No. _____

In The
Supreme Court of the United States

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.,
Petitioners,

v.

EDWARDS AQUIFER AUTHORITY, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In its *Avery v. Midland County*, *Hadley v. Junior College District*, and *Morris v. Board of Estimate* line of cases, this Court has held that political units are subject to the Fourteenth Amendment's equal population rule for electoral districts. In its *Salyer* and *Ball* cases, the Court created a narrow exception for certain political units to diverge from that population equality rule when the electoral franchise is highly restricted, and those allowed to participate in the election are electing representatives who would perform functions more closely associated with non-governmental entities. In the four decades since recognizing this exception, the Court has not articulated an effective test for lower courts to determine which line of authority governs a political unit with representatives who are chosen through open-franchise elections, and whose power is more akin to traditional government functions. The questions presented are thus:

1. Whether the *Salyer-Ball* exception to the one-person, one-vote population equality requirement ought to apply to local government representatives chosen in unrestricted, open-franchise popular elections.

2. Where the narrow *Salyer-Ball* exception does apply, what limits are necessary to ensure that voters who bear the overwhelming burden of financing a special purpose unit of government, which exercises at least some general governmental powers, are not unconstitutionally deprived of an equally weighted vote compared to those who bear no such financial burden but reap the benefit of

that special purpose unit's exercise of governmental power.

3. Whether an electoral scheme designed to afford more weight to voters based exclusively on the geographical region where they reside can ever pass muster under rational basis review.

PARTIES TO THE PROCEEDING

Petitioners, the plaintiff-appellants below, are the League of United Latin American Citizens, Maria Martinez, Jesse Alaniz, Jr., and Ramiro Navara.

Respondents are the Edwards Aquifer Authority, the defendant-appellee below, and the City of San Marcos, the City of Uvalde, Uvalde County, New Braunfels Utilities, and the Guadalupe-Blanco River Authority, who were intervenor defendants-appellees in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioners who are non-governmental non-profit corporations and individual Texas residents state that no parent or publicly held company owns 10% or more of their stock or interest.

STATEMENT OF RELATED CASES

Petitioners are aware of no other related case.

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PETITION FOR A WRIT OF CERTIORARI

The League of United Latin American Citizens ("LULAC"), Maria Martinez, Jesse Alaniz, Jr., and Ramiro Nava respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a-30a) is reported at 937 F.3d 457. The order of the District Court (App. 31a-64a) is reported at 313 F. Supp. 3d 735.

JURISDICTION

The opinion of the court of appeals was entered on August 28, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor

> deny to any person within its jurisdiction the equal protection of the laws.

This case additionally involves Article XVI, Section 59 of the Texas Constitution, reproduced in Petitioners' appendix at App. 67a-71a, and the Edwards Aquifer Authority Act,[1] reproduced in Petitioner's appendix at App. 72a-215a.

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[1] Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended by Act of May 16, 1995, 74th Leg., R.S., ch. 524, § 1, sec. 3.03, 1995 Tex. Gen. Laws 3280; Act of May 29, 1995, 74th Leg., R.S., ch. 261, § 1, secs. 1.09, 1.091, 1.092, 1.093, 1995 Tex. Gen. Laws 2505, 2505–16; Act of May 6, 1999, 76th Leg., R.S., ch. 163, § 1, sec. 1.094, 1999 Tex. Gen. Laws 634, 634–35; Act of May 25, 2001, 77th Leg., R.S., ch. 1192, § 1, sec. 1.03(26), (27), 2001 Tex. Gen. Laws 2696, 2696–97; Act of May 27, 2001, 77th Leg., R.S., ch. 966, §§ 2.60–2.62, 6.01–6.05, secs. 1.03(26), (27), 1.29(e), 1.44(e), 1.115, 1.15(e), (f), 1.11(h), 1.41(e), 2001 Tex. Gen. Laws 1991, 2021–22, 2075–76; Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), sec. 1.12, 2003 Tex. Gen. Laws 3188, 3193; Act of May 23, 2007, 80th Leg., R.S., ch. 510, § 1, sec. 1.081, 2007 Tex. Gen. Laws 900; Act of May 27, 2007, 80th Leg., R.S., ch. 1351, §§ 2.01– 2.11, secs. 1.11(f), (f-1), (f-2), 1.14(a), (c), (e), (f), (h), 1.16(g), 1.19(b), 1.22(a), 1.26, 1.26A, 1.29(b), (h), (i), 1.45(a), 1.14(b), (d), 1.21, 1.29(a), (c), (d), 2007 Tex. Gen. Laws 4612, 4627– 34; Act of May 27, 2007, 80th Leg., R.S., ch. 1430, §§ 12.01–12.11, secs. 1.11(f), (f-1), (f-2), 1.14(a), (c), (e), (f), (h), 1.16(g), 1.19(b), 1.22(a), 1.26, 1.26A, 1.29(b), (h), (i), 1.45(a), 1.14(b), (d), 1.21, 1.29(a), (c), (d), 2007 Tex. Gen. Laws 5848, 5901–09; Act of May 21, 2009, 81st Leg., R.S., ch. 1080, § 1, sec. 1.04, 2009 Tex. Gen. Laws 2818, 2818–25; Act of May 20, 2013, 83rd Leg., R.S., ch. 783, § 1, sec. 1.033(c), (d), 2013 Tex. Gen. Laws 1998, 1998–99; Act of May 24, 2019, 86th Leg., R.S., ch. ___, § 1, sec. 1.34(a)-(f), 2019 Tex. Gen. Laws ____, ____-__; Act of May 26, 2019, 86th Leg., R.S., ch. ___, § 1, sec. 1.44(c), (e), (c-1), (e-1), 2019 Tex. Gen. Laws ____, ____-__; Act of May 27, 2019, 86th Leg., R.S., ch. ___, §§ 1–15, secs. 1.03(20), 1.07, 1.08(a), 1.09(d), (i)-(k), 1.11(d), 1.21, 1.211, 1.26(a), 1.29(b), (f), 1.361, 1.37(j), (n), (r), 1.38, 1.46, 3.01(d), 36.205(e), 1.25(b), 36.101(1), 36.1011(e), 36.125, 36.419, 2019 Tex. Gen. Laws ____, ____-__.

STATEMENT OF THE CASE

1. The History of the Edwards Aquifer and its Governmental Management

In the early part of the twentieth century, severe droughts led Texans to ratify the Conservation Amendment to the Texas Constitution, which declared that the conservation, preservation, and development of all natural resources of the state are "public rights and duties." App. 48a. (quoting Tex. Const. Art. XVI, § 59(a)). To that end, the constitutional amendment further provided for the creation of water conservation and reclamation districts to ensure that one of the state's most vital resources is collected, conserved, and made available to Texas residents. App. 48a-49a. Under the Texas Constitution, these conservation districts are "governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions . . . as may be conferred by law." App. 67a. Seventy-five years later, use of this constitutional authority reached its zenith with the Texas Legislature's creation of the powerful Edwards Aquifer Authority.

The Edwards Aquifer is a vital natural resource that is subject to regulation under the Conservation Amendment of the Texas Constitution, but the history of its regulation demonstrates how exceptional it is compared to other water sources in the state. The Edwards Aquifer is "a unique underground system of water-bearing formations in Central Texas." *Barshop v. Medina Cty. Underground Water Conservation Dist.,* 925 S.W.2d 618, 623 (Tex. 1996). "Water enters the aquifer through the ground as surface water and rainfall and leaves the aquifer

through well withdrawals and springflow. The Aquifer "is the primary source of water for south central Texas and therefore vital to the residents, industry, and ecology of the region, the State's economy, and the public welfare." *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291 S.W.3d 392, 394 (Tex. 2009).).

Throughout the 1970s and 1980s, the Aquifer was being dangerously over-pumped to supply drinking water for the nearly two million residents in the growing San Antonio area, and for irrigation water for farming efforts in the rural western areas served by the Aquifer. The lowered water levels, especially in two huge springs issuing from the Aquifer, endangered numerous animal species native to the region. App. 3a; *see also*, *Sierra Club v. Lujan*, No. MO-91-CA-069, 1993 U.S. Dist. LEXIS 3361, *10-11, 76-77 (W.D. Tex., Jan. 30, 1993). During this period, the Edwards Underground Water District (EUWD) ostensibly existed to govern use of the Edwards Aquifer, but this elected body "lacked the regulatory authority" necessary to adequately address the problems of dwindling water supply and resultant ecological destruction. App. 3a. In 1993, in the wake of successful litigation under the Endangered Species Act, the Texas Legislature used its Conservation Amendment authority to replace the EUWD with a new entity – the Edwards Aquifer Authority (EAA) – with significantly more expansive regulatory powers and a broader geographic reach. App. 49a-50a. The Legislature passed the EAA Act pursuant to its authority under Tex. Const. Art. XVI, § 59, *id.,* "giving the Authority broad powers for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the

economic development of the state." *Chem. Lime, Ltd.*, 291 S.W.3d at 394. The Authority's jurisdiction under the EAA Act encompasses eight counties, broken down roughly into three regions: (1) urban Bexar County, with over 1.7 million residents; (2) western agricultural counties including Uvalde, Medina, and Atascosa, with approximately 117,000 residents; and (3) eastern spring counties, including Hays, Comal, Guadalupe, and Caldwell, with approximately 435,000 residents. App. 6a.

The 1993 legislation provided for an appointed board of directors; however, this structure failed to gain preclearance from the Department of Justice under § 5 of the Voting Rights Act. App. 7a. The EAA Act was therefore amended in 1995, continuing the conferral of expansive powers but establishing a board of directors consisting of fifteen voting members elected from districts, plus two non-voting appointed members. *Ibid.* With respect to the fifteen voting members, the legislature designed the system such that four directors would be elected from the agricultural counties, four directors would be elected from the spring counties, and seven directors would be elected from urban Bexar county. *Ibid.* Each of those regions was then divided into single-member districts based on the number of directors allotted to the region. App. 57a. "[T]he electoral franchise is not limited to only permit holders or landowners with wells;" App. 59a, rather, all qualified voters in each of the districts are entitled to cast a vote in elections for the EAA director from their district. As a result of this system design, the fifteen districts are grossly malapportioned, with an overall population deviation of 212%. App. 292a-293a. The San Antonio urban area of Bexar County, with 75% of the population within

the Aquifer's jurisdiction, was specifically and by design assigned a minority status on the governing board. App. 222a-23a.

2. Purpose and Powers of the Edwards Aquifer Authority

The legislatively-defined purpose of the EAA Act makes clear that the EAA board was given unusually far-reaching powers for this kind of political subdivision because of the Aquifer's uniqueness and centrality to the economic vibrancy of the large Central Texas region. The impetus for the EAA's creation was the need to save the Aquifer by establishing a comprehensive regime for conserving water. The EAA Act states that creation of the Authority was necessary "to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state." App. 79a.

The failure of the EUWD showed that extensive powers were necessary to achieve this purpose. To that end, the EAA "has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer." App. 108a. The general powers of the EAA include the power to: engage in rulemaking; close abandoned, wasteful, or dangerous wells; regulate land use of permit and non-permit holders; require utility permit holders to increase costs on utility users as a conservation measure; exercise the power of eminent domain; and many others. App. 144a. While the EAA cannot levy taxes, it can not only work in conjunction with the State

Attorney General and Texas Commission on Environmental Quality ("TCEQ") to issue revenue bonds, but can (and does) raise millions of dollars in annual revenue through the assessment of "aquifer management fees." App 6a.

More specifically, the EAA has the authority to decide whether those within its jurisdiction may withdraw groundwater from even their own property, with limited exception, by requiring that every person wishing to withdraw water from the Aquifer have a permit to do so. App. 154a-55a. The EAA exercises significant control over permit holders. For example, the EAA requires that the water withdrawn is used within the district, App. 187a, and according to the terms or conditions of the permit, App. 189a. Violation of the terms of a permit can result in the revocation of said permit, and the assessment of administrative penalties. App. 189-96a. Further, the control exercised over permit holders can have a direct impact on non-permit holders. For example, the EAA has the authority to require that utility permit-holders increase the cost passed on to utility customers, to discourage and limit discretionary use by permit-holders during periods of drought. App. 5a.

Significantly, the EAA has authority over residents within the jurisdiction whether those residents are permit-holders or not. The EAA has the power to regulate the behavior of all residents within its jurisdiction by virtue of its duty to conserve and prevent pollution of the Aquifer. No person residing within the EAA's jurisdiction may waste water withdrawn from the aquifer or pollute or contribute to the pollution of the aquifer, and all residents are bound by the laws and rules governing the EAA, regardless

of status as a permit-holder. App. 189a. Agents of the Authority may enter onto any resident's property to enforce these prohibitions, whether to inspect and close a dangerous well or to investigate use of prohibited pollutants in the recharge and contribution zones. App. 6a. And the EAA is empowered to assess significant administrative penalties of up to $1000 a day against non-permit-holding residents who engage in prohibited activity. App. 191a-96a.

3. District Court Proceedings

In June of 2012, the League of United Latin American Citizens ("LULAC") and Bexar County LULAC members Jesse Alaniz, Jr., Ramiro Nava and Maria Martinez (hereinafter, "LULAC Petitioners") filed suit challenging the electoral scheme of the Edwards Aquifer Authority as violative of the one-person, one-vote guarantee of the Fourteenth Amendment's Equal Protection Clause.[2] App. 33a-34a. The jurisdiction of the district court was invoked under 28 U.S.C. § 1331. Specifically, LULAC Petitioners alleged that the unusually large population disparity among the districts from which EAA directors are elected results in the unconstitutional dilution of voting strength of voters in Bexar County. On August 29, 2012, an arm of the City of San Antonio known as the San Antonio Water Systems ("SAWS"), which is Bexar county's largest water and sewer utility, successfully intervened on LULAC's side, also alleging a violation of the one-

[2] LULAC Petitioners additionally brought claims against the EAA under Section 2 of the Voting Rights Act; however these claims were voluntarily dismissed following the district court's summary judgment order on the one-person, one-vote claim and are not at issue here.

person, one-vote guarantee. App. 33a-34a. Subsequently, the City of San Marcos, Uvalde County, the City of Uvalde, New Braunfels Utilities, and the Guadalupe-Blanco River Authority were granted permission to intervene as defendants. *Ibid.* The respective parties filed cross-motions for summary judgment on the one-person, one-vote claim in early 2014, and the district court heard oral argument in June of 2014. On June 16, 2018, the district court issued an order granting summary judgment in favor of defendants. App. 33a.

The district court focused its legal inquiry on whether the narrow exception to the one-person, one-vote requirement of the Fourteenth Amendment laid out by this Court in *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973), and *Ball v. James,* 451 U.S. 355 (1981) applied to the election of the EAA's directors. The district court first assessed the purpose, power and authority of the EAA, concluding that it was created for a "narrow" purpose, and that it "does not have the authority to exercise the sort of governmental powers that invoke the strict demands of *Reynolds,"* placing particular emphasis on the district's inability to levy taxes. App. 54a-57a. However, after concluding that the EAA lacked general governmental powers, the district court did not examine whether the challenged electoral system had a disproportionate effect on the regions afforded greater voting power. Rather, the district court simply applied rational basis review to the statute creating the EAA, concluding that it passed muster because the structure, which was designed to give voice to the interests associated with the three different regions, was necessary for the bill's passage. App. 59a-63a.

4. Fifth Circuit Ruling

LULAC Petitioners appealed to the Fifth Circuit Court of Appeals, alleging that the district court was in error for concluding that the *Salyer-Ball* exception could apply to open-franchise popular elections of representatives from districts generally, App. 12a, and that the district court misapplied the narrow *Salyer-Ball* exception to the one-person, one-vote constitutional requirement in any event. App. 17a-18a, 24a-26a. LULAC Petitioners additionally argued that the EAA's apportionment scheme, designed to give greater weight to the votes of residents in the agricultural and spring regions simply by virtue of their geographic location, could not satisfy rational basis review. App. 28a.

The Fifth Circuit rejected LULAC Petitioners' argument that the *Salyer-Ball* exception cannot be properly applied to an open-franchise popular election, citing this Court's decision in *Town of Lockport v. Citizens for Community Action, Inc.*, 430 U.S. 259, 261-62, 266 (1977), which centered on a referendum on city-county government consolidation and predated this Court's decision in *Ball,* for the proposition that "the exception enunciated in *Salyer* and *Ball* may apply to a general election." App. 13a & n.8. Critically, highlighting the circuit split on this issue, to support its conclusion, the Court below additionally relied on decisions of the Seventh and Second Circuit Courts of Appeals, reading these decisions as reaching the same conclusion. App. 14a-15a. The Fifth Circuit ultimately concluded that based on the fact that "all voters may participate in elections to the EAA board of directors, albeit with unequal voting power" the case at hand "represents a

narrower departure from the principle of 'one person, one vote' than in *Salyer* and *Ball,* where the franchise was restricted to landowners and weighted according to the value of the land owned. App. 15a.

The Fifth Circuit then turned its discussion to application of the *Salyer-Ball* framework, "first consider[ing] whether the EAA serves a 'special limited purpose.'" App. 15a-16a. The court below conceded that "the EAA exercise 'some typical governmental powers,'" App. 16a, and has some ability to dictate the behavior of water users and limit use of the water once withdrawn, *see* App. 16a-18a. Further, the court conceded that "[t]he EAA's obligation to prevent the pollution of the aquifer . . . is more characteristic of the powers exercised by a general governmental entity." App. 17a. However, the court held that the EAA's pollution prevention powers were only incidental to its purpose, "secondary to the plenary environmental authority of the TCEQ and subject to its supervision." App. 18a-19a. Much like the district court below, the Fifth Circuit also emphasized the EAA's inability to levy *ad valorem* property or sales tax. App. 16a, 20a-22a. The court thus concluded that the EAA's "authority is circumscribed to attain its narrowly defined purpose to conserve aquifer water." App. 22a.

Then, considering whether the EAA's activities disproportionately impact those afforded greater voting power – the agricultural and spring counties – the Fifth Circuit conceded that Bexar County residents are required to "purchase water at significantly higher rates than their rural counterparts," and "finance almost seventy-five percent of the EAA's operations" as a result.

However, the court rejected LULAC petitioners' argument that this constituted a disproportionate burden on Bexar County voters, concluding that the expenses, passed through permit-holder SAWS, were merely "incidental effects." App. 24a-26a. Finding thus that the one-person, one-vote principle does not apply, the Fifth Circuit held that the EAA's electoral scheme designed to protect regional interests was necessary to effectuate the passage of the law in the first instance, and therefore survived rational basis review. App. 27a-29a.

REASONS FOR GRANTING THE WRIT

This Court has long held that the right to vote and have one's vote counted is a bedrock principle of our democracy, and that "[o]ther rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). This fundamental right is undermined "by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). As this Court has made plain, "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing -- one person, one vote." *Gray v. Sanders*, 372 U.S. 368, 381 (1963). While these principles are firm and foundational, this Court has, in only very specific circumstances, allowed some departure from this constitutional demand, in order to allow very limited units of local government to meet unique local needs. *See Avery v. Midland Co.*, 390 U.S. 474, 485 (1967) (collecting cases)). Specifically, in *Salyer Land Co. v. Tulare Lake*

Basin Water Storage Dist., 410 U.S. 719 (1973), and *Ball v. James*, 451 U.S. 355 (1981), this Court has carved out a narrow exception to the one-person, one-vote redistricting principle, which allows the selection of representatives in highly specialized local units of government – with limited power and thus limited reach – by only those impacted by the unit's activities. This narrow exception has broadened over time, and the decision of the Fifth Circuit below represents the broadest application of the *Salyer-Ball* exception to date. By applying the exception to the Edwards Aquifer Authority, elected in an open-franchise popular election, the court below has decided a previously unsettled question of federal law that strikes at the heart of our democracy – in conflict with this Court's precedent and other circuits' interpretation. Not only at odds with the federal courts, the Fifth Circuit's decision also creates tension with Texas's own interpretation of the Authority's reach, with implications on property owners' ability to adequately protect their interests. This straightforward case presents an ideal vehicle for this Court to finally clarify when the one-person, one-vote principle may yield without running afoul of the Fourteenth Amendment's Equal Protection guarantee.

I. A Decision from This Court Is Necessary to Clarify the Scope of the *Salyer-Ball* Exception to the Fundamental Constitutional Guarantee of One Person, One Vote

Since its decision issued in *Ball v. James,* 451 U.S. 355 (1981), this Court has not taken up a case applying the *Salyer-Ball* exception to a special purpose unit of government. In the intervening years,

the various circuit courts of appeals have been left to develop the contours of the exception through application. The result is an inconsistent body of caselaw, reaching opposite conclusions based on substantially similar facts, that fails to provide clear guidance to the lawmakers seeking to design electoral schemes and the lower courts seeking to evaluate their constitutionality. The decision of the Fifth Circuit Court of Appeals further exacerbates this confusion by definitively holding that the *Salyer-Ball* exception can be appropriately applied in an open-franchise popular election–in contravention of established Supreme Court precedent interpreting the Equal Protection Clause. A decision by this Court is therefore necessary to clarify the circumstances under which the one-person, one-vote mandate of the Fourteenth Amendment may yield.

a. This Court's Precedent Plainly Counsels Against Applying the *Salyer-Ball* Exception in an Open-Franchise Representative Election, but Clarification from this Court Would Resolve Tensions Between Circuit Rulings

Unlike the Fifth Circuit, this Court has directed that a jurisdiction that grants the right to vote to all eligible voters cannot be properly exempt from the bedrock democratic principle of one person, one vote. Therefore, a survey of this Court's apportionment decisions and this Court's language in *Hadley v. Junior College District of Metropolitan Kansas City, Mo.*, 397 U.S. 50 (1970), leads to the opposite conclusion of that reached by the court below. A decision by this Court is necessary to rectify

the Fifth Circuit's recent decision with this longstanding body of caselaw, resolve dissonant decisions amongst the Circuit Courts of Appeals, and to answer this important federal question with certainty and finality.

