It is an elementary rule of construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered

superfluous.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003); see also TEX. GOV'T CODE § 311.021(2). If necessary, we may consider other factors, including the law's objective, legislative history, and the consequences of a particular construction. *McIntyre*, 109 S.W.3d at 745; *Tex. Water Comm'n v. Brushy Creek Mun. Util. Dist.*, 917 S.W.2d 19, 21 (Tex. 1996).

City of Marshall v. City of Uncertain, 206 S.W.3d 97, 105 (Tex. 2006)

58. In light of the Supreme Court's recognition in *Day* that a landowner has a property right in the groundwater beneath his land and the fact that there exists no action at law for damages at this time for the members of TESPAs who are adversely impacted by this well, Plaintiff requests this Court to reject the English rule of capture and replace it with the standard of “reasonable use,” also known as “the American rule.” The application of this rule will protect landowners' property rights from groundwater profiteers seeking to mine and export groundwater from portions of the State of Texas, such as the properties in the case before you, if they are beyond the reach of the Legislature's groundwater control districts. Also, the “reasonable use” rule supports the public policy efforts of the Legislature, and in this case the county government of Hays County, which manifestly intends to promote groundwater conservation rather than exploitation.

59. Texas common law already recognizes a reasonable use standard as applied to surface waters. Under the Texas common law, a riparian property owner has a right to reasonably use riparian waters, but this right is limited. A riparian property owner has no right to use riparian waters in such a way as to cause substantial injury to the common right of other riparian owners. *Mott v. Boyd*, 116 Tex. 82, 286 S.W.2d 458 (1926); *Great American Development Co. v. Smith*, 303 S.W.2d 861 (Tex. Civ. App.—Austin 1957, no writ). In addition,

a riparian owner cannot divert water to land lying beyond the watershed of the stream. *Watkins Land Co. v. Clements*, 98 Tex. 578, 86 S.W. 733 (1905).

60. In numerous jurisdictions across the United States, courts have applied a rule of reasonable use to *groundwater*, often as a substitute for the absolute dominion doctrine or rule of capture. *Forbell v. City of New York*, 164 N.Y. 522, 527, 58 N.E. 644, 646 (1900); *Katz v. Walkinshaw*, 141 Cal. 116, 74 P. 766 (1903); *Pence v. Carney*, 58 W. Va. 296, 52 S.E. 702 (1905); *Meeker v. City of East Orange*, 77 N.J.L. 623 (1909); *Horne v. Utah Oil Refining Co.*, 202 P. 815 (Utah 1921); *Schenk v. City of Ann Arbor*, 196 Mich. 75, 163 N.W. 109 (1917); *Stillwater Water Co. v. Farmer*, 89 Minn. 58, 93 N.W. 907 (1903); *Bristol v. Cheatham*, 255 P.2d 173 (Ariz. 1953); *Koch v. Wick*, 87 So.2d 47 (Fla. 1956); *Martin v. City of Linden*, 667 So. 2d 732 (Ala. 1995).

61. An early court explained that it would not be unreasonable for a landowner to drill wells and use all the water that he needs for the use and enjoyment on his land, “[b]ut to fit it up with wells and pumps of such pervasive and potential reach that from their base the defendant can tap the water stored in the plaintiff’s land, and in all the region thereabout, and lead it to his own land, and by merchandising it prevent its return, is, however reasonable it may appear to the defendant and its customers, unreasonable as to the plaintiff and the others whose lands are thus clandestinely sapped, and their value impaired.” *Forbell v. City of New York*, 164 N.Y. 522, 526, 58 N.E. 644 (1900).

62. Even the Supreme Court of Texas has grappled with the obvious inequity of a doctrine that permits a landowner, to the detriment of his neighbors, to pump and market groundwater off site. A major point of discussion for the Court in *Houston Texas Central*

Railroad Company v. W.A. East, 98 Tex. 146, 151, 81 S.W. 279 (1904) was the fact that the railroad was using the groundwater for its own business purposes rather than for domestic purposes. The Court examined the decision in *Forbell v. City of New York*, 164 N.Y. 522 (1904), where the court applied a rule of reasonable use. The Court noted the difference between the facts in *Forbell* and the facts in *East*, as the railroad in *East* was using groundwater on the overlying tract. The Court in *East* explained that none of the courts applying the reasonable use doctrine would “sustain this action,” because “[t]he defendant here is making a *reasonable and legitimate use* of the water which it takes from its own land...” *Houston & T.C. Ry. Co. v. E.*, 98 Tex. 146, 151, 81 S.W. 279, 281-82 (1904)(emphasis added). **Thus, the foundation upon which the “rule of capture” rests in Texas, actually is a foundation which already recognizes “reasonable use.”**

63. “The marked tendency in American jurisdictions in later years has been away from the doctrine that the owner's right to sub-surface waters is unqualified; on the contrary there has been an ever-increasing acceptance of the viewpoint that their use must be limited to purposes incident to the beneficial enjoyment of the land from which they are obtained, and if their diversion or sale to others away from the land impairs the supply of a spring or well on the property of another, such use is not for a ‘lawful purpose’ within the general rule concerning percolating waters, but constitutes an actionable wrong for which damages are recoverable.” *Rothrauff v. Sinking Spring Water Co.*, 339 Pa. 129, 134, 14 A.2d 87, 90 (1940).

64. More recently, in *Martin v. City of Linden*, the Alabama Supreme Court held that the doctrine of reasonable use prohibited the City from pumping groundwater from a common

aquifer and piping the water fifteen miles away to supply its customers. 667 So. 2nd 732 (Ala. 1995).

65. In 1999, the Supreme Court of Texas in *Sipriano v. Great Spring Waters of Am., Inc.*, 1 S.W.3d 75, 83 (Tex. 1999), declined “*at that time*” to apply the doctrine of reasonable use *to provide a remedy* to landowners whose wells had gone dry as a result of the bottled water company pumping large quantities of groundwater off site. While the Supreme Court recognized that the rule of capture is “harsh” and “outmoded” and has been “severely criticized,” it was unwilling to change the law “*at that time.*”

66. Over fifteen years have passed since the Court’s decision in *Sipriano*. The Legislature marches forward in a patchwork protecting groundwater through groundwater conservation districts that under a permitting system, which require “reasonable use” to protect groundwater in many parts of Texas. The Court should follow the clearly expressed intent of the Legislature and follow the rule of “reasonable use” in those areas not yet reached by the Legislature. ***The Supreme Court’s judicially created rule of capture encourages the plunder of groundwater with impunity in direct contrast with the intent of the Legislature and the state constitution to protect groundwater.*** Within the common law framework, the courts retain the right, power and sense to modify, change or discard altogether common law rules that have become outmoded by change of circumstances. ***Especially in light of the voters’ mandate for conservation in the “Conservation Amendment,” the rule of capture is no longer defensible, and in fact is dangerous public policy as it risks exhaustion of critical water resources.***

67. Chief Justice Hecht in his concurring opinion in *Sipriano* thoroughly explained the need to abandon this archaic, obsolete, and unsound rule of judicial activism.

Justice HECHT, joined by Justice O'NEILL, concurring.

The people of Texas have given the Legislature, in article XVI, section 59 of the Texas Constitution, not only the power but the duty to “pass all such laws as may be appropriate” for the conservation, development, and preservation of the State's natural resources, including its groundwater. The Legislature has concluded that local “[g]roundwater conservation districts ... are the state's preferred method of groundwater management.” Actually, such districts are not just the preferred method of groundwater management, they are the only method presently available. Yet in the fifty years since the Legislature first authorized the creation of groundwater conservation districts, the record in this case shows that only some forty-two such districts have been created, covering a small fraction of the State. Not much groundwater management is going on.

The reason is not lack of groundwater. Twenty-nine aquifers underlie eighty-one percent of the State. Nor is the reason lack of use. In 1992, groundwater sources supplied fifty-six percent of all water used in the State, including sixty-nine percent of agricultural needs and forty-one percent of municipal needs. Nor is the reason lack of need of management. Over twenty-five years ago the Texas Senate's Interim Committee on Environmental Affairs warned of severe, impending problems with municipal groundwater use and called for comprehensive regulation. The predicted problems have in fact occurred. The comprehensive revision of the Water Code in 1997 was motivated by what the Lieutenant Governor's general counsel has called “the seriousness of the situation”: recurring droughts, expansive population growth, and dwindling water supplies.

What really hampers groundwater management is the established alternative, the common law rule of capture, which entitles a landowner to withdraw an unlimited amount of groundwater for any purpose other than willful waste or malice, and as long as he is not negligent in causing subsidence of nearby property. When this Court adopted the rule of capture as a common-law rule ninety-five years ago in *Houston & Texas Central Railway. Co. v. East*, we believed it to have been adopted in England and by the court of last resort in every state in this country except New Hampshire. Thirty-five years later only eleven of the eighteen western states still followed the rule of capture; after two more decades, only three western states still followed the rule. Now there is but one lone holdout: Texas.

The Court in *East* gave two reasons for adopting the rule of capture:

“(1) Because the existence, origin, movement, and course of such waters, and the causes which govern and direct their movements, are so secret, occult, and concealed that an attempt to administer any set of legal rules in respect to them would be involved in hopeless uncertainty, and would, therefore, be practically impossible. (2) Because any such recognition of correlative rights would interfere, to the material detriment of the commonwealth, with drainage and agriculture, mining, the construction of highways and

railroads, with sanitary regulations, building, and the general progress of improvement in works of embellishment and utility.”

Neither remains valid. The extensive regulation of oil and gas production proves that effective regulation of migrant substances far below the surface is not only possible but necessary and effective. In the past several decades it has become clear, if it was not before, that it is not regulation that threatens progress, but the lack of it.

Neither respondent nor any of the more than a dozen amici curiae who have appeared in support of respondent's position attempt a principled argument for retaining the rule of capture. They focus instead on pragmatics. First, they say, the rule should not be abandoned because it has been the rule for a long time. The oft-cited wisdom of Justice Holmes is sufficient to rebut this argument:

It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past. Second, respondent and its supporters argue that abandoning the rule of capture would be disruptive. To some extent they are right, of course, but the cost of such disruption must be balanced against the danger that the State's water supply will be threatened because of a lack of reasoned water planning. Studies on the subject seem rather uniformly to indicate that the balance tilts against the rule of capture. Finally, respondent argues that water regulation is the Legislature's responsibility under the Constitution, and that the Court should not venture into the area. I agree that this argument has merit, at least since 1917 when article XVI, *83 section 59 was adopted, but it comes ninety-five years too late: the Court entered the area of water regulation in *East* when it adopted the rule of capture. Does the Court intrude on the Legislature's constitutional responsibility and duty by maintaining the rule of capture or by abandoning it? It is hard to see how maintaining the rule of capture can be justified as deference to the Legislature's constitutional province when the rule is contrary to the local regulation that is the Legislature's “preferred method of groundwater management.”

Dissenting in *City of Corpus Christi v. City of Pleasanton*, Justice Will Wilson cautioned in 1955 that this Court would not forever use deference to the Legislature to justify maintaining the rule of capture in the face of changing circumstances. After all, even if the Court abandoned the rule of capture as part of the common law, the Legislature could adopt the rule by statute—although given its stated regulatory preference, presumably it would not do so. Petitioners make a strong case for replacing the rule of capture with the beneficial purpose doctrine set out in section 858 of the *Restatement (Second) of Torts*:

Liability for Use of Ground Water

(1) A proprietor of land or his grantee who withdraws ground water from the land and uses it for a beneficial purpose is not subject to liability for interference with the use of water by another, unless

(a) the withdrawal of ground water unreasonably causes harm to a proprietor of neighboring land through lowering the water table or reducing artesian pressure,

(b) the withdrawal of ground water exceeds the proprietor's reasonable share of the annual supply or total store of ground water, or

(c) the withdrawal of the ground water has a direct and substantial effect upon a watercourse or lake and unreasonably causes harm to a person entitled to the use of its water.

(2) The determination of liability under clauses (a), (b) and (c) of Subsection (1) is governed by the principles stated in §§ 850 to 857.

While neither section 858 nor any other common law rule of water regulation is preferable to almost any effective legislative solution, absent such a solution, section 858 is preferable to the rule of capture.

Nevertheless, I am persuaded for the time being that the extensive statutory changes in 1997, together with the increasing demands on the State's water supply, may result before long in a fair, effective, and comprehensive regulation of water use that will make the rule of capture obsolete. I agree with the Court that it would be inappropriate to disrupt the processes created and encouraged by the 1997 legislation before they have had a chance to work. I concur in the view that, for now—but I think only for now—*East* should not be overruled.

Sipriano v. Great Spring Waters of Am., Inc., 1 S.W.3d 75, 81-83 (Tex. 1999)(Hecht, concurring)

68. If Defendants' conduct is allowed unchecked, those adversely impacted, whose homes become uninhabitable due to a lack of water, have no remedy under the rule of capture for the very real and substantial impacts they bear because of an archaic and obsolete law that is contrary to a strong policy of water conservation promoted by the Legislature and the

Constitution of Texas. As the Supreme Court noted in *Sipriano*: "...the genius of the common law rests in its ability to change, to recognize when a timeworn rule no longer serves the needs of society, and to modify the rule accordingly." *Id.* at 80.

ARE THE WELLS IN THIS CASE A "REASONABLE USE"?
NO, THEY UNDERMINE THE STATE'S EFFORTS
TO PROTECT GROUNDWATER IN THIS AREA

69. In addition to the common law rules of "reasonable use" already discussed and the detrimental impact commercial pumping and export of groundwater will have on Plaintiff's domestic wells, the use in this case is in direct conflict with the intensive governmental planning and projections to protect and manage the groundwater in this area, an area managed by the State as a priority area of critical concern. If there is a gap in jurisdiction of the groundwater conservation districts such that these wells are not within their jurisdiction and direct powers to manage, the common law as interpreted and applied through the courts should be consistent with these state-approved objectives for groundwater management in this area. To do otherwise, would have a judge usurping public policy objectives already set in place and approved by the State through the Texas Water Development Board, which again violates the "rule of decision" as codified in Texas Civil Practice & Remedies Code § 5.001.

70. Exhibits 3, 4, and 5 show the basic geology and flow of water in this area.

71. According to the Texas Water Development Board, 99 groundwater conservation districts now exist in Texas.² Under the TEXAS WATER CODE, Chapter 36, the Legislature has created a process where groundwater districts with jurisdiction over the same aquifers work

² Information including maps showing aquifers and administrative boundaries may be found on the Texas Water Development Board's website: <https://www.twdb.texas.gov/mapping/maps.asp>

together in a “*Groundwater Management Area*” or GMA to establish “*Desired Future Conditions*” or “DFC’s” for these aquifers. **“Desired future conditions” are “the desired, quantified conditions of groundwater resources such as water levels, water quality, spring flows, or saturated thickness at a specified time or times in the future...”**³ Under Chapter 36 of the Water Code, a GMA submits the DFC for an aquifer to the Texas Water Development Board, a state agency, who uses it to determine the “*Modeled Available Groundwater*” (MAG) for the aquifer.” Please note, the State of Texas through the Texas Water Development Board is setting these science-based policy objectives. Groundwater conservation districts then use the MAG in their permitting decisions, as Chapter 36 requires groundwater districts to manage groundwater in a way that achieves the adopted DFC.⁴

72. The location of the proposed wells is located less than one mile from a large multi-county area designated by the State as a Priority Groundwater Management Area, a “PGMA.” The TCEQ explains: “A Priority Groundwater Management Area (PGMA) is an area designated and delineated by TCEQ that is experiencing, or is expected to experience, within 50 years, critical groundwater problems including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Since the ultimate purpose of designating a PGMA is to ensure the management of groundwater in areas of the state with critical groundwater problems, a PGMA evaluation will consider the need for creating groundwater conservation districts and different options for doing so. Such

³ See TEXAS WATER CODE § 36.108.

⁴ TEXAS WATER CODE § 36.1071(a).

districts are authorized to adopt policies, plans, and rules that can address critical groundwater problems.”

73. These wells are in GMA 10, close to the boundary of Groundwater Management Area 9, which also manages the Trinity Aquifer in this area. For the portion of the Trinity Aquifer that falls under the jurisdiction of GMA 10 and the Barton Springs/Edwards Aquifer Conservation District (BSEACD) and/or Hays Trinity Groundwater Conservation District, the Texas Water Development Board determined that the MAG is 1,288 acre/feet a year. **The defendant developer purportedly plans to pump 4,300 acre feet, or more than 300% of the Modeled Available Groundwater!** Thus, Defendants actions directly conflict with and undermine existing State water management plans. The location of the wells is less than one mile, actually less than ½ mile for some of the wells from the Priority Groundwater Management Area, and solidly within the PGMA “Buffer Area” designation area. Massive, unplanned, and uncontrolled commercial pumping is not a “reasonable use” under these conditions.

74. The MAG and DFC for GMA 10 is directly applicable, but consideration must also be given to the MAG and DFC for GMA 9. The Modeled Available Groundwater and Desired Future Conditions for GMA 10 are attached as Exhibits 6 & 7, and Exhibits 8 and 9 are for GMA 9.

75. For the portion of the Trinity Aquifer governed by GMA 9 and the Hays-Trinity Groundwater Conservation District, the annual amount of water the water supplier intends to pump (5,600 acre feet) is over half of the MAG (9,100 acre feet per year) that the Texas Water Development Board determined is available to permit for the district to achieve its DFC. To repeat this fact in very clear terms, Defendants’ proposed water well will consume ½ of all water

approved for permitting by the Hays Trinity Groundwater Conservation District – and Defendants have neither applied for a permit from this entity, nor even submitted the plan to this entity for a determination of how it will impact the mandatory factors enumerated by the Legislature.

**THE WELLS ALSO UNDERMINE
HAYS COUNTY GOVERNMENT EFFORTS**

76. As shown on Exhibit 10, these wells are located so close to the Hill Country PGMA that they will impact and draw water from a Priority Groundwater Management Area in Hays County. Demonstrating more efforts by governmental entities to manage and protect the groundwater in the area where these wells and uncontrolled water withdrawal is proposed – which is inconsistent with the rule of capture and thus inconsistent for the rule of decision - the Hays County Commissioners have promulgated thoughtful and considered regulations to protect water within the county, in addition to all of the other regulatory efforts to protect groundwater in Hays County. The county government obviously is keenly aware of the critical groundwater situation within the county and made efforts to promote water conservation, quality, and sustainability. Key excerpts are attached as Exhibit 12. One example of the level of concern and effort by the County to protect the groundwater comes from Chapter 715 relating to Water and Wastewater, remembering that the well in controversy is located near a Priority Groundwater Management Area as designated by the Texas Commission on Environmental Quality.

Hays County Development Regulations, Chapter 715, § 3.06. Additional Requirements for Subdivisions Served by Individual Water Wells Producing Local Groundwater in Priority Groundwater Management Areas

Applicants requesting approval to utilize individual private water wells producing Local Groundwater to serve proposed new development in a Priority Groundwater Management Area, as that term is defined by the Texas Commission on Environmental Quality, shall be

subject to the following additional requirements:

(A) The person preparing the groundwater availability certification shall document that they obtained available information on historical water levels and known water wells from the applicable Groundwater Conservation District.