As early as *Gray v. Sanders,* this Court explained that an equal weighting of votes in an apportionment plan is necessary to give full effect to the guarantees of the equal protection clause. Invalidating Georgia's system of electing state legislators, which afforded more weight to the votes of those who happened to live in a rural county, this Court admonished:

> How then can one person be given twice or ten times the voting power of another person in a[n] . . . election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote -- whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.

372 U.S. 368, 380 (1963).

This principle was later applied to units of local government as well in *Avery v. Midland Co.*, 390 U.S. 474, 480 (1967) ("when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process"). The *Avery* decision acknowledged the need for local governments to "devis[e] mechanisms of local government suitable for local needs," and contemplated that the one-person, one-vote principle may yield in certain circumstances. *Id.* at 485. Specifically, the courted noted that where the local governmental unit at issue is "a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents," "such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions." *Id.* at 483-84. However, this Court declined to extend an exemption to the apportionment scheme of the Commissioners Court at issue which provided more weight to the votes of those living in rural districts, despite the fact that the entity disproportionately focused its attention on rural areas. In rejecting the applicability of its hypothetical, this Court noted: "the relevant fact is that the powers of the Commissioners Court include the authority to make a substantial number of decisions that affect *all* citizens, whether they reside inside or outside the city limits . . . ." *Id.*

In *Hadley v. Junior College District of Metropolitan Kansas City, Mo.*, 397 U.S. 50, 58-59 (1970), this Court reaffirmed the possible exception to the one-person, one-vote requirement it had

enumerated in *Avery*, noting that "a State may, in certain cases, limit the right to vote to a particular group or class of people." Importantly, this Court nonetheless held that the one-person, one-vote principle applied to the district at issue, noting:

> [W]hile the office of junior college trustee differs in certain respects from those offices considered in prior cases, it is exactly the same in *the one crucial factor* – the[] officials are elected by popular vote. When a court is asked to decide whether a State is required by the Constitution to give each qualified voter the same power in an election *open to all*, there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election.

Id. at 54 (emphasis added). This Court went on to state unequivocally that "once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.'" *Id.* at 59 (quoting *Gray,* 372 U.S. at 381).

In *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.,* 410 U.S. 719 (1973), this Court confronted for the first time a district that fell squarely within the exception contemplated by *Avery* and *Hadley* – a water storage district with limited authority, elected only by the landowners responsible for funding the district's operations. *Id.* at 728. The electoral scheme at issue allocated votes to

landowners – regardless of whether they lived within the district or were "natural persons who would be entitled to vote in a more traditional political election" – in proportion with the land held and thus the economic burden incurred. *Id.* at 729. But in explaining its justification for exempting the district from the requirements of one person, one vote, this Court made an important distinction, noting that "California has not opened the franchise to all residents, as Missouri had in *Hadley* . . ., nor to all residents with some exceptions, as New York had in *Kramer* . . . . *Id.* at 730. Thus, in its treatment of the district in *Salyer,* and its subsequent treatment of the district in *Ball v. James*, 451 U.S. 355, 357 (1981), which also restricted the franchise to landowners, this Court did not purport to abandon the longstanding constitutional principle it reaffirmed in *Hadley*: "whenever a state or local government decides to select persons *by popular election* to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election." 397 U.S. at 56.

Further, this Court's later decision in *Bd. of Estimate v. Morris*, 489 U.S. 688 (1989), affirming the Second Circuit's rejection of the New York City Board of Estimate apportionment scheme, strongly supports a conclusion that the one-person, one-vote constitutional requirement applies in any popular election where the franchise has been opened to all. The board in *Morris* consisted of three members elected citywide, plus the elected presidents of each of the city's five boroughs, with no regard for the population of each borough. *Id.* at 690 & n.2. Just as with the EAA, the intent of the structure was to give

equal voice to each of the boroughs, "accomodat[ing] natural and political boundaries as well as local interests." *Id.* at 702. And just as with the EAA, the result of this structure was an egregious total population deviation – 78% or 132.9% between the borough districts, depending upon the metric used. *Id.* at 691, 701-02. To be sure, as the Fifth Circuit noted below, App. 14a, this Court held that – despite its inability to levy taxes – the board's powers were "'general enough and ha[d] sufficient impact throughout the district' to require that elections to the body comply with equal protection strictures." *Morris,* 489 U.S. at 696 (quoting *Hadley*, 397 U.S. at 54). But this Court, in affirming the Second Circuit, also placed significant emphasis on the fact that the board members were selected through open-franchise popular election. The Second Circuit concluded that "[b]ecause all eight officials on the board ultimately are selected by popular vote, . . . the board's selection process must comply with the so called 'one-person, one-vote' requirement of the reapportionment cases." *Id.*at 691. Similarly, this Court affirmed, "[t]hat the members of New York City's Board of Estimate trigger this constitutional safeguard is certain. All eight officials become members as a matter of law upon their various elections," and "are elected by votes of the entire city electorate." *Id.* at 694. While the Fifth Circuit below contends that "the Court performed the same analysis in *Salyer* and *Ball*," App. 14a, in fact neither the Second Circuit Court of Appeals nor this Court made any mention of either *Salyer* or *Ball* in their analysis. It stands to reason that this Court declined to do so because those cases, which dealt with restricted-franchise election

schemes, are inapplicable to an election scheme that opens the franchise to all eligible voters.[3]

b. The Fifth Circuit's Overbroad Application of the *Salyer-Ball* Exception Adds to an Inconsistent Body of Lower-Court Caselaw that Requires this Court's Intervention

In attempting to justify its unprecedented extension of the *Salyer-Ball* exception to the open-franchise popular election at issue, the Fifth Circuit below relied on decisions from sister circuits that purportedly reach the same conclusion. However, an examination of these cases demonstrates that they provide no such clear-cut justification. Further, other federal court decisions are irreconcilably inconsistent with the Fifth Circuit's conclusion that the *Salyer-Ball* exception obviates the EAA's need to comply with the one-person, one-vote requirement – either by demonstrating that the exception should not have applied in the first instance, or by demonstrating that the purported justifications for the EAA's electoral scheme cannot pass constitutional muster under even the most lenient standards. The uncertainty created by this body of federal caselaw can only be rectified by a decision of this Court.

The Fifth Circuit below looked to decisions by the Seventh and Second Circuit Courts of Appeals to support its holding that "the exception may apply to a

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[3] It is also worth noting that this Court rejected as illegitimate the City of New York's justifications for the election scheme grounded in local interests and the city's history, citing *Reynolds,* 377 U.S. at 579-580, for the proposition that "[c]itizens, not history or economic interests, cast votes." *Morris*, 489 U.S. at 703 n.10.

popular election of a local body of government." App. 14a. However, neither circuit presents a case analogous to the one at hand, where an election scheme requires the election of representatives from districts and affords the franchise to all eligible voters, and as such fail to provide support for the Fifth Circuit's broad application of *Salyer* and *Ball*. The first such case relied on by the Fifth Circuit below is *Pittman v. Chicago Bd. of Educ.,* 64 F.3d 1098 (7th Cir. 1995), in which, by the Fifth Circuit's telling "the court ruled that the elections of 'local and specialized' school councils in Chicago were not subject to the 'one person, one vote' requirement." App. 14a. This is an oversimplification of the issue presented in *Pittman,* which is distinguishable in important respects. The district in *Pittman* was not apportioned into smaller electoral districts, but rather all residents of the district voted for all elected representatives at-large. 64 F.3d at 1100. The non-parent resident plaintiffs in *Pittman* contended that their right to vote was "bobtailed" by a requirement that six of the elected members be parents of children attending the school and that only two of the members were permitted to be non-parent residents – despite having an equal opportunity to vote for all parent and non-parent members.

Thus, the electoral scheme at issue in *Pittman* allowed for equality of voting strength, and did not implicate the one-person, one-vote principle in a traditional sense, but rather required a novel interpretation of the one-person, one-vote principle to a restriction on candidacy. *Pittman* therefore fails to provide a supporting example for the Fifth Circuit's holding that an electoral scheme that provides for

grossly unequal *voting strength* in an election open to all can ever pass constitutional muster.

The Second Circuit cases cited by the court below are similarly unhelpful for illuminating the correct standard in the situation and hand. The Fifth Circuit perplexingly relied on *Education/Instruccion, Inc. v. Moore,* 503 F.2d 1187 (2d Cir. 1974) to support its position; however, the government body in that case was *not* elected in an open-franchise popular election. In fact, in concluding that the one-person, one-vote principle did not apply, the Second Circuit principally noted that "the statute in question does not provide for elective bodies," and further found that "at least some members of the council d[id] not automatically become council members by virtue of their election to office in their respective towns," but rather were appointed by local government bodies. *Education/Instruccion, Inc.*, therefore, stands for the non-controversial inverse of the Fifth Circuit's position: that the principle of one person, one vote does not apply to bodies with representatives who are not elected by popular vote. The court below similarly cited to *Baker v. Reg'l High Sch. Dist. No. 5,* 520 F.2d 799, 801-03 (2d Cir. 1975) as evidence that the *Salyer-Ball* "special-purpose exception" framework is appropriately applied in the context of an open-franchise, popular election, claiming that it was through this framework that the court found "that the boards engaged in 'broad . . . governmental activity." App. 15a n.10. But the Second Circuit *did not* apply the "special-purpose exception" to the regional school boards at issue in *Baker*. Far from supporting the Fifth Circuit's holding, the *Baker* decision presents an additional conflict with the decision of the court below. In rejecting the applicability of *Salyer,* the

Second Circuit highlighted important distinctions – distinctions that are importantly also present between the water district in *Salyer* and the EAA here. The court stated:

> The regional school boards' impact is general and related to all voters of the towns as such. In *Salyer,* the Court was careful to note that it was the land which was being benefited and the landowners only paying the costs . . . . Here we have school districts in which those towns which are paying the most for the district's support have to accept a diluted vote in the running of the schools.

520 F.2d at 802-03. It was based on these facts – which are clearly analogous to those before the courts below – that the Second Circuit stated plainly that *Salyer* was "simply not relevant." *See* App. 24a. (conceding that "Bexar county residents finance almost seventy-five percent of the EAA's operations through the payment of aquifer management fees . . . because they purchase water at significantly higher rates than their rural counterparts").

Other circuit courts of appeals have articulated and applied readings of the *Salyer-Ball* exception that plainly conflict with the Fifth Circuit's broad interpretation below. For example, in *Hellebust v. Brownback*, the Tenth Circuit characterized the exception as a "narrow" one, and summarized it as follows: "the one person, one vote rule does not apply to units of government having a narrow and limited focus which *disproportionately affects the few who are entitled to vote."* 42 F.3d 1331, 1333 (10th Cir. 1994)

(emphasis added). This articulation of the exception, which plainly requires a restricted-franchise electoral scheme, is fundamentally at odds with the Fifth Circuit's holding. But setting aside the distinction between open- and restricted-franchise election schemes, the *Hellebust* decision conflicts with the Fifth Circuit's treatment of the EAA in other material respects. In holding that the electorate of the Kansas State Board of Agriculture could not be appropriately be restricted to delegates from agricultural organizations, the court noted that – just like the EAA – "the Board has 'significant' control over the use of water, not only by farmers and ranchers, but also by cities, utilities, and individual non-agricultural users," and "agents of the Board have enforcement authority to carry out its orders and regulations which extend beyond the agricultural industry." *Id.* at 1334. The court found unpersuasive the Board's argument that because it dealt exclusively with agriculture, only agricultural interests should be empowered to vote, noting that its "focus is not whether some of the Board's activities deal exclusively with agriculture, but whether its powers transcend that ground and materially affect residents of Kansas who are not represented by the present method of Board selection." *Id.* Because the Tenth Circuit answered that question in the affirmative, it concluded that the one-person, one-vote principle must apply.[4] The Fifth Circuit below conceded that

[4] Additionally, the Tenth Circuit's declaration in *Hellebust* that an entity's "partial dependence on the actions of other state entities does not restrict the range of governmental powers it wields," 42 F.3d at 1334, directly conflicts with the Fifth Circuit's conclusion that the EAA's pollution control powers do not rise to the level of general governmental power because they are subject to the authority of the TCEQ. App. 18a-19a.

the residents of Bexar County feel the reach, and are "materially affect[ed]" by the powers of the EAA, but nonetheless saw fit to justify its decision based on who feels the reach *more*. *See* App. 23a-24a (noting that Bexar County landowners possess twenty-four percent of land overlying the aquifer and that Bexar County contains twenty one percent of the recharge and contributing zones heavily regulated by the EAA, but declining to apply one person, one vote because the other regions possess more land and thus greater portions of these regulated zones).

Similarly, the approach taken by the Fourth Circuit Court of Appeals in *Vander Linden v. Hodges,* 193 F.3d 268 (4th Cir. 1999), when addressing whether the one-person, one-vote principle applied to South Carolina's county legislative delegations demonstrates a conflict with the approach taken by the Fifth Circuit here. The court below contends that *Vander Linden* does not support LULAC Petitioners' view that the *Salyer-Ball* exception does not apply in the context of an open-franchise popular elections because of the "array" of governmental functions the court held the delegations could exercise. App. 14a & n.9. However, the Fifth Circuit's focus on the number or scope of governmental functions performed is the exact approach that was explicitly rejected by the *Vander Linden* court. *See Vander Linden*, 193 F.3d at 274-75 (rejecting the district court's distinction of *Board of Estimate v. Morris* on the basis that the "delegations exercise only limited functions"). Rather, after concluding that the delegations were in fact elected by popular vote, the Fourth Circuit held that the operative question was simply "do the delegations perform governmental functions?" *Id.* at 275. While the district court had erroneously discounted many

stipulated powers of the delegations, the Fourth Circuit noted that even the few it did consider should have led the district court to conclude that the one-person, one-vote principle must apply. Specifically, the Fourth Circuit held that the district court was in error for failing to consider the power to make appointments a governmental function, given that "South Carolina law clearly regards . . . the making of appointments[] as a governmental function." *Id.*

According to Texas law, several of the powers exercised by the EAA are considered governmental functions. *See City of White Settlement v. Super Wash, Inc.*, 198 S.W.3d 770, 776 (Tex. 2006) (defining "governmental functions generally as those that are public in nature and performed . . . as the agent of the state in furtherance of general law for the interest of the public at large"). Specifically, the EAA is authorized to engage in activities regarding the following functions explicitly enumerated as governmental functions under Texas law: fire protection and control, App. 109a, health and sanitation services, App. 108a-09a, water and sewer service, and reservoirs and dams, App. 204a. *See Tex. Bay Cherry Hill, L.P. v. City of Fort Worth*, 257 S.W.3d 379, 388 n.4 (Tex. Ct. App. 2008). In fact, the Fifth Circuit below even conceded that the pollution control powers of the EAA were of the type "exercised by a general government entity." App. 17a. Under the Fourth Circuit's approach in *Vander Linden*, therefore, "the relative modesty" of the EAA's powers "in comparison to those of some other elected bodies does not render [it] so unimportant that the one person, one vote rule should not be applied." 193 F.3d at 278. Thus, the inconsistency between decisions of the Fifth, Second and Seventh Circuits with decisions

from the Tenth and Fourth Circuits in *Hellebust* and *Vander Linden* illuminate why intervention by this Court is necessary for consistent application of federal law by the lower courts: the operative legal analysis in both the Tenth Circuit and the Fourth Circuit would mandate a different result under the exact same factual circumstances than that reached by the Fifth Circuit below.

c. The Fifth Circuit's Decision Further Creates Circuit Conflict by Approving Regional Favoritism as an Acceptable Justification for Population Deviations in Violation of the One-Person, One-Vote Mandate

The conflict created and exacerbated by the ruling below amongst federal circuit courts of appeals is not limited to the inconsistency in the application of the *Salyer-Ball* exception. The Fifth Circuit's conclusion that "[t]he EAA's electoral scheme is rationally related to the legitimate goal of protecting the aquifer because it equitably balances the rival interests of the agricultural, spring-flow, and urban counties to ensure that no one region can dominate the aquifer's management" is also irreconcilably at odds with the decisions of other federal courts, including this one. *See Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1142 (E.D. Ca. 2018); *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F. 3d 333, 351 (4th Cir. 2016); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1343 (N.D. Ga. 2004). In a decision affirmed by this Court, the Georgia Northern District Court rejected regionalism – "favoring certain geographic regions of a state over other regions" as a legitimate interest that could satisfy rational basis review.

Larios v. Cox, 300 F. Supp. 2d 1320, 1343 (N.D. Ga. 2004). In its assessment of Georgia's electoral districts, which gave greater weight to the votes cast by residents in rural counties to enhance their political voice, the *Larios* court looked to this Court's admonition in *Reynolds* that "[t]he fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote." 300 F. Supp. 2d at 1344-45 (quoting *Reynolds*, 377 U.S. at 567-68). Further, the *Larios* court was counseled by this Court's explanation in *Abate v. Mundt*, followed in countless other decisions, that:

> This Court has never suggested that certain geographic areas or political interests are entitled to disproportionate representation. Rather, our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality. Accordingly, we have underscored the danger of apportionment structures that contain a built-in bias tending to favor particular geographic areas or political interests . . . .

Id. at 1344-45 (citing *Abate v. Mundt*, 403 U.S. 182, 185-86 (2004) and collecting cases). Based upon the plainly stated precedent of this Court, the *Larios* court concluded that "[a] state cannot dilute or debase the vote of certain citizens based merely on the fortuity of where in the state they reside any more than it can dilute citizens' votes based upon their race, gender, or economic status." 42 F.3d at 1347. Despite this precedent, the Fifth Circuit rejected LULAC's

contention that an electoral scheme that intentionally favors or disfavors specific geographic regions cannot satisfy rational basis review, noting that "courts have repeatedly found that a special-purpose district passes constitutional muster where its electoral scheme was reasonably necessary to the formation of the district." App. 28a. But the court below does not cite to a single case in which the electoral scheme that was necessary for the district's formation cemented in bias by favoring "particular geographic areas or political interests," contrary to this Court's warning in *Abate*. 402 U.S. at 186. A decision by this Court is necessary to clarify whether such regional favoritism can provide a legitimate basis for an apportionment scheme, or if, even where one person, one vote does not apply, such a distinction violates the Equal Protection Clause of the Constitution.

II. The Decision of the Fifth Circuit Creates Tension with Texas's Own Interpretation of the EAA as It Relates to the Property Rights of Texans

As noted *supra* I.b., the Fifth Circuit's conclusion that the EAA "does not engage in any general governmental activities," App. 16a, is fundamentally at odds with Texas's own interpretation of what constitutes a governmental function. This discrepancy alone contravenes this Court's mandate that "a State's highest court is the final judicial arbiter of the meaning of state statutes." *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975). But the Fifth Circuit's disregard of longstanding principles of deference owed to a State's highest court is all the more significant when considering the way in which the decision of the court below conflicts with the Texas

Supreme Court's articulation of constitutionally protected property rights that the EAA must balance in carrying out its purpose. The decision below has undermined Texas's ability to define and defend the property rights of its citizens, and as such, this Court should grant the writ in order to reverse this display of federal judicial overreach.

Under Texas law, a landowner is the absolute owner of groundwater in place beneath his land, and "groundwater rights are property rights subject to constitutional protection." *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 832-33 (Tex. 2012); *See also Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118 (Tex. App. 2013) ("a landowner has absolute title in severalty to the water in place beneath his land. The only qualification of that rule of ownership is that it must be considered in connection with the law of capture and is subject to police regulations"). This property right exists whether a landowner owns 100 acres in rural Uvalde County or a quarter of an acre in suburban San Antonio. The Texas Supreme court in *Day* recognized that "[u]nder the EAA, a landowner may be deprived of all use of groundwater other than a small amount for domestic or livestock use, merely because he did not use water during the historic period." 369 S.W.3d at 841. Accordingly, such a deprivation by the EAA may trigger the Takings Clause, and a landowner denied a permit may be constitutionally entitled to just compensation. *Id.* at 843. The *Day* court held that such a balance "ensures that the problems of a limited public resource – the water supply – are shared by the public, not foisted onto a few." *Id.* Because the EAA so heavily regulates this property right, it is all the more critical that all possessors of that property right be afforded an

equally weighted voice in how the governing body regulates access to the groundwater.

The Fifth Circuit below recognized that all landowners in Texas have a property interest in the groundwater in place beneath their land. App. 23a. However, the court concluded that because the rural and spring counties together comprise a greater area of land over the Aquifer, and thus "own an outsized share of aquifer water," the residents of these counties can justifiably be afforded more voice in the electoral scheme. *Ibid.* But an uncompensated taking of groundwater is no more or less an infringement on an individual landowner's constitutionally protected rights based on the county in which the landowner resides. The apportionment scheme upheld by the court below nonetheless affords a greater ability for some Texas voters to act in preservation of their property rights simply by virtue of the county in which their property lies. This outcome is inconsistent with the Texas Supreme Court's assertion that the burdens of maintaining a limited public resource such as groundwater must be "shared by the public," and a decision from this Court is needed to protect the state of Texas's articulation of property rights in groundwater from the decision below.

III. This Case is an Ideal Vehicle to Resolve the Question Presented

This case, unlike many of the cases relied upon by the court below, presents a largely undisputed set of facts and a straightforward election scheme, and thus provides this Court with an opportunity to provide clarity for legislative bodies and lower courts regarding the constitutional standards applicable to

special purpose units of government. This case was dispensed with at the district court level on cross-motions for summary judgment, and as such was decided to a great extent on statutory and regulatory language and historical transcripts that speak for themselves. In fact, the EAA even concedes in the instant case that its electoral districts are malapportioned. App. 7a. And while the parties certainly disagree about the appropriate interpretation of state and federal law with respect to the authorized powers of the EAA, the plain text of its authorizing Act is beyond dispute. Thus, the questions at issue below and now presented to this Court are purely issues of law ripe for this Court's consideration.

Further, as evidenced by the Fifth Circuit's inability to find one, no other case analyzing the *Salyer-Ball* exception has applied it to a local jurisdiction whose district representatives are chosen under such a straightforward and conventional open-franchise popular election framework. Local units of government to which the *Salyer-Ball* exception might apply are frequently chosen through unconventional or hybrid electoral schemes, making them ill-suited for resolution of the principal questions presented to this court: whether the one-person, one-vote principle can every appropriately yield in an open-franchise popular election of representatives from districts, and if so, whether justification based purely upon regional interests can ever pass constitutional muster. *See supra* I.b*; see also Carlson v. Wiggins*, 675 F.3d 1134, 1141 (8th Cir. 2012) (upholding under *Salyer-Ball* exception an election scheme in which only members of Iowa bar were entitled to vote for attorney members of State Nominating commission); *Kessler v. Grand*

Cent. Dist. Mgmt. Ass'n., 158 F.3d 922 (2d Cir. 1998), *Kessler v. Grand Cent. Dist. Mgmt. Ass'n.*, 960 F. Supp. 760, 766 (S.D.N.Y. 1997) (upholding under *Salyer-Ball* exception an election scheme for Business Improvement District in which franchise was restricted to "[o]wners of record of real property," commercial tenants, and tenants of "dwelling units within the district regardless of residency within district, and denying franchise to otherwise "interested parties" within the district").

Moreover, now is the time for this Court to use this ideal vehicle to provide guidance to states seeking to create special purpose units of government and lower courts seeking to assess the constitutional requirements applicable to such units. Recent studies have documented an explosive proliferation of such forms of government, with 2,300 such units in Texas alone. *See* Chance Sparks, *Proliferation of Special Districts*, APA Texas Chapter, https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/45988/TxAPA_Proliferation (last visited Nov. 23, 2019); Nicholas Bauroth, *Hide in Plain Sight: The Uneven Proliferation of Special Districts Across the United States by Size and Function*, 39 Pub. Admin. Q. 295 (2015). Because state and county governments are increasingly relying upon this mechanism to delegate their general governmental power, and because this case offers the clearest presentation of these issues, critical to ensure that local units of government respect the constitutional rights of the governed, this Court should grant LULAC Petitioners' writ.

CONCLUSION

For the foregoing reasons, the LULAC Petitioners respectfully request the issuance of a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDIX

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United States Court of Appeals
Fifth Circuit
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IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-50655

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, (LULAC); MARIA MARTINEZ; JESSE ALANIZ, JR.; RAMIRO NAVA,

versus Plaintiffs–Appellants,

EDWARDS AQUIFER AUTHORITY,

Defendant–Appellee,

CITY OF SAN MARCOS; CITY OF UVALDE; UVALDE COUNTY; NEW BRAUNFELS UTILITIES, also known as NBU; GUADALUPE-BLANCO RIVER AUTHORITY,

Intervenor Defendants–Appellees.

Appeal from the United States District Court for the Western District of Texas

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Before HIGGINBOTHAM, SMITH, and SOUTHWICK, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

The Edwards Aquifer Authority ("EAA") is a conservation and reclamation district established to regulate the groundwater of the Edwards Aquifer for the benefit of dependent users and species. The League of United Latin American Citizens and its Bexar County members Maria Martinez, Jesse Alaniz, Jr., and Ramiro Nava (collectively, "LULAC") sued the EAA, asserting that its electoral scheme violated the "one person, one vote" principle of the Equal Protection Clause of the Fourteenth Amendment. Claiming to be a special-purpose unit of government, the EAA countered that it was exempt from such strictures. The district court granted summary judgment for the EAA, finding that its limited functions disproportionately impact those most empowered in its elections and that its apportionment scheme has a rational basis. We agree and affirm.

I.

The Edwards Aquifer "is a unique underground system of water-bearing formations." *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 623 (Tex. 1996). Water enters the aquifer as rainfall and surface water and exits through well-withdrawals and spring discharges. *Id.* As "the primary source of water for south central Texas," it is "vital to the residents, industry, and ecology of the region, the State's economy, and the public welfare." *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291 S.W.3d 392, 394 (Tex. 2009).

During the 1980s, overdrafting of the aquifer threatened various species that "rel[ied] upon adequate and continuous natural flows of fresh water . . . as an environment for their survival." *Sierra Club v. Lujan*, No. MO-91-CA-069, 1993 WL 151353, at *5 (W.D. Tex. Feb. 1, 1993). At the time, the Edwards Underground Water District ("EUWD") administered the aquifer. But it ultimately "lacked the regulatory authority the Legislature came to believe was essential." *Chem. Lime*, 291 S.W.3d at 394. Responding to successful litigation under the Endangered Species Act of 1973, the Texas legislature replaced the EUWD with the EAA in 1993, vesting it with "broad powers 'for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state.'"[1]

Under the Edwards Aquifer Authority Act,[2] the EAA possesses "all of the powers, rights, and

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[1] *Chem. Lime*, 291 S.W.3d at 394 (citation omitted); *see also Barshop*, 925 S.W.2d at 624 ("The [EAA] supersedes the [EUWD], which previously possessed limited power to govern the aquifer.").

[2] Act of May 30, 1993, 73d Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, *amended by* Act of May 16, 1995, 74th Leg., R.S., ch. 524, 1995 Tex. Gen. Laws 3280; Act of May 29, 1995, 74th Leg., R.S., ch. 261, 1995 Tex. Gen. Laws 2505; Act of May 6, 1999, 76th Leg., R.S., ch. 163, 1999 Tex. Gen. Laws 634; Act of May 25, 2001, 77th Leg., R.S., ch. 1192, 2001 Tex. Gen. Laws 2696; Act of May 28, 2001, 77th Leg., R.S., ch. 966, §§ 2.60–2.62, 6.01–6.05, 2001 Tex. Gen. Laws 1991, 2021, 2075; Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193; Act of May 23, 2007, 80th Leg., R.S., ch. 510, 2007 Tex. Gen. Laws 900; Act of May 28, 2007, 80th Leg., R.S., ch. 1351, §§ 2.01–2.12, 2007 Tex. Gen. Laws 4612, 4627; Act of May

privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer." Act § 1.08(a). Those powers include the ability to hire employees; enter contracts; issue grants or loans for water conservation and reuse; finance, construct, and operate dams and reservoirs; assert the power of eminent domain; and otherwise adopt and enforce rules necessary to execute its functions. *See id.* § 1.11.

The Act prohibits the withdrawal of aquifer water without a permit, limits the annual amount of permitted withdrawals, "and gives preference to 'existing user[s]' . . . who 'withdr[ew] and beneficially used underground water from the aquifer on or before June 1, 1993.'" *Chem. Lime*, 291 S.W.3d at 394–95 (quoting Act § 1.03(10)); *see also* Act §§ 1.14(c), 1.15. An existing user who submits "a declaration of historical use of underground water," pays an application fee, and "establishes by convincing evidence beneficial use of" aquifer water is entitled to a permit.[3] Subject to the annual cap on withdrawals, the EAA may grant "additional regular permits" after processing existing users' applications. Act § 1.18(a). Currently, there are fewer than two thousand active permit holders.

28, 2007, 80th Leg., R.S., ch. 1430, §§ 12.01–12.12, 2007 Tex. Gen. Laws 5848, 5901; Act of May 21, 2009, 81st Leg., R.S., ch. 1080, 2009 Tex. Gen. Laws 2818; Act of May 20, 2013, 83d Leg., R.S., ch. 783, 2013 Tex. Gen. Laws 1998 [hereinafter the "Act"].

[3] *Id.* § 1.16(b), (d). "Beneficial use" is defined broadly to mean "the use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose." *Id.* § 1.03(4).

Permit holders "may not violate the terms or conditions of the permit" or use aquifer water outside the boundaries of the EAA. *Id.* §§ 1.34(a), 1.35(b). They must meter their water usage, avoid waste, and implement conservation plans approved by the EAA.[4] During a drought, the EAA may impose "utility pricing . . . to limit discretionary use by the customers of water utilities" and require further "reduction of nondiscretionary use by permitted or contractual users." Act § 1.26(a)(3)–(4).

The EAA has adopted rules to preserve the quality of water in the aquifer. Specifically, the EAA regulates the construction, operation, and maintenance of wells that draw from the aquifer or are drilled through it. *See* EAA Rules §§ 713.200–203. The rest of its regulations, however, are limited to the recharge[5] and contributing zones,[6] where pollutants are most likely to seep into the aquifer. Within those regions, the EAA mandates the reporting of noxious spills and regulates facilities housing toxic substances for commercial use. *Id.* §§ 713.400–401, 713.501. It further governs the storage of hazardous substances in large aboveground and underground storage tanks in the recharge zone. *Id.* § 713.603. And it proscribes the use of coal tar-based pavement sealant products

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[4] *Id.* §§ 1.23, 1.31(a), 1.35(c); *see also* EDWARDS AQUIFER AUTHORITY, EDWARDS AQUIFER AUTHORITY RULES § 715.106 (2013) [hereinafter "EAA Rules"].

[5] The recharge zone refers to the area where caves, sinkholes, or other permeable features allow surface water to enter the aquifer, risking potential pollution. *See* EAA Rules § 702.1(162).

[6] The contributing zone encompasses the area "where runoff from precipitation flows downgradient to the recharge zone." *Id.* § 702.1(52).

in the parts of Comal and Hays Counties that overlie the recharge and contributing zones. *Id.* § 713.703.

To ensure compliance with the Act and its regulations, EAA employees "may enter private or public property at any reasonable time," provided they "observe the establishment's rules concerning safety, internal security, and fire protection[;] . . . notify any occupant of their presence[;] and present proper identification." *Id.* § 717.104. If a violation has occurred, the EAA may suspend a permit, assess an administrative penalty, or sue for an injunction or civil penalty. Act §§ 1.36–1.38, 1.40.

The Act explicitly prohibits the EAA from levying a property tax to finance its operations. *Id.* § 1.28(a). With the approval of the state attorney general and the Texas Commission on Environmental Quality ("TCEQ"), however, the EAA may issue revenue bonds for the purchase of land or necessary equipment. *Id.* § 1.28(b)–(c). Moreover, it may "assess equitable aquifer management fees based on aquifer use." *Id.* § 1.29(b). Alternatively, other water districts located within its boundaries may contract with the EAA to pay its expenses through taxes collected from water users in those districts. *Id.* But in any case, the EAA may not charge "more than is reasonably necessary for [its] administration." *Id.*

The EAA's jurisdiction covers eight counties representing three distinct regions: (1) the western agricultural counties of Atascosa, Medina, and Uvalde, where approximately 117,000 persons dwell; (2) the eastern spring-flow counties of Caldwell, Comal, Guadalupe, and Hays, where roughly 435,000 people live; and (3) the urban county of Bexar, which has over 1.7 million residents. Initially, the Act

provided that each region would appoint three members to the EAA board of directors. *See* Act of May 30, 1993, 73d Leg., R.S., ch. 626, § 1.09, 1993 Tex. Gen. Laws 2350, 2356–57. But the Department of Justice ("DOJ") denied preclearance under § 5 of the Voting Rights Act of 1965 "due to the appointment method of selecting the board of directors." *Barshop*, 925 S.W.2d at 625. In consultation with the DOJ, the Texas legislature amended the Act in 1995 to establish a board of directors comprised of fifteen popularly elected members and two appointed non-voting members. Act § 1.09. Under the current scheme, the agricultural and spring-flow counties elect four directors each, whereas Bexar County elects seven directors. *Id.* § 1.093.

II.

LULAC sued the EAA in 2012, claiming, *inter alia*, that its electoral system contravened the principle of "one person, one vote." Conceding that its electoral districts were malapportioned, the EAA rejoined that, as a special-purpose district, it was exempt from the "one person, one vote" requirement. The San Antonio Water System filed a complaint as plaintiff-intervenor, and the City of San Marcos, the City of Uvalde, Uvalde County, New Braunfels Utilities, and the Guadalupe-Blanco River Authority intervened as defendants. Both sides moved for summary judgment.

The district court denied LULAC's motion and granted summary judgment for the EAA, noting that its "power and authority [wa]s limited to carrying out its narrowly defined statutory purposes to manage, protect, preserve, and conserve the water in the aquifer." Given that the per capita usage of aquifer

water was significantly higher in the agricultural and spring-flow counties than in Bexar County, the court explained that the EAA's activities disproportionately affected those most advantaged in its elections. It therefore held that, under *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), and *Ball v. James*, 451 U.S. 355 (1981), the EAA is not subject to the strictures of "one person, one vote." Additionally, the court concluded that the apportionment scheme was rationally related to the EAA's statutory goals in balancing the competing interests of the three regions. LULAC appeals.

III.

At the heart of democratic society is "[t]he right to vote freely for the candidate of one's choice." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). That right, however, "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* "[A]s a basic constitutional standard," legislative districts must "be apportioned on a population basis." *Id.* at 568; *see also Wesberry v. Sanders*, 376 U.S. 1, 8–9 (1964).

In *Avery v. Midland County*, 390 U.S. 474 (1968), the Court extended the principle of "one person, one vote" to the elections of local government officials. That case concerned the Midland County Commissioners Court, which possessed the authority to appoint minor officials; enter contracts; issue bonds; set the county tax rate; adopt a county budget; conduct elections; administer public welfare services; establish a public housing authority; fix school district boundaries; and construct and operate a courthouse, jail, hospital, airport, libraries, bridges,

and roads. *Id.* at 476–77. Though recognizing that the Constitution is "not [a] roadblock[] in the path of innovation, experiment, and development among units of local government," the Court held that "units with general governmental powers over an entire geographic area [may] not be apportioned among single-member districts of substantially unequal population." *Id.* at 485–86. Because the Commissioners Court possessed "the authority to make a substantial number of decisions that affect all citizens," the Court determined that its elections must comply with the "one person, one vote" requirement. *Id.* at 484. Nevertheless, the Court surmised the outcome might be different "[w]ere the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents." *Id.* at 483–84.

The Court reached a similar conclusion in *Hadley v. Junior College District*, 397 U.S. 50 (1970). There, the plaintiffs claimed they had been denied an equal right to vote for junior college trustees, who were authorized to make employment decisions, form contracts, issue bonds, levy taxes and fees, supervise and discipline students, review petitions to annex school districts, condemn private property, "and in general manage the operations of the junior college." *Id.* at 53. The Court agreed. Although those powers were "not fully as broad as those of the" Commissioners Court, "the trustees perform[ed] important governmental functions" that were "general enough and ha[d] sufficient impact" to trigger the principle of "one person, one vote." *Id.* at 53–54. Yet once again, the Court acknowledged the possibility "that there might be some case in which a

State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* . . . might not be required." *Id.* at 56.

Such a case arose in *Salyer*. At issue was the Tulare Lake Basin Water Storage District, which covered 193,000 acres of California farmland and contained only seventy-seven residents. *Salyer*, 410 U.S. at 723. Though "vested with some typical governmental powers"—including the ability to hire and fire employees, make contracts, issue bonds, condemn property, and cooperate with other agencies—the Tulare District "ha[d] relatively limited authority." *Id.* at 728 & n.7. "Its primary purpose, indeed the reason for its existence, [wa]s to provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin." *Id.* at 728. Notably, the district "provide[d] no other general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body." *Id.* at 728–29.

Equally importantly, "its actions disproportionately affect[ed] landowners." *Id.* at 729. The entire cost of its operations was assessed against the land in proportion to the benefits received, and any delinquent payments became a lien on the land itself. *Id.* "In short, there [wa]s no way that the economic burdens of district operations c[ould] fall on residents qua residents . . . ." *Id.* Consequently, the Court held that the district was not subject to the strict requirements of *Reynolds*. *Id.* at 728. Instead, the Court found a rational basis for permitting only landowners to vote in the district's elections and for

apportioning such votes according to the assessed valuation of the land.[7]

In *Ball*, 451 U.S. at 357, the Court confronted another water reclamation district that restricted the franchise to landowners and apportioned voting power based on the amount of land a voter owned. Unlike the relatively small Tulare District, however, the Salt River Project Agricultural Improvement and Power District covered nearly half the population of Arizona. *Id.* at 365. And whereas the operating costs of the Tulare District were assessed against the land, the Salt River District funded its activities through the sale of electric power and had become one of the largest electric providers in the state. *Id.* at 365–66. But those "distinctions d[id] not amount to a constitutional difference." *Id.* at 366.

After all, the Salt River District could not impose *ad valorem* property or sales taxes; enact laws governing the conduct of citizens; maintain streets or schools; or provide sanitation, health, or welfare services. *Id.* Furthermore, the district's water functions were "relatively narrow" because it "d[id] not own, sell, or buy water, nor d[id] [it] control the use of any water" once distributed. *Id.* at 367. Rather, it "simply store[d] water behind its dams, conserve[d] it from loss, and deliver[ed] it through project canals." *Id.* Moreover, "neither the existence nor size of the District's power business" was "constitutionally relevant" because "the provision of electricity is not a traditional element of governmental sovereignty"

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[7] *Salyer*, 410 U.S. at 730–31, 33–34. On the same day the Court decided *Salyer*, it upheld a similar scheme in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973) (per curiam).

and, in any event, was "incidental" to the district's primary purpose of conserving and delivering water. *Id.* at 367–68.

As in *Salyer*, the Court also found that the Salt River District disproportionately affected "the specific class of people whom the system ma[de] eligible to vote." *Id.* at 370. Only landowners committed capital to the district, and only they were subject to liens and acreage-based taxes. *Id.* Hence, the Court upheld the district's voting scheme "because it [bore] a reasonable relationship to its statutory objectives." *Id.* at 371.

The EAA does not contest that its electoral scheme dilutes the voting power of Bexar County residents. Instead, the parties dispute whether the *Salyer-Ball* exception extends to an electoral scheme that enfranchises all voters and, if so, whether the EAA satisfies the two prongs of the exception.

A.

LULAC maintains that the exception is limited to cases such as *Salyer* and *Ball* in which the franchise is restricted. LULAC reasons that where, as here, the franchise is open to all, LULAC contends that the electoral scheme must conform to the fundamental principle of "one person, one vote." To hold otherwise, LULAC insists, would be to invert the narrow exception for the general rule.

Nevertheless, both *Avery* and *Hadley* contemplated that the exception could apply to an election open to all. Although *Avery*, 390 U.S. at 483–84, involved an open-franchise election, the Court observed that if the Commissioners Court were a special-purpose district, it "would have to confront the

question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions." Similarly, in *Hadley*, 397 U.S. at 56, the Court remarked "that a *popular election* in compliance with *Reynolds* . . . might not be required" for officials "whose duties are so far removed from normal governmental activities and so disproportionately affect different groups." (Emphasis added.)

Relatedly, in *Town of Lockport v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259, 261–62 (1977), the Court upheld an electoral scheme for adopting a charter form of county government that enfranchised all voters but weighted the votes from city and county dwellers differently. In doing so, the Court analogized to *Salyer* and determined that the interests of city and county residents were sufficiently different to justify the disparity in voting strength. *Id.* at 266–69. Although *Lockport* is not directly on point,[8] it suggests that the exception enunciated in *Salyer* and *Ball* may apply to a general election.

LULAC rejoins that, in *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Court "did not

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[8] Two features distinguished *Lockport* from *Salyer*. First, unlike the Tulare District in *Salyer*, the county government in *Lockport*, 430 U.S. at 260, possessed "general government powers." Second, whereas *Salyer* concerned the election of a board of directors, *Lockport* involved "a 'single-shot' referendum" in which "the expression of voter will [wa]s direct, and there [wa]s no need to assure that the voters' views w[ould] be adequately represented through their representatives in the legislature." *Id.* at 266. Hence, though *Salyer* was instructive, the Court explained that it "d[id] not resolve the issues in [*Lockport*]." *Id.* at 268.

purport to examine whether" the *Salyer-Ball* exception applied "most logically because . . . the franchise [there] was unrestricted." But that is a complete mischaracterization of *Morris*. In holding that elections to the Board of Estimate of the City of New York must comport with the "one person, one vote" requirement, the Court never implied that the exception is relevant only in a limited-franchise context. Instead, the Court performed the same analysis in *Salyer* and *Ball* to determine that the board was an entity of general governmental power. Indeed, the Court emphasized that the board exercised "a significant range of functions common to municipal governments," including the authority to calculate property taxes, approve the city budget, and manage land use. *Id.* at 694–95. Such "'powers [we]re general enough and ha[d] sufficient impact throughout the district' to require that elections to the body comply with equal protection strictures." *Id.* at 696 (quoting *Hadley*, 397 U.S. at 54). Far from supporting LULAC's strained view of *Salyer* and *Ball*, *Morris* thus indicates that the exception may apply to a popular election of a local body of government.[9]

At least two circuits have so held. In *Pittman v. Chicago Board of Education*, 64 F.3d 1098, 1101–03 (7th Cir. 1995), the court ruled that the elections of "local and specialized" school councils in Chicago were not subject to the "one person, one vote" requirement. Importantly, the electoral scheme at issue granted the franchise to "all adult

[9] LULAC likewise misreads *Vander Linden v. Hodges*, 193 F.3d 268 (4th Cir. 1999). That court concluded that South Carolina's county legislative delegations fell "within the scope of the one person, one vote mandate," given their array of "fiscal, regulatory, and appointive functions." *Id.* at 277–78.

residents of the school's district," as well as to "all parents whether or not residents."[10] Similarly, in *Education/Instruccion, Inc. v. Moore*, 503 F.2d 1187, 1188 (2d Cir. 1974) (per curiam), the court upheld a state statute establishing regional councils of government comprised of the chief elected official from each town. As the court explained, the councils mainly performed advisory and investigative tasks and thus "d[id] not have even the minimal governmental powers found insufficient to invoke the one man, one vote principle in . . . *Salyer*." *Id.* at 1189.