(B) The person preparing the groundwater availability certification shall perform a walking receptor survey around the perimeter of the Subject Property to identify the visual location of apparent undocumented water wells and to visually confirm the presence of documented water wells within five hundred (500) feet of the boundaries of the subject property.

(C) The person preparing the groundwater availability certification shall estimate the average annual recharge (per acre) in the vicinity of the Subject Property using a Groundwater Availability Model (GAM) reviewed and approved by the Texas Water Development Board.

(D) The person preparing the groundwater availability certification shall utilize the estimated annual average recharge rates (developed under § 715.3.06.C) to determine the total estimated annual recharge for the footprint area of the Subject Property. The estimated annual recharge for the Subject property shall be compared to the projected annual groundwater withdrawal, to assess whether the projected withdrawal exceeds the estimated recharge. For developments where the projected withdrawal exceeds estimated recharge, the Applicant shall take one or more of the following steps:

(1) Comply with the minimum lot size requirement of 6.00 acres, as presented in Table 705.05.01;

(2) Provide a supplemental demonstration of water availability based on an Other Water Supply System and prorate the minimum lot size requirement using 6.00 acres for the percentage provided by Local Groundwater and the otherwise applicable value from Table 705.05.01 for the Other Water Supply System; or,

(3) Subject to the requirements of § 715.3.06(F), secure the future development rights for currently undeveloped property in a quantity sufficient to balance the groundwater withdrawal for the Subject Property with overall recharge from the Subject Property and other property, and provide Written Notice, as outlined in Chapter 701, to the owners of all proximate property for which a groundwater well is documented or discovered during the walking receptor survey and the owners of any other documented well within one-quarter mile of the Subject Property, that the projected groundwater use for the proposed development is being offset through the acquisition of additional property. The Department shall make available to the public standardized notice language for this purpose.

(E) For developments where the availability of groundwater is limited to less than the flow required to support fully developed conditions, the Applicant shall include in the Water and Wastewater Service Plan the procedures to be utilized to limit groundwater withdrawal to

the certified available quantity.

(F) Property outside the Subject Property that is used for the purpose of balancing the groundwater withdrawal for the Subject Property shall comply with the following conditions:

(1) Eligible additional property must recharge to the same aquifer zone as the Subject Property and be within the same PGMA.

(2) All such additional property shall be subject to a conservation easement or equivalent legal mechanism structured to prohibit in perpetuity its future subdivision or development. The easement or instrument shall be granted to the public and shall be held by the County or other non-profit legal entity recognized by the County as custodian for the County. Such easement or instrument shall be in such form and under such conditions as are acceptable to the County.

(3) For properties located within the jurisdiction of public entities having zoning authority, the Applicant shall provide documentation that the zoning for the additional property is “agricultural”, “open space” or other equivalent zoning that allows little to no development of the additional property.

(4) The additional property shall either be contiguous to the Subject Property or located within five (5) miles of the Subject Property.

(5) Additional property that is contiguous to the Subject Property may be considered as providing the same recharge as the Subject Property.

(6) Additional property that is not contiguous but is located within five (5) miles of the Subject Property shall be considered as providing seventy five percent (75%) of the recharge provided by the Subject Property.

(7) In instances where the Applicant proposes to secure the development rights from a property (the originating property) that is outside the jurisdiction of the County and within the jurisdiction of one or more local governmental entities, the Applicant must provide documentation of the written approval of the transfer from each such local governmental entity with jurisdiction over the originating property.

WATER PROTECTION TRANSCENDS THE RULE OF CAPTURE

77. The Supreme Court has already ruled that the critical importance of protecting groundwater for the public interest transcends vested private property rights. “In fact, we have only twice recognized legislative interests of sufficient import to override vested private rights:

Barshop, 925 S.W.2d 618, and *In re A.V.*, 113 S.W.3d 355. At issue in *Barshop* was a statute regulating water use in the Edwards Aquifer basin. Before the enactment of the law, property owners were permitted, under the rule of capture, to extract as much water as they desired from the aquifer. Concerned that the rule of capture discouraged water conservation, the Legislature authorized local water districts to regulate water use through a permitting scheme that allocated use permits on the basis of historical use. Without conducting a vested rights analysis, we held that the Legislature's interest in water conservation trumped whatever interest landowners had in the continued existence of the rule of capture because “[c]onservation of water has always been a paramount concern in Texas, especially in times, like today, of devastating drought.” *Barshop*, 925 S.W.2d at 626.” *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 158 (Tex. 2010).

“REASONABLE USE” AS ALREADY APPLIED IN TEXAS

78. “Reasonable Use” has been applied by the common law of Texas for over 100 years in other areas of water use. The following are examples of prior applications of the rule.

79. “Plaintiffs in error have not the right to apply all of the water flowing from Toyah spring or along that creek to their riparian lands, but have a right in common with others to make a reasonable use of the water. Neither have they the right to appropriate any of that water to non-riparian land which they may own, although it may adjoin land owned by one of them which is entitled to the use of the water. Nor has either of them the right to sell water to others to irrigate lands not riparian.” *Watkins Land Co. v. Clements*, 98 Tex. 578, 589, 86 S.W. 733, 738 (1905)

80. “Even if the Cummins had littoral rights in their land, they would not be entitled to construct a private, recreational boat dock because that would not be a “reasonable use” of

water regulated by a water control and improvement district.” *Cummins v. Travis Cnty. Water Control & Improvement Dist.*, 175 S.W.3d 34, 47 (Tex. App. - Austin 2005, rev. denied).

81. “Perhaps if the water had been allowed to continue to run down to appellee’s lands up to the time it ceased to run at all in both streams (if appellee’s pleadings are so framed as to meet the case made by the findings of the trial court), he would have been able to catch and store a sufficient quantity of this continued flow to continue to water his rice and save his crop from damage. Such use of the water by appellant as would prevent his doing this could hardly be said to be a reasonable use consistent with the equal right of appellee to the use of the water. This view makes it important to determine upon another trial whether the damage to appellee’s crop was caused by this stoppage of the flow while the water was still running in the streams, depending to some extent upon whether he was prepared to catch and hold this continued flow if it had not been stopped by appellant. The evidence does not make this entirely clear.” *Stacy v. Delery*, 57 Tex. Civ. App. 242, 248, 122 S.W. 300, 303 (1909, no writ).

82. “It is the law of this state that upper riparian owners cannot lawfully use the waters of a flowing stream for irrigation, when such use materially interferes with the supply required to meet the reasonable domestic needs of lower riparian owners, including water for stock.” *Martin v. Burr*, 111 Tex. 57, 62, 228 S.W. 543, 544 (1921).

83. “Under the common law as now administered, a riparian use must be a reasonable one (Long on Irrigation, § 56), and certainly no right of use which would constitute a cause of general destruction by floods is a reasonable use. A use which works substantial injury to the common right as between riparians is an unreasonable use (Long on Irrigation, s 56, p. 106), and

certainly a use which would injure the general public by permitting overflows and floods is an unreasonable one.” *Mott v. Boyd*, 116 Tex. 82, 115, 286 S.W. 458, 470 (1926).

84. “Upper riparian owner's use of stream's waters for irrigation was unreasonable when it stopped flow of water onto lower riparian owner's land and caused water in pools to lower and become covered with scum and undesirable for human or livestock consumption.” *Great Am. Dev. Co. v. Smith*, 303 S.W.2d 861 (Tex. Civ. App. 1957, no writ).

85. “Injunction is a proper remedy to a riparian owner whose rights as such have been unlawfully invaded or interfered with. Plaintiff's evidence tended to establish his contention that the use by the defendant of the water from this water hole, in the quantities which it had been using it, would probably result in the withdrawal of all the water from said hole, and would cause plaintiff and his tenants, who relied on said hole of water, in part at least, for the watering of their stock and for domestic purposes, great and irreparable damage.” *King v. Schaff*, 204 S.W. 1039, 1042 (Tex. Civ. App. 1918)(internal citations omitted).

86. “Irrigation of land, however beneficial in some portions of this State, is not one of the natural wants which will justify the owner of a head spring in exhausting the water which flows from it, to the injury of proprietors lower down on the natural channel of the stream. The maxim *sic utere tuo ut alienum non lædas* (so use your own as not to injure another's property) applies.” *Fleming v. Davis*, 37 Tex. 173 (1873) (parenthetical added).

87. “Where the result of the diversion is an unreasonable diminution of the water supply, equity will intervene to restrain an upper riparian owner; and there would appear to be stronger reason for such action when the water is diverted by one who is not a riparian owner, or used on nonriparian lands. It has been held that an injunction will lie to restrain an unlawful

interference with water rights even if the owner contemplates no immediate exercise of such rights. This may be done to prevent their loss by adverse user.” *Woody v. Durham*, 267 S.W.2d 219, 221 (Tex. Civ. App. 1954, writ ref’d).

88. “Where it is shown, as in this case, that a person owns a part of the bed of a natural lake, which is very valuable with the water upon it and worthless without it, we think such person has the right to have the water of the same maintained at its natural level, unless that level is disturbed by another riparian owner for riparian uses recognized by our decisions, and that another owner of part of the bed of the lake cannot be permitted to divert the water to irrigate non-riparian lands, when it is shown that such diversion injuriously affects the rights of the owner of the other part of the lake.” *Lakeside Irr. Co. v. Kirby*, 166 S.W. 715, 718 (Tex. Civ. App. 1914, writ ref’d).

INCONSISTENT POLICY - PUBLIC VS. PRIVATE LIABILITY

89. Further demonstrating the absurd contradiction of still defending the rule of capture, under *Day v. EAA*, a governmental entity may be liable at law for an indirect “regulatory taking” of real property from a landowner through excessive limitations upon the landowner’s pumping of groundwater. Also, a governmental entity must pay the landowner for water rights taken directly for public use through eminent domain. Recognizing the economic value of groundwater to a landowner, the Legislature in Texas Property Code § 21.0421 provides a detailed methodology to value groundwater when taken through condemnation.

(a) In a condemnation proceeding initiated by a political subdivision under this chapter, the special commissioners or court shall admit evidence relating to the market value of groundwater rights as property apart from the land in addition to the local market value of the real property if:

(1) the political subdivision proposes to condemn the fee title of real property; and

(2) the special commissioners or court finds, based on evidence submitted at the hearing, that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose.

(b) The evidence submitted under Subsection (a) on the market value of the groundwater rights as property apart from the land shall be based on generally accepted appraisal methods and techniques, including the methods of appraisal under Subchapter A, Chapter 23, Tax Code.

(c) If the special commissioners or court finds that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose, the special commissioners or court may assess damages to the property owner based on:

(1) the local market value of the real property, excluding the value of the groundwater in place, at the time of the hearing; and

(2) the market value of the groundwater rights as property apart from the land at the time of the hearing.

(d) In assessing damages based on the market value of groundwater rights under Subsection (c)(2), the special commissioners or court shall consider:

(1) the amount of groundwater the political subdivision can reasonably be expected to produce from the property on an annual basis;

(2) the number of years the political subdivision can reasonably be expected to produce groundwater from the property;

(3) the quality of the groundwater;

(4) the location of the real property in relation to the political subdivision for conveyance purposes;

(5) any potential environmental impact of producing groundwater from the real property;

(6) whether or not the real property is located within the boundaries of a political subdivision that can regulate the production of groundwater from the real property;

(7) the cost of alternative water supplies to the political subdivision; and

(8) any other reasonable factor that affects the market value of a groundwater right.

(e) This section does not:

(1) authorize groundwater rights appraised separately from the real property under this section to be appraised separately from real property for property tax appraisal purposes; or

(2) subject real property condemned for the purpose described by Subsection (a) to an additional tax as provided by Section 23.46 or 23.55, Tax Code.

90. As shown above, public entities must compensate the landowner for the direct condemnation of water rights taken for public use, and may become liable to the landowner for

diminution in the value of his land resulting from excessive regulatory limitation upon pumping from his wells. But, under the old rule of capture as the Defendants would have it, if the same governmental body contracts with a private commercial driller and operator to take the same water from under the land of neighbors to sell to the public entity, then the landowners from whom the water is taken are left with neither water nor compensation even if their home and lands are rendered uninhabitable. While the neighbors receive no economic compensation for the taking, they sustain very real economic loss due to the decreased value of their homes that have no water and thus become uninhabitable. **What possible legal rationale could allow a governmental body to do indirectly through private parties that which it could not do itself—to take groundwater away from the neighboring private landowners without compensation or limitation?**

91. Plaintiffs ask that the Court adopt the rule of “reasonable use” followed in the majority of other jurisdictions. Landowners can take what they can reasonably use for their own needs, but no more. Water taken for public purposes should remain within the province of public policy through condemnation type compensation shared by those impacted, not just a private pump operator taking all of the public funds paid even though it takes private property of value from adjacent landowners. To allow otherwise jeopardizes turning areas of this state into uninhabitable areas, destroying families, homes, ranches, and rural communities. The current policy promotes distrust and discord between neighbors and encourages the plunder of water rather than conservation.

TEXAS CONSTITUTIONAL GUARANTEE OF REMEDY FOR INJURY

92. The Texas Constitution, Article I, § 13 provides: “All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.” Should not the plain language of this constitutional protection be given effect? The rule of capture flies in the face of the obvious, plain language of this constitutional protection of a right to a remedy for injury as it is read, understood, and believed by the average citizen.

93. As previously stated, this judicially created rule, created in 1904, subsequently omitting a key condition of the decision regarding “reasonable and legitimate use,” trumped by a constitutional mandate by the citizens of the state in the Conservation Amendment, and now the subsequent efforts of state and local government trying to protect groundwater, in the face of a direct guarantee of remedy in the Constitution, is no longer worthy of the dignity of the imprimatur of the Court to defend it.

EXHIBITS INCORPORATED

94. The attached exhibits are incorporated by references for all purposes.
- Exhibit 1 – Memorandum of lease - Bridges Brothers Family LP No. 1 LLC to Electro Purification LLC
- Exhibit 2 – Memorandum of lease – Roy Odell, Eddie Odell, and Nita Lienneweber to Electro Purification LLC
- Exhibit 3 – Graphic showing cross section of waters from surface through aquifers.
- Exhibit 4 – Graphic showing cross section of waters from surface through aquifers.

Exhibit 5 – Graphic showing stratigraphy and hydrostratigraphy from Chapter 7 of the Hays

Trinity Groundwater Conservation District Report.

Exhibit 6 – Groundwater Management Area 10 – Modeled Available Groundwater

Exhibit 7 – Groundwater Management Area 10 – Desired Future Condition

Exhibit 8 – Groundwater Management Area 9 – Modeled Available Groundwater

Exhibit – 9 Groundwater Management Area 10 – Desired Future Condition

Exhibit 10 – Priority Groundwater Management Areas of Texas from TCEQ

Exhibit 11 – Hill Country PGMA boundary with Defendants’ Wells

Exhibit 12 – Hays County Regulations for Developers – Excerpts

Exhibit 13 - April 23, 2003, Letter from Hays Trinity Groundwater Conservation District to
TCEQ

Exhibit 14 - March 18, 2015, Notice letter to HTGCD with affidavit of service.

RELIEF REQUESTED

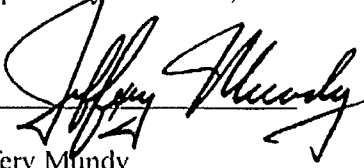
95. What is clear at this point in time is that those with wells that run dry because of Defendants’ conduct may not have a cause of action at law for damages, but there is a legislatively mandated framework in place to protect their wells. Thus, like their rural ancestors of not too long ago Texas, these citizens have to seek help of the law to protect them and their homesteads through the Court’s equitable powers to enjoin Defendants’ drilling and operation of these massive commercial water wells, and also to protect the legislative framework for groundwater conservation in this area. The only difference between 100 years ago and now for those who seek out areas they believe to be beyond the reach of the law is that the firepower of the sheriff’s pistol now resides in the power of the pen from the bench.

96. Therefore, Plaintiff requests the Court to issue a temporary injunction maintaining the status quo of the parties until the final determination of the case, and a permanent injunction upon final hearing and determination if it is in favor of Plaintiff. Plaintiff specifically requests the Court to enjoin Defendants from drilling and withdrawing water from their proposed wells until such time as they provide satisfactory proof to the Court that they have provided the statutorily mandated notice from the landowners to the Hays Trinity Groundwater Conservation District of their intent to drill, and the well owner/operator obtains the statutorily mandated permit to operate the wells from the Hays Trinity Groundwater Conservation District. If the Court determines that the Hays Trinity Groundwater Conservation District does not have jurisdiction over these wells, then Plaintiff requests the Court to enjoin Defendants from operating their wells to produce any more than they need for their own “reasonable use” and enjoin the operation of their wells from producing for off premise use. In the alternative and additionally, Plaintiff requests all other relief to which it may show itself entitled on behalf of its members.

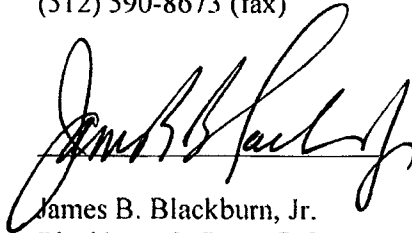
JURY DEMAND

97. Plaintiff requests trial by jury and is tendering the jury fee with this Petition.

Respectfully submitted,



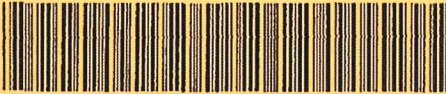
Jeffery Mundy
The Mundy Firm, PLLC
Texas Bar: 14665575
4131 Spicewood Springs Rd. Suite O-3
Austin, Texas 78759
Email: jeff@jmundy.com
(512) 334-4300
(512) 590-8673 (fax)



James B. Blackburn, Jr.
Blackburn & Carter P.C.
Texas Bar: 02388500
4709 Austin Street
Houston, Texas 77004
Email: jbb@blackburncarter.com
713/524-1012
713/524-5165 (fax)

ATTORNEYS FOR PLAINTIFF

Hays County
Liz Q. Gonzalez
County Clerk
San Marcos, Texas 78666



70 2013 13039248

Instrument Number: 2013-13039248

As

Recorded On: November 26, 2013

OPR RECORDINGS

Parties: BRIDGES BROTHERS FAMILY LP NO 1

Billable Pages: 8

To ELECTRO PURIFICATION LLC

Number of Pages: 9

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

OPR RECORDINGS	54.00
Total Recording:	54.00

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

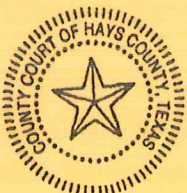
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2013-13039248
Receipt Number: 354431
Recorded Date/Time: November 26, 2013 03:44:54P
Book-Vol/Pg: BK-OPR VL-4806 PG-820
User / Station: L Peralez - Cashing #1

Record and Return To:

JACKSON SJOBERG MCCARTHY & TOWNSEND LLP
711 WEST 7TH ST
AUSTIN TX 78701-2711



State of Texas |
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q. Gonzalez
Liz Q. Gonzalez, County Clerk

Plaintiffs' EXHIBIT NO. 1 (1 of 2)

Exhibit "H"
MEMORANDUM OF LEASE

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Memorandum of Lease is made and entered into by and between Bridges Brothers Family LP No. 1, a Texas limited partnership ("Lessor") and Electro Purification, LLC, a Texas limited partnership ("Lessee"), and is as follows:

1. Pursuant to that certain Groundwater Lease with an effective date of November 1, 2013, executed by Lessor and Lessee (the "Lease"), Lessor has leased to Lessee and Lessee has leased from Lessor that certain real property which is described in Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Premises"), for the purpose of exploring for, drilling for, producing, utilizing, saving, transporting, and treating water from beneath the surface of the land.