We therefore decline LULAC's invitation to cabin the *Salyer-Ball* exception to cases in which the franchise is restricted. LULAC claims that "[t]o read this exception any more broadly [would] divorce the rule from the unique factual moorings of *Salyer* and *Ball*" and would permit the rare exception to swallow the general requirement of "one person, one vote." But notably, the Court in those cases upheld an electoral system that not only weighted votes differently, but also denied the franchise entirely to certain voters. In contrast, all voters may participate in elections to the EAA board of directors, albeit with unequal voting power. Consequently, this case represents a narrower departure from the principle of "one person, one vote" than in *Salyer* or *Ball*.

B.

Under the *Salyer-Ball* framework, we must first consider whether the EAA serves a "special

[10] *Pittman*, 64 F.3d at 1100. *Cf. Baker v. Reg'l High Sch. Dist. No. 5*, 520 F.2d 799, 801–03 (2d Cir. 1975) (applying the special-purpose exception to the popular elections of regional school boards but ultimately finding that the boards engaged in "broad . . . governmental activity").

limited purpose." *Salyer*, 410 U.S. at 728. Much like the water storage districts in those cases, the EAA exercises "some typical governmental powers." *Id.* at 728 & n.7; *see also Ball*, 451 U.S. at 366 n.11. For example, it may hire employees; enter contracts; administer grants or loans for water conservation and reuse; issue revenue bonds for the purchase of land or necessary equipment; design and operate dams and reservoirs; and condemn private property. *See* Act §§ 1.11, 1.28(b). Yet the EAA does not engage in any general governmental activities. It cannot levy *ad valorem* property or sales taxes or oversee such public functions as schools, housing, zoning, transportation, roads, or health and welfare services. *See Morris*, 489 U.S. at 694–96; *Ball*, 451 U.S. at 366; *Salyer*, 410 U.S. at 728–29. Rather, its powers are expressly tailored to protecting the quantity and quality of groundwater in the Edwards Aquifer and do not extend to any surface water or other aquifers located within its jurisdiction.[11]

As LULAC concedes, the EAA largely accomplishes its statutory purposes by regulating fewer than two thousand permit holders. LULAC avers that, in issuing permits and imposing conditions thereon, the EAA not only "decid[es] who can access the groundwater" in the first instance, but also controls the use of the water once withdrawn. But contrary to LULAC's depiction, the EAA's discretion to grant a permit is quite limited. The Act itself caps the total amount of permitted withdrawals each year. Act § 1.14(c). Additionally, the Act "entitle[s]" an

[11] *See* Act § 1.08(b) ("The [EAA's] powers . . . apply only to underground water within or withdrawn from the aquifer. This subsection is not intended to allow the [EAA] to regulate surface water.").

existing user to a permit upon filing a declaration of historical use, paying an application fee, and establishing a beneficial use for the water.[12]

Similar to the district in *Ball*, 451 U.S. at 367, the EAA "do[es] not own, sell, or buy water." Rather, Texas landowners possess the groundwater in place beneath their property. *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 838 (Tex. 2012). Although the EAA may place certain conditions on permit holders, it does so only as necessary to fulfill its legislative mandate to conserve aquifer water. For instance, the EAA requires permit holders to meter their water usage, avoid waste, implement conservation plans, and use aquifer water within the boundaries of the EAA. Act §§ 1.23, 1.31(a), 1.34(a), 1.35(c). It also proscribes landscape watering during daytime hours except "with a hand-held hose or a soaker hose." EAA Rules § 715.126. And during a drought, the EAA may require permit holders to adopt utility pricing and to reduce even nondiscretionary uses of aquifer water. Act § 1.26(a)(3), (4). Such measures reasonably prohibit wasteful applications of a precious resource. But by no means does the EAA affirmatively mandate "the use to which the landowners who are entitled to the water choose to put it." *See Ball*, 451 U.S. at 367–68.

The EAA's obligation to prevent the pollution of the aquifer, however, is more characteristic of the powers exercised by a general governmental entity.[13]

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[12] *See Chem. Lime*, 291 S.W.3d at 395; *see also* Act § 1.16(d) (providing that the EAA "*shall* grant a[] . . . permit" if those conditions are met (emphasis added)).

[13] *See Ball*, 451 U.S. at 366 (observing that the Salt River District did not oversee any sanitation services).

LULAC maintains that the EAA serves broad and significant purposes in protecting the health and sanitation of the region and in governing a natural resource "vital to the general economy and welfare of the State of Texas." *See Barshop*, 925 S.W.2d at 623. LULAC further contends that the EAA wields "expansive police powers" to "regulate every person in its jurisdiction directly" by conducting compliance investigations and initiating civil suits to enforce the Act.

That theory is unavailing. In *Ball*, 451 U.S. at 367–69 & n.12, the plaintiffs urged that the Salt River District's power operations and its authority over flood control "affect[ed] all residents within District boundaries and therefore represent[ed] the sort of important governmental function[s] that invoke[] the *Reynolds* one-person, one-vote doctrine." The Court disagreed. Because those functions "were stipulated to be incidental" to the district's "primary legislative purpose . . . to store, conserve, and deliver water," *id.* at 368–69, they did not "transform the District into an entity of general governmental power," *id.* at 370. Plainly put, "[n]othing in the *Avery*, *Hadley*, or *Salyer* cases suggests that . . . the breadth of economic effect of a venture undertaken by a government entity as an incident of its narrow and primary governmental public function can, of its own weight, subject the entity to the one-person, one-vote requirements." *Id.* at 370.

As in *Ball*, the parties agree that the EAA's main function is to preserve the quantity of aquifer water by regulating permit holders. What's more, the EAA's powers are secondary to the plenary environmental authority of the TCEQ and subject to

its supervision.[14] Hence, the EAA's regulation of pollutants does not render it a general governmental body because such conduct is incidental to its primary task of administering the permit process.

Indeed, aside from the construction and operation of aquifer wells, the EAA's regulation of water quality is confined to the recharge and contributing zones, which present the highest risk of water contamination. Within those specific zones, the EAA requires the reporting of toxic spills, EAA Rules § 713.401; prohibits the use of coal tar-based pavement sealant products, *id.* § 713.703; and regulates the storage of hazardous substances for commercial purposes, *id.* § 713.501, or in large aboveground and underground storage tanks, *id.* § 713.603. Such functions, however, are hardly "general enough [or] have sufficient impact throughout" the jurisdiction to warrant the strictures of "one person, one vote." *Hadley*, 397 U.S. at 54. That the EAA may conduct inspections and bring suit to enforce its regulations does not change the analysis. *See* Act §§ 1.37–1.38, 1.40; EAA Rules § 717.104. As the district court rightly noted, "[i]t would have been meaningless for the Legislature to create the EAA without giving it the tools it needs to carry out its duties and responsibilities."

The holding in *Kessler v. Grand Central District Management Association, Inc.*, 158 F.3d 92

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[14] *See* TEX. WATER CODE ANN. § 5.013(a) (granting the TCEQ "general jurisdiction" over the issuance of water rights permits and pollution regulations, as well as "continuing supervision" over conservation districts—such as the EAA—that were created under article XVI, section 59 of the Texas Constitution).

(2d Cir. 1998), is thus instructive. *Kessler* involved the Grand Central Business Improvement District, which existed for the "limited purpose" of "promot[ing] business activity in the district." *Id.* at 94, 104. Its management association lacked the power to impose income or sales taxes, much less "to enact or enforce any laws governing the conduct of persons present in the district." *Id.* at 104. Though it performed some traditional governmental functions "in the area of security, sanitation, and social services," the court held that the district's manager was not subject to the "one person, one vote" requirement. *Id.* at 105. As the court reasoned, the manager's "responsibility for these functions [wa]s at most secondary to that of [New York] City," and its "activities in these areas [we]re quantitatively dwarfed by those of the City." *Id.* For example, "while the [management association] contribute[d] to the funding of a single outreach facility for homeless persons, the City ha[d] an entire [d]epartment devoted to assisting the homeless." *Id.* In much the same way, the EAA's conduct in regulating aquifer pollutants is limited and subservient to the general authority of the TCEQ.

Finally, LULAC complains that the EAA can "raise billions in revenue" through aquifer management fees, utility pricing regulation, and civil penalties. Although those "powers are not statutorily labeled as" a tax, LULAC posits that "the lack of any such label is legally insignificant." Invoking *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 564 (2012) [hereinafter *NFIB*], LULAC insists that the EAA's statutory powers share "the essential feature of any tax" in that they "produce[] at least some revenue for the Government."

That reasoning stretches *NFIB* to its breaking point. There, the Court held that the individual mandate of the Patient Protection and Affordable Care Act of 2010 was functionally a tax despite its statutory label as a "penalty." *See NFIB*, 567 U.S. at 564, 574. In doing so, the Court noted that the "requirement to pay [wa]s found in the Internal Revenue Code and enforced by the IRS, which . . . must assess and collect it in the same manner as taxes."[15] The individual mandate did not impose a "prohibitory" financial burden, nor was the IRS permitted to collect payment by "means most suggestive of a punitive sanction, such as criminal prosecution." *Id.* at 566 (citation omitted). Because the refusal to buy health insurance incurred no other legal consequences, the Court thus concluded that "the individual mandate . . . need not be read" as a penalty. *Id.* at 567–68.

Conversely, aquifer management fees are not calculated or collected in the same way as is an income tax. Instead, such fees are "based on aquifer use" and may not exceed what "is reasonably necessary for the administration of the [EAA]." Act § 1.29(b). Although other water districts located within its boundaries may contract with the EAA to pay expenses "through taxes in lieu of user fees," *id.*, the EAA itself lacks the ability to tax, *id.* § 1.28(a). The same is true of its utility pricing regulation. Though the EAA may require water utilities to

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[15] *NFIB.*, 567 U.S. at 563–64 (internal quotation marks and citation omitted) (noting that the shared responsibility payment "d[id] not apply to individuals who d[id] not pay federal income taxes" and, for those who owed the payment, "its amount [wa]s determined by such familiar factors as taxable income, number of dependents, and joint filing status").

increase their pricing to limit discretionary use by their customers, it cannot collect higher fees directly from water users. *See id.* § 1.26(a)(3). And in any event, the EAA may engage in utility pricing regulation only during "critical period[s]" of drought. *Id.* § 1.26(a).

Additionally, should a violation of the Act occur, the EAA can suspend a permit, assess an administrative penalty, or sue for an injunction or civil penalty of up to $10,000 per day of a continuing infraction. *See id.* §§ 1.36–1.38, 1.40. Unlike the individual mandate, those measures "attach[] negative" and "prohibitory" legal consequences to wrongful conduct and are explicitly designed to deter violations of Texas law. *See NFIB*, 567 U.S. at 566, 568 (citation omitted). Hence, the EAA has no taxing power or the functional equivalent thereof. Rather, its authority is circumscribed to attain its narrowly defined purpose to conserve aquifer water.

C.

We next ask whether the EAA's activities disproportionately impact the western agricultural and eastern spring-flow counties, whose residents are most empowered by its elections. *See Ball*, 451 U.S. at 370; *Salyer*, 410 U.S. at 728. The EAA's functions have a lopsided effect on those regions for at least four reasons.

First, per capita usage is significantly higher in those counties than in urban Bexar County. Between 1992 and 1994—just before the adoption of the EAA's current electoral scheme—the average user in the western counties pumped three to eight times more water than did the average user in Bexar County.

Similarly, the average user in the eastern counties consumed twice as much as did the average user in Bexar County. Aquifer usage has remained constant over the years. Between 2010 and 2012, the western counties had a per capita usage that was roughly six to twelve times that of Bexar County, whereas the eastern counties averaged two times the per capita usage of Bexar County. Such disparate usage shows that residents of the agricultural and spring-flow counties are more dependent upon the aquifer and thus are disproportionately affected by the EAA's regulation thereof.

Second, under Texas law, landowners enjoy "a constitutionally compensable interest in groundwater." *Day*, 369 S.W.3d at 838. Notably, property owners in the agricultural and spring-flow counties collectively possess seventy-six percent of the land overlying the Edwards Aquifer. Consequently, they own an outsized share of aquifer water and are disproportionately impacted by the EAA's efforts to manage it.

Third, the EAA's regulation of water quality has little bearing on residents of Bexar County. Its rules relating to toxic spills and facilities storing large volumes of hazardous materials apply solely to the recharge and contributing zones. *See* EAA Rules §§ 713.401, 713.501. Yet only twenty-one percent of those regions fall within Bexar County. The EAA further regulates large aboveground and underground storage tanks in the recharge zone. *Id.* § 713.603. But only ten percent of that zone intersects Bexar County. Likewise, the ban on coal tar-based pavement sealant products applies exclusively in Comal and Hays Counties. *Id.* § 713.703. Hence,

residents of the western and eastern counties disproportionately feel the weight of the EAA's regulatory power.

Fourth, one of the EAA's central purposes—and, indeed, the impetus for its creation—was the protection of endangered species. *See* Act § 1.14(a)(6)–(7). A disproportionate number of those species, however, reside in the eastern counties. Because that region lies downstream from the western and Bexar counties, resident human and animal populations are directly and adversely affected by reduced spring flow. The eastern counties and the wildlife they contain therefore rely most on the EAA's conservation efforts.

In response, LULAC highlights that Bexar County residents finance almost seventy-five percent of the EAA's operations through the payment of aquifer management fees. That is so largely because they purchase water at significantly higher rates than their rural counterparts. Whereas the statute caps fees at $2 per acre-foot of water *actually withdrawn* for agricultural use, municipal and industrial users pay $84 per acre-foot of water *authorized* to be pumped. *See id.* § 1.29(e). LULAC thus maintains that Bexar County residents, "who have the *least* voting power within the EAA, are disproportionately burdened by the fees used to support it." According to LULAC, that "inverse relationship of burden and voting strength is the exact opposite of what" occurred in *Salyer* and *Ball*, where "the groups that were electorally advantaged . . . [also] bore the burden and reaped the benefit" of the districts' operations.

Yet LULAC overlooks that the burden of those costs does not fall directly on Bexar County residents.

Instead, aquifer management fees are assessed to the San Antonio Water System which, as the permit holder, chooses to draw water from the aquifer and to pass on such expenses to the citizens of Bexar County. Such indirect effects are insufficient to subject the EAA to the "one person, one vote" requirement where residents in the eastern and western counties are directly and disproportionately impacted by its activities. The advantaged class of voters for a special-purpose district need not "be the only parties at all affected by the operations of the entity," nor must "their entire economic well-being . . . depend on that entity." *Ball*, 451 U.S. at 371. Instead, what matters is that "the effect of the entity's operations on them [i]s disproportionately greater than the effect on those" with diminished voting power. *Id.* Such is the case here.

LULAC yet emphasizes that the Act requires water utilities to raise their prices to limit discretionary use during a drought. *See* Act § 1.26(a)(3). LULAC therefore maintains that the passing along of operation costs from municipal permit holders to their customers is "not incidental or indirect" but "is expressly contemplated by the text of the . . . Act."

That claim is unpersuasive. In *Salyer*, 410 U.S. at 730, the Court similarly had "[n]o doubt" that "residents within the district may be affected by its activities." But it concluded that the "argument prove[d] too much." *Id.* The Court explained, "Since assessments imposed by the district bec[a]me a cost of doing business for those who farm[ed] within it"—and that cost was ultimately passed along to consumers of the produce—"food shoppers in far away

metropolitan areas [we]re to some extent likewise 'affected' by the activities of the district." *Id.* at 730–31. Nevertheless, "[c]onstitutional adjudication cannot rest on any such 'house that Jack built' foundation." *Id.* at 731. Notwithstanding the incidental effects that municipal water users may experience, the fact remains that the economic burden of the EAA's operations does not fall on Bexar County "residents qua residents." *Id.* at 729.

Lastly, LULAC advances that the EAA's efforts to conserve aquifer water and to protect endangered species benefit all residents, regardless of whether the water is used for agricultural irrigation, recreational springs, or human consumption. Citing *Hellebust v. Brownback*, 42 F.3d 1331, 1335 (10th Cir. 1994), LULAC urges that where "a state agency has the authority to affect every resident in matters arising in their daily lives, its powers are not disproportionate to those who vote for its officials." But *Hellebust* concerned the Kansas State Board of Agriculture, which possessed statewide jurisdiction to enforce approximately eighty laws governing the quality of meat and dairy products, the use of pesticides, and the right to divert and pump water. *Id.* at 1332–33, 1335. Conversely, the EAA does not exercise such omnibus and far-flung powers affecting all persons at all times.

D.

Because the EAA therefore qualifies as a special-purpose district, we ask only whether the apportionment scheme "bears a reasonable relationship to its statutory objectives." *Ball*, 451 U.S. at 371. Rational-basis review "is not a license for

courts to judge the wisdom, fairness, or logic of legislative choices." *Heller v. Doe*, 509 U.S. 312, 319 (1993) (citation omitted). Instead, "[a] statute is presumed constitutional, and [t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."[16] Provided the law reasonably advances a legitimate state interest, we will sustain the statute "even if [it] seems unwise or works to the disadvantage of a particular group." *Romer v. Evans*, 517 U.S. 620, 632 (1996).

The EAA's electoral scheme is rationally related to the legitimate goal of protecting the aquifer because it equitably balances the rival interests of the agricultural, spring-flow, and urban counties to ensure that no one region can dominate the aquifer's management. Legislative history confirms that the legislature sought to achieve regional parity on the EAA board of directors. For example, Representative Robert Puente stated that the board was "structured to . . . even out the three different interests" of the competing regions. Debate on Tex. S.B. 1477 on the Floor of the House, 73d Leg., R.S. 84 (May 24, 1993). Senator Kenneth Armbrister likewise remarked that the legislature "w[as] trying to provide a mechanism" that would prevent the board from being "skewed one way or the other." Hearing on Tex. S.B. 1477 Before the Senate Comm. on Nat. Res., 73d Leg., R.S. 13 (May 6, 1993). That concern persisted even when, in 1995, the legislature replaced the appointed nine-

[16] *Heller*, 509 U.S. at 320 (internal quotation marks and citations omitted); *see also Salyer*, 410 U.S. at 730 (considering whether the district's electoral scheme "was wholly irrelevant to achievement of the regulation's objectives" (internal quotation marks and citation omitted)).

member board with an elected fifteen-member board.[17]

Additionally, the apportionment scheme was likely necessary to ensure the creation of the EAA. In their declarations before the district court, both Puente and Armbrister reflected that the Act would not have passed if any one region controlled a majority of the directors or if the statute lacked the approval of all three regions. LULAC does not contest that political reality but retorts that "legislators may not bargain away the constitutional voting rights of citizens . . . in order to get legislation passed." Citing *Romer*, 517 U.S. at 634, and *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446–47 (1985), LULAC contends that an apportionment scheme "predicated explicitly on favoring or disfavoring one political[ly] unpopular group or geographic region cannot survive even rational basis inquiry."

Nonetheless, courts have repeatedly found that a special-purpose district passes constitutional muster where its electoral scheme was reasonably necessary to the formation of the district. *See, e.g.*, *Ball*, 451 U.S. at 371; *Salyer*, 410 U.S. at 731; *Kessler*, 158 F.3d at 108. LULAC's reference to *Romer* and *Cleburne* is inapposite. Unlike in those cases, there is no suggestion that the EAA's apportionment scheme rested on an "irrational prejudice" or "a bare . . . desire to harm a politically unpopular group." *Cleburne*, 473 U.S. at 447, 450 (citation omitted); *see also Romer*,

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[17] *See* Debate on Tex. H.B. 3189 on the Floor of the House, 74th Leg., R.S. 55 (May 9, 1995) ("Senate Bill 1477 was passed out with an appointed authority with roughly one third from each geographic region. The bill before you still stays [true] to that compromise . . . .").

517 U.S. at 634. Consequently, the EAA's electoral system complies with the Equal Protection Clause of the Fourteenth Amendment.

AFFIRMED.

PATRICK E. HIGGINBOTHAM, Circuit Judge, concurring:

Lacking the requisite indicia of general governmental powers, the Aquifer Authority is plainly a single purpose entity, yet it is here urged that in choosing to select its directors by election than by appointment, the Texas Legislature stepped on the trip wire of one person one vote—an unnecessary mechanical reflex that would here undo the underpinnings—and virtues—of the single purpose doctrine.

The Aquifer Authority is charged with protecting an extraordinary asset of the state—one that can be depleted and lost to contamination and misallocation. The Legislature did not choose to create an appointive board. It rather chose to engage the three geographical areas with the greatest incentive to protect this unique resource, each with its own perspectives. These competing interests are defined by their proximity to the Aquifer—and distinct in their draw upon it. Its balancing allocation of members to the three distinct interests demands accommodation in the governance of the Aquifer Authority, spinning self-interest to the common objective of asset protection. It bears emphasis that this governance comes with no disenfranchisement of voters— only a dilution of voter strength essential to the very structure of the special purpose entity, a dilution essential to its core purpose. And to these

eyes, dilution looks past the binary liability metric of impact attending disenfranchisement. The inquiry does not end with a finding of vote dilution. Here, dilution in service of preserving a common resource results not in disenfranchisement but in effective governance of the state's single purpose entity.

[ENTERED: June 18, 2018]

FILED
JUN 18 2018
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY /s/
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), et. al.	)	
Plaintiffs	)	
and	)	
CITY OF SAN ANTONIO, acting by and through the San Antonio Water System	)	
Intervenor-Plaintiff	)	CIVIL ACTION NO. SA-12-CA-620-OG
v.	)	
EDWARDS AQUIFER AUTHORITY	)	
Defendant	)	
and	)	

CITY OF SAN MARCOS,)
CITY OF UVALDE,)
COUNTY OF UYALDE,)
NEW BRAUNFELS)
UTILITIES and)
GUADALUPE BLANCO)
RIVER AUTHORITY)
)
Intervenor-Defendants)

O R D E R

Pending before the Court is the Motion for Summary Judgment on Plaintiffs' One Person, One Vote Equal Protection Claim, filed by the Edwards Aquifer Authority ("EAA"). Docket no. 119. Intervenor-Defendants Guadalupe-Blanco River Authority, City of Uvalde, County of Uvalde, City of San Marcos, and New Braunfels Utilities have joined in the EAA's motion for summary judgment. Docket nos. 117, 122, 124, 129, and 137. The Texas Farm Bureau and Past and Current Members of the EAA Board of Directors have filed amid briefs in support of the EAA's motion for summary judgment. Docket nos. 166, 182. The LULAC plaintiffs and San Antonio Water System ("SAWS") filed a joint response in opposition to the EAA's motion for summary judgment (docket nos. 140-158) and the EAA filed a reply (docket no. 169). LULAC and SAWS also filed a response to the current and former board members' amicus brief. Docket no. 183.

Also pending before the Court is Plaintiffs' Joint Motion for Partial Summary Judgment on One Person, One Vote Equal Protection Claim. Docket no. 168. The EAA filed a response (docket no. 169) and Intervenor-Defendants Guadalupe-Blanco River

Authority, New Braunfels Utilities, City of San Marcos, City of Uvalde, and County of Uvalde joined in the EAA's response (docket nos. 170, 171, 172, 173, 174). Plaintiffs also filed a reply in support of their motion for partial summary judgment. Docket no. 175.

After reviewing the record and the applicable law, the Court finds that the EAA's Motion for Summary Judgment on Plaintiffs' One Person, One Vote Equal Protection Claim (docket no. 119) should be granted and Plaintiffs' Joint Motion for Partial Summary Judgment on One Person, One Vote Equal Protection Claim (docket no. 168) should be denied.

I.

Statement of the case

A. The parties:

This lawsuit was filed by the League of United Latin American Citizens (LULAC), Marie Martinez, Jesse Alaniz, Jr. and Ramiro Nava (collectively "the LULAC plaintiffs") against the Edwards Aquifer Authority in June 2012. See docket no. 1. The City of San Antonio, acting by and through the San Antonio Water System ("SAWS") sought permission to intervene as a plaintiff in August 2012, and permission was granted. Docket nos. 8, 10. The LULAC plaintiffs filed their First Amended Complaint in January 2013 (docket no. 28) and their Second Amended Complaint in March 2013 (docket no. 38). The LULAC plaintiffs added the Secretary of State as a party defendant in their Second Amended Complaint. Docket no. 38. In August 2013, SAWS filed its First Amended Complaint in Intervention,

also adding the Secretary of State as a defendant. Docket no. 70. All claims against the Secretary of State were dismissed on March 31, 2014. Docket no. 165. Several other governmental entities have intervened as defendants and are aligned with EAA, including the City of San Marcos, City of Uvalde, County of Uvalde, New Braunfels Utilities and Guadalupe Blanco River Authority. The City of Victoria, Past and Current Individual Members of the EAA Board of Directors, and the Texas Farm Bureau are not parties but they have filed *amici* briefs.

B. The claims:

The LULAC plaintiffs bring two causes of action challenging the current apportionment plan for the single member districts used to elect directors to the EAA. The first claim is brought under 42 U.S.C. § 1983 for alleged violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; the second claim is brought under 42 U.S.C. § 1973, Section 2 of the Voting Rights Act, for alleged dilution of minority votes. Docket no. 38. Intervenor-Plaintiff SAWS brings only a cause of action under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (the one person, one vote claim). Docket no. 70. Both LULAC and SAWS seek declaratory and injunctive relief and a statutory award of attorneys fees and costs. Docket nos. 38, 70. The parties have agreed to stay LULAC's cause of action under Section 2 of the Voting Rights Act and proceed with LULAC and SAWS' Equal Protection claim. Docket no. 68. The motions for summary judgment address only the Equal Protection claim.

II.

Summary judgment standard

Summary judgment is proper when the evidence shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-52 (1986). Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails . . . to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Curtis v. Anthony*, 710 F.3d 587, 594 (5th Cir. 2013) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

The Court must draw reasonable inferences and construe evidence in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Although the evidence is viewed in the light most favorable to the nonmoving party, a nonmovant may not rely on "conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence" to create a genuine issue of material fact sufficient to survive summary judgment. *Freeman v. Tex. Dep't of Criminal Justice*, 369 F.3d 854, 860 (5th Cir. 2004).

III.

The general rule: one person, one vote

In 1963, Justice Douglas, writing for the Supreme Court, stated that "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the

Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing one person, one vote." *Gray v. Sanders*, 372 U.S. 368, 381 (1963). The justiciability of a claim based on this principle was first recognized in *Baker v. Carr*, 369 U.S. 186 (1962). The Supreme Court extended the application of the one person, one vote principle to state legislatures in *Reynolds v. Sims*, 377 U.S. 533 (1964), and local governmental units such as counties and cities in *Avery v. Midland County*, 390 U.S. 474 (1968).

In *Reynolds v. Sims*, the Alabama Legislature had failed to reapportion itself since 1901. 377 U.S. at 540. After 60 years of population growth, the legislative districts were severely malapportioned. Id. Because the vote of individuals in overpopulated districts carried less weight than the vote of individuals in underpopulated districts, the voters in disfavored areas were being deprived of their right to an equal vote. *Id.* at 562-568. The Court found the districting schemes in Alabama to be unconstitutional and held that "[t]he Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races." *Id.* at 568. Thus, "the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Id.* This means that the State must "make an honest and good faith effort to construct districts. . . as nearly of equal population as is practicable." *Id.* at 577. The Court stated that "the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." *Id.* at 579. The Court did note that state legislative districts far outnumber congressional districts so more flexibility

is permitted in apportionment of state seats. *Id.* at 578. The Court further noted that any deviations in population must be based on clearly rational state policy. *Id.* at 582.

Subsequent cases tested the limits of constitutionally permissible population deviations in apportionment plans, and the results differ based on the proffered explanation for the deviation and whether the record supports the explanation. *See Connor v. Finch*, 431 U.S. 407 (1977) (court drawn Senate plan and aspects of the House plan held unconstitutional because the record showed that the state policy of protecting the integrity of political subdivisions and historical boundaries could have been achieved with less deviation); *see also Brown v. Thomson*, 462 U.S. 835 (1983) (one district with substantial population deviation held constitutional because it was based on Wyoming's long standing, consistently applied, and clearly legitimate state policy of using counties as representative districts).

IV.

The *Salver/Ball* exception

While the one person, one vote principle is firmly embedded in American jurisprudence, the Supreme Court had the foresight to realize that exceptions to the rule may arise. In *Avery*, the Court explained that "[w]ere the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's

functions." 390 U.S. at 483-484. Under the facts in *Avery*, the Court found that the Commissioners Court had "general government powers over the entire geographic area served by the body" and a "substantial variation from equal population" in drawing districts would violate the one person, one vote principle. *Id.* at 484-85. However, the Court in *Avery* left open the question of whether representation in "special purpose" districts could be apportioned based on interest rather than population. Two years later, the Supreme Court in *Hadley v. Junior College District*, 397 U.S. 50 (1970), determined that a plan for electing junior college trustees violated the Equal Protection Clause and reiterated that one person, one vote is the general rule but again acknowledged that an exception to the rule may be recognized under a different set of facts:

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from

> normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds, supra*, might not be required, but certainly we see nothing in the present case that indicates that the activities of these trustees fit in that category.

Hadley, 397 U.S. at 56.

Three years later, in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 720 (1973), the Supreme Court was "presented with the issue expressly reserved in *Avery*." The *Salyer* case involved a water storage district that was created by the California Legislature to provide a local response to the problem of inadequate water supplies.[1] The water storage district's purpose, power, and authority was described as follows:

> Such districts are authorized to plan projects and execute approved projects for the acquisition, appropriation, diversion, storage, conservation, and distribution of water. Incidental to this general power, districts may acquire, improve, and operate any necessary works for the storage and distribution of water as well as any drainage or reclamation works connected therewith, and the generation and distribution of hydroelectric power may be provided for. They may fix tolls

[1] As the Court noted, the California Legislature has the authority to create not only water storage districts, but also irrigation districts, water conservation districts, and flood control districts. *Salyer*, 410 U.S. at 723.

> and charges for the use of water and collect them from all persons receiving the benefit of the water or other services in proportion to the services rendered. The costs of the projects are assessed against district land in accordance with the benefits accruing to each tract held in separate ownership.

410 U.S. at 723-24 (internal citations and quotations omitted). The water storage district was governed by a board of directors elected from the divisions within the district. *Id.* at 724. The *Salyer* plaintiffs claimed the qualifications for voting in the elections for directors, which were based on land ownership rather than mere residency, violated their right to equal protection of the laws under the Fourteenth Amendment. After considering the parties' arguments, the Court found that an exception to the general rule was warranted and applied the rational basis test to find the voter qualification scheme constitutional:

> We conclude that the appellee water storage district, by reason of its special limited purpose and of the disproportionate effect of its activities on landowners as a group, is the sort of exception to the rule laid down in *Reynolds* which the quoted language from *Hadley*, *supra*, and the decision in *Avery*, *supra*, contemplated.
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> * * *
>
> [We] hold that the voter qualification for water storage district elections was

> rationally based and did not violate the Equal Protection Clause.

Id. at 728, 734-3 5. In its reasoning, the Court focused on the purpose of the water storage district, its power and authority, and the proportionality of the benefits and burdens on the people and the land affected by its operations. The Court explained:

> The appellee district in this case, although vested with some typical governmental powers, has relatively limited authority. Its primary purpose, indeed the reason for its existence, is to provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin. It provides no other general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body. There are no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundaries, and it does not have a fire department, police, buses, or trains. Not only does the district not exercise what might be thought of as "normal governmental" authority, but its actions disproportionately affect landowners. All of the costs of district projects are assessed against land by assessors in proportion to the benefits received. Likewise, charges for services rendered are collectible from persons receiving their benefit in proportion to the services.

Salyer, 410 U.S. at 728-29. The Court further explained that "it is quite understandable that the statutory framework for election of directors of the [water storage district] focuses on the land benefitted, rather than on people as such." *Id.* at 729-30. Thus, while members of the general public may be affected, the California Legislature was reasonable to conclude that landowners needed to be the dominant voice in its control. *Id.* at 730-32. The Court framed the issue as follows: "in the type of special district we now have before us, the question for our determination is not whether or not we [would have done something differently], but instead whether... 'any state of facts reasonably may be conceived to justify' California's decision . . .". *Id.* at 732 (quoting *McGowan v. Maryland*, 366 U.S. 420, 426 (1961)). The Court in *Salyer* could not find the property-based voting scheme to be "wholly irrelevant to achievement of the regulation's objectives." *Id.* at 730. Thus, the scheme passed the rational basis test and did not violate the Equal Protection Clause. *Id.* at 735.

The Supreme Court decided a similar case on the same day it decided the *Salyer* case. *Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist.*, 410 U.S. 743, 745 (1973). Again, the Court held, based on the reasoning in *Salyer*, that the watershed district was a governmental unit of special or limited purpose and the voting scheme in question, which entitled only landowners to vote according to acreage, did not violate the Equal Protection Clause. *Id.*

Several years later, in *Ball v. James*, 451 U.S. 355 (1981), the Supreme Court revisited this issue. The *Ball* case involved a challenge to the constitutionality of an Arizona statute providing that

voting in elections for directors of an agricultural improvement and power district was limited to landowners and their voting power was apportioned based on the number of acres owned. The Court described the special purpose district as follows:

> The public entity at issue here is the Salt River Project Agricultural Improvement and Power District, which stores and delivers untreated water to the owners of land comprising 236,000 acres in central Arizona. The District, formed as a governmental entity in 1937, subsidizes its water operations by selling electricity, and has become the supplier of electric power for hundreds of thousands of people in an area including a large part of metropolitan Phoenix. Nevertheless, the history of the District began in the efforts of Arizona farmers in the 19th century to irrigate the arid lands of the Salt River Valley, and, as the parties have stipulated, the primary purposes of the District have always been the storage, delivery, and conservation of water.
>
> * * *
>
> As noted by the Court of Appeals, the services currently provided by the Salt River District are more diverse and affect far more people than those of the Tulare Lake Basin Water Storage District. Whereas the Tulare District included an area entirely devoted to agriculture and populated by only 77 persons, the Salt River District includes

> almost half the population of the State, including large parts of Phoenix and other cities. Moreover, the Salt River District, unlike the Tulare District, has exercised its statutory power to generate and sell electric power, and has become one of the largest suppliers of such power in the State. Further, whereas all the water delivered by the Tulare District went for agriculture, roughly 40% of the water delivered by the Salt River District goes to urban areas or is used for nonagricultural purposes in farming areas. Finally whereas all operating costs of the Tulare District were born by the voting landowners through assessments apportioned according to land value, most of the capital and operating costs of the Salt River District have been met through the revenues generated by the selling of electric power.

Ball, 451 U.S. at 357, 366. "Nevertheless, a careful examination of the Salt River District reveal[ed] that, under the principles of the *Avery*, *Hadley*, and *Salyer* cases, these distinctions d[id] not amount to a constitutional difference." *Id.* at 366. First, the Salt River District "did not exercise the sort of governmental powers that invoke the strict demands of *Reynolds*." *Id.* Although the District could raise money through an acreage-proportionate taxing power or through bonds, it could not impose ad valorem property taxes or sales tax. *Id.* at 360, 366. It could not "enact any laws governing the conduct of citizens, nor [did] it administer such normal functions

of government as the maintenance of streets, the operation of schools, or sanitation, health, or welfare services." *Id.* at 366. Second, the District's water functions, which were the primary and originating purpose of the District, were relatively narrow. The District did not own, sell, or buy water, or control the use of the water they delivered. The District stored the water behind its dams, conserved it from loss, and delivered it through project canals. Alhough as much as 40% of the water went to nonagricultural purposes, the Court found that "the distinction between agricultural and urban land is of no special constitutional significance in this context." *Id.* at 367. And finally, "neither the existence nor size of the District's [hydroelectric] power business affect[ed] the legality of its property-based voting scheme." *Id.* at 368. The ability to generate and sell electricity did not change the character of the District. The storage, conservation, and delivery of water was still the primary purpose of the District. *Id.* at 368-69. The Supreme Court found that the purpose, authority, and functions of the Salt River District justified a departure from the strict demands of the one person, one vote principle. *Ball*, 451 U.S. at 370. The voting scheme was reasonably related to the statutory objectives for the District and Arizona had a rational basis for limiting the persons eligible to vote and weighing their votes differently. *Id.* at 371.

The California Supreme Court, sitting *en banc*, applied the *Salyer/Ball* exception in determining the constitutionality of the property-based voting scheme for the Southern California Rapid Transit District. *Southern Calif Rapid Transit Dist. v. Bolen*, 822 P.2d 875, 1 Cal. 4th 654 (1992). The Court in Bolen

thoroughly analyzed the Salyer/Ball exception and observed:

> No one reviewing this area of the high court's equal protection jurisprudence can fail to be impressed with the result in *Ball* not because the opinion represents an analytical advance over the principles developed in *Salyer*, but because it illustrates the majority's steadfast willingness to adhere to the *Salyer* analysis in the face of a record presenting such compelling, if "constitutionally irrelevant," facts. Clearly, in light of *Ball*, as far as the governmental function analysis is concerned, the constitutionally decisive fact is that the voting scheme at issue reflects the "narrow primary purpose for which the [public entity] is created."

Bolen, 1 Cal. 4th at 668-69 (quoting *Ball*, 451 U.S. at 369).

There have been cases since *Salyer* and *Ball* with facts that did not fit within the exception, but federal courts are well aware of the exception and its application when circumstances warrant. *See*, *e.g.*, *Rice v. Cayetano*, 528 U.S. 495, 522 (2000) (Supreme Court found that the *Salyer/Ball* exception did not apply to statewide elections for the Office of Hawaiian Affairs, which limited voters to native Hawaiians; rather, the Fifteenth Amendment controlled); *Kessler v. Grand Central Dist. Mgmt. Ass'n, Inc.*, 158 F.3d 92, 108 (2nd Cir 1998) (Second Circuit found the *Salyer/Ball* exception applied to the Grand Central Business District's weighted voting scheme which

guaranteed majority Board representation to property owners); *Hellebust v. Brownback*, 824 F.Supp. 1506, 1510 (D. Kan. 1993) (*Salyer/Ball* exception did not apply because the State Board of Agriculture's general governmental power to regulate for the benefit of the health, safety, and welfare of all Kansas residents made it subject to the general rule in *Reynolds*), *aff'd*, 42 F.3d 1331 (10th Cir. 1994).

V.

The applicable standard

The threshold question is whether the strict demands of the one person one vote principle under *Reynolds* must be applied or a more relaxed rational basis review under the *Salyer/Ball* exception is appropriate.[2] If the one person one vote principle is applied, the EAA has a substantial burden of demonstrating a compelling justification for its apportionment scheme. If this case qualifies for an exception to the *Reynolds* principle, the constitutional test is less demanding and the Court must simply determine whether the apportionment scheme is rationally related to the statutory objectives of the

[2] This Court previously held, in a final consent decree entered in *Williams v. Edwards Underground Water District, et. al.*, No. SA-92-CA- 144, that "the District was established for a special limited purpose and its functions are of the narrow, special sort discussed in *Ball v. James*, 451 U.S. 355, 370 (1981)." *See* Docket no. 119, exh. T (May 5, 1994). The EAA's predecessor (EUWD) was the named defendant when the lawsuit began; the EAA became the statutory successor in 1993; and the consent decree was entered in 1994. The final consent decree was later vacated on other grounds. *See Williams v. Edwards Underground Water District, et. al.*, No. SA-92-CA- 144, docket nos. 2, 3 (W.D. Tex. Feb. 7, 2012).

EAA.[3] The Court begins by looking at the creation, purpose, power, and authority of the EAA.

A. Creation of the EAA

Severe droughts in the early 1900's prompted Texas citizens to approve the Conservation Amendment to the Texas Constitution, which calls for the conservation and preservation of all natural resources of the State. TEX. CONST. Art. XVI, § 59(a) ("The conservation and development of all of the natural resources of this State . . . and the preservation and conservation of all such natural resources of the State are . . . public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto"); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996). The Amendment authorizes the Legislature to pass all such laws as may be necessary and appropriate to protect our most precious natural resource water. TEX. CONST. Art. XVI, § 59(b) ("There may be created . . . such number of conservation and reclamation districts as may be determined to be essential")

The Edwards Aquifer ("the aquifer") is a unique underground system of water-bearing geologic formations in South-Central Texas. *Barshop*, 925 S.W.2d at 623. The aquifer is the primary source of water in the region. *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291 S.W.3d 392, 394 (Tex. 2009). Water

[3] The rational basis test has been applied in other equal protection challenges to the EAA Act. *See Barshop*, 925 S.W.2d at 631-32 (preferential allocation of water to existing users was rationally related to the goal of protecting the aquifer by controlling increased demand).

enters the aquifer through the ground as surface water and rainfall and leaves through well withdrawals and springflow. *Id.* The Coma! Springs and San Marcos Springs sit on the eastern edge of the aquifer. *Sierra Club v. Babbitt*, 995 F.2d 571, 573 (5th Cir. 1993). These springs systems are hydraulically connected to the aquifer. The volume of flow emanating from the springs is directly influenced by the water level of the aquifer, which in turn is influenced by the ratio of recharge over time to both natural discharge through springs and artificial discharge through wells. *See id.* Without regulation, during drought conditions, withdrawals from the aquifer increase and thereby reduce flows from the springs. *Shields v. Babbitt*, 229 F.Supp.2d 638, 645 (W.D. Tex. 2000), *vacated sub nom*, *Shields v. Norton*, 289 F.3d 832 (5th Cir. 2002), *cert. denied*, 537 U.S. 1071 (2002). The flow from these springs is vital for the survival of various species and feeds tributaries that flow to the bay and estuaries in the Gulf Coast. *Id.*; *Sierra Club v. Lujan*, 1993 WL 151353, at *33-35 (W.D. Tex. Feb. 1. 1993). "The prospect of future droughts always lingers in the face of ever-increasing demands for water from the aquifer." *Barshop*, 925 S.W.2d at 626.

In 1993, in response to a federal court order to protect aquifer-dependent threatened and endangered species,[4] and with "anticipated increases in the withdrawal of water from the aquifer and the potentially devastating effects of a drought, the Legislature determined it was necessary, appropriate, and a benefit to the welfare of this state to provide for the management of the aquifer." *Barshop*, 925 S.W.2d

[4] *Sierra Club v. Lujan*, 1993 WL 151353, at *33-35.

at 623-24. Thus, pursuant to its authority under Article XVI, § 59 of the Texas Constitution, the Legislature passed the Edwards Aquifer Authority Act ("the EAA Act") and "a conservation and reclamation district, to be known as the Edwards Aquifer Authority, [was] created in all or part of Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina and Uvalde counties." The EAA Act, § 1.01 -1.02 (docket no. 119, exh. A).