2. The term of the Lease commenced on the Effective Date, and continues for fifty (50) years, and for as long thereafter as Groundwater is being commercially produced from the Leased Premises (the "Term"), unless sooner terminated in accordance with the provisions of the Lease.

3. The parties acknowledge that the Term of the Lease is subject to termination upon the occurrence of certain events of default as provided therein. Lessor and Lessee expressly agree that upon the expiration of the Term of the Lease, or the earlier termination of the Lease in accordance with the terms of the Lease, Lessor shall have the right to deliver to Lessee an instrument confirming such termination, and if Lessee fails to execute and deliver such instrument to Lessor within fifteen (15) days, then Lessor shall be entitled to execute and record in the Official Public Records of Hays County, Texas, an Affidavit certifying that the Lease has terminated, which Affidavit shall constitute conclusive evidence of the termination of the Lease.

4. This Memorandum does not alter, amend or modify the terms of the Lease, but is executed solely for the purpose of giving notice of the existence of the Lease and the terms and conditions therein, which Lease is incorporated herein by reference for all purposes to the same extent and with the same effect as if set forth herein in full.

Executed by the undersigned effective as of November 1, 2013.

LESSOR:
BRIDGES BROTHERS FAMILY LP NO. 1, a Texas
limited partnership

By: Bridges Brothers, L.L.C., its General Partner

By: Robert A. Bridges
Name: Robert A. Bridges
Title: President

[← Back](#)

Result For:

Result Matches:[1 - 2 of 2]

Name: electro purification Dates: 08/25/1848 To 02/24/2015

Role: Any Town: Any Document Type: Any

Name	File Date	Grantor/Grantee	Number	Type Desc.	Inst. Date	# Pgs.	Book/Vol/Page
ELECTRO PURIFICATION LLC	01/06/2015 10:19:15	Grantee	15000305	MEMORANDUM		11	OPR/05109/194
ELECTRO PURIFICATION LLC	11/26/2013 15:44:54	Grantee	13039248	MEMORANDUM		9	OPR/04806/820

For best results use Internet Explorer 5 and above or Netscape 6 and above.

Copyright © 2015 Xerox Corporation. All rights reserved. [Terms of Service](#)

NOTICE: We collect personal information on this site. To learn more about how we use your information, see our [Privacy Policy](#)

For support, please [Contact Us](#)

[← Back](#)

Result For: [ELECTRO PURIFICATION LLC]

Number	File Date	Type Desc.	Inst. Date	# Pgs.	Book/Vol/Page	Town	Consideration
15000305	01/06/2015	MEMORANDUM		11	OPR/05109/194	Not Applicable	

Volume	Page	Lot	Block	Addition
05109	194			TRACT 1 41.55 AC JESUSA PEREZ NO 14
05109	194			TRACT II 462.20 AC CLIFTON LAVERNE ODELL

Grantor
[LEINNEWEBER NITA](#)
[ODELL EDDIE](#)
[ODELL ROY](#)

Grantee
[ELECTRO PURIFICATION LLC](#)

- [Quick Document Viewer](#) - (This option is not recommended for printing.)
- [View/Save Printable Document](#) - (Requires TIFF Plugin) [Click Here](#) for Printing/TIFF Plug-in Instructions.
- [Download the Document Pages](#) (Requires TIFF Viewer) [Click Here](#) for Instructions.
- [Email Image](#)

For best results use Internet Explorer 5 and above or Netscape 6 and above.

Copyright © 2015 Xerox Corporation. All rights reserved. [Terms of Service](#)

NOTICE: We collect personal information on this site. To learn more about how we use your information, see our [Privacy Policy](#)

For support, please [Contact Us](#)

Hays County
Liz Q. Gonzalez
County Clerk
San Marcos, Texas 78666



70 2015 15000305

Instrument Number: 2015-15000305

As

Recorded On: January 06, 2015

OPR RECORDINGS

Parties: ODELL ROY

Billable Pages: 10

To ELECTRO PURIFICATION LLC

Number of Pages: 11

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

OPR RECORDINGS	62.00
Total Recording:	62.00

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Record and Return To:

Document Number: 2015-15000305
Receipt Number: 386005
Recorded Date/Time: January 06, 2015 10:19:15A
Book-Vol/Pg: BK-OPR VL-5109 PG-194
User / Station: C Rodriguez - Cashering #2

JACKSON SJOBERG MCCARTHY & TOWNSEND LLP
ATTN: EDMOND R MCCARTHY JR
711 W 7TH STREET
AUSTIN TX 78701



State of Texas |
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q. Gonzalez
Liz Q Gonzalez, County Clerk

MEMORANDUM OF LEASE

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Memorandum of Lease is made and entered into by and between Roy Odell, Eddie Odell, and Nita Leinneweber (collectively "Lessor") and Electro Purification, LLC, a Texas limited partnership ("Lessee"), and is as follows:

1. Pursuant to that certain Groundwater Lease with an effective date of December 12, 2014, executed by Lessor and Lessee (the "Lease"), Lessor has leased to Lessee and Lessee has leased from Lessor that certain real property which is described in Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Premises"), for the purpose of exploring for, drilling for, producing, utilizing, saving, transporting, and treating water from beneath the surface of the land.

2. The initial term of the Lease commenced on the Effective Date, and continues for three (3) years, unless extended, and for as long thereafter as Groundwater is being commercially produced from the Leased Premises (the "Term"), unless sooner terminated in accordance with the provisions of the Lease.

3. The parties acknowledge that the Term of the Lease is subject to termination upon the occurrence of certain events of default as provided therein. Lessor and Lessee expressly agree that upon the expiration of the Term of the Lease, or the earlier termination of the Lease in accordance with the terms of the Lease, Lessor shall have the right to deliver to Lessee an instrument confirming such termination, and if Lessee fails to execute and deliver such instrument to Lessor within fifteen (15) days, then Lessor shall be entitled to execute and record in the Official Public Records of Hays County, Texas, an Affidavit certifying that the Lease has terminated, which Affidavit shall constitute conclusive evidence of the termination of the Lease.

4. This Memorandum does not alter, amend or modify the terms of the Lease, but is executed solely for the purpose of giving notice of the existence of the Lease and the terms and conditions therein, which Lease is incorporated herein by reference for all purposes to the same extent and with the same effect as if set forth herein in full.

Executed by the undersigned effective as of December 12, 2014.

LESSOR:

By: Roy Odell
Roy Odell
P.O. Box 253
Dripping Springs, TX 78620

STATE OF TEXAS §
COUNTY OF Hays §

This instrument was acknowledged before me on the 12th day of December, 2014, by Roy Odell, individually, and as a co-owner and partner of the Odell Ranch Partnership, on behalf of said Partnership.

Liz English
Notary Public, State of Texas

[SEAL]



LESSOR:

By: Eddie Odell
Eddie Odell
1194 Rutherford Dr.
Driftwood, Texas 78619

STATE OF TEXAS §

COUNTY OF Hays §

This instrument was acknowledged before me on the 12th day of December, 2014, by Eddie Odell, individually, and as a co-owner and partner of the Odell Ranch Partnership, on behalf of said Partnership.



Liz English
Notary Public, State of Texas

[SEAL]

LESSOR:

By: *Nita Leinneweber*
Nita Leinneweber
c/o Custom Quilting
P.O. Box 1297
Wimberley, TX 78676-1297

STATE OF TEXAS §

COUNTY OF Hays §

This instrument was acknowledged before me on the 12th day of December 2014, by Nita Leinneweber, individually, and as a co-owner and partner of the Odell Ranch Partnership on behalf of said Partnership.



Liz English
Notary Public, State of Texas

[SEAL]

LESSEE:

Electro Purification, LLC by its Managing Partners,

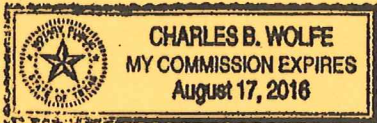
By: *Tim N Throckmorton*
Tim N Throckmorton, Manager

By: *R. D. Bart Fletcher*
R. D. "Bart" Fletcher, Manager

STATE OF TEXAS §
COUNTY OF *Harris* §

This instrument was acknowledged before me on behalf of Electro Purification LLC, a Texas limited liability company (the "Company"), on the *17* day of *December*, 2014, by Tim N Throckmorton and R. D. "Bart" Fletcher acting in their capacities as Managers of said Company.

Charles B. Wolfe
Notary Public, State of Texas
My Commission Expires _____



After Recording Return To:
Edmond R. McCarthy, Jr.
Jackson, Sjoberg, McCarthy & Townsend, LLP
711 W. 7th Street
Austin, TX 78701

Bk Vol Pg
15000305 0PR 5109 200

EXHIBIT "A"

The 457 acres consists of the original 462.20 acre tract conveyed from Joe Cruze to Grantor by General Warranty Deed recorded in Volume 174, Page 293, Hays County Deed Records, which is more fully described below as Tract I, SAVE AND EXCEPT approximately 5.2 acres deeded from Grantor to General Telephone Company of the Southwest in 1987, which is more fully described below as Tract II.

TRACT I: Being 41.55 acres in the Jesusa Perez No. 14, 41.16 acres in the William A. Mays, 146.28 acres in the James Lansing No. 32, and 233.21 acres in the Watkins Noble No. 107, described by metes and bounds as follows:

BEGINNING at a fence corner on the North side of Wimberley-Blanco Road and the Southwest side of road by Joe Cruze home, toward Lone Mount which fence corner is N. 65° W. 15 varas from an 18" Live Oak described as being on the North and West side of the Blanco City Road, referred to in the latter part of these field notes in Second Tract in Joe Cruze Abstract caption, and in field notes of Warranty Deed filed April 10, 1929, of record in Volume 98, Pages 126-135, Hays County Deed Records, from Mrs. W. A. Mayes, et al., to Joe S. Cruze, said point being on or near the line common to the J. Perez and W. H. Lupton Surveys;

THENCE, following the fence line on the North side of Wimberley Road as follows: S. 88° 52' W. 768.86 varas to a stone mound and fence corner indicated by Joe Cruze as an accepted corner common to the Mays, Lupton and Perez and Noble Surveys;

THENCE, S. 1° 20' E. 661.93 varas with West fence line of Wimberley Road to a fence post for corner, also line common to the Noble and Lupton Surveys, as per Joe Cruze;

THENCE, leaving Wimberley Road, S. 88° 50' W. 321.10 varas angle in fence line;

THENCE, N. 89° 10' W. 227.36 varas with fence line to fence corner at stone fence indicated by Joe Cruze as a corner within the Noble Survey;

THENCE, S. 1° 27' E. 515.08 varas to a fence post in old stone fence within Noble Survey line as per Joe Cruze;

THENCE, N. 42° 44' W. 355.20 varas to a fence post at angle point in fence;

THENCE, N. 65° 06' W. 1291.32 varas with fence line within Watkins Noble Survey to Noble west line a fence post, as per Joe Cruze, for most Southwest corner of the survey hereby made;

Clerk's Note: At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon of photocopy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed.

Exhibit "A" - Page 1

Bk Vol Pg
15000305 0PR 5109 201

THENCE, N 1° 08' W. 213.59 varas with west fence line of Noble Survey and east line of Jas. M. Smith Survey to corner post;

THENCE, N. 89° 16' E. passing old stone fence, 71.33 varas to fence post for corner in marshy ground;

THENCE, N 3° 57' W. at about 100 varas crossing Lansing south line, 846.36 varas with fence line to fence post at Southwest corner of public road from Joe Cruze Home to the east;

THENCE, on Southwesterly and Southerly side of public road by Joe Cruze Home with fence line having the following courses:

- N. 79° 12' E. 136.36 varas to fence post for corner;
- N. 74° 22' E. 202.92 varas to fence post for corner;
- S. 80° 05' E. 81.27 varas to fence post for corner;
- S. 69° 22' E. 507.92 varas to fence post for corner;
- S. 48° 48' E. 271.66 varas to fence post for corner;
- S. 78° 27' E. 178.49 varas with fence to fence post for corner;;
- N. 84° 26' E. at 100 varas, more or less, crossing Lansing-Mays Survey line as indicated by Joe Cruze, passing Joe Cruze Home, in all 340.02 varas with fence line to post for corner;
- N. 66° 59' E. 190.08 varas;
- N. 71° E. 150.68 varas to a fence post for corner, near the Mays-Perez line;
- S. 63° 38' E. 726.29 varas to angle in fence;
- S. 37° 04' E. 206.63 varas to PLACE OF BEGINNING.

Field notes prepared from survey made on the ground in May 1958 by Arnold C. Kellersberger, Registered Public Surveyor.

TRACT II: Being a portion of that 462.20 acre tract conveyed to Clifton Laverne O'Dell, et ux, by Joe Cruze, et ux, by deed dated June 12, 1958, and recorded in Volume 174, Page 293, Hays County Deed Records, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron stake with a "Pro-Tech" aluminum cap set in the North line of R. M. Highway 3237 for a Southeast corner of the tract herein described, from which a concrete highway monument found in the North line of R. M. 3237, at its intersection with County Road No. 183, at Engineer's Centerline Station 367 + 18.90 bears, with the North line of R. M. 3237, N. 89° 44' E. 498.80 feet;

THENCE, with the North line of R. M. 3237, S. 89° 44' W. 100.00 feet to an iron stake with an aluminum cap set for a Southwesterly corner of the tract herein described, from which a concrete highway monument found at a point of tangency in the Northerly line of R. M. 3237 at Engineer's Centerline Station 358 + 60.94 bears, with the North line of R. M. 3237, S. 89° 44' W. 259.00 feet;

Exhibit "A" - Page 2

THENCE, leaving R. M. 3237, the following calls numbered (1) and (2):

- (1) N. 35° 38' W. 397.19 feet to an iron stake with an aluminum cap set, for the West corner of the tract herein described;
- (2) N. 54° 49' E. at 401.20 feet passing an iron stake with an aluminum cap set, and continuing on, in all, 412.82 feet to a point in the Southwesterly line, as fenced and used, of County Road No. 183, same being a Northeasterly line of the aforesaid O'Dell 462.20 acre tract, for the North corner of the tract herein described;

THENCE, with the Southwesterly line, as fenced and used, of County Road No. 183, and the Northeasterly line of said O'Dell 462.20 acre tract, the following calls numbered (3) and (4):

- (3) S. 63° 15' E. 242.72 feet to a 60d nail with an aluminum washer set in an angle fence post, from which an iron stake found at an angle in the Northeasterly line of County Road No. 183, same being an angle in the Southwesterly line of Lot 5 of Rolling Oaks Ranch, Section One, a subdivision of record in Book 1, Page 64, Hays County Plat Records, bears N. 42° 31' E. 41.58 feet;
- (4) S. 36° 50' E. 240.32 feet to a point under an overhead power line for the East corner of the tract herein described, from which a concrete highway monument found in the intersection of the Southwesterly line of County Road No. 183 and the Northerly line of R. M. 3237 at Engineer's Centerline Station 367 + 48.90 bears, with the Southwesterly line of County Road No. 183, S. 36° 50' E. 270.17 feet;

THENCE, leaving County Road No. 183 and the Northeasterly line of said O'Dell 462.20 acre tract, with said overhead power line, S. 54° 49' W. at 9.88 feet passing an iron stake with an aluminum cap set, and continuing on, in all, 448.77 feet to the POINT OF BEGINNING, containing 5.164 acres of land.

Field notes prepared January 6, 1987, from a survey completed in December 1986 by Darrel Sutton, Registered Public Surveyor #1927.

Exhibit "A" - Page 3

SCHEDULE 1 to EXHIBIT "A"

Odell 457 acres 7 miles Northeast from Wimberley in Hays County, Texas

Grantor	Grantee	Acreage	% Interest	Vol/Page - Date
Joe Cruse et ux	Clifton Laverne Odell/Marjorie Wilson Odell	462.20	100%	174/293 (6/12/58)
Clifton Laverne Odell/Marjorie Wilson Odell	Roy Gene Odell	457 out of 462.20	1.67%	1930/209 (12/19/01)
Clifton Laverne Odell/Marjorie Wilson Odell	Juanita M. Leinneweber	457 out of 462.20	1.67%	1930/214 (12/19/01)
Clifton Laverne Odell/Marjorie Wilson Odell	Eddie Ray Odell	457 out of 462.20	1.67%	1930/219 (12/19/01)
Clifton Laverne O'Dell/Marjorie Wilson O'Dell	Roy Gene O'Dell	457 out of 462.20	1.56%	2210/226 (4/22/03)
Clifton Laverne O'Dell/Marjorie Wilson O'Dell	Juanita M. Leinneweber	457 out of 462.20	1.56%	2210/236 (4/22/03)
Clifton Laverne O'Dell/Marjorie Wilson O'Dell	Eddie Ray O'Dell	457 out of 462.20	1.56%	2210/231 (4/22/03)
Clifton Laverne Odell/Marjorie Wilson Odell	Juanita M. Leinneweber	457 out of 462.20	1.73%	2625/721 (1/18/05)
Clifton Laverne Odell/Marjorie Wilson Odell	Roy Gene Odell	457 out of 462.20	1.73%	2625/727 (1/18/05)
Clifton Laverne Odell/Marjorie Wilson Odell	Eddie Ray Odell	457 out of 462.20	1.73%	2625/733 (1/18/05)
Clifton Laverne Odell/Marjorie Wilson Odell	Roy Gene Odell	457 out of 462.20	1.75%	3098/642 (1/22/07)
Clifton Laverne Odell/Marjorie Wilson Odell	Eddie Ray Odell	457 out of 462.20	1.75%	3098/648 (1/22/07)
Clifton Laverne Odell/Marjorie Wilson Odell	Juanita M. Leinneweber	457 out of 462.20	1.75%	3098/636 (1/22/07)

Clifton Laverne Odell/Marjorie Wilson Odell	Roy Gene Odell	457 out of 462.20	1.04%	3580/673 (1/16/09)
Clifton Laverne Odell/Marjorie Wilson Odell	Eddie Ray Odell	457 out of 462.20	1.04%	3580/680 (1/16/09)
Clifton Laverne Odell/Marjorie Wilson Odell	Juanita M. Leinneweber	457 out of 462.20	1.04%	3580/687 (1/16/09)
Clifton Laverne Odell/Marjorie Wilson Odell	Eddie Ray Odell	457 out of 462.20	0.95%	4046/156 (1/3/11)
Clifton Laverne Odell/Marjorie Wilson Odell	Juanita M. Leinneweber	457 out of 462.20	0.95%	4046/142 (1/3/11)
Clifton Laverne Odell/Marjorie Wilson Odell	Roy Gene Odell	457 out of 462.20	0.95%	4046/149 (1/3/11)
Clifton Laverne Odell/Marjorie Wilson Odell	Juanita M. Leinneweber	457 out of 462.20	24.6333%	4157/674 (7/18/11)
Clifton Laverne Odell/Marjorie Wilson Odell	Roy Gene Odell	457 out of 462.20	24.6334%	4157/688 (7/18/11)
Clifton Laverne Odell/Marjorie Wilson Odell	Eddie Ray Odell	457 out of 462.20	24.6333%	4157/681 (7/18/11)
		Total Ownership	100%	



EDWARDS AQUIFER REGION

1615 N. St Mary's Street • San Antonio, Texas 78215 • 210.222.2204 • 1.800.292.1047 • www.edwardsaquifer.org

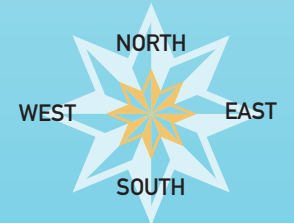
Drainage basins in the drainage area collect surface water runoff and funnel it into streams that cross the recharge zone.