B. Purpose of the EAA

As the Supreme Court noted in *Ball*, "[a] key part of the *Salyer* decision was that the voting scheme for a public entity like a water district may constitutionally reflect the narrow primary purpose for which the district is created." 451 U.S. at 369. In *Salyer*, the "primary purpose, indeed the reason for [the district's] existence, [was] to provide for the acquisition, storage, and distribution of water. . .". *Salyer*, 410 U.S. at 728. Likewise, in *Ball*, the primary legislative purpose of the district was "to store, conserve, and deliver water for use by [d]istrict landowners, and the sole legislative reason for making water projects public entities was to enable them to raise revenue through interest-free bonds . . .". *Ball*, 451 U.S. at 369. In this case, the primary purpose of the EAA is the management, protection, preservation, and conservation of the Edwards Aquifer, a unique and distinctive natural resource. More specifically, § 1.01 of the Act provides:

> The legislature finds that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In

> keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state. Use of water in the district for beneficial purposes requires that all reasonable measures be taken to be conservative in water use.

Docket no. 119, exh. A (emphasis added). This Court previously described the purpose of the EAA as follows:

> [T]he Texas Legislature created the district in order to provide for the conservation, preservation, protection, and recharge of the underground water-bearing formations within the District and the prevention of waste and pollution of this underground water. The District also was created to ensure equitable allocation of underground water among human uses and users within the District, and to protect aquifer-supported habitats such as San Marcos Springs in Hays County and Comal Springs in Comal County.

Docket no. 119, exh. T; *Williams v. Edwards Underground Water District, et. al.*, No. SA-92-CA-

144, docket no. 2, exh. A (W.D. Tex. May 5, 1994), vacated on other grounds, docket no. 3 (Feb. 7, 2012).[5] The original legislative purpose of the EAA has not changed.

C. Powers and authority:

Special districts created pursuant to Article XVI, § 59 have only such powers and authorities as "may be conferred by law." TEX. CONST. Art. XVI, § 59(b). Thus, the EAA has only those powers expressly granted to it by the Texas Legislature. Those powers are generally set forth in § 1.08(a) of the Act, which states "[t]he authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer. The authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 50, 51, and 52, Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution." Docket no. 119, exh. A. "The authority's powers regarding underground water apply only to underground water within or withdrawn from the aquifer." § 1.08(b). Plaintiffs describe these powers as broad and far-reaching, but the EAA's power and authority is limited to carrying out its narrowly defined statutory purpose to manage, protect, preserve, and conserve the water in the aquifer.

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[5] *See* note 2, *supra*. The EAA is the statutory successor to the EUWD. The EAA was created in 1993, prior to entry of the 1994 consent decree.

Like the special purpose districts in *Salyer* and *Ball*, the EAA has the power to adopt and implement rules to exercise its authority, § 1.11(a), and the power to enforce those rules, § 1.11(c).[6] The EAA may issue or administer grants, loans, or other financial assistance to water users for water conservation and water reuse; receive grants, awards, and loans for use in carrying out its powers and duties; enter into contracts; sue and be sued in its own name; hire an executive director and delegate the power to hire employees to that executive director; own real and personal property; close abandoned, wasteful, or dangerous wells; hold permits under state or federal law pertaining to the Endangered Species Act; enforce Chapter 32 of the Water Code and rules adopted thereunder within the EAA boundaries; own and/or operate recharge facilities as long as it does not include a facility to re-circulate water at Comal or San Marcos Springs; and the power of eminent domain (which does not include the acquisition of rights to underground water by the power of eminent domain). § 1.11(d), 1.24. The EAA has the duty to manage withdrawals of water from the aquifer and monitor withdrawal points, such as wells, through a permit

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[6] *See* docket no. 119, Exh. E, EAA rules, effective December 2013. These rules implement the Act and other applicable law and provide a framework for carrying out the legislative mandate to manage, protect, preserve, and conserve the water in the aquifer. The rules address, *inter alia*, permit applications, administrative fees, groundwater withdrawals, exempt wells, production wells, exportation prohibition, waste prevention, pollution prevention, recharge/storage/recovery projects, meters and reporting, water quality, well construction/operation/maintenance, well closures, spill reporting, registration and storage of regulated substances, storage tanks, water management, groundwater conservation and reuse, conservation grants, and penalties.

process. §§ 1.14 - 1.23. The EAA is tasked with developing, implementing, and reviewing a "comprehensive water management plan that includes conservation, future supply, and demand management plans." § 1.25. The BAA must also have a "critical period management plan" that addresses discretionary and nondiscretionary use; reductions in discretionary use; and if further reductions become necessary, reductions of nondiscretionary use by permitted or contractual users. § 1.26. Additionally, the BAA must develop a "recovery implementation program" that includes a habitat conservation plan, § 1.26A, and conduct research that focuses on water quality, augmentation of springflow, enhancement of recharge and yield, management of water resources, water conservation, water use/reuse, drought management, and alternative supplies of water for users, § 1.27. The BAA "shall assess" equitable aquifer management fees based on aquifer use to finance its administrative expenses and programs, § 1.29. And the EAA may suspend permits and/or assess penalties when aquifer water is impermissibly withdrawn, wasted, or polluted. § 1.35 - 1.40.

The EAA cannot impose ad valorem property taxes or sales taxes. *See Ball*, 451 U.S. at 366. Nor does BAA provide general public services such as the operation of schools, housing, transportation, public utilities, road building and maintenance, public sanitation, health, welfare services or anything else of the type ordinarily financed by a municipal body. *See Ball*, 451 U.S. at 366; *see also Salyer*, 410 U.S. at 729; *accord Kessler v. Grand Cent. Dist. Mgmt. Ass'n, Inc.*, 158 F.3d 92, 104 (2nd Cir. 1998)("GCDMA cannot be said to exercise the core powers of sovereignty typical

of a general purpose governmental body"); *cf Avery*, 390 U.S. at 484; *cf Hadley*, 397 U.S. at 53-54.

Plaintiffs contend the EAA is more akin to a general purpose governmental body than a special purpose district because it "controls . . . how everyone uses [a]quifer water." Docket no. 168, pp. 16-19. But the EAA asserts control through permit conditions only insofar as needed to fulfill its legislative mandate to conserve water from the aquifer. *See* EAA Act § 1.14 (authorizations to withdraw water from the aquifer shall be limited to "achieve water conservation" and "maximize the beneficial use of water available for withdrawal from the aquifer"); § 1.15 (each permit must specify the maximum rate and total volume of water that the water user may withdraw); § 1.26 (critical period management plan must distinguish between discretionary use and nondiscretionary use; require reductions of all discretionary use to the maximum extent feasible; require reduction of nondiscretionary use by permitted or contractual users and, to the extent further reductions are necessary, require reduction of use in specified order). Plaintiffs also make the broad assertion that the EAA has the "power to control how property owners can use the surface of their land." Docket no. 168, p. 20. Again, however, the EAA imposes limited restrictions only insofar as necessary to carry out its legislative mandate to protect the aquifer from pollution. *See* EAA Act, § 1.08(a) (authority to "protect the aquifer" and "prevent the waste or pollution of water" in the aquifer); 1.08(c) ("to prevent pollution and enforce water quality standards included within the authority's boundaries and within a buffer zone that includes all of the area less than five miles outside of those counties, [the EAA]

shall apply pollution control regulations equally and uniformly throughout the area within the counties and the buffer zone"); and 1.081 ("[t] o protect the water quality of the aquifer, [the EAA] shall adopt rules regarding the control of fires in the aquifer's recharge zone"). The rules implemented under this authority include restrictions meant to keep sources of pollution such as sewage, liquid waste, livestock or poultry yards, cemeteries, pesticide facilities, chemical storage, standing water, debris, and coal tar-based pavement away from aquifer wells and prevent spills that release into the environment within the recharge zone of the aquifer. Docket no. 119, exh. E, EAA rules. As Plaintiffs concede, the aquifer is "highly vulnerable to contamination" (docket no. 168, p. 20) and the EAA cannot carry out its duty to protect the aquifer without implementing specific preventive measures. But these protective measures have a special purpose and their enforcement does not equate to a general purpose governmental function. Plaintiffs further allege that the EAA performs "classic governmental functions" such as making rules, deciding which permits to issue, and determining penalties. Docket no. 168, pp. 21, 26-27. But this alone does not make the EAA a general purpose governmental entity. These functions are incidental to the EAA's primary purpose to manage, protect, preserve, and conserve the water in the aquifer. It would have been meaningless for the Legislature to create the EAA without giving it the tools it needs to carry out its duties and responsibilities.

The EAA is tasked with the power to carry out the legislative mandate to manage, protect, preserve, and conserve the water in the aquifer, but it does not have the authority to "exercise the sort of

governmental powers that invoke the strict demands of *Reynolds*." *Ball*, 451 U.S. at 366. The Texas Legislature established the EAA to fulfill the Act's limited purpose and scope, not a broader general governmental purpose. Because the EAA has a limited purpose, the powers to fulfill that purpose are also limited in scope and effect. The EAA is clearly a special purpose district that falls within the *Salyer/Ball* exception to the one person, one vote requirement.

VI.

The BAA apportionment scheme has a rational basis

A. The single member district apportionment scheme:

The EAA is "governed by a board of directors composed of 15 directors elected from the single-member election districts." EAA Act § 1.09. "The elected directors serve staggered four-year terms with as near as possible to one-half of the members' terms expiring December 1 of each even-numbered year." *Id*. Additionally, two nonvoting directors are appointed, *Id.* § 1.091(a), making a total of 17 BAA directors – all of whom can participate but only 15 of whom can vote. The single-member districts used to elect the 15 voting board members are distributed among the counties as follows: seven in Bexar County; one in Comal County; one in Comal and Guadalupe Counties combined; one in Hays County; one in Hays and Caldwell Counties combined; one in Medina County; one in Medina and Atascosa Counties combined; and two in Uvalde County. *Id.* § 1.093(a)-(o).

Section 1.094 of the Act permits modification of the district lines as follows:

(a) After each federal decennial census, or as needed, the board may modify the district lines described in Section 1.093 of this article. During March or April of an even-numbered year, the board by order may modify the district lines described in Section 1.093 of this article to provide that the lines do not divide a county election precinct except as necessary to follow the authority's jurisdictional boundaries.

(b) Modifications under this section may not result in:

(1) the dilution of voting strength of a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.) as amended;

(2) a dilution of representation of a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.), as amended;

(3) discouraging participation by a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.), as amended; or

(4) increasing or decreasing the number of districts in any county.

(c) A county election precinct established by a county in accordance with Chapter 42, Election Code, may not contain territory from more than one authority district.

EAA Act, § 1.094.

Following the 2010 census, the BAA reconfigured the districts and the plan was approved by the governing board in 2012. Docket no. 36, p. 5; docket no. 72, p. 7. The EAA submitted the changes to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act, and preclearance was granted. Docket no. 36, p. 5; docket no. 119, exh. R. The redistricting in 2012 was primarily an effort to avoid splitting precincts, which facilitates joint elections between the EAA and the counties within its jurisdiction. Docket no. 119, exh. R. Subsequent elections have proceeded under the current apportionment plan during the pendency of this lawsuit.[7]

B. Disproportionate impact and balance of interests

In *Salyer*, the electoral franchise was restricted to only landowners and their votes were apportioned according to the assessed valuation of the land. 410 U.S. at 724-25. In *Ball*, the franchise was limited to landowners and their vote was weighted by the amount of land owned. 451 U.S. at 357. In this case, the electoral franchise is not limited to only permit holders or landowners with wells; instead, all residents within the jurisdictional boundaries of the EAA are allowed to vote. However, the apportionment scheme for the BAA board of directors is carefully balanced to reflect the different water interests in the subregions that are disproportionately impacted by the EAA. In exercising its authority to manage the aquifer, the EAA must balance discharge and recharge, pumping and spring flow. Docket no. 119,

[7] Although Plaintiffs seek permanent injunctive relief, they did not seek to enjoin any elections during the pendency of this lawsuit.

exh. Z. The various interests, which vary by subregion, include agricultural needs, spring flow contributions, pumping demands, municipal use, industrial use, protection of threatened and endangered species, downstream protection, and recharge. *Id.* When it comes to municipal use, the City of San Antonio is responsible for the most discharge, but the City includes only about 0.4% of the area of the recharge zone. *Id.* at p. 13. Two-thirds of the recharge occurs in the Western counties, about ten percent in Bexar County, and most of the rest in Comal County. *Id.* When it comes to per capita use, the average person in the agricultural counties uses approximately nine to eleven times as much water as the average person in Bexar County, and the average person in the spring flow counties uses more than two times as much water as the average person in Bexar County. Docket no. 169, p. 27; docket no. 119, exh. F, SS. Comal and San Marcos Springs also provide the habitat for several threatened and endangered species. Docket no. 119, exh. Z at 28. Nearly all of the pumping for agriculture takes place in Uvalde and Medina counties, and irrigation pumping is highly seasonal and extremely variable. *Id.* at 39. There is a finite amount of water to meet all interests and "[a]ny one user's pumping quickly and directly affects the availability of the resource for others." *Id.* at 112-13. The various interests are constantly competing for this natural resource, and the decisions made by the EAA's board of directors have a disproportionate impact on voters in different counties and subregions.

The EAA Act dictates how the districts are apportioned and it would not have been passed "if it was . . . a San Antonio-only bill." Docket no. 119, exh.

E, R. Puente deposition at 58:1-8.[8] Nor would it have passed "if it was too far slanted in the springs interest or the agricultural interest." *Id.* at 93:15-94:4. There was an understanding that a balance of water interests was needed so that "no one could control . . . pumping permits, pumping withdrawals." *Id.* at 93:3-23. The Texas Legislature "felt that San Antonio controlling the Edwards Aquifer was not good for the State of Texas" and a "balanced approach to the EAA's board was the right approach." *Id.* at 98:25-99:13. This balanced approach, which took urban, agricultural, and spring flow interests into account in terms of voting power on the board, was the primary focus of the Legislature. *Id.* at 123:8-20. SAWS expressed its agreement with this balanced approach when the bill was being considered in the Legislature, as reflected in SAWS legal counsel's testimony before the Senate Natural Resource Committee:

> The governing body of the board would be balanced among the regional interests . . . If you compare the historical record, you can see that among aquifer beneficiaries, including the spring flow, usage is divided roughly one-third, one-third, one-third, in this fashion. Approximately one-third of the usage of this resource is by irrigated agriculture. Approximately one-third of the use of this resources is by municipal and industrial customers, primarily located in Bexar County, but spread throughout the five-county region. The remaining one-third of usage

[8] Robert Puente, former state representative and current president and CEO of SAWS, was the original sponsor of the bill.

> constitutes usage in the eastern counties or north eastern counties, Hays and Comal, but primarily spring discharge issuing from Comal and San Marcos springs, upon which that region and downstream users rely. The Senate Bill 1320 balances the governing board three, three, and three among those interests considering the Comal and Hays County interest as representing the spring flow requirements.

Docket no. 119, exh. K, Senate Natural Resource Committee hearing transcript at 27:13-28:15. When the Texas Legislature amended the Act two years later, SAWS still agreed with the balanced interest approach. As Mr. Puente explained, "[t]here will be an amendment offered that changes that elected board to a 5/7/5 board. The western counties will get an additional member, and the eastern counties will get an additional member; or the downstream people will get an additional member. Bexar County specifically will have seven members." Docket no. 119, exh. O, House Natural Resource Committee hearing transcript at 2:16-25.

Since the BAA's inception, the number of directors has changed and the original appointment scheme changed to a single member district electoral scheme, but the delicate balance of subregional interests has never changed. As cogently stated by Intervenor-Defendant NBU, "[t]he scheme of proportional representation designed by the Legislature not only reflects the interest of the region, it was the *sine qua non* for the legislative enactment required to conserve and protect the water resources

of the Edwards aquifer." Docket no. 137, p. 3. Plaintiffs want apportionment by population rather than apportionment by subregional water interests, but population-based representation would defeat the purpose of the EAA and destroy the careful balance of interests upon which it was formed. SAWS complains that, as the largest permit holder, it bears the highest financial impact. However, this factor does not outweigh the others, and did not sway the Supreme Court in *Ball*. 451 U.S. at 368 ("neither the existence nor size" of the hydroelectric power business affected the legality of the District's voting scheme).

It is undisputed that some districts are urban and very populated while others are rural and less populated; however, the EAA is a special purpose district and its apportionment plan is not subject to the strict demands of the one person one vote principle under *Reynolds*. The EAA single member district apportionment plan is carefully balanced to reflect the different water interests in the subregions that are disproportionately impacted by the EAA and thus meets the more relaxed rational basis review under *Salyer/Ball*. The apportionment scheme is rationally related to the statutory objectives of the EAA and does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

It is therefore ORDERED that the Motion for Summary Judgment on Plaintiffs' One Person, One Vote Equal Protection Claim filed by the Edwards Aquifer Authority (docket no. 119) and joined by Intervenor-Defendants Guadalupe-Blanco River Authority, City of Uvalde, County of Uvalde, City of San Marcos, and New Braunfels Utilities (docket nos.

117, 122, 124, 129, and 137) is GRANTED. Plaintiffs' Joint Motion for Partial Summary Judgment on One Person, One Vote Equal Protection Claim (docket no. 168) is DENIED. The Equal Protection claims against the EAA, brought pursuant to 42 U.S.C. § 1983, are DISMISSED with prejudice. SAWS has no other pending claims. The LULAC plaintiffs shall file a written advisory within twenty days from the date below indicating whether they will proceed with their Section 2 claim.

SIGNED this 18 day of June, 2018.

/s/
ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE

[ENTERED: July 17, 2018]

FILED
JUL 17 2018
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY /s/
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), et. al.	)	
Plaintiffs	)	
and	)	
CITY OF SAN ANTONIO, acting by and through the San Antonio Water System	)	
Plaintiff-Intervenor	)	CIVIL ACTION NO. SA-12-CA-620-OG
v.	)	
EDWARDS AQUIFER AUTHORITY	)	
Defendant	)	
and	)	

CITY OF SAN MARCOS,	)
CITY OF UVALDE,	)
COUNTY OF UYALDE,	)
NEW BRAUNFELS	)
UTILITIES and	)
GUADALUPE BLANCO	)
RIVER AUTHORITY	)
	)
Defendant-Intervenors	)

O R D E R

On June 18, 2018, the Court granted the EAA's motion for summary judgment on the One Person, One Vote Equal Protection claims. Docket no. 193. The City of San Antonio/SAWS had no other claims, but the LULAC plaintiffs had claims remaining. In the summary judgment order, the Court ordered the LULAC plaintiffs to advise the Court whether they intended to pursue their remaining claims. On July 9, 2018, the LULAC plaintiffs filed a written advisory stating they no longer wished to pursue their remaining claims and requested that the Court enter an order of dismissal without prejudice on their Section 2 and constitutional vote dilution claims.

It is therefore ORDERED that the LULAC plaintiffs' Section 2 and constitutional vote dilution causes of action are DISMISSED without prejudice. There are no other claims remaining between the parties. Final judgment may be entered accordingly and this case may be closed.

SIGNED this 17 day of July, 2018.

/s/
ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE

Sec. 59. CONSERVATION AND DEVELOPMENT OF NATURAL RESOURCES; DEVELOPMENT OF PARKS AND RECREATIONAL FACILITIES; CONSERVATION AND RECLAMATION DISTRICTS; INDEBTEDNESS AND TAXATION AUTHORIZED.

(a) The conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semiarid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment. All such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as may be prescribed by law. The Legislature shall also authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds and for the maintenance of such districts and improvements. Such indebtedness shall be a lien upon the property assessed for the payment thereof. The Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified voters of such district and the proposition adopted.

(c-1) In addition and only as provided by this subsection, the Legislature may authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized by this section to be developed and financed with taxes before September 13, 2003. For development of such parks and recreational facilities, the Legislature may authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, or

Montgomery County, or for the Tarrant Regional Water District, a water control and improvement district located in whole or in part in Tarrant County. All the indebtedness may be evidenced by bonds of the conservation and reclamation district, to be issued under regulations as may be prescribed by law. The Legislature may also authorize the levy and collection within such district of all taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of the bonds and for maintenance of and improvements to such parks and recreational facilities. The indebtedness shall be a lien on the property assessed for the payment of the bonds. The Legislature may not authorize the issuance of bonds or provide for indebtedness under this subsection against a conservation and reclamation district unless a proposition is first submitted to the qualified voters of the district and the proposition is adopted. This subsection expands the authority of the Legislature with respect to certain conservation and reclamation districts and is not a limitation on the authority of the Legislature with respect to conservation and reclamation districts and parks and recreational facilities pursuant to this section as that authority existed before September 13, 2003.

(d) No law creating a conservation and reclamation district shall be passed unless notice of the intention to introduce such a bill setting forth the general substance of the contemplated law shall have been published at least thirty (30) days and not more than ninety (90) days prior to the introduction thereof in a newspaper or newspapers having general circulation in the county or counties in which said district or any part thereof is or will be located and by

delivering a copy of such notice and such bill to the Governor who shall submit such notice and bill to the Texas Water Commission, or its successor, which shall file its recommendation as to such bill with the Governor, Lieutenant Governor and Speaker of the House of Representatives within thirty (30) days from date notice was received by the Texas Water Commission. Such notice and copy of bill shall also be given of the introduction of any bill amending a law creating or governing a particular conservation and reclamation district if such bill (1) adds additional land to the district, (2) alters the taxing authority of the district, (3) alters the authority of the district with respect to the issuance of bonds, or (4) alters the qualifications or terms of office of the members of the governing body of the district.

(e) No law creating a conservation and reclamation district shall be passed unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. Each such commissioners court and governing body may file its written consent or opposition to the creation of the proposed district with the governor, lieutenant governor, and speaker of the house of representatives. Each special law creating a conservation and reclamation district shall comply with the provisions of the general laws then in effect relating to consent by political subdivisions to the creation of conservation and reclamation districts and to the inclusion of land within the district.

(f) A conservation and reclamation district created under this section to perform any or all of the purposes of this section may engage in fire-fighting activities and may issue bonds or other indebtedness for fire-fighting purposes as provided by law and this constitution.

(Added Aug. 21, 1917; Subsec. (d) added Nov. 3, 1964; Subsec. (e) added Nov. 6, 1973; Subsec. (f) added Nov. 7, 1978; Subsec. (c) amended Nov. 2, 1999; Subsec. (a) amended and (c-1) added Sept. 13, 2003.) (TEMPORARY TRANSITION PROVISIONS for Sec. 59: See Appendix, Note 1.)

EDWARDS AQUIFER AUTHORITY

EDWARDS AQUIFER AUTHORITY ACT

(includes amendments through September 1, 2019 effective date)

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended by Act of May 16, 1995, 74th Leg., R.S., ch. 524, § 1, sec. 3.03, 1995 Tex. Gen. Laws 3280; Act of May 29, 1995, 74th Leg., R.S., ch. 261, § 1, secs. 1.09, 1.091, 1.092, 1.093, 1995 Tex. Gen. Laws 2505, 2505–16; Act of May 6, 1999, 76th Leg., R.S., ch. 163, § 1, sec. 1.094, 1999 Tex. Gen. Laws 634, 634–35; Act of May 25, 2001, 77th Leg., R.S., ch. 1192, § 1, sec. 1.03(26), (27), 2001 Tex. Gen. Laws 2696, 2696–97; Act of May 27, 2001, 77th Leg., R.S., ch. 966, §§ 2.60–2.62, 6.01–6.05, secs. 1.03(26), (27), 1.29(e), 1.44(e), 1.115, 1.15(e), (f), 1.11(h), 1.41(e), 2001 Tex. Gen. Laws 1991, 2021–22, 2075–76; Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), sec. 1.12, 2003 Tex. Gen. Laws 3188, 3193; Act of May 23, 2007, 80th Leg., R.S., ch. 510, § 1, sec. 1.081, 2007 Tex. Gen. Laws 900; Act of May 27, 2007, 80th Leg., R.S., ch. 1351, §§ 2.01–2.11, secs. 1.11(f), (f-1), (f-2), 1.14(a), (c), (e), (f), (h), 1.16(g), 1.19(b), 1.22(a), 1.26, 1.26A, 1.29(b), (h), (i), 1.45(a), 1.14(b), (d), 1.21, 1.29(a), (c), (d), 2007 Tex. Gen. Laws 4612, 4627–34; Act of May 27, 2007, 80th Leg., R.S., ch.

1430, §§ 12.01–12.11, secs. 1.11(f), (f-1), (f-2), 1.14(a), (c), (e), (f), (h), 1.16(g), 1.19(b), 1.22(a), 1.26, 1.26A, 1.29(b), (h), (i), 1.45(a), 1.14(b), (d), 1.21, 1.29(a), (c), (d), 2007 Tex. Gen. Laws 5848, 5901–09; Act of May 21, 2009, 81st Leg., R.S., ch. 1080, § 1, sec. 1.04, 2009 Tex. Gen. Laws 2818, 2818–25; Act of May 20, 2013, 83rd Leg., R.S., ch. 783, § 1, sec. 1.033(c), (d), 2013 Tex. Gen. Laws 1998, 1998–99; Act of May 24, 2019, 86th Leg., R.S., ch. ___, § 1, sec. 1.34(a)-(f), 2019 Tex. Gen. Laws ____, ____-__; Act of May 26, 2019, 86th Leg., R.S. ch. ___, § 1, sec. 1.44(c), (e), (c-1), (e-1), 2019 Tex. Gen. Laws ____, ____-__; Act of May 27, 2019, 86th Leg., R.S., ch. ___, §§ 1–15, secs. 1.03(20), 1.07, 1.08(a), 1.09(d), (i)-(k), 1.11(d), 1.21, 1.211, 1.26(a), 1.29(b), (f), 1.361, 1.37(j), (n), (r), 1.38, 1.46, 3.01(d), 36.205(e), 1.25(b), 36.101(1), 36.1011(e), 36.125, 36.419, 2019 Tex. Gen. Laws ____, ____-__.

EDWARDS AQUIFER AUTHORITY ACT

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CHAPTER 626

S.B. No. 1477

AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer; granting the power of eminent domain; authorizing the issuance of bonds; providing civil and administrative penalties; and validating the creation of the Uvalde County Underground Water Conservation District.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1

SECTION 1.01 FINDINGS AND DECLARATION OF POLICY. The legislature finds that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state. Use of water in the district for beneficial purposes requires that all reasonable measures be taken to be conservative in water use.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.01, 1993 Tex. Gen. Laws 2350.

SECTION 1.02 CREATION. (a) A conservation and reclamation district, to be known as the Edwards Aquifer Authority, is created in all or part of Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina, and Uvalde counties. A confirmation election is not necessary. The authority is a governmental agency and a body politic and corporate.

(b) The authority is created under and is essential to accomplish the purposes of Article XVI, Section 59, of the Texas Constitution.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.02, 1993 Tex. Gen. Laws 2350, 2351.

SECTION 1.03 DEFINITIONS. In this article:

(1) "Aquifer" means the Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(2) "Augmentation" means an act or process to increase the amount of water available for use or springflow.

(3) "Authority" means the Edwards Aquifer Authority.

(4) "Beneficial use" means the use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(5) "Board" means the board of directors of the authority.

(6) "Commission" means the Texas Natural Resource Conservation Commission.

(7) "Conservation" means any measure that would sustain or enhance water supply.

(8) "Diversion" means the removal of state water from a watercourse or impoundment.

(9) "Domestic or livestock use" means use of water for:

(A) drinking, washing, or culinary purposes;

(B) irrigation of a family garden or orchard the produce of which is for household consumption only; or

(C) watering of animals.

(10) "Existing user" means a person who has withdrawn and beneficially used underground water from the aquifer on or before June 1, 1993.

(11) "Industrial use" means the use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

(12) "Irrigation use" means the use of water for the irrigation of pastures and commercial crops, including orchards.

(13) "Livestock" means animals, beasts, or poultry collected or raised for pleasure, recreational use, or commercial use.

(14) "Municipal use" means the use of water within or outside of a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity, including the use of treated effluent for certain purposes specified as follows. The term includes:

(A) the use of water for domestic use, the watering of lawns and family gardens, fighting fires, sprinkling streets, flushing sewers and drains, water parks and parkways, and recreation, including public and private swimming pools;

(B) the use of water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands; and

(C) the application of treated effluent on land under a permit issued under Chapter 26, Water Code, if:

(i) the primary purpose of the application is the treatment or necessary disposal of the effluent;

(ii) the application site is a park, parkway, golf course, or other landscaped area within the authority's boundaries; or

(iii) the effluent applied to the site is generated within an area for which the commission has adopted a rule that prohibits the discharge of the effluent.

(15) "Order" means any written directive carrying out the powers and duties of the authority under this article.

(16) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(17) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of any water in the state, or the contamination of any water in the state, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, property, or public health, safety, or welfare or that impairs the usefulness of the public enjoyment of the water for any lawful or reasonable purpose.

(18) "Recharge" means increasing the supply of water to the aquifer by naturally occurring channels or artificial means.

(19) "Reuse" means authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(20) "Underground water" or "groundwater" means water percolating beneath the earth.

(21) "Waste" means:

(A) withdrawal of underground water from the aquifer at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from the aquifer if the water produced is not used for a beneficial purpose;

(C) escape of underground water from the aquifer to any other reservoir that does not contain underground water;

(D) pollution or harmful alteration of underground water in the aquifer by salt water or other deleterious matter admitted from another stratum or from the surface of the ground;

(E) willfully or negligently causing, suffering, or permitting underground water from the aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26, Water Code;

(F) underground water pumped from the aquifer for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Water Code.

(22) "Well" means a bored, drilled, or driven shaft or an artificial opening in the ground made by digging, jetting, or some other method where the depth of the shaft or opening is greater than its largest surface dimension, but does not include a surface pit, surface excavation, or natural depression.

(23) "Well J-17" means state well number AY-68-37-203 located in Bexar County.

(24) "Well J-27" means state well number YP-69-50-302 located in Uvalde County.

(25) "Withdrawal" means an act or a failure to act that results in taking water from the aquifer by or through man-made facilities, including pumping, withdrawing, or diverting underground water.

(26) "Agricultural use" means any use or activity involving any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) wildlife management;

(E) raising or keeping equine animals; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(27) "Nursery grower" means a person who grows more than 50 percent of the

products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item before sale or lease and typically includes activities associated with the production or multiplying of stock, such as the development of new plants from cuttings, grafts, plugs, or seedlings.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.03, 1993 Tex. Gen. Laws 2350, 2351; as amended by Act of May 25, 2001, 77th Leg., R.S., ch. 1192, 2001 Tex. Gen. Laws 2696; Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 2.60, 2001 Tex. Gen. Laws 1991, 2021; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 1, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.04 BOUNDARIES. The authority includes the territory contained within the following area:

(1) all of the areas of Bexar, Medina, and Uvalde counties;

(2) all of the area of Comal County, except that portion of the county that lies North of the North line through the county of Subdivision No. 1 of the Underground Water Reservoir in the Edwards Limestone, Balcones escarpment area, as defined by the order of the Board of Water Engineers dated January 10, 1957;

(3) the part of Caldwell County beginning with the intersection of Hays County Road 266 and the San Marcos River;

THENCE southeast along the San Marcos River to the point of intersection of Caldwell, Guadalupe, and Gonzales counties;

THENCE southeast along the Caldwell-Gonzales County line to its intersection with U.S. Highway 183;

THENCE north along U.S. Highway 183 to its intersection with State Highway 21;

THENCE southwest along State Highway 21 to its intersection with Hays County Road 266;

THENCE southwest along Hays County Road 266 to the place of beginning;

(4) the part of Hays County beginning on the northwest line of the R. B. Moore Survey, Abstract 412, in Comal County where it crosses the Comal County-Hays County line northeast along the northwest line of said Survey to the northeast corner of said Survey in Hays County, Texas;

THENCE southeast in Hays County, Texas across the Jas. Deloach Survey, Abstract 878, to the most westerly northwest corner of the Presidio Irrigation Co. Survey, Abstract 583;

THENCE northeast along the northwest line of said Survey to its most northerly northwest corner;

THENCE continuing in the same line across the R.S. Clayton Survey 2, Block 742, to the west line of the H. & G. N. RR. Co. Survey 1, Abstract 668;

THENCE north along the west line of said Survey to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE northeast across the David Wilson Survey 83, Abstract 476, to the southeast corner of the F. W. Robertson Survey 71, Abstract 385;

THENCE north along the east line of said Survey to the southwest corner of the Benjamin Weed Survey 72, Abstract 483;

THENCE east along the south line of said Survey to its southeast corner;

THENCE northeast across the William Gray Survey 73, Abstract 92, and the Murray Bailey Survey 75, Abstract 42, to the southwest corner of the D. Holderman Survey 33, Abstract 225;

THENCE north along the west line of said Survey to its northwest corner;

THENCE continuing in the same line to the north line of the Day Land & Cattle Co. Survey 672;

THENCE west along said north line of said Survey to its northwest corner, which is in the east line of the Jesse Williams Survey 4 to the northeast corner of said Survey;

THENCE west along the north line of said Survey to the Southwest corner of the Amos Singleton Survey 106, Abstract 410;

THENCE north along the west lines of said Amos Singleton Survey 106 and the Watkins Nobles Survey 107, Abstract 346, to the northwest corner of said Watkins Nobles Survey 107;

THENCE east along the north line of said Survey to the southwest corner of the Jesusa Perez Survey 14, Abstract 363;

THENCE north along the west line of said Jesusa Perez Survey 14 to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE, south along the east line of said Survey for a distance of approximately 10,000 feet to its intersection with Ranch Road 150;

THENCE, east by southeast along Ranch Road 150 approximately 24,500 feet to its intersection with the southern boundary line of the Andrew Dunn Survey 9, Abstract 4;

THENCE, east along the south line of said survey as it extends and becomes the southern boundary line of the Morton M. McCarver Survey 4, Abstract 10, for a distance of approximately 7,000 feet to its intersection with Ranch Road 2770;

THENCE, south on Ranch Road 2770 for a distance of approximately 400 feet to its intersection with Farm-to-Market Road 171;

THENCE, east along Farm-to-Market Road 171 for a distance of approximately 10,500 feet to its intersection with Farm-to-Market Road 25;

THENCE, north by northeast along Farm-to-Market Road 25 for a distance of approximately 3,100 feet to its intersection with Farm-to-Market Road 131;

THENCE, east by southeast along Farm-to-Market Road 131 for a distance of approximately 3,000 feet to its intersection with the east line of the Thomas G. Allen Survey, Abstract 26;

THENCE south along the east line of said Thomas G. Allen Survey to the most northerly northwest corner of the Elisha Pruett Survey 23, Abstract 376;

THENCE southwest along a west line of said Elisha Pruett Survey 23 to the west corner of said Survey;

THENCE southeast along the southwest line of said Survey to the north corner of the John Stewart Survey, Abstract 14;

THENCE southwest along the northwest line of said John Stewart Survey to its west corner;

THENCE continuing in the same line to the most northerly southwest line of the John Jones Survey, Abstract 263;

THENCE southeast along said southwest line to an interior corner of said John Jones Survey;

THENCE southwest along the most southerly northwest line of said Survey to the southwest corner of said Survey;

THENCE southeast along the south line of said Survey to the north corner of the James W. Williams Survey 11, Abstract 473;

THENCE southwest along the northwest line of said James W. Williams Survey 11 to its west corner;

THENCE southeast along the southwest line of said Survey to the north right-of-way line of the I. & G. N. RR.;

THENCE southwest along said right-of-way of said I. & G. N. RR. to the Hays County- Comal County line;

THENCE south along said county line to the northwest line of the R. B. Moore Survey, Abstract 412, in Hays County where it crosses the Hays County-Comal County line;

(5) all of the territory of Hays County contained within the following described area:

Beginning on the most southern point of Hays County at the intersection of Hays, Comal, and Guadalupe Counties; then continuing in a northeasterly direction along the Hays-Guadalupe county line to its intersection with the Hays-Caldwell county line; then continuing along the Hays-Caldwell county line to an intersection with Farm-to-Market Road 150; then continuing in a northwesterly direction along Farm-to-Market Road 150 to the intersection with the existing southern boundary of

the part of Hays County described in Subdivision (4) of this section; then continuing in a southwesterly direction along the existing southern boundary of the part of Hays County described in Subdivision (4) of this section to the intersection with the Hays-Comal county line; then continuing in a southerly direction along the Hays-Comal county line to the point of beginning;

(6) the part of Guadalupe County beginning at the Guadalupe County- Caldwell County-Hays County line at the San Marcos River in the northeast corner of Guadalupe County, Texas.

THENCE southwest along the Guadalupe County-Hays County line to the intersect of the Guadalupe County-Hays County-Comal County line.

THENCE southwest along the Guadalupe County-Comal County line to the intersect of the Guadalupe County-Comal County-Bexar County intersect at the Cibolo creek.

THENCE south along the Guadalupe County-Bexar County line along the Cibolo creek to the intersect of the Guadalupe County-Bexar County-Wilson County line.

THENCE south along the Guadalupe County-Wilson County line along the Cibolo creek to the intersect and crossing of Guadalupe County Road 417.

THENCE east along Guadalupe County Road 417 to the intersect of Guadalupe County Road 417 and Guadalupe County Road 412.

THENCE northeast along Guadalupe County Road 412 to the intersect of Guadalupe County Road 412 and Guadalupe County Road 411 A.

THENCE east along Guadalupe County Road 411 A to the intersect of Guadalupe County Road 411 A and Farm-to-Market road number 725.

THENCE north along Farm-to-Market Road 725 to the intersect of Farm-to-Market Road 725 and Interstate Highway 10.

THENCE east along Interstate Highway 10 to the intersect of Interstate Highway 10 and State Highway 90.

THENCE east along State Highway 90 to the Guadalupe County-Caldwell County line at the San Marcos river.

THENCE northwest along the Guadalupe County-Caldwell County line along the San Marcos river to the place of beginning;

(7) the part of Atascosa County beginning on the north line of the Robt. C. Rogers Survey, at the Bexar County-Atascosa County line, to its northwest corner, which is the northeast corner of the F. Brockinzen Survey, Abstract 86;

THENCE south along the east line of said Survey passing through its southeast corner and continuing south along the east line of the F. Brockinzen Survey, Abstract 90, to its southeast corner;

THENCE west along the south line of said survey to its southwest corner;

THENCE north along the west line of said F. Brockinzen Survey to the southeast corner of the B. Bonngartner Survey, Abstract 87;

THENCE west along the south line of said B. Bonngartner Survey passing through its southwest corner and continuing along the south line of the J. B. Goettlemann Survey, Abstract 309, to the Atascosa County-Medina County line;

THENCE north along the Atascosa County-Medina County line to the Bexar County line;

THENCE east along the Atascosa County-Bexar County Line to the place of beginning;

and

(8) the following parcels:

(A) Parcel 1, consisting of two tracts:

(i) Tract 1 - 153-70/100 acres of land in Atascosa County, Texas, being out of the W.L. Hurd Original Survey No. 368; said 153-70/100 acres being more particularly described as follows:

beginning at an iron stake set in the Northwest corner of the J.B. Bush 261.7 acre tract, said corner being in the Southeast intersection of the Lytle-Seglar

and Lytle-Bexar Roads, for the Northwest corner of this tract;

THENCE South 00° 28' East, with the East line of the Lytle-Seglar Road, 1767.5 feet to an iron stake for the Southwest corner of this tract;

THENCE South 89° 27' East 3748.8 feet to an iron stake set for the Southeast corner of this tract, said stake being in the West line of a 40-foot road;

THENCE North 00° 39' West, with the West line of said 40-foot road, 1806.9 feet to an iron stake set in the South line of the Lytle-Bexar Road, for the Northeast corner of this tract;

THENCE South 89° 57' West, with the South line of the Lytle-Bexar Road, 3742.5 feet to the place of beginning; and

(ii) Tract 2 - 73 acres of land in Atascosa County, Texas, being out of the R.C. Rogers Survey No. 530, said 73 acres being more particularly described as follows:

beginning at the most Northerly North East corner of this tract, said corner being in the South R/W line of State Highway No. 1518, and being South 89 degrees 02 minutes West 522.1 feet from the intersection of this road R/W with the West R/W of the Luckey road;

THENCE South 497.5 feet to an iron pin for corner;

THENCE East 522.0 feet to an iron pin for a corner in the West R/W line of said Luckey Road;

THENCE South 24 minutes east 2559.0 feet along said Luckey Road R/W to the Southeast corner of this tract;

THENCE South 89 degrees West 1148.6 feet to the Southwest corner of this tract; THENCE North 2855.4 feet to a corner;

THENCE East 210.0 feet to a corner;

THENCE North 210.0 feet to a corner in the South R/W line of State Highway No. 1518;

THENCE North 89 degrees 02 minutes East 397.0 feet along said Highway R/W to the place of beginning; and

(B) Parcel 2, consisting of five tracts:

(i) Tract 1 - 185.14 acres of land, more or less, out of the Robert C. Rogers Sur. No. 530, Abstr. No. 721, in Atascosa County, Texas, described as being all of that certain 242.025 acres of land, more or less, described as "First Tract" in Warranty Deed recorded in Vol. 291, p. 120, Deed Records, Atascosa County, Texas, dated October 31, 1962, executed by Mae S. Bush, et vir, to C.W.