In the artesian zone, the water flows generally from west to east.

Water movement through the Edwards Limestone is generally slower south and east of the fresh water zone. This water remains in contact with the limestone and gypsum longer, allowing dissolved mineral concentrations to increase to over 1,000 milligrams/liter.

Drainage Area	County Lines
Recharge Zone	EAA Jurisdictional Boundary
Artesian Zone	San Antonio City Limits
	Major Rivers
	Minor Rivers
	Intermittent Streams



How Does The Aquifer Work?

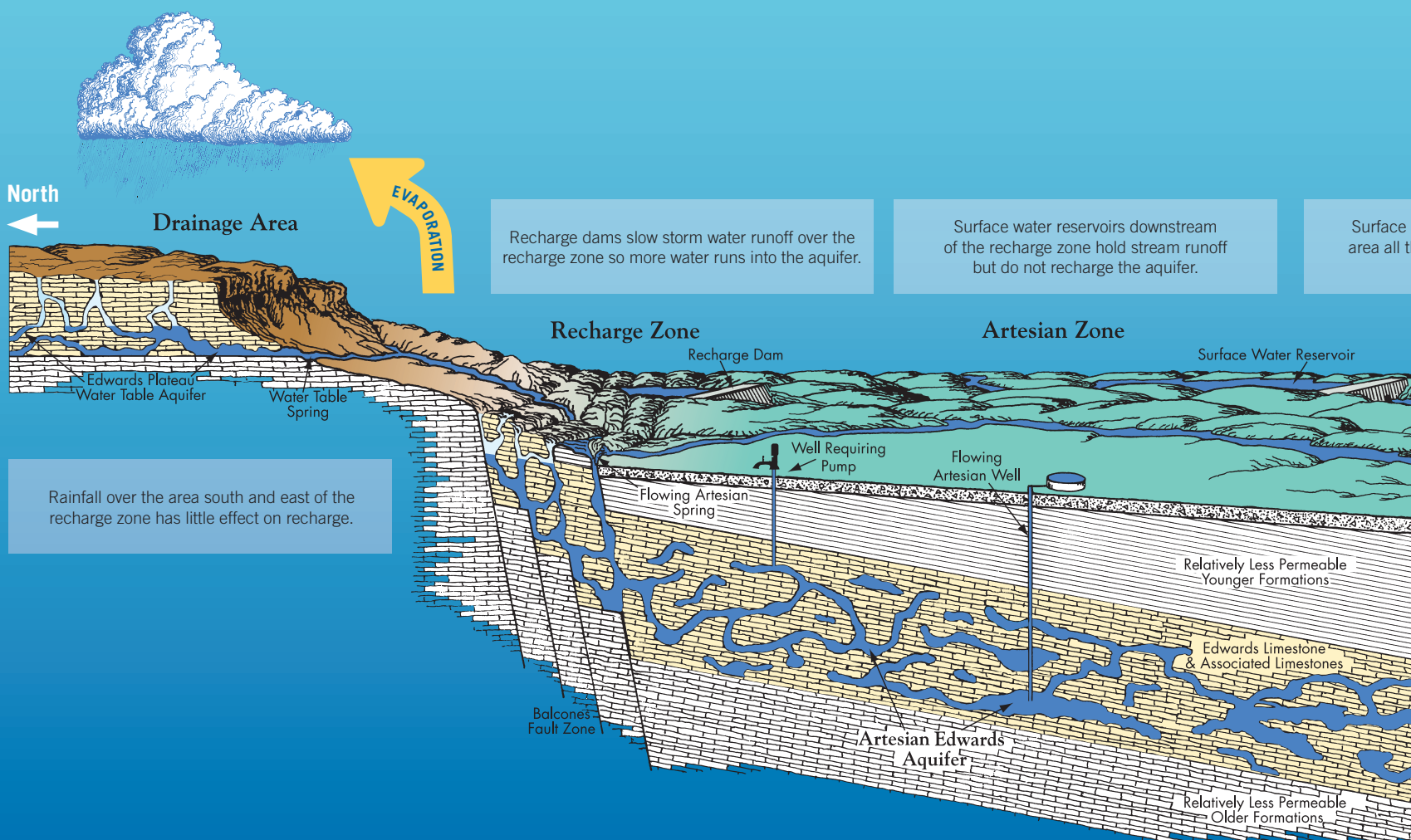
About 85% of precipitation falling on the area is lost back to the atmosphere by evaporation or by transpiration of water vapor from vegetation.

This generalized diagram of a north-south cross section of the Edwards Aquifer region highlights the key components of the aquifer and how they inter-relate and function to form a natural underground system for storing water.

The Edwards Aquifer is a karst aquifer, which means it consists of porous, honeycombed formations of Edwards Limestone and other associated limestones that serve as natural conduits through which water travels and is stored underground.

Water reaches the aquifer as rain runoff that first collects on the *drainage area* (Edwards Plateau), soaks into the water table, and then emerges as spring-fed

streams that flow downhill to the *recharge zone*. In the recharge zone, where the Edwards Limestone is exposed at the land surface, the water actually enters the aquifer through cracks, crevices, caves, and sinkholes, and then percolates further underground into the *artesian zone*. Here, a complex network of interconnected spaces, varying in size from microscopic pores to open caverns, stores and carries water in a west to east direction. Because water in the artesian zone is under pressure, there are areas where water is forced back to the surface through openings such as springs and free-flowing wells. Where there is not enough artesian pressure to force water to the surface, wells equipped with pumps can extract water from the aquifer for human use.



Rainfall over the area south and east of the recharge zone has little effect on recharge.

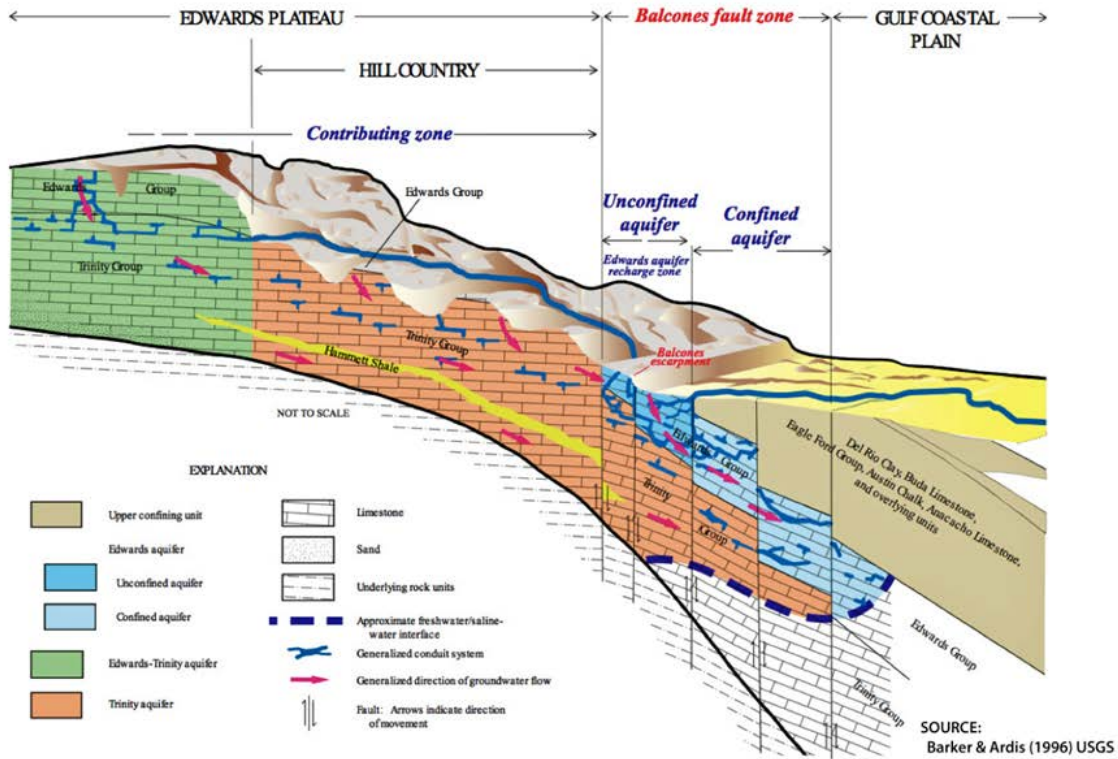
Recharge dams slow storm water runoff over the recharge zone so more water runs into the aquifer.

Surface water reservoirs downstream of the recharge zone hold stream runoff but do not recharge the aquifer.

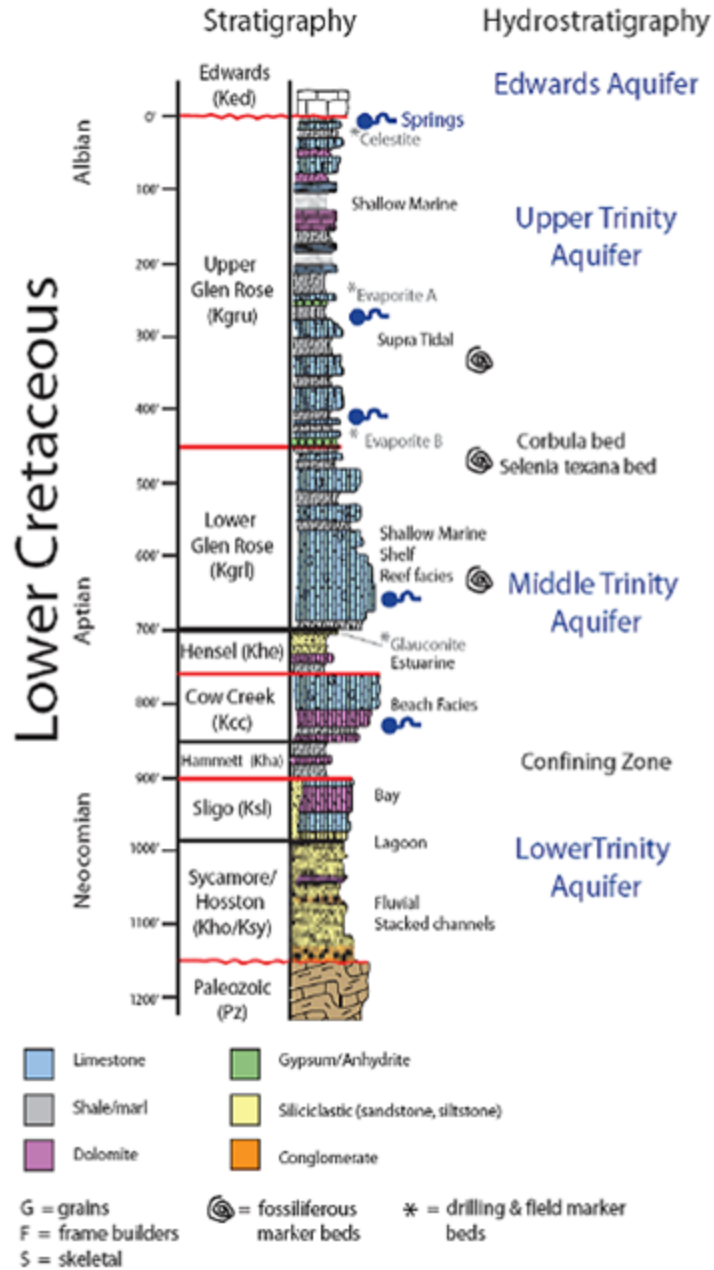
Surface streams flow beyond the aquifer area all the way to the bays and estuaries of the Gulf Coast.

Flowing artesian wells and springs exist where hydraulic pressure is sufficient to force the water up through wells and faults to the surface. Pumps are used where there is less hydraulic pressure.

Water in the artesian zone of the porous Edwards Limestone is confined between two relatively less permeable geologic formations.



Stratigraphy and Hydrostratigraphy of the Hays Trinity Groundwater Conservation District



Alex S. Broun, P.G. #4845 modified from Strcklin and Lozo (1971)
 Prepared by: Leslie Llado, Hays Trinity Groundwater Conservation District, Feb. 2008.

Groundwater Management Area 10 - Modeled Available Groundwater

Aquifer	County	Regional Water Planning Area	River Basin	Modeled Available Groundwater						TWDB Report
				2010	2020	2030	2040	2050	2060	
Trinity	Bexar	L	San Antonio	19,998	19,998	19,998	19,998	19,998	19,998	AA 10-29 MAG
Trinity	Caldwell	L	Guadalupe	0	0	0	0	0	0	AA 10-29 MAG
Trinity	Comal	L	Guadalupe	27,176	27,176	27,176	27,176	27,176	27,176	AA 10-29 MAG
Trinity	Comal	L	San Antonio	2,108	2,108	2,108	2,108	2,108	2,108	AA 10-29 MAG
Trinity	Guadalupe	L	Guadalupe	0	0	0	0	0	0	AA 10-29 MAG
Trinity	Guadalupe	L	San Antonio	0	0	0	0	0	0	AA 10-29 MAG
Trinity	Hays	K	Colorado	955	955	955	955	955	955	AA 10-29 MAG
Trinity	Hays	L	Guadalupe	2,860	2,860	2,860	2,860	2,860	2,860	AA 10-29 MAG
Trinity	Medina	L	Nueces	4,373	4,373	4,373	4,373	4,373	4,373	AA 10-29 MAG
Trinity	Medina	L	San Antonio	996	996	996	996	996	996	AA 10-29 MAG
Trinity	Travis	K	Colorado	634	634	634	634	634	634	AA 10-29 MAG
Trinity	Travis	K	Guadalupe	7	7	7	7	7	7	AA 10-29 MAG
Trinity	Uvalde	L	Nueces	639	639	639	639	639	639	AA 10-29 MAG
Leona Gravel	Medina	L	Nueces	12,369	12,369	12,369	12,369	12,369	12,369	AA 10-07 MAG
Leona Gravel	Medina	L	San Antonio	4,013	4,013	4,013	4,013	4,013	4,013	AA 10-07 MAG
Leona Gravel	Uvalde	L	Nueces	9,385	9,385	9,385	9,385	9,385	9,385	AA 10-28 MAG
Saline Edwards (BFZ)	Caldwell	L	Colorado	64	64	64	64	64	64	AA 10-35 MAG
Saline Edwards (BFZ)	Caldwell	L	Guadalupe	134	134	134	134	134	134	AA 10-35 MAG
Saline Edwards (BFZ)	Hays	K	Colorado	9	9	9	9	9	9	AA 10-35 MAG
Saline Edwards (BFZ)	Hays	L	Guadalupe	235	235	235	235	235	235	AA 10-35 MAG
Saline Edwards (BFZ)	Travis	K	Colorado	699	699	699	699	699	699	AA 10-35 MAG
Saline Edwards (BFZ)	Travis	K	Guadalupe	39	39	39	39	39	39	AA 10-35 MAG
Edwards (BFZ)	Hays	K	Colorado	2,292	2,292	2,292	2,292	2,292	2,292	GR 10-059 MAG Version 2
Edwards (BFZ)	Hays	L	Guadalupe	307	307	307	307	307	307	GR 10-059 MAG Version 2
Edwards (BFZ)	Travis	K	Colorado	1,166	1,166	1,166	1,166	1,166	1,166	GR 10-059 MAG Version 2
Austin Chalk	Uvalde	L	Nueces	2,935	2,935	2,935	2,935	2,935	2,935	AA 10-26 MAG
Buda Limestone	Uvalde	L	Nueces	758	758	758	758	758	758	AA 10-27 MAG
Edwards (BFZ)	Kinney	J	Nueces	6,319	6,319	6,319	6,319	6,319	6,319	GR 12-002 MAG
Edwards (BFZ)	Kinney	J	Rio Grande	2	2	2	2	2	2	GR 12-002 MAG

**Groundwater Management Area 10
Desired Future Conditions**

Aquifer	Desired Future Condition Summary	Date Desired Future Condition Adopted
Austin Chalk (Uvalde County)	No drawdown (including exempt and non-exempt use).	8/23/2010
Buda Limestone (Uvalde County)	No drawdown (including exempt and non-exempt use).	8/23/2010
Edwards (BFZ) Northern Subdivision	Springflow at Barton Springs during average recharge conditions shall be no less than 49.7 cubic feet per second averaged over an 84 month (7-year) period; and during extreme drought conditions, including those as severe as a recurrence of the 1950s drought of record, springflow of Barton Springs shall be no less than 6.5 cubic feet per second averaged on a monthly basis.	8/4/2010
Edwards (BFZ) Northern Subdivision Saline Zone	Well drawdown at the saline-freshwater interface (the so-called Edwards Bad Water Line) averages no more than 5 feet and does not exceed a maximum of 25 feet at any one point on the interface.	8/4/2010
Edwards (BFZ) San Antonio Segment within Edwards Aquifer Authority	Desired future conditions and modeled available groundwater for the Edwards Aquifer within jurisdiction of the Edwards Aquifer Authority are set by the Texas Legislature (Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § § 2.02 and 2.06, 2007 Tex. Gen. Laws, 4612, 4627, and 4627; Act of May 28, 2007, 80th Leg., R.S. ch. 1430, § § 12.02 and 12.06, 2007 Tex. Gen. Laws 5848, 5901, and 5903). The DFCs are specified in Sections 1.14(a), (f), (h), and 1.26 of the Edwards Aquifer Authority Act. The DFCs are specified in Sections 1.14(a), (f), (h), and 1.26 of the Edwards Aquifer Authority Act, and relate to levels in index wells (J-17 in the San Antonio pool and J-27 in the Uvalde pool) or flows in the Comal Springs and San Marcos Springs. Refer to the Edwards Aquifer Authority Groundwater Management Plan for details.	5/28/2007
Edwards (Kinney County)	Water level in well number 70-38-902 shall not fall below 1184 feet mean sea level.	8/4/2010
Leona Gravel (Medina County)	Average drawdown of 15 feet.	5/17/2010
Leona Gravel (Uvalde County)	No drawdown (including exempt and non-exempt use).	8/23/2010
Trinity	Average regional well drawdown not exceeding 25 feet during average recharge conditions (including exempt and non-exempt use); within Hays-Trinity Groundwater Conservation District: no drawdown; within Uvalde County: 20 feet. Not relevant in Trinity-Glen Rose GCD. Note: Hays-Trinity Groundwater Conservation District and Trinity-Glen Rose Groundwater Conservation District are no longer within the Groundwater Management Area 10 boundary.	8/23/2010

Groundwater Management Area 9 - Modeled Available Groundwater

Aquifer	County	Regional Water Planning Area	River Basin	Modeled Available Groundwater						TWDB Report
				2010	2020	2030	2040	2050	2060	
Marble Falls	Blanco	K	Colorado	261	261	261	261	261	261	AA 10-14 MAG
Ellenburger-San Saba	Blanco	K	Colorado	2,655	2,655	2,655	2,655	2,655	2,655	AA 10-01 MAG
Ellenburger-San Saba	Blanco	K	Guadalupe	6	6	6	6	6	6	AA 10-01 MAG
Hickory	Blanco	K	Colorado	1,162	1,162	1,162	1,162	1,162	1,162	AA 10-02 MAG
Hickory	Blanco	K	Guadalupe	1	1	1	1	1	1	AA 10-02 MAG
Edwards-Trinity (Plateau)	Bandera	J	Guadalupe	21	21	21	21	21	21	GR 10-049 MAG
Edwards-Trinity (Plateau)	Bandera	J	Nueces	101	101	101	101	101	101	GR 10-049 MAG
Edwards-Trinity (Plateau)	Bandera	J	San Antonio	561	561	561	561	561	561	GR 10-049 MAG
Edwards-Trinity (Plateau)	Kendall	L	Colorado	46	46	46	46	46	46	GR 10-049 MAG
Edwards-Trinity (Plateau)	Kendall	L	Guadalupe	103	103	103	103	103	103	GR 10-049 MAG
Edwards-Trinity (Plateau)	Kendall	L	San Antonio	169	169	169	169	169	169	GR 10-049 MAG
Trinity	Bandera	J	Guadalupe	76	76	76	76	76	76	GR 10-050 MAG
Trinity	Bandera	J	Nueces	903	903	903	903	903	903	GR 10-050 MAG
Trinity	Bandera	J	San Antonio	6,305	6,305	6,305	6,305	6,305	6,305	GR 10-050 MAG
Trinity	Bexar	L	San Antonio	24,856	24,856	24,856	24,856	24,856	24,856	GR 10-050 MAG
Trinity	Blanco	K	Colorado	1,322	1,322	1,322	1,322	1,322	1,322	GR 10-050 MAG
Trinity	Blanco	K	Guadalupe	1,251	1,251	1,251	1,251	1,251	1,251	GR 10-050 MAG
Trinity	Comal	L	Guadalupe	6,906	6,906	6,906	6,906	6,906	6,906	GR 10-050 MAG
Trinity	Comal	L	San Antonio	3,308	3,308	3,308	3,308	3,308	3,308	GR 10-050 MAG
Trinity	Hays	K	Colorado	4,721	4,710	4,707	4,706	4,706	4,706	GR 10-050 MAG
Trinity	Hays	L	Guadalupe	4,410	4,410	4,410	4,410	4,410	4,410	GR 10-050 MAG
Trinity	Kendall	L	Colorado	135	135	135	135	135	135	GR 10-050 MAG
Trinity	Kendall	L	Guadalupe	6,028	6,028	6,028	6,028	6,028	6,028	GR 10-050 MAG
Trinity	Kendall	L	San Antonio	4,976	4,976	4,976	4,976	4,976	4,976	GR 10-050 MAG
Trinity	Kerr	J	Colorado	318	318	318	318	318	318	GR 10-050 MAG
Trinity	Kerr	J	Guadalupe	15,646	14,129	14,056	13,767	13,450	13,434	GR 10-050 MAG
Trinity	Kerr	J	Nueces	0	0	0	0	0	0	GR 10-050 MAG
Trinity	Kerr	J	San Antonio	471	471	471	471	471	471	GR 10-050 MAG
Trinity	Medina	L	Nueces	1,575	1,575	1,575	1,575	1,575	1,575	GR 10-050 MAG
Trinity	Medina	L	San Antonio	925	925	925	925	925	925	GR 10-050 MAG
Trinity	Travis	K	Colorado	8,920	8,672	8,655	8,643	8,627	8,598	GR 10-050 MAG

**Groundwater Management Area 9
Desired Future Conditions**

Aquifer	Desired Future Condition Summary	Date Desired Future Condition Adopted
Edwards Group of Edwards-Trinity (Plateau)	No net increase in average drawdown in Kendall and Bandera counties. Not relevant in Kerr and Blanco counties.	7/26/2010
Ellenburger-San Saba	Allow for an increase in average drawdown of no more than 2 feet [in Blanco County].	8/29/2008
Hickory	Allow for an increase in average drawdown of no more than 7 feet [in Blanco County].	8/29/2008
Marble Falls	Allow for no net increase in average drawdown [in Blanco County].	8/29/2008
Trinity	Allow for an increase in average drawdown of approximately 30 feet through 2060.	7/26/2010

Priority Groundwater Management Areas (PGMAs)



Dallam County PGMA - 1990

North - Central Texas Trinity and Woodbine Aquifers PGMA - 2009

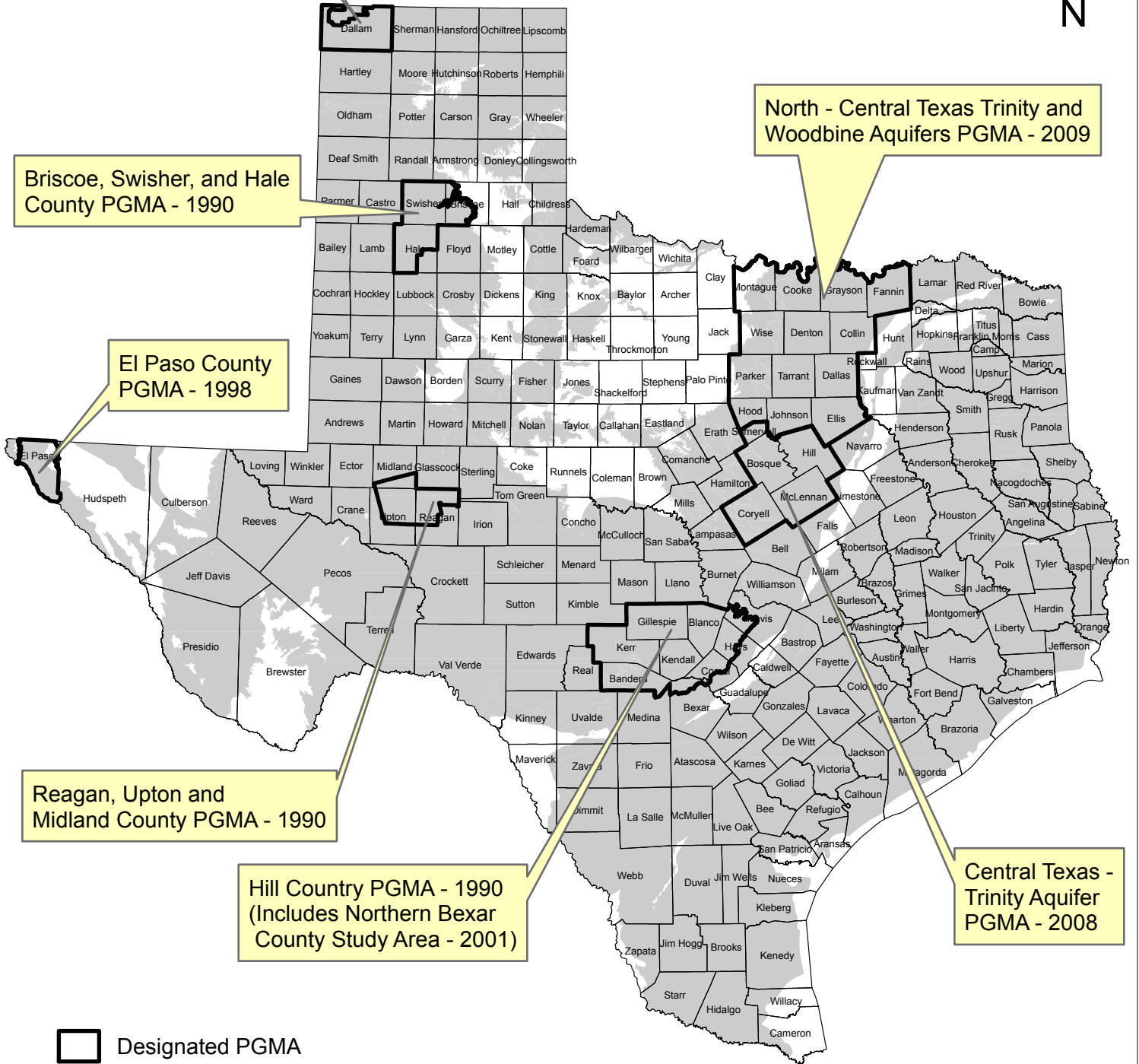
Briscoe, Swisher, and Hale County PGMA - 1990

El Paso County PGMA - 1998

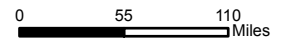
Reagan, Upton and Midland County PGMA - 1990

Hill Country PGMA - 1990
(Includes Northern Bexar County Study Area - 2001)

Central Texas - Trinity Aquifer PGMA - 2008

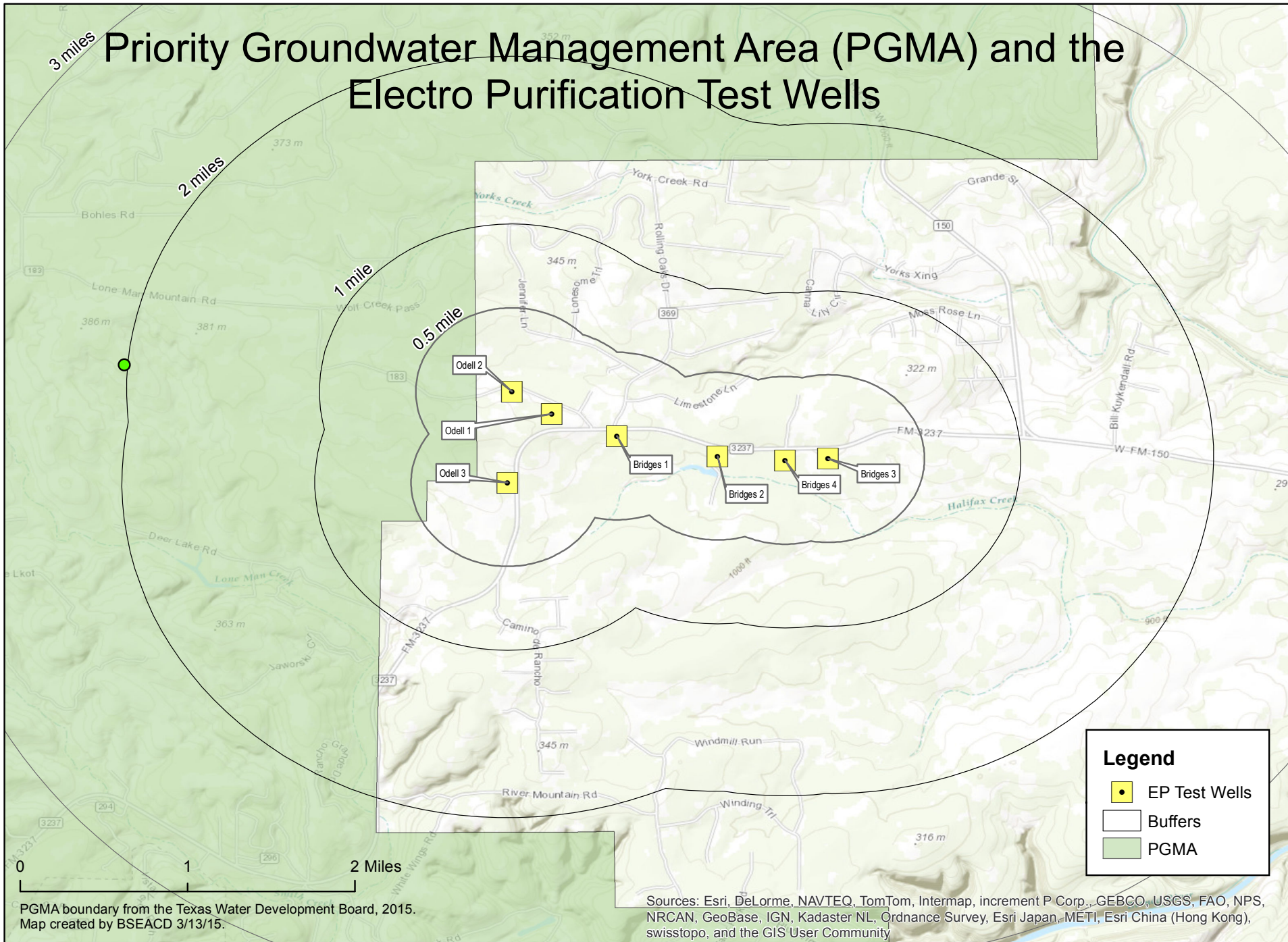


- Designated PGMA
- Major and Minor Aquifers
- County



This map was prepared by the TCEQ for display purposes only. No claims are made to the accuracy or completeness of the information shown here nor is this map suitable for any other use. The scale and location of mapped data are approximate. For more information about this map, please contact TCEQ Groundwater Planning and Assessment Team.

Priority Groundwater Management Area (PGMA) and the Electro Purification Test Wells





ADOPTION VERSION

*HAYS COUNTY
DEVELOPMENT REGULATIONS*

CHAPTER 701 - DEVELOPMENT REGULATIONS IN GENERAL

Sub-Chapter 1 - Preamble and Purpose

§1.01. Preamble

These Development Regulations have been adopted by Order of the Hays County Commissioners Court to provide a framework for the orderly and efficient development of rural and suburban Hays County. The various departments, agencies, entities and employees of the County are directed to implement these Regulations and are authorized to do so as outlined herein.

§1.02. Purpose

The purpose of these regulations is to implement the powers and duties of the County authorized under the Texas Water Code, the Texas Health and Safety Code, the Texas Local Government Code and other laws, to establish the policies of the Commissioners Court and to set forth procedures to be followed in County proceedings in regulating certain activities associated with development in Hays County. The regulations should be interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of laws and regulations by the County.

§1.03. Severability

It is hereby declared to be the express intention of the Commissioners Court of Hays County, Texas, that the appendices, Chapters, clauses, paragraphs, phrases, Sections, sentences, and Subsections of these Regulations are severable. In the event any appendix, Chapter, clause, paragraph, phrase, Section, sentence or Subsection of these Regulations shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any remaining appendices, Chapters, clauses, paragraphs, phrases Sections, or Subsections of these Regulations.

§1.04. Adoption by Reference

Where these Regulations adopt by reference the guidelines, laws, ordinances, policies, procedures, regulations, rules, and/or statutes (hereinafter “other rules”) of another entity, the implementing County departments, employees and agents shall maintain and make available to the public a copy of any current document which contains such other rules adopted by reference, in accordance with Chapter 799.

Sub-Chapter 2 - Applicability

§2.01. General Requirements

This Chapter shall govern the general administrative procedures and review and evaluation processes to be used by the County to process and approve Applications for various types of Development Authorizations and to outline public notice requirements and establish guidelines for public participation in the review and approval of Development Authorizations.

§2.02. Legal Authority

Legal Authority for adopting and enforcing the regulations in this Chapter is granted to the County under Texas Local Government Code (TLGC) in Chapters 232, 233, 234, 242, 245 and 352 and under the Texas Water Code (TWC) in Chapters 26 and 35.

§2.03. Approval Required

Except as otherwise provided herein, approval of the County is required prior to conducting any of the development activities outlined in these regulations.

§2.04. Development Authorizations within ETJ of a Municipality

Whenever any portion of an Original Tract lies within the defined extraterritorial jurisdiction (ETJ) of a municipality and is subject to both the development regulations of such municipality and Hays County, the following procedures will govern:

- (A) The Applicant should obtain approval of the Application from the applicable Reviewing Authority, as determined under TLGC Chapter 242, before filing record documents with the County Clerk. As required by the Texas Property Code, the County Clerk will not accept documents for recordation unless they have been approved by the Reviewing Authority.
- (B) In accordance with the TLGC, the County is authorized to enter into inter-local agreements with municipalities within the County to identify the Reviewing Authority for the area within the County that is also within that municipality's ETJ. The County shall maintain and make available to the public a list of all municipalities with ETJ within the County and shall identify on that list the Reviewing Authority for each portion of an ETJ within the County. The following procedures shall govern the requirements for review and approval based on the identity of the Reviewing Authority:
 - (1) For Applications for which the County is the Reviewing Authority, Applicants shall follow the procedures outlined in these Regulations.
 - (2) For Applications for which a municipality is the Reviewing Authority, a person wishing to file record documents with the County Clerk for a development activity approval shall with those documents file a certificate that indicates that the development activity has either been approved by the municipality or is exempted from the municipality's development regulations, and that all fees due to the County have been paid. The applicant bears the burden of establishing to the Commissioners Court that no municipal approval is required.
 - (3) For Applications for which the Reviewing Authority is a joint office established by the County and one or more authorized municipalities through inter-local agreement, the implementing departments, agencies and employees of the County shall maintain and make available to the public a current copy of the regulations and procedures for the Reviewing Authority. A person wishing to file record documents with the County Clerk for a Development Authorization shall with those documents file a certificate that indicates that the development activity has either been approved by the Reviewing Authority or is exempted from the Reviewing Authority's development regulations, and that all fees due to the County have been paid. For a development activity that the Applicant asserts is exempt from obtaining an approval from the Reviewing Authority,

the Applicant bears the burden of establishing to the Commissioners Court that no Reviewing Authority approval is required.

- (C) Unless otherwise expressly stated in an agreement between the County and the Reviewing Authority, the County's fees shall be assessed on all Applications for Development Authorizations for which the County is not the Reviewing Authority where any portion of the Subject Property is located outside the incorporated limits of a municipality. The County's fees shall be separate and severable from fees assessed by other entities on an Application. A waiver of fees by the Reviewing Authority shall not constitute a waiver of fees by the County, unless the County's fees are duly waived under these regulations.

§2.05. Affect of Regulations on Prior Development Authorizations

- (A) These Regulations shall not alter the rights granted by any prior Development Authorizations issued by the County, provided that:
 - (1) Such Development Authorization has not expired based on the provisions of the Development Authorization or the regulations or ordinances under which such Development Authorization was issued; and,
 - (2) The activities authorized under such Development Authorization are conducted in accordance with the provisions of the Development Authorization or the regulations or ordinances under which such Development Authorization was issued.
- (B) Any person who holds a Development Authorization issued by the County prior to the effective date of these regulations may petition the County to modify such prior Development Authorization to comply with any portion of these Regulations. This petition should be submitted in writing in accordance with Subchapter 15 of this Chapter.

§2.06. Affect of Regulations on Pending or Previously Filed Applications

- (A) These Regulations shall not alter the rights granted by TLGC Chapter 245 to applications filed or pending before the effective date of these Regulations. Applications filed or pending before the effective date of these Regulations, and subsequent County-issued Development Authorizations related to such pending applications, have the right to be reviewed under the regulations in effect at the time the original application was filed, provided that:
 - (1) The Application has not expired in accordance with the regulations in effect at the time of filing;
 - (2) The Applicant timely files supplemental information requested by the Department for consideration; and,
 - (3) The Application is not denied by the Commissioners Court.
- (B) Applications pending before the effective date of these Regulations that expire at any time after the effective date of these Regulations shall be null and void and shall disqualify the Applicant, Permittee and owner of the Subject Property from the ability to submit any subsequent applications for consideration under prior regulations based on the original application date of the expired application. Expired applications shall require a complete new Application be submitted under these Regulations.

- (C) An Applicant with an Application pending on the effective date of these regulations may petition the County to have such application considered under these Regulations. This petition must be submitted in writing in accordance with Subchapter 15 of this Chapter.

§2.07. Affect of Regulations on Previously Unregulated Activities

These regulations shall be implemented as presented below for each of the following categories of previously unregulated activities:

- (A) For persons, facilities and sites that commence newly regulated activities following the effective date of these Regulations, such persons, facilities and sites shall comply with the terms of these Regulations on the date such regulated activity commences.
- (B) Persons, facilities and sites that have commenced newly regulated activities prior to the effective date of these Regulations shall have one hundred eighty (180) calendar days to bring such regulated activities into compliance with these Regulations.
- (C) For those newly regulated activities that require approval of the County, such persons, facilities and locations that have commenced newly regulated activities prior to the effective date of these Regulations shall bring such regulated activities into compliance with these Regulations within thirty days of final action by the County on their application; provided such application was filed within one hundred eighty (180) calendar days of the effective date of these Regulations.

Sub-Chapter 3 - Definitions

§3.01. Language Construction and Meaning

Unless otherwise indicated by individual Chapters of these Regulations, the language construction and meaning shall be that assigned in common usage at the time of their adoption.

§3.02. Defined Terms Used in the Regulations

Unless otherwise indicated by individual Chapters, the following terms, when used in these Regulations, shall have the meanings ascribed to them as outlined below.

- (A) Acre - A unit of area equal to 43,560 square feet. When calculating the acreage of any Lot, the gross square footage within the Lot shall be used, provided any area within a private roadway easement or an easement for a Shared Access Driveway shall be excluded.
- (B) Applicant - A person seeking approval of an application submitted pursuant to these Regulations.
- (C) Application – A document or series of documents describing the applicant, the property, the activity for which approval is sought, how the activity satisfies the requirements of these regulations, and which is filed with the intent of obtaining approval of the application.
- (D) Calendar Day – any and all days shown on the County’s official calendar, inclusive of holidays and weekends.
- (E) Commissioners Court - The Commissioners Court of Hays County.

- (F) Conservation Easement – an easement on real property for the purpose of limiting or restricting development activities on the property subject to said easement. To qualify as a Conservation Easement under this Chapter, the easement shall be granted to the public and shall be held by the County or other non-profit legal entity recognized by the County as custodian for the County. A Conservation Easement shall be in such form and under such conditions as are acceptable to the County.
- (G) Contiguous Property(ies) - land parcels, tracts or lots of real property that are immediately adjacent, connected to one another or share a common boundary, but may also include land separated only by a roadway, utility corridor or aquatic feature. Properties that are separated by a roadway, utility corridor or aquatic feature within two hundred feet are considered Contiguous Properties.
- (H) Contributing Zone of the Edwards Aquifer - The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer and is generally located upstream (upgradient) and north to northwest of the recharge zone, as identified by the Texas Commission on Environmental Quality (TCEQ) under the Edwards Aquifer Rules. It is the intent of the County that this definition conform to the corresponding definition included in the TCEQ Edwards Aquifer Program regulations, as subsequently amended. In the event an Applicant cannot determine with specificity the location of the boundary of the Contributing Zone of the Edwards Aquifer, the Applicant may submit appropriate maps and other evidence as may be requested by the Department for assistance in such determination from the Department.
- (I) County - Hays County, Texas. Where referenced herein, the County may include either the Commissioners Court or personnel, departments or agencies of the County acting under authority delegated to such personnel, departments or agencies by the Commissioners Court.
- (J) County Clerk - The County Clerk of Hays County.
- (K) Department – Either the Hays County Transportation Department or Hays County Development Services Department, as applicable.
- (L) Development - All land modification activity, including the construction of buildings, roadways, paved storage areas, parking lots, storm water management facilities and other impervious structures or surfaces.
- (M) Development Agreement – A written agreement entered into between the County, the Permittee and/or the Owner(s) of the Subject Property that stipulates the conditions under which development activities on the Subject Property will be conducted. Development Agreements must have the approval of the Hays County Commissioners Court.
- (N) Development Authorization – The approval by the Hays County Commissioners Court or by departments, agents, or personnel delegated such approval authority by the Commissioners Court of one or more Applications for development activities governed by these Regulations for a specific project or tract of land, as identified in such Application(s). Development Authorizations shall include approved preliminary plans, final plats, flood hazard area permits, on-site sanitary sewer facility permits, Manufactured Home Rental Community permits, Permits for the Use of County Property or Facilities, a Land Use/Location Restriction license, combinations of any such permits

or licenses, and any other approvals or authorizations issued under these Regulations. This term shall also apply to Development Authorizations or equivalent approvals issued by the County prior to the effective date of these Regulations.

- (O) Director - The Director of the Hays County Transportation Department or Hays County Development Services Department, as applicable, and any successor thereto.
- (P) Dwelling Unit –One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of one household. Dwelling units may include:
 - (1) A Single Family Residence;
 - (2) An Apartment;
 - (3) A Condominium Unit; or,
 - (4) A Manufactured Home within a Manufactured Home Rental Community;
- (Q) Edwards Aquifer Recharge Zone - Any area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer, as identified by the Texas Commission on Environmental Quality under the Edwards Aquifer Rules. It is the intent of the County that this definition conform to the corresponding definition included in the TCEQ Edwards Aquifer Program regulations, as subsequently amended. In the event an Applicant cannot determine with specificity the location of the boundary of the Edwards Aquifer Recharge Zone, the Applicant may submit appropriate maps and other evidence as may be requested by the Department for assistance in such determination from the Department. Any determination by the Department will affect only these Regulations and will not in any manner be binding upon the TCEQ. The Department may require the Applicant to obtain a determination from the TCEQ, and any determination by the TCEQ regarding the location of the Recharge Zone will control for purposes of these Regulations. The intent of these Regulations is to coordinate applicable state and local regulations such that the definition of the Edwards Aquifer Recharge Zone under these Regulations shall be identical with the definition found within the Edwards Aquifer Rules.
- (R) Edwards Aquifer Rules - The Regulations promulgated by the Texas Commission on Environmental Quality (TCEQ) relating to the Edwards Aquifer, currently set forth in Title 30, Texas Administrative Code, Chapter 213, as amended from time to time.
- (S) Endangered Species Act - the federal Endangered Species Act of 1973, including any and all subsequent amendments.
- (T) Final Plat - A map of a proposed Subdivision of land prepared in a form suitable for filing of record with all necessary survey drawings, notes, information, affidavits, dedications and acceptances as required by these Regulations.
- (U) Groundwater Conservation District (GCD) - A special district or other governmental entity authorized under the laws of the State of Texas with authority over groundwater resources as identified in the Texas Water Code, Chapter 36. Current Groundwater Conservation Districts in Hays County include the Barton Springs Edwards Aquifer

Conservation District, the Edwards Aquifer Authority and the Hays Trinity Groundwater Conservation District.

- (V) Local Groundwater – Water obtained by pumping or extracting water from below the surface of the ground from an Aquifer native to Hays County such as the Trinity or Edwards Aquifers.
- (W) Lot - Any tract to be created by the division of the Original Tract pursuant to a proposed Subdivision Application or a Manufactured Home Rental unit or space including the remainder of the Original Tract, as well as existing platted and un-platted tracts, and exempt subdivisions.
- (X) Manufactured Home Rental Community - a plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than sixty (60) months without a purchase option, for the installation of manufactured homes for use and occupancy as residences.
- (Y) Official County Records – the official County map records, deed records, and such other official County records as the County Clerk may be required or in fact does maintain.
- (Z) On-Site Sewage Facility Rules – The Order Adopting Rules of Hays County, Texas, for On-Site Sewage Facilities, as shown in Appendix A and as may be amended from time to time.
- (AA) Original Tract - The original tract of land owned by an Owner prior to the proposed Subdivision.
- (BB) Owner(s) - The holder(s) of a legal or equitable interest in real property as shown by the deed records of the county in which the property is located, and which has been included in an Application or Development Authorization under these Regulations.
- (CC) Permittee – A person, including legal successors or assigns, to whom the County actually issues a Development Authorization and who is responsible for complying with the terms of said Development Authorization, including any representations, covenants and agreements included in the Application and any special provisions incorporated by the County into the Development Authorization. A person indicated on an Application as a Permittee shall be considered a prospective Permittee until such time as a Development Authorization is issued to such Permittee.
- (DD) Permitted Sewer System - Any public or private sewerage system for the collection of sewage that flows into a treatment and disposal system that is regulated pursuant to the rules of the Texas Commission on Environmental Quality (TCEQ) and Chapter 26 of the Texas Water Code for which the TCEQ is the permitting authority.
- (EE) Person - any natural person, trust, estate, partnership, limited partnership, association, company, corporation, political subdivision or other legal entity recognized by the Texas Secretary of State.
- (FF) Phased Development Agreement – A Development Agreement that allows for the timely and orderly development process of a large-scale development in phases.
- (GG) Political Subdivision - A county, municipality, school district, junior college district, housing authority, authority established by the Texas Legislature, municipal utility

district, water control and improvement district, groundwater conservation district, emergency services district, other special district, or other political subdivision of the State of Texas.

- (HH) Preliminary Plan - A map of proposed Subdivision of land showing the general dimensions and boundaries of each Lot, the layout of the proposed streets, drainage improvements, utility infrastructure, if any, easements, and other information required by these Regulations.
- (II) Priority Groundwater Management Area (PGMA) - A geographic area designated and delineated by the Texas Commission on Environmental Quality that is experiencing or is expected to experience, within the immediately following 25-year period, critical groundwater problems, as identified in Title 30, Texas Administrative Code, Chapter 294.
- (JJ) Private Well - Shall have the meaning ascribed in the On-Site Sewage Facilities Rules provided in Appendix A, as amended.
- (KK) Public Water Well - Shall have the meaning ascribed to “Public Well” in the On-Site Sewage Facilities Rules provided in Appendix A, as amended.
- (LL) Rainwater Harvesting System - Shall have the meaning ascribed in the On-Site Sewage Facilities Rules provided in Appendix A, as amended.
- (MM) Record Documents – Documents included and associated with an Application or Development Authorization, including but not limited to:
 - (1) Information included with the Application;
 - (2) Deeds, including restrictive covenants;
 - (3) Plats;
 - (4) Easements, including Conservation Easements;
 - (5) Development Agreements, including Conservation Development Agreements; and,
 - (6) Any other document required under these Regulations.
- (NN) Regulated Roadways – Those roadways, including the associated right-of-way and features constructed in the right-of-way, located within the County but outside the incorporated limits of any municipality in the County, associated with an Application for a Development Authorization under these Regulations, including the following:
 - (1) Existing dedicated public roadways that are improved or on which construction or tie-ins are made in association with the proposed development for which an Application is submitted under these regulations;
 - (2) New roadways dedicated to the public through any action of the County;
 - (3) New roadways dedicated to the public to be maintained by the County including roadways constructed as a part of a subdivision, Manufactured Home Rental Community or other type of Development Authorization approved under these Regulations; and,
 - (4) Private roadways, shared access easements, and shared access driveways not dedicated to the public and not maintained by the County, but used for emergency services access or

general egress/ingress by the public as a part of any Development Authorization issued under these Regulations.

- (OO) Regulations - The Hays County Development Regulations, inclusive of Chapters 701 through 799.
- (PP) Reviewing Authority – An authorized municipality, Hays County, or a joint office established by one or more authorized municipalities and Hays County for the purpose of conducting reviews and issuing approvals for development activities.
- (QQ) Single Family Residence - Any habitable structure constructed on, or brought to, its site and occupied by members of a family, including but not limited to manufactured homes situated on leased space.
- (RR) Subdivision - The division of a tract of land situated within Hays County and outside the corporate limits of any municipality into two or more lots to lay out or identify: (i) a subdivision of the tract, including an addition; (ii) lots; (iii) roadways, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the roadways, alleys, squares, parks, or other parts; or (iv) division of the property for the purposes of establishing a security interest or a financial severance. It is the intent of the Commissioners Court of Hays County that the term "subdivision" be interpreted to include all divisions of the land to the fullest extent permitted under the laws of the State of Texas.
- (1) A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance, in a contract for deed or other executory contract to convey, in a lease (other than agricultural and hunting leases), or by using any other method of a conveyance of an interest in land.
- (2) A division of land shall be considered as relating to the laying out of streets, whether public or private, if:
- The division occurs prior to the later to occur of: two (2) years from the date of the completion of construction of any roadway onto which the Lot has frontage or, in the case of public roadways, the expiration of the performance or maintenance bond for any such roadway;
 - The division of land creates one or more Lots without practical, physical vehicular access onto a Regulated Roadway or with less than fifty feet (50') of direct frontage onto a Regulated Roadway or calls for driveways onto Regulated Roadways that are spaced fewer than fifty feet (50') apart;
 - The division of land will affect drainage on, in or adjacent to a public roadway or any county drainage ditch, swale, culvert or other drainage facility; or
 - Other circumstances exist which, in the determination of the Department, cause such division of land to be related to the laying out of roadways or related to drainage for any roadway to which any Lot has access.
- (SS) Subject Property – the property or tract for which an Application has been submitted under these Regulations.

- (TT) Surface Water - Water from streams, rivers or lakes or other bodies of water above the surface of the ground.
- (UU) TCEQ Regulated Development - Any development or construction activity that would constitute a Regulated Activity under the Texas Commission on Environmental Quality Edwards Aquifer Rules (see 30 TAC §213.3), but without regard to the aquifer over which the activity is conducted. If a Lot larger than five acres is restricted by plat note prohibiting (i) further resubdivision of the Lot into lots five acres in size or smaller and (ii) any Development other than the construction of a single-family residence or duplex and associated customary out buildings, such as a barn or garage apartment, then such Development on the Lot shall be considered excluded from the term "TCEQ Regulated Development" for purposes of these Regulations.
- (VV) Wetland(s) - an area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support it and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The intent of this definition is to conform to the corresponding definition included in the Texas Water Code, Chapter 11, Subchapter J, as subsequently amended.
- (WW) Working Day – Any recognized working day that the County offices are routinely open for business, specifically excluding weekends and holidays recognized by the County.

Sub-Chapter 4 - Delegation of Authority, Appeals and Public Records

§4.01. Responsible Departments

The Commissioners Court designates the Hays County Development Services Department (Department), and specifically the Director of the Department, as agent for receiving and reviewing Applications submitted under these regulations and as custodian of records for all information received, acquired or developed during the exercise of these duties. The Department may coordinate with any other County department, agency or personnel in the performance of the duties required and allowed under these regulations.

§4.02. Delegation of Authority

The Department and Director are delegated the authority by the Commissioners Court to conduct the activities required on behalf of the County under these regulations. All officials and employees of Hays County, Texas, having duties under these Regulations are authorized to perform such duties as are required of them under said Regulations. The Commissioners Court reserves the final authority for approval or denial of any Application submitted under these regulations.

§4.03. Appeals

Persons aggrieved by an action or decision of a designated representative of the Commissioners Court may appeal any such action or decision to the Commissioners Court of Hays County, Texas. Any such appeal shall be filed with the County Clerk and with the office of the County Judge within ten days from the date the aggrieved person receives notice of such action or decision.

CHAPTER 715 - WATER AND WASTEWATER AVAILABILITY

Sub-Chapter 1 - Applicability

§1.01. General Requirements

This Chapter shall govern demonstrations of water and wastewater availability required in conjunction with the approval of subdivision plats and the issuance of permits for Manufactured Home Rental Communities, unless excluded or exempted under State law or as exempted in these Regulations.

§1.02. Legal Authority

Legal Authority for adopting and enforcing the regulations in this Chapter is granted to the County under TLGC in Chapters 232, 233 and 234, and under Texas Water Code Chapter 35.

§1.03. Approval Required

In accordance with TLGC Chapter 232, approval of the County is required prior to a utility furnishing water or wastewater service to subdivisions and Manufactured Home Rental Communities under the jurisdiction of these regulations. Prior to furnishing utility service, the prospective utility provider shall apply for a certification from the Department stating that the applicable Development Authorization has been issued by the County.

§1.04. Water System Classifications and Requirements

Under authority granted to the County under the Texas Water Code and the Texas Local Government Code, the Commissioners Court established classifications for water supply sources recognized under these Regulations to implement the minimum lot size requirements in Chapters 705 and ~~744~~ the Hays County On-Site Sewage Facilities rules. Specific definitions for these classifications are provided in Subchapter 3 of Chapter 701.

(A) Local Groundwater System

A Local Groundwater Supply System is any water supply system that obtains greater than one-third of its overall supply from Local Groundwater. Applicants that plan to serve any phase of a development with a Local Groundwater Supply System must comply with the minimum lot size and other requirements contained in these Regulations for Local Groundwater Supply Systems, except as outlined in §715.1.04(B). As outlined in the remainder of this Chapter, water supply systems that use Local Groundwater must comply with the requirements stipulated in this Chapter for the use of that Local Groundwater in any quantity. For implementation purposes, this classification of water supply systems is further subdivided into Public Local Groundwater Supply Systems and Non-Public Groundwater Supply Systems. Public Local Groundwater Supply Systems are those owned and/or operated by a governmental entity recognized under the Texas Local Government Code or any system designated a Public Water System by the Texas Commission on Environmental Quality. Non-Public Local Groundwater Supply Systems are any Local Groundwater Supply System that does not qualify as a Public Local Groundwater Supply System, including, but not limited to individual water supply wells.

(B) Other Water Supply Systems

Systems which are not Local Groundwater Supply Systems are considered Other Water Supply Systems. Other Water Supply Systems obtain more than two-thirds of their total supply from

any combination of surface water, rainwater harvesting and groundwater that is not Local Groundwater. The Commissioners Court will consider on a case by case basis requests to re-classify certain Local Groundwater Supply Systems as an Other Water Supply System for the purposes of serving a specific development. Local Groundwater Supply Systems that obtain greater than one-third, but less than one-half, of their the total supply from Local Groundwater may request this re-classification from the Commissioners Court for the purposes of serving a specific development.

Applicants wishing to request re-classification of a specific system shall submit, within ten (10) working days of making an Application for a Development Authorization, a letter to the Department requesting that the re-classification be considered by the Commissioners Court. If the request for re-classification is approved by the Commissioners Court, the Applicant and/or the Permittee will be required to enter into a Development Agreement with the County pursuant to Chapter 771 of these Regulations. The initial request letter shall include contact information for all parties who will be included in drafting the Development Agreement with the County. Within ten (10) working days of receipt of this request, a County representative will contact the Applicant or his designated representative regarding the proposed Development Agreement. A development agreement shall be drafted within thirty (30) working days, unless all parties involved agree on an extended timeline.

Applicants who plan to serve all phases of a development with an Other Water Supply System may utilize the minimum lot size and other requirements contained in these Regulations for Other Water Supply Systems.

§1.05. Compliance with Regulations Constitutes No Warranty by County

While these rules are intended to preserve and protect the water resources of Hays County, the Commissioners Court of Hays County does not make any warranty - express, implied or otherwise - that developments that comply with these rules will be able to meet the water or wastewater needs of those whom the development serves.

Sub-Chapter 2 - Administrative Procedures

§2.01. Water and Wastewater Service Plan Required

An Applicant for a Development Authorization shall prepare a Water and Wastewater Service Plan demonstrating the availability of both water and wastewater service to the proposed development. This plan will be required to demonstrate the availability of either water or wastewater service in the event that a demonstration of availability of the other service is exempted.

§2.02. Preparation of Water and Wastewater Service Plan

The Water and Wastewater Service Plan shall be prepared by qualified personnel holding the proper credentials to perform their services in the State of Texas. The report shall be prepared under the direction of and sealed by a Texas licensed professional engineer, with the following exceptions:

- (A) For developments for which either water or wastewater availability or both is being demonstrated using only an existing TCEQ permitted system, the Applicant may include availability statements in accordance with Subchapters 3 and/or 4 of this Chapter, provided that the Water and Wastewater Service Plan indicates that facilities providing

service from the TCEQ permitted system shall be designed by a Texas licensed professional engineer;

- (B) For developments for which water availability is being demonstrated using only individual private water wells, the Applicant may include a water availability statement in accordance with Subchapter 3 of this Chapter prepared by a Texas licensed professional geoscientist or professional engineer; or,
- (C) For developments for which wastewater availability is being demonstrated using only On-site Sewage Facilities subject to permitting by the County under the Hays County On-Site Sewage Facilities rules, the Applicant may include a wastewater availability statement in accordance with §715.4.05.

§2.03. Contents of Water and Wastewater Service Plan

The Water and Wastewater Service Plan shall describe how the proposed development will be provided with both water and wastewater service. The Water and Wastewater Service Plan shall, at a minimum, contain the following information:

- (A) A description of how water and wastewater service will be provided to serve all portions of the development (e.g. platted lots or rental units);
- (B) Identification of all water and wastewater facilities associated with the proposed development;
- (C) Identification of all water and wastewater facilities to be placed in County rights-of-way;
- (D) For phased developments, the description must address all water and wastewater facilities proposed to be utilized throughout full build-out of the development;
- (E) For developments where the availability of either water or wastewater has been based upon demand or use restrictions or limitations, the Applicant shall include in the Water and Wastewater Service Plan the procedures to implement demand or use restrictions so there is reasonable assurance that demand or use will not be allowed to exceed the demonstrated availability. These provisions shall include procedures to notify the end user of the restrictions/limitations and that the County has been granted the right to enforce such restrictions/limitations;
- (F) For service methods that require any operating and/or maintenance components for any system other than a TCEQ permitted system, written operations procedures shall be included in the Water and Wastewater Service Plan;
- (G) For developments that are regulated by the Edwards Aquifer Authority or the TCEQ Chapter 213 Edwards Aquifer rules, a statement acknowledging that all applicable requirements of such rules are met; and,
- (H) For developments within the jurisdiction of a Groundwater Conservation District, a statement acknowledging that all applicable requirements of the GCD will be met.

§2.04. Availability Demonstrations Using Multiple Methods

The Water and Wastewater Service Plan may demonstrate availability using multiple methods, subject to the following conditions:

- (A) The anticipated percentage of the service need to be satisfied by each method and the conditions under which each method is to be utilized shall be clearly identified;
- (B) Any procedures for switching between service methods shall be clearly identified; and,
- (C) Potential conflicts between service methods shall be clearly identified.

Sub-Chapter 3 - Water Availability

§3.01. Applicability

The following developments are exempted from the requirements to certify water availability under these Regulations. The County encourages exempted developments to comply with these Regulations.

- (A) Exempted subdivisions as defined under §701.3.01.
- (B) Exempted Manufactured Home Rental Communities as defined under §745.2.01.
- (C) The following categories of non-exempt subdivisions are not required to demonstrate water availability, subject to the inclusion of a plat note prohibiting further non-exempt subdivision or re-subdivision for a period of five (5) years following the filing of the Final Plat:
 - (1) All non-exempt subdivisions of five (5) lots or less in which all lots average at least two (2) acres.
 - (2) All subdivisions of ten (10) lots or less in which all lots are larger than ten (10) acres.

§3.02. Items Common to All Water Availability Demonstrations

The following items shall be addressed in all water availability demonstrations prepared under these regulations, regardless of the source(s) utilized:

- (A) An estimate of the amount of water demand throughout all phases of development supported by engineering calculations based on the anticipated timetable for full build-out, including a statement describing the level of fire protection afforded to the proposed phase(s) of the development;
- (B) A statement as to whether there are plans for alternative or backup water service; if so, an identification of the alternative or backup water source;
- (C) A description of any anticipated new water facility improvements required to serve the development;
- (D) A map showing the proposed location of all water facilities throughout all phases of development as well as the proposed water service area, including any TCEQ-approved service area boundaries of a water service provider operating under a Certificate of Convenience and Necessity (CCN) within the boundaries of the proposed subdivision;
- (E) An estimated timetable for completion of all facilities; and,
- (F) Based on the information available at the time the application is submitted, the anticipated owner(s) and operator(s) of all water facilities throughout all phases of development shall be identified and included in the application.

§3.03. Notification for All Developments Utilizing Local Groundwater

This Subchapter addresses the requirements that Subdivisions and Manufactured Home Rental Communities must meet to demonstrate water availability using Local Groundwater for the purposes of obtaining a Development Authorization from the County. These Regulations do not include the details for requirements on the withdrawal and use of groundwater that may originate from the regulations other entities. The public is hereby notified that portions of Hays County are within the jurisdiction of other governmental entities, including Groundwater Conservation Districts and the Edwards Aquifer Authority, which regulate the withdrawal and use of groundwater under direct authority from the State of Texas, independent from the authority of Hays County. Within their statutory authority, these other governmental entities may impose requirements in addition to those contained in these Regulations. The Department shall cause to be included in any Development Authorizations issued under these Regulations a notice that states that valid limitations imposed by these other authorized entities are incorporated as a special provision into the terms of the County's Development Authorization and may be enforced as such by the County. The Department shall also develop and publish requirements for incorporating into the Record Documents notice of the requirements of these other governmental entities.

Where applicable federal, state or local statutes require Applicants to submit water availability certifications to other governmental entities, the Applicant shall document compliance with these requirements. Where the Department is made aware of applicable regulations of other entities, the Department shall process any Application as requesting a variance where that Application is determined to not be in compliance with such other regulations. It is the intention of these Regulations that all Applications be processed, to the extent authorized under State law, to not conflict with Groundwater Management Area planning efforts, established sustainable yields, desired future conditions, and managed available groundwater volumes.

§3.04. Procedures for Department Coordination with the Applicable Groundwater Conservation District

For all water availability demonstrations which rely in whole or in part on Local Groundwater, the Department shall ensure that a copy of the water availability demonstration is submitted to the applicable groundwater conservation district(s) [GCD] for review and comment. Where the Applicant is required to make such a submittal under §715.3.03, the Department shall forward to the GCD within ten (10) working days of receipt, a written request for review and comment on the portion of the availability demonstration relying on Local Groundwater. Where such submittal to the GCD is not otherwise required by the Applicant, the Department shall forward the information to the GCD within ten (10) working days of receipt, with a written request for review and comment on the portion of the availability demonstration relying on Local Groundwater. If the Department has not received written comments from the GCD within fifteen (15) working days, the GCD shall be considered as having waived the opportunity for review and comment on the availability demonstration. The Department shall consider all comments received from the GCD and may request such additional information from the Applicant as the Department deems appropriate in response to these comments. The Department shall include a summary of any comments timely received from the applicable GCD in any report made to the Commissioners Court on an Application. If the County has adopted a

Memorandum of Understanding (MOU) with any GCD, the Department shall follow the procedures outlined in the MOU.

§3.05. Water Availability Demonstrations Using Individual Private Water Wells Producing Local Groundwater

In addition to the requirements outlined in §715.3.02, Applicants requesting approval to utilize one or more individual private water wells using Local Groundwater to serve the proposed development shall construct at least two wells (one test well and one monitor well). Use of existing wells will be permitted if the wells fully meet these regulations. Well analyses shall be performed by a Texas licensed professional engineer or Texas licensed professional geoscientist, qualified to perform the hydrogeological testing, geophysical well logging and aquifer pump testing. The following information shall be provided to Commissioners Court for each well tested.

- (A) Identify the hydrogeologic formation by well driller's log and approved geophysical logging methods. Provide a map and list of all known wells within 1,000 feet of the proposed subdivision boundaries (or a distance where measurable drawdown effects from the proposed subdivision well are expected). Each well is to be located by latitude and longitude.
- (B) The Certification of Groundwater Availability For Platting Form as required by the TCEQ rules on Groundwater Availability Certification for Platting at 30 Tex. Admin. Code Section 230.3. The Department shall require an applicant to submit any engineering calculations, studies or other data supporting the statements contained in the Certification of Groundwater Availability For Platting Form.

Individuals marketing the development shall provide each purchaser or renter with a statement describing the extent to which water and wastewater service will be made available, and how and when such service will be made available.

§3.06. Additional Requirements for Subdivisions Served by Individual Water Wells Producing Local Groundwater in Priority Groundwater Management Areas

Applicants requesting approval to utilize individual private water wells producing Local Groundwater to serve proposed new development in a Priority Groundwater Management Area, as that term is defined by the Texas Commission on Environmental Quality, shall be subject to the following additional requirements:

- (A) The person preparing the groundwater availability certification shall document that they obtained available information on historical water levels and known water wells from the applicable Groundwater Conservation District.
- (B) The person preparing the groundwater availability certification shall perform a walking receptor survey around the perimeter of the Subject Property to identify the visual location of apparent undocumented water wells and to visually confirm the presence of documented water wells within five hundred (500) feet of the boundaries of the subject property.
- (C) The person preparing the groundwater availability certification shall estimate the average annual recharge (per acre) in the vicinity of the Subject Property using a Groundwater

Availability Model (GAM) reviewed and approved by the Texas Water Development Board.

- (D) The person preparing the groundwater availability certification shall utilize the estimated annual average recharge rates (developed under §715.3.06.C) to determine the total estimated annual recharge for the footprint area of the Subject Property. The estimated annual recharge for the Subject property shall be compared to the projected annual groundwater withdrawal, to assess whether the projected withdrawal exceeds the estimated recharge. For developments where the projected withdrawal exceeds estimated recharge, the Applicant shall take one or more of the following steps:
- (1) Comply with the minimum lot size requirement of 6.00 acres, as presented in Table 705.05.01;
 - (2) Provide a supplemental demonstration of water availability based on an Other Water Supply System and prorate the minimum lot size requirement using 6.00 acres for the percentage provided by Local Groundwater and the otherwise applicable value from Table 705.05.01 for the Other Water Supply System; or,
 - (3) Subject to the requirements of §715.3.06(F), secure the future development rights for currently undeveloped property in a quantity sufficient to balance the groundwater withdrawal for the Subject Property with overall recharge from the Subject Property and other property, and provide Written Notice, as outlined in Chapter 701, to the owners of all proximate property for which a groundwater well is documented or discovered during the walking receptor survey and the owners of any other documented well within one-quarter mile of the Subject Property, that the projected groundwater use for the proposed development is being offset through the acquisition of additional property. The Department shall make available to the public standardized notice language for this purpose.
- (E) For developments where the availability of groundwater is limited to less than the flow required to support fully developed conditions, the Applicant shall include in the Water and Wastewater Service Plan the procedures to be utilized to limit groundwater withdrawal to the certified available quantity.
- (F) Property outside the Subject Property that is used for the purpose of balancing the groundwater withdrawal for the Subject Property shall comply with the following conditions:
- (1) Eligible additional property must recharge to the same aquifer zone as the Subject Property and be within the same PGMA.
 - (2) All such additional property shall be subject to a conservation easement or equivalent legal mechanism structured to prohibit in perpetuity its future subdivision or development. The easement or instrument shall be granted to the public and shall be held by the County or other non-profit legal entity recognized by the County as custodian for the County. Such easement or instrument shall be in such form and under such conditions as are acceptable to the County.
 - (3) For properties located within the jurisdiction of public entities having zoning authority, the Applicant shall provide documentation that the zoning for the additional property is

“agricultural”, “open space” or other equivalent zoning that allows little to no development of the additional property.

- (4) The additional property shall either be contiguous to the Subject Property or located within five (5) miles of the Subject Property.
- (5) Additional property that is contiguous to the Subject Property may be considered as providing the same recharge as the Subject Property.
- (6) Additional property that is not contiguous but is located within five (5) miles of the Subject Property shall be considered as providing seventy five percent (75%) of the recharge provided by the Subject Property.
- (7) In instances where the Applicant proposes to secure the development rights from a property (the originating property) that is outside the jurisdiction of the County and within the jurisdiction of one or more local governmental entities, the Applicant must provide documentation of the written approval of the transfer from each such local governmental entity with jurisdiction over the originating property.

§3.07. Water Availability Demonstrations Utilizing a new TCEQ public water supply system:

In addition to the requirements outlined in §715.3.02, Applicants proposing to serve a development through a new public water supply system shall include the following information in the Water and Wastewater Service Plan:

- (A) If water service is to be provided by a municipal utility district or other special purpose district that has not been created as of the filing of the Preliminary Plan, a detailed description of the proposed district boundaries, a timetable for creation of the district, and identification of the proposed organization of the district.
- (B) Prior to the final approval of the development (e.g. the final plat or the Infrastructure Development Plan), the Applicant shall supply a letter to the Department from the water service provider certifying that they have the authority to provide water service; that there will be sufficient capacity to serve all phases of the proposed development; and that all required agreements have been executed.
- (C) Within ten (10) working days of receiving this supply letter, the Department shall notify in writing all governmental entities which the Department has record of having jurisdiction over any aspect of water supply to the proposed development requesting their comments on the letter. In instances where the water service provider does not own or otherwise control the source(s) of supply, the Department may require that the Applicant obtain supporting documentation certifying the availability of adequate supply from the actual water supply source(s) in addition to the information required to be provided by the water service provider. The Department shall include in any Development Authorization a Special Provision recognizing the requirements of any other governmental entity with established jurisdiction over the proposed development. Any disputes between the Applicant, water service provider and other governmental jurisdictions shall be heard by the Commissioners Court.
- (D) For developments within the jurisdiction of a Groundwater Conservation District that utilize groundwater in their demonstration, a formal groundwater availability analysis, in

accordance with 30 TAC 230, shall be completed, along with a statement acknowledging that all applicable requirements of the GCD will be met.

§3.08. Water Availability Demonstrations Utilizing an existing TCEQ-permitted public water supply:

If wholesale or retail water service is to be provided by an existing water utility or other existing water service provider, an applicant shall submit a written statement from the existing provider containing the following:

- (A) A description of the authority of the existing provider to serve the proposed phase of development.
- (B) A statement as to whether the existing provider has available capacity to serve the proposed phase of development, including a statement describing the level of fire protection afforded to the proposed phase(s) of the development.
- (C) A description of the type of water service to be provided (wholesale or retail) and a timetable for the providing of such service to the proposed development.
- (D) Identification of any anticipated water supply or service agreements that will need to be executed prior to the provision of service.
- (E) Prior to the final approval of the development (e.g. the final plat or the Infrastructure Development Plan), the applicant shall supply a letter to the Department from the utility provider certifying that they have the authority to provide water service; that there will be sufficient capacity to serve all phases of the proposed development; and that all required agreements have been executed.
- (F) Within ten (10) working days of receiving this supply letter, the Department shall notify in writing all governmental entities which the Department has record of having jurisdiction over any aspect of water supply to the proposed development requesting their comments on the letter. In instances where the water service provider does not own or otherwise control the source(s) of supply, the Department may require that the Applicant obtain supporting documentation certifying the availability of adequate supply from the actual water supply source(s) in addition to the information required to be provided by the water service provider. The Department shall include in any Development Authorization a Special Provision recognizing the requirements of any other governmental entity with established jurisdiction over the proposed development. Any disputes between the Applicant, water service provider and other governmental jurisdictions shall be heard by the Commissioners Court.

§3.09. Water Availability Demonstrations Utilizing Rainwater Harvesting

In addition to the requirements outlined in §715.3.02, Applicants proposing to serve a development through rainwater harvesting shall include the following information in the Water and Wastewater Service Plan:

- (A) Estimates of the water availability from rainwater harvesting shall be based upon the “The Texas Manual on Rainwater Harvesting”, published by the Texas Water Development Board, or other industry standard sources acceptable to the Department.

- (B) Water demand estimates for demonstrations involving rainwater harvesting, including demonstrations utilizing multiple water sources, may not be lower than the largest value of the following:
 - (1) The maximum water usage rates for “water conserving households” identified by the American Water Works Association, “Residential End Uses of Water”;
 - (2) A total of forty five (45) gallons per person per day;
 - (3) A total of one hundred fifty (150) gallons per dwelling unit per day.
- (C) The Water and Wastewater Service Plan shall include a standardized design for a rainwater harvesting system, prepared by a Texas licensed professional engineer, using design parameters applicable to the location of the Subject Property. This standardized design shall be based on a prototype representative of actual conditions anticipated to be present in the proposed development, including typical structure sizes and materials of construction. The standardized design shall include schematic plans, drawings and descriptions for the various component parts of the prototype system, and shall include any minimum requirements (e.g. minimum storage tank sizes) and appropriate adjustment factors to be used for each component to account for the range of differing sizes and configurations of structures anticipated to be present in the proposed development.
- (D) The Water and Wastewater Service Plan shall include a standardized operations and maintenance plan for a rainwater harvesting system, prepared by a Texas licensed professional engineer. This operating and maintenance plan shall be based on the prototypical design and shall describe in detail the operating and maintenance requirements for each component of the prototypical rainwater harvesting system.
- (E) The Water and Wastewater Service Plan shall clearly identify any water conservation measures and use limitations used in estimating the water demand and shall include the provisions to be utilized to ensure that the end users of the rainwater harvesting systems are aware of the need to follow these restrictions.
- (F) Where rainwater harvesting constitutes the sole source of water supply for the development, the Applicant shall incorporate sufficient restrictions (including deed restrictions and plat notes) into the development documents to ensure that subsequent owners or users of the property do not install or utilize groundwater wells, until an updated water availability demonstration is approved documenting sufficient groundwater is available.

Sub-Chapter 4 - Wastewater Service Availability

§4.01. Development Permits

The Department shall issue no On-Site Sewage Facility or development permit on any parcel of land unless that property is in compliance with all the requirements of these Regulations.

§4.02. Items Common to All Wastewater Availability Demonstrations

The following items shall be addressed in all wastewater availability demonstrations prepared under these regulations, regardless of the management method(s) utilized:

- (A) A description of any new wastewater collection, treatment, storage, pumping and conveyance facilities. If the project is to be phased, the description must address all wastewater facilities proposed to be utilized throughout full build-out of the development.
- (B) An estimate of the amount of wastewater that will be treated and managed throughout all phases of development supported by engineering calculations based on the anticipated timetable for full build-out.
- (C) A statement as to whether there are plans for alternative or backup wastewater service; if so, an identification of the alternative or backup wastewater source.
- (D) A map showing the location of all wastewater facilities throughout all phases of development as well as the proposed wastewater service area, including any TCEQ-approved service area boundaries of a wastewater service provider operating under a Certificate of Convenience and Necessity (CCN) within the boundaries of the proposed development.
- (E) Include an estimated timetable for completion of facilities.
- (F) Identification of the proposed method of wastewater effluent disposal or re-use and a listing of any TCEQ permits that will be needed to implement the proposed wastewater disposal or re-use.
- (G) Based on the information available at the time the application is submitted, the anticipated owner(s) and operator(s) of all wastewater facilities throughout all phases of development shall be identified and included in the application.

§4.03. Wastewater Availability Demonstrations Utilizing a new TCEQ-permitted wastewater system:

Applicants proposing to serve a development through a new wastewater system shall submit an engineering report sealed by a Texas licensed professional engineer describing how the proposed development will be provided with wastewater service. The Water and Wastewater Service Plan shall at a minimum contain the following information:

- (A) Identification of the proposed method of wastewater effluent disposal or re-use and a listing of any TCEQ permits that will be needed to implement the proposed wastewater disposal or re-use.
- (B) If wastewater service is to be provided by a municipal utility district or other special purpose district that has not been created as of the filing of the Preliminary Plan, a detailed description of the proposed district boundaries, a timetable for creation of the district, and identification of the proposed organization of the district.
- (C) Prior to the final approval of the development (e.g. the final plat or the Infrastructure Development Plan), the applicant shall supply a letter to the Department from the utility provider certifying that they have the authority to provide wastewater service; that there will be sufficient capacity to serve all phases of the proposed development; and that all required agreements have been executed.

§4.04. Wastewater Availability Demonstrations Utilizing an existing TCEQ-permitted wastewater system

Applicants proposing to serve a development through an existing wastewater system shall submit an engineering report sealed by a Texas licensed professional engineer describing how the proposed development will be provided with wastewater service. The Water and Wastewater Service Plan shall at a minimum contain the following information:

- (A) A description of the authority of the existing provider to serve the proposed phase of development.
- (B) A statement as to whether the existing provider has available capacity to serve the proposed phase of development.
- (C) A description of the type of wastewater service to be provided (wholesale or retail) and a timetable for the providing of such service to the proposed development.
- (D) Identification of any anticipated wastewater service agreements that will need to be executed prior to the provision of service.
- (E) Prior to the approval of the final plat the applicant shall supply a letter to the Department from the utility provider certifying that:
 - (1) They have the authority to provide wastewater service;
 - (2) That there will be sufficient capacity to serve all phases of the proposed development;
 - (3) And that all required agreements have been executed.

§4.05. Developments to be served by On-Site Sewage Facilities:

Applicants proposing to serve a development by On-Site Sewage Facilities shall submit a design report sealed by a Texas licensed professional engineer or a Texas registered sanitarian describing how the proposed development will be provided with wastewater service. The wastewater design report shall at a minimum contain the information required by Item §715.04.02 and must meet the requirements of the Hays County On-Site Sewage Facilities rules.

**Hays Trinity Groundwater
Conservation District,
Hays County, Texas**

101 Old Fitzhugh Road, Precinct 4, Offices; Dripping Springs, TX
Mail: P. O. Box 1648; Dripping Springs, TX 78620
E-mail: trent@haysgroundwater.com
Phone: 512-858-9253 or toll free 866-858-9253
Fax: 512-858-2384

Board Members: Eddle Gumbert, Wimberley, Texas; Jack Hollon, *President*, Wimberley, Texas Lewis Bullard, Dripping Springs, Texas; Randall Robinson, Dripping Springs, Texas; Dubb Smith, *Secretary*, Dripping Springs, Texas.

April 23, 2003

Mr. Kelly Mills, TCEQ
MC-147
P. O. Box 13087
Austin, TX 78711-3087

Dear Mr. Mills:

The Hays Trinity Groundwater Conservation District's enabling legislation, Senate Bill 2, went into effect on September 1, 2001. Section 3.0303 of that act states that the District must "prepare and file a description of district boundaries with the Texas Commission of Environmental Quality."

The Hays Trinity GCD includes all of Hays County outside of the boundaries of the Barton Springs/Edwards Aquifer Conservation District and the Edwards Aquifer Authority.

Sincerely,


Trent Jennings
District Manager

AFFIDAVIT OF SERVICE

State of Texas

County of Travis

Court

Case Number: --

RE: Notice Pursuant to Texas Water Code 36.119

For:
The Mundy Firm PLLC
4131 Spicewood Springs Rd
Suite O-3
Austin, TX 78759

Received by Austin Process LLC on the 18th day of March, 2015 at 1:22 pm to be served on Mr. Rick Broun, General Manager and the Board Hays Trinity Groundwater Conservation District, Center Lake Business Park, 14101 Hwy 290 W., Bldg. 100, Suite 212, Austin, TX 78737.

I, Mike Gallo, being duly sworn, depose and say that on the 18th day of March, 2015 at 3:24 pm, I:

INDIVIDUALLY/PERSONALLY delivered a true and correct copy of the Correspondence Dated 03/17/2015 from Jeffery Mundy with the date of service endorsed thereon by me, to: Mr. Rick Broun, General Manager and the Board Hays Trinity Groundwater Conservation District at the address of: Center Lake Business Park, 14101 Hwy 290 W., Bldg. 100, Suite 212, Austin, TX 78737, as an authorized agent of Austin Process, LLC, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, of sound mind, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was delivered. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Mike Gallo

Subscribed and Sworn to before me on the 18th day of March, 2015 by the affiant who is personally known to me.

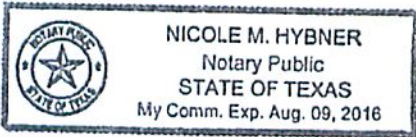
Nicole M. Hybner

NOTARY PUBLIC

Mike Gallo
SCH 1630, Exp. 11/30/17

Austin Process LLC
809 Nueces
Austin, TX 78701
(512) 480-8071

Our Job Serial Number: MST-2015001218
Ref: RE:Notice Pursuan to Texas Water Code



The Mundy Firm PLLC

4131 Spicewood Springs Rd, Suite C03
Austin, Texas 78759
512-334-4300
E-Mail: jeff@mundy.com

March 17, 2015

Via CMRRR and email

Mr. Rick Broun, General Manager, and the Board
Hays Trinity Groundwater Conservation District
P.O. Box 1648
Dripping Springs, Texas 78620
manager2@haysgroundwater.com

Mr. Gregory Ellis
2104 Midway Court
League City, Texas 77573
greg.ellis@gmservices.info

Re: Notice Pursuant to Texas Water Code § 36.119

Dear Mr. Broun, Mr. Ellis, and members of the HTGCD Board,

Notice is given pursuant to the notice requirement of the Texas Water Code's citizen suit provision, TEXAS WATER CODE § 36.119(g) & (h), that the Trinity Edwards Springs Protection Association ("TESPA"), a Texas non-profit, intends to file suit on behalf of its affected members, against the landowners, owners, and operators of what in the opinion of TESPAs appear to be apparently illegal wells bottomed within your jurisdiction. *See* TEX. WATER CODE § 36.119.

Information Known at this Time

Upon information and belief, Electro Purification LLC has drilled seven wells between December 10, 2013, and today on lands belonging to Bridges Brothers Family LP No. 1, Bridges Brothers, L.L.C., Roy Gene Odell, Eddie Ray Odell, and Juanita Marie Lienneweber (also known as Nita Lienneweber). The wells are in the vicinity of FM 3237 and shown in yellow on the attached map. Public comments indicate that Electro Purification L.L.C. and/or the several landowners intend to convert all or some of these wells into production wells ultimately to produce over 5 million gallons a day for off-premise commercial use.

TESPA has not made a final decision, but you are advised that if necessary, TESPAs may also join the Hays Trinity Groundwater Conservation District as a party to the citizen suit, but

SERVICE RETURN ATTACHED

AUSTIN PROCESS, LLC
809 NUECES
AUSTIN, TX 78701

Plaintiffs' EXHIBIT 14 (2 of 7)

sincerely hopes that the HTGCD will take a leadership role to enforce its jurisdiction and compliance with its permitting and planning process designed to protect these waters that appear to be within the jurisdiction of the HTGCD. TEX. WATER CODE § 36.119(b).

In the opinion of TESPAs, the activities described in this notice appear to constitute "illegal drilling" and "illegal operation" of wells, in violation of the Texas Water Code, Chapter 36, and the rules of the Hays Trinity Groundwater Conservation District ("HTGCD" or the "District").

Due to the imminent and irreparable harm to some of its members, TESPAs intends to commence an action in the very near future against the landowners, owners, and operators of the wells. Given in imminent danger of these wells proceeding, TESPAs need not await the expiration of the full 90-day period before filing suit and seeking an injunction. Proceeding without waiting the usual 91 days is permitted by TEXAS WATER CODE § 36.119(h), which provides: "An aggrieved party may sue a well owner or well driller to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the district and without the need to wait for a hearing." TESPAs is entitled to seek an injunction against the completion and/or operation of these apparently illegal wells. TEX. WATER CODE § 36.119(b).

Noticing Party

The Trinity Edwards Springs Protection Association is a membership organization whose members include landowners who have the right to produce groundwater from land that lies within one-half mile of the apparently illegal wells. *See* TEX. WATER CODE § 36.119(b). TESPAs sends this notice letter on behalf of the following members who live within a half mile and/or withdraw from the Trinity Aquifer:

- Jacquelin Hyman, 301 Limestone Lane, Driftwood, Texas 78619;
- Lamont & Deborah Lewis, 262 Wolf Creek Pass, Wimberley, Texas 78676;
- Walter Ian Green, 8601 Ranch Road 3237, Driftwood, Texas 78619;
- Dan & Cynthia Pickens, 851 Jennifer Lane, Driftwood, Texas, 78619;
- Terry W. Raines, 471 Limestone Lane, Driftwood, Texas 78619; and
- Nancy Weaver, 515 Limestone Lane, Driftwood, Texas 78619.

Other affected landowners may later join TESPAs, and this letter is sent on behalf of current members, as well as those landowners who may later join TESPAs before filing suit who meet the distance requirements of TEXAS WATER CODE § 36.119(b).

Hays Trinity Groundwater Conservation District Has Jurisdiction, Permitting Authority, & Regulatory Duties

The Legislature provided that if no other groundwater conservation district in Hays County has jurisdiction, then the jurisdiction over groundwater goes to the HTGCD by default.

TEXAS SPECIAL DISTRICTS CODE § 8843.004, the law creating the HTGCD states:

SERVICE RETURN ATTACHED

The district's boundaries are coextensive with the boundaries of Hays County, excluding any area that on September 1, 2001, was within another groundwater conservation district with authority to require a permit to drill or alter a well for the withdrawal of groundwater, unless the district's territory has been modified under: Subchapter J, Chapter 36, Water Code; or other law.

The apparently illegal wells penetrate through the Edwards Aquifer, but are not bottomed in the Edwards Aquifer. The Edwards Aquifer Authority has stated that it has neither regulatory jurisdiction over these wells nor the waters of the Trinity Aquifer. Similarly, the Barton Springs/Edwards Aquifer Conservation District, which is just to the north of the apparently illegal wells, does not assert regulatory jurisdiction over the Trinity Aquifer in this location from which the apparently illegal wells will be bottomed and withdraw groundwater.

The Trinity Aquifer in which the wells are bottomed and from which water is proposed to be withdrawn lies within Hays County. Because the Trinity Aquifer at the location of the apparently illegal wells is not within the jurisdiction of another groundwater conservation district and lies within Hays County, the Trinity Aquifer at this location by statutory definition falls by default within the jurisdiction of the Hays Trinity Groundwater Control District.

The rights and duties of the district are extensive:

The district has the rights, powers, privileges, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. (Acts 77th Leg., R.S., Ch. 966, Sec. 3.0304(a) (part).).

TEXAS SPECIAL DISTRICTS CODE § 8843.101.

All of these new wells within the district are subject to regulation:

Notwithstanding Section 8843.104, a landowner must notify the district before the construction of a new well that is to be completed after September 1, 2013.

TEXAS SPECIAL DISTRICTS CODE § 8843.103. Thus, these proposed wells are subject to the jurisdiction of the Hays Trinity Groundwater Conservation District.

Furthermore, TEXAS SPECIAL DISTRICTS CODE § 8843.104 requires:

- (a) Groundwater withdrawals from the following wells may not be regulated, permitted, or metered by the district:
- (1) a well used for domestic use by a single private residential household and incapable of producing more than 25,000 gallons per day; and
 - (2) a well used for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, or poultry operations.

SERVICE RETURN ATTACHED!

AUSTIN PROCESS, LLC
809 NUECES
AUSTIN, TX 78701

....
(b-1) A well owner must obtain a permit and pay any required fees, including a well construction fee, before using any groundwater withdrawn from a well for purposes other than those exempted by this section.

The District has adopted Rules to regulate new wells, requiring new well construction notification, and requiring operating permits for certain non-exempt new wells. HTGCD Rules 3.1 (landowner notification, permitting and violations), 3.3 (new wells), 3.4 (well construction notification), 3.5 (new operating permit). The "[d]rilling or operating a well or wells without a required permit or producing groundwater in violation of a district rule adopted under Section 36.116(a)(2) is declared to be illegal, wasteful per se, and a nuisance." TEX. WATER CODE § 36.119(a). In a suit for damages against the owner of the well or wells, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) is prima facie evidence of illegal drainage. TEX. WATER CODE § 36.119(c).

If you have any questions regarding any aspect of this letter, please call me, and we hope to work with you.

Respectfully submitted,


Jeffrey Mundy

SERVICE RETURN ATTACHED!

AUSTIN PROCESS, LLC
809 NUECES
AUSTIN, TX 78701

**Hays Trinity Groundwater
Conservation District,
Hays County, Texas**

101 Old Fathugh Road, Precinct 4, Offices; Dripping Springs, TX
Mail: P. O. Box 1048; Dripping Springs, TX 78620
E-mail: tront@haysgroundwater.com
Phone: 512-858-0253 or toll free 866-858-0253
Fax: 512-858-2384

Board Members: Eddle Gumbert, Wimberley, Texas; Jack Hollon, *President*, Wimberley, Texas; Lewis Bullard, Dripping Springs, Texas; Randall Robinson, Dripping Springs, Texas; Dubb Smith, *Secretary*, Dripping Springs, Texas.

April 23, 2003

Mr. Kelly Mills, TCEQ
MC-147
P. O. Box 13087
Austin, TX 78711-3087

Dear Mr. Mills:

The Hays Trinity Groundwater Conservation District's enabling legislation, Senate Bill 2, went into effect on September 1, 2001. Section 3.0303 of that act states that the District must "prepare and file a description of district boundaries with the Texas Commission of Environmental Quality."

The Hays Trinity GCD includes all of Hays County outside of the boundaries of the Barton Springs/Edwards Aquifer Conservation District and the Edwards Aquifer Authority.

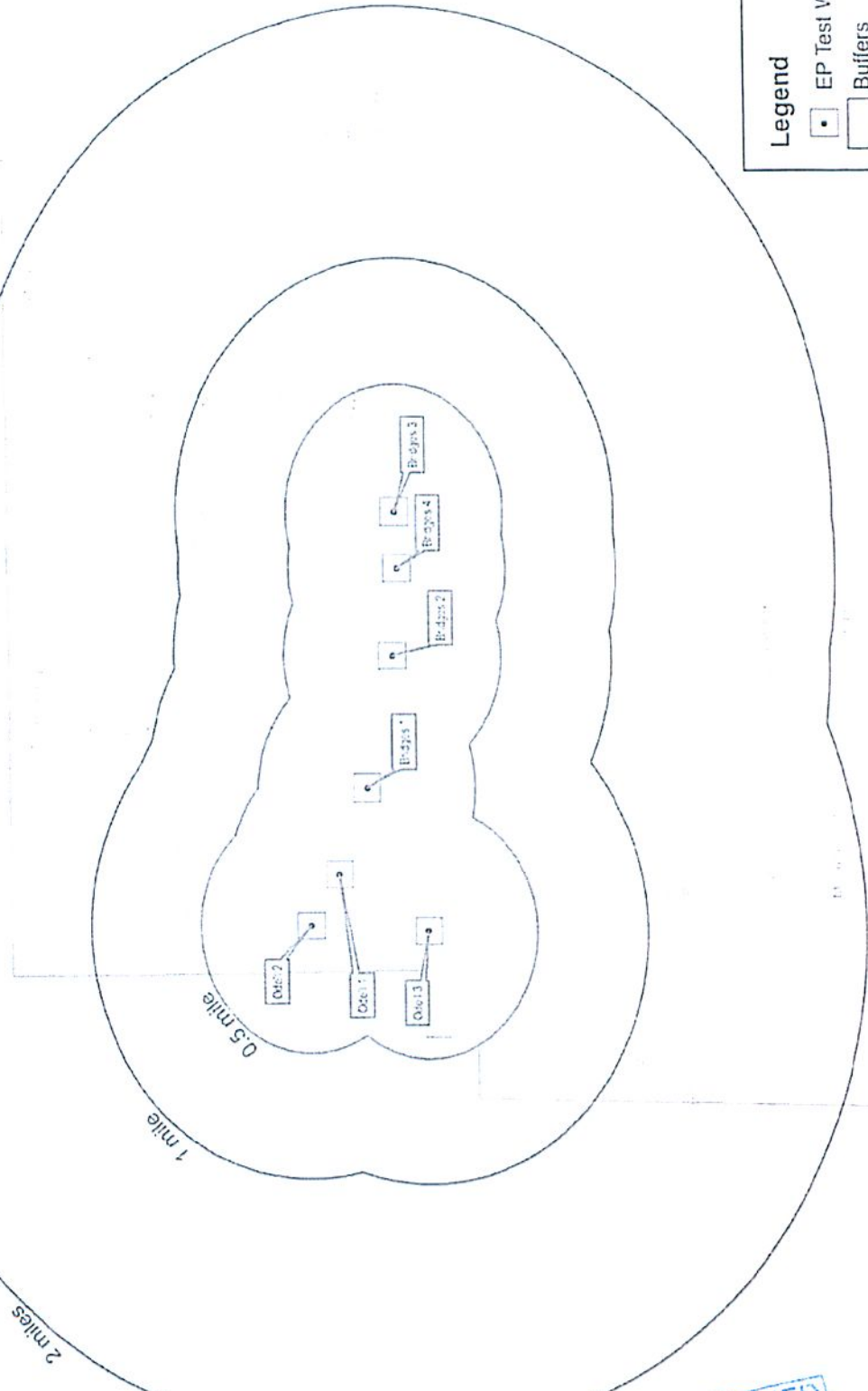
Sincerely,


Trent Jennings
District Manager

SERVICE RETURN ATTACHED!

AUSTIN PROCESS, LLC
809 NUECES
AUSTIN, TX 78701

Priority Groundwater Management Area (PGMA) and the Electro Purification Test Wells



Legend

- EP Test Wells
- Buffers
- PGMA

0 1 2 Miles

PGMA boundary from the Texas Water Development Board, 2015.
Map created by BSEACD 3/13/15.

SERVICE RETURN ATTACHED!

AUSTIN PROCESS, LLC
809 NUECES
AUSTIN, TX 78701

Sources: Esri, DeLorme, NAVTEO, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeBCO, IGN, Kadaster NL, Ordnance Survey, Esri Japan, MEI, Esri China (Hong Kong), Swisstopo, and the GIS User Community