> Mask, et ux, and more particularly described by metes and bounds as follows:
>
> beginning at the NE corner of the original W.P. Riley 565.3 acre tract, more particularly described in Warranty Deed dated June 18, 1923, executed by W.P. Riley to B.L. Riley, recorded in Vol. 93, p. 24, Deed Records, Atascosa County, Texas, said point also being the NE corner of that certain 80.675 acre tract more particularly described by metes and bounds in Warranty Deed dated May 24, 1943, executed by J.F. Riley, et ux, to J.W. Bush, Sr., recorded in Vol. 162, p. 125, Deed Records, Atascosa County, Texas;

THENCE west along the south R.O.W. line of the Lytle-New Somerset public road, 1129 feet to a point for beginning; said beginning point being the NE corner of said 242.025 acre subdivision, being also the NW corner of a subdivision of 80.675 acres heretofore conveyed to J.W. Bush, Sr.;

THENCE S. 0° 09' E. 3075.43 feet to the SE corner of said 242.025 acre subdivision; THENCE S. 89° 20' W. 2489.44 feet to an inside corner;

THENCE S. 0° 34' W. 602 feet to corner;

THENCE N. 89° 36' W. 778 feet to the SW corner of this tract, being also the SE corner of the W.C. Riley 242.6 acres;

THENCE N. 0° 09' W. 3660.9 feet to the NW corner of this tract, being also the NE corner of the W.C. Riley 242.6 acre tract;

THENCE E. along the S. R.O.W. line of the Lytle-New Somerset Road 3260 feet to the place of beginning, and containing 242.025 acres of land, more or less, being parcels 1, 2, and 3, of a subdivision of the east portion of the said W.P. Riley original 565.3 acres of land;

LESS HOWEVER, the following:

23.20 acres of land, more less, out of the northwest corner of the C.W. Mask 860 acre tract of land, said 23.20 acres of land, more or less, more particularly described by metes and bounds as follows:

beginning at a cedar corner post in the south R.O.W. line of Farm Road 1518, at station no. 325 plus 90.5 for the northwest corner of this tract, said corner being also the northwest corner of said 860 acre tract;

THENCE S. 89° 47' E. 661.0 feet along a fence line to an iron pin in a fence corner for the southeast corner;

THENCE S. 89° 17' W. 672.1 feet along a fence to an iron pin in a fence corner for the southwest corner, said corner being in the west line of the 860 acre tract;

THENCE N. 0° 23' W. 1521.6 feet along the west line of said 860 acre tract to the place of beginning; and

LESS 14.86 acres of land, more or less, out of the C.W. Mask 860 acre tract of land, said 14.86 acres of land, more or less, more particularly described by metes and bounds as follows: beginning at a creosote corner post in the south R.O.W. line of Farm Road 1518 at station 314 plus 96.5 on a line 661' from corner of C.W. Mask 860 acre tract for the NW corner of this tract; THENCE S. 89° 47' E. 433 feet along a fence line on said Road 1518 south R.O.W. line to an 8" cedar corner post for the NE corner;

THENCE S. 0° 13' W. 1504.0 feet along a fence line to an iron pin in a fence corner for the SE corner;

THENCE S. 89° 21' W. 426.5 feet along a fence line to an iron pin in the fence corner for the SW corner;

THENCE N. 0° 02' W. 1510.6 feet along a fence line to the place of beginning; and

LESS 6.31 acres of land, more or less, more particularly described by metes and bounds as follows:

beginning at a cedar corner post in the south R.O.W. line of FM 2790 at Station 314 plus 96.5 for the northwest corner of this tract;

THENCE S. 89° 47' E. 275 feet along a fence on FM 2790 south R.O.W. line to an iron pin for the northeast corner;

THENCE S. 0° 13' W. 1000 feet to an iron pin for the southeast corner;

THENCE N. 89° 41' W. 275 feet to an iron pin in a fence line, for the southwest corner;

THENCE N. 0° 13' E. 1000 feet along an existing fence line to the place of beginning;

and

LESS the south 12.515 acres of the above described 242.025 acres of land, more or less;

> (ii) Tract 2 - 12.515 acres of land, more or less, out of the Robert C. Rogers Sur No. 530, Abstr. No. 721, in Atascosa County, Texas, described as being the south 12.515 acres of land, more or less, of that certain 242.025 acres of land, more or less, described as "First Tract" in Warranty Deed recorded in Vol. 291, p. 120, Deed Records, Atascosa County, Texas, dated October 31, 1962, executed by Mae S. Bush, et vir, to C.W. Mask, et ux, and which 242.025 acres of land, more or less, is more particularly described by metes and bounds as follows:
>
> beginning at the NE corner of the original W.P. Riley 565.3 acre tract, more particularly described in Warranty Deed dated June 18,

1923, executed by W.P. Riley to B. L. Riley, recorded in Vol. 93, p. 24, Deed Records, Atascosa County, Texas; said point also being the NE corner of that certain 80.675 acre tract more particularly described by metes and bounds in Warranty Deed dated May 24, 1943, executed by J.F. Riley, et ux, to J.W. Bush, Sr., recorded in Vol. 162, p. 125, Deed Records, Atascosa County, Texas;

THENCE west along the south R.O.W. line of the Lytle-New Somerset public road, 1129 feet to a point for Beginning; said Beginning point being the NE corner of said 242.025 acre subdivision, being also the NW corner of a subdivision of 80.675 acres heretofore conveyed to J.W. Bush, Sr.;

THENCE S. 0° 09' E. 3075.43 feet to the SE corner of said 242.025 acre subdivision; THENCE S. 89° 20' W. 2489.44 feet to an inside corner;

THENCE S. 0° 34' W. 602 feet to corner;

THENCE N. 89° 36' W. 778 feet to the SW corner of this tract, being also the SE corner of the W.C. Riley 242.6 acres;

THENCE N. 0° 09' W. 3660.9 feet to the NW corner of this tract, being also the NE corner of the W.C. Riley 242.6 acre tract;

THENCE E. along the S. R.O.W. line of the Lytle-New Somerset Road 3260 feet to the place of beginning, and containing 242.025 acres of land, more

or less, being parcels 1, 2, and 3, of a subdivision of the east portion of the said W. P. Riley original 565.3 acres of land;

(iii) Tract 3 - 304 acres of land, more or less, out of the Robert C. Rogers Sur. No. 530, Abstr. No. 721, in Atascosa County, Texas, described as "Second Tract" in Warranty Deed recorded in Vol. 291, p. 120, Deed Records, Atascosa County, Texas, dated October 31, 1962, executed by Mae S. Bush, et vir, to C. W. Mask, et ux, and more particularly described by metes and bounds as follows:

beginning at a fence corner, the most easterly SE corner of this tract in the NW corner of a county road, said fence corner being the northeast corner of a 20 acre tract out of the Robert C. Rogers Sur. No. 530, Abstr. No. 721, more particularly described by metes and bounds in Deed dated May 31, 1985, executed by Thomas W. Thornton, et ux, to Robert Harold Griffin, recorded in Vol. 717, p. 92, Deed Records, Atascosa County, Texas; said point also being the northeast corner of that certain 177.596 acre tract described in Deed dated October 13, 1980, executed by Harry E. Richardson,

et al, to Thomas Warren Thornton, et ux, recorded in Vol. 538, p. 363, Deed Records, Atascosa County, Texas;

THENCE N. 0° 35' E. with the west line of said county road, 2447 feet to a fence corner, the NE corner of this tract;

THENCE S. 89° 20' W. with a fence, 3648 feet to a fence corner for the NW corner;

THENCE with a fence the west line as follows: S. 0° 34' E. 602 feet; S. 0° 38' E. 1836 feet, and S. 0° 19' W. 2447 feet to a fence corner in the SW corner;

THENCE S. 89° 35' E. with a fence, 1787 feet to a fence corner in the west line of the county road for the SE corner;

THENCE N. 0° 01' W. with a fence, the west line of said road, 2482 feet to a fence corner;

THENCE N. 89° 41' E. with the north line of road 1823 feet to the place of beginning;

(iv) Tract 4 - 313.8 acres of land, more or less, composed of lands formerly owned in part by Martha W. White and in part by M. E. Jordan and subsequently owned by the Dr. R. B Touchstone Estate, said 313.8 acres of land, more or less, being out of the Robert C. Rogers Sur. No. 530, Abstr. No. 721, in Atascosa County, Texas, and described as "Third Tract" in Warranty Deed

> recorded in Vol. 291, p. 120, Deed Records, Atascosa County, Texas, dated October 31, 1962, executed by Mae S. Bush, et vir, to C. W. Mask, et ux, and more particularly described by metes and bounds as follows:
>
> beginning at a fence corner, the NE corner of this tract and the SE corner of the Mae S. Bush tract, as described in Deed dated September 22, 1944, executed by H. M. Bush, Sr., to Mae S. Bush, recorded in Vol. 166, p. 508, Deed Records, Atascosa County, Texas;

THENCE with a fence, the east line of this tract, S. 0° 21' E. 3694.8 feet to a fence corner, the SE corner of the M.E. Jordan tract, for the SE corner of this tract;

THENCE S. 89° 33' W. with a fence, the south line of the Jordan tract, 3709.4 feet to the SW corner of the Jordan tract, the SW corner of this tract;

THENCE N. 0° 34' E. with a fence at 1869 feet pass common corner of the Jordan and White tract, a distance of 3731 feet to a fence corner, the NW corner of the White tract, for the NW corner of this tract;

THENCE N. 89° 37' E. with a fence the north line of the White tract, the north line of this tract, 711.8 feet to an angle in fence;

THENCE N. 89° 50' E. continuing with said fence, 2937.1 feet to the place of Beginning;

and

(v) Tract 5 - 5.066 acres of land, more or less, out of the Robert C. Roberts Sur. 530, Abstr. No. 721, in Atascosa County, Texas, more particularly described by metes and bounds in Warranty Deed dated July 31, 1992, recorded in Vol. 854, p. 724, Deed Records, Atascosa County, Texas, executed by Thomas Warren Thornton, et ux, to Jerry Kye Mask.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.04, 1993 Tex. Gen. Laws 2350, 2353; as amended by Act of May 21, 2009, 81st Leg., R.S., ch. 1080, 2009 Tex. Gen. Laws 2818.

SECTION 1.05 FINDINGS RELATING TO BOUNDARIES. The legislature finds that the boundaries and field notes of the authority form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district or the legality or operation of the district or its governing body.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.05, 1993 Tex. Gen. Laws 2350, 2355.

SECTION 1.06 FINDING OF BENEFIT. (a) The legislature finds that the water in the unique underground system of water-bearing formations known as the Edwards-Balcones Fault Zone Aquifer has a hydrologic interrelationship to the Guadalupe, San Antonio, San Marcos, Comal, Frio, and Nueces river basins, is the primary source of water for the residents of the region, and is vital to the general

economy and welfare of this state. The legislature finds that it is necessary, appropriate, and a benefit to the welfare of this state to provide for the management of the aquifer through the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.

(b) The legislature further finds that the state will be benefited by exercise of the powers of the authority and by the works and projects that are to be accomplished by the authority under powers conferred by Article XVI, Section 59, of the Texas Constitution. The authority is created to serve a public use and benefit.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.06, 1993 Tex. Gen. Laws 2350, 2355.

SECTION 1.07 OWNERSHIP OF UNDERGROUND WATER. The ownership and rights of the owner of the land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in underground water and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized. However, action taken pursuant to this Act may not be construed as depriving or divesting the owner or the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the authority under this Act or a district exercising the powers provided by Chapter 36,

Water Code. The legislature intends that just compensation be paid if implementation of this article causes a taking of private property or the impairment of a contract in contravention of the Texas or federal constitution.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.07, 1993 Tex. Gen. Laws 2350, 2356; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 2, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.08 GENERAL POWERS. (a) The authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer. The authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 51, Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction. Chapter 36, Water Code, does not apply to the authority.

(b) The authority's powers regarding underground water apply only to underground water within or withdrawn from the aquifer. This subsection is not intended to allow the authority to regulate surface water.

(c) The authority and local governments with pollution control powers provided under Subchapters D and E, Chapter 26, Water Code, in order to prevent pollution and enforce water quality

standards in the counties included within the authority's boundaries and within a buffer zone that includes all of the area less than five miles outside of those counties, shall apply pollution control regulations equally and uniformly throughout the area within the counties and the buffer zone. The buffer zone does not include the territory within a water management district created under Chapter 654, Acts of the 71st Legislature, Regular Session, 1989.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.08, 1993 Tex. Gen. Laws 2350, 2356; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 3, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.081 FIRE CONTROL. To protect the water quality of the aquifer, the board shall adopt rules regarding the control of fires in the aquifer's recharge zone. In adopting rules under this section, the board shall consult with fire departments and fire marshals with jurisdiction over the recharge zone.

Act of May 23, 2007, 80th Leg., R.S., ch. 510, 2007 Tex. Gen. Laws 900.

SECTION 1.09 BOARD OF DIRECTORS; ELECTIONS; TERMS. (a) The authority is governed by a board of directors composed of 15 directors elected from the single- member election districts described by Section 1.093 of this article and two directors appointed as provided by Section 1.091 of this article. The elected directors serve staggered four-year terms with as near as possible to one-half of the members' terms expiring December 1 of each even- numbered year.

(b) The board shall order elections of the appropriate number of directors to replace directors holding elected offices whose terms are nearest expiration to be held on the uniform election date in November of each even-numbered year.

(c) If a director's position becomes vacant for any reason, the board shall appoint a qualified person to serve until the first election of directors following the appointment. If the position is not scheduled to be filled at that election, the board shall provide for a director to be elected at that election to serve in the position for the remainder of the unexpired term.

(d) Section 41.008, Election Code, does not apply to an election held under this article.

(e) At the initial meeting of the board following an election of new directors, the directors shall elect a presiding officer and other necessary officers. Officers serve terms set by rule of the board not to exceed two years.

(f) An act of the board is not valid unless adopted by the affirmative vote of a majority of the directors who are entitled to vote when a quorum is present. For purposes of this subsection, eight directors who are entitled to vote constitute a quorum.

(g) A director receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the director's duties.

(h) An elected director shall hold office until a successor has been elected and has qualified by taking the oath of office.

(i) A member of a governing body of another political subdivision is ineligible for appointment or election as a director of the authority. A director of the authority is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision.

(j) For liability purposes only, a director of the authority is considered an employee of the authority under Chapter 101, Civil Practice and Remedies Code, even if the director does not receive fees of office voluntarily, by authority policy, or through a statutory exception.

(k) A director of the authority is immune from suit and immune from liability for official votes and official actions. To the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations, this subsection provides immunity for those actions.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.09, 1993 Tex. Gen. Laws 2350, 2356; as amended by Act of May 29, 1995, 74th Leg., R.S., ch. 261, § 1, 1995 Tex. Gen. Laws 2505; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 4, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.091 NONVOTING MEMBERS OF BOARD. (a) In addition to the directors provided by Section 1.09 of this article, the board includes two nonvoting directors appointed as provided by this section.

(b) One nonvoting director shall be appointed by a majority vote of the South Central

Texas Water Advisory Committee from among the members of the committee.

(c) One nonvoting director shall be appointed by the Commissioners Court of Medina County or Uvalde County as provided by this subsection. A nonvoting director appointed by the Commissioners Court of Medina County must be a resident of Medina County, and a nonvoting director appointed by the Commissioners Court of Uvalde County must be a resident of Uvalde County. The Commissioners Court of Medina County shall appoint the nonvoting director for the term beginning December 1, 1996, and the Commissioners Court of Uvalde County shall appoint the nonvoting director for the term beginning December 1, 2000. Subsequent directors shall be appointed under this subsection by the Commissioners Courts of Medina County and Uvalde County in alternation.

(d) A director appointed under this section serves a four-year term. The terms of the initial directors appointed under this section begin December 1, 1996, and expire December 1, 2000. Subsequent regular appointments under this section shall be made on or before the date of the directors election held for the even-numbered election districts described by Section 1.093 of this article. Subsequently appointed directors' terms expire December 1 following the appointment of the directors' successors. If the office of a director appointed under this section becomes vacant for any reason, the office shall be filled by appointment as provided by Subsection (b) or (c) of this section, as appropriate, for the unexpired portion of the term.

(e) A director appointed under this section is entitled to participate in and comment on any matter before the board in the same manner as a voting director, except that a director appointed under this section may not vote on any matter before the board.

(f) A director appointed under this section is not entitled to compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing the director's duties.

Act of May 29, 1995, 74th Leg., R.S., ch. 261, § 1, 1995 Tex. Gen. Laws 2505, 2507.

SECTION 1.092 TEMPORARY BOARD AND INITIAL ELECTION OF DIRECTORS. (a) Until a board is elected as provided by this section and takes office, the authority is governed by a temporary board that consists of:

(1) Mr. Phil Barshop;

(2) Mr. Ralph Zendejas;

(3) Mr. Mike Beldon;

(4) Ms. Rosa Maria Gonzales;

(5) Mr. John Sanders;

(6) Ms. Sylvia Ruiz Mendelsohn;

(7) Mr. Joe Bernal;

(8) Mr. Oliver R. Martin;

(9) Mr. A. O. Gilliam;

(10) Mr. Bruce Gilleland;

(11) Mr. Rogelio Munoz;

(12) Mr. Doug Miller;

(13) Ms. Paula DiFonzo;

(14) Mr. Mack Martinez;

(15) Ms. Jane Houghson;

(16) one temporary director appointed by the South Central Texas Water Advisory Committee from among the members of the committee; and

(17) one temporary director appointed jointly by the Commissioners Courts of Medina County and Uvalde County who must be a resident of one of those counties.

(b) A temporary director appointed by the South Central Texas Water Advisory Committee or by the Commissioners Courts of Medina County and Uvalde County is a nonvoting member of the temporary board. The temporary director appointed by the South Central Texas Water Advisory Committee serves until the first nonvoting director appointed under Section 1.091(b) takes office. The temporary director appointed by the Commissioners Courts of Medina County and Uvalde County serves until the first nonvoting director appointed under Section 1.091(c) of this article takes office.

(c) If a vacancy occurs in a temporary director's office, except for the two nonvoting temporary directors, the remaining directors shall

appoint a person to fill the vacancy. If a vacancy occurs in the office of one of the nonvoting temporary directors, the body that made that director's appointment shall appoint a person to fill the vacancy.

(d) As soon as is practicable, the temporary board shall:

(1) meet to elect a presiding officer and other necessary officers; and

(2) adopt rules governing the authority and board procedures.

(e) A temporary director receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the director's duties.

(f) A temporary director is not personally liable for any action the director takes within the scope of the director's office and under color of authority granted by this article.

(g) The temporary board shall order an election of directors to be held on the uniform election date in November 1996. Notwithstanding Section 1.09 of this article, the initial directors elected from odd-numbered election districts described by Section 1.093 of this article serve terms expiring December 1, 1998, and the initial directors elected from even-numbered districts described by that section serve terms expiring December 1, 2000.

(h) The temporary board has all of the authority granted to the permanent board by this article and by general law.

Act of May 29, 1995, 74th Leg., R.S., ch. 261, § 1, 1995 Tex. Gen. Laws 2505, 2507.

SECTION 1.093 SINGLE-MEMBER ELECTION DISTRICTS. (a) District 1 is composed of Bexar County tracts 1203, 1204, 1205.02, 1206, 1208, 1209.02, 1211.03, 1211.04, 1211.05, 1211.06, 1211.07, 1211.08, 1212.01, 1212.02, 1218.01, 1218.03, 1218.04, 1218.05, 1219.02, 1914.02, 1917, 1918.01, and 1918.02; and that part of Bexar County tract 1205.01included in block groups 6, 7, 8, and blocks 104, 105, 106, 107, 310, 501, and 504; and that part of Bexar County tract 1207 included in block groups 2 and 3 and blocks 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 407, 408, 409, 410, 411, 412, 413, 414, 415, 417, 418, 419, 502, 503, 504, 505, and 506; and that part of Bexar County tract 1209.01 included in block groups 2 and 3 and blocks 102, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, and 132; and that part of Bexar County tract 1210 included in block groups 4, 5, and 6; and that part of Bexar County tract 1213 included in block groups 1 and 2; and that part of Bexar County tract 1214.01 included in blocks 102A, 102B, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; and that part of Bexar County tract 1215.01 included in blocks 101, 102, 103, 104, 105A, 105B, 106, 108, 109, 110, 118, 119, 120, 121, 122, 123, 124, 125, 126, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, and 231; and that part of Bexar County tract 1216.03 included in block groups 3, 4, 5, 6, and blocks 101, 102, 103A, 103B, 103C, 104, 105A, 105B, 107, 108, 109, 201B, 201C, 201E, 202, 204, 205, and 206; and that part of Bexar County tract 1217 included in blocks

101A, 101B, 101C, 101D, 111A, 111B, and 112; and that part of Bexar County tract 1218.02 included in block groups 1 and 3; and that part of Bexar County tract 1219.01 included in blocks 202, 203, 204, 205, 206A, 206B, 207A, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, and 318; and that part of Bexar County tract 1903 included in blocks 132A, 133, 134A, 134B, 134C, 134D, 135A, and 135B; and that part of Bexar County tract 1904 included in blocks 101A, 101B, 103, 104, and 105; and that part of Bexar County tract 1908 included in blocks 101, 102, 103, 105, 106, 107, 108, 110, 111, 112, 113, 118, 120, 122, 125, 127, 130, 201, 202, 204, 205, 208, 210, 211, 212, 216, 217, 218, 219, 220, 221, 225, 301, 302, 304, 305, 306, 307, 311, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 334; and that part of Bexar County tract 1909 included in blocks 313, 317, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, and 329; and that part of Bexar County tract 1912 included in block groups 1, 2, 6, 7, and blocks 301, 302, 303, 304, 305, 306, 309, 310, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, and 511; and that part of Bexar County tract 1913 included in block groups 1, 4, 5, and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 215, 216, 217, 218, 219, 220, 221, 222, 236, 237, 244, 301, 302, 303, 304, 305, 306, 307, 308, and 310; and that part of Bexar County tract 1914.01 included in block group 1; and that part of Bexar County tract 1914.03 included in block groups 3 and 4.

(b) District 2 is composed of Bexar County tracts 1102, 1201.85, 1214.02, 1301, 1302, 1303, 1305, 1306, 1307.85, 1308, 1308.84, 1309, 1310, 1311, 1312, 1313, 1314, 1315.01, 1315.02, and 1316.04; and that part of Bexar County tract 1101 included in block

groups 2, 3, 4, 5, 6, 7, and blocks 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 114, 118, 119, 120, 121, 122, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 142, and 144; and that part of Bexar County tract 1109 included in blocks 126, 130, 201, 202, 203, 204, 209, 210, 211, 212, 213, 214, 217, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, and 249; and that part of Bexar County tract 1110 included in block group 1 and blocks 201, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231A, 231B, 232, 233, 234, 235, 236, 237, 238, 239, 401, 406, 407, 408, 409, 410, 415, 416, and 417; and that part of Bexar County tract 1202.85 included in block groups 1, 2, 3, 4, 5, 9, and blocks 601, 602, 603, 604, 605, 606, 607, 608A, 608B, 610, 613, 614, 615, and 617; and that part of Bexar County tract 1205.01 included in block groups 2 and 4 and blocks 101, 102, 103, 108, 109, 110, 111, 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 502, 503, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, and 520; and that part of Bexar County tract 1214.01 included in block groups 4, 5, 6, and 7; and that part of Bexar County tract 1215.02 included in block groups 4 and 5; and that part of Bexar County tract 1215.03 included in block groups 3 and 4; and that part of Bexar County tract 1304 included in block groups 1 and 8 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214B, 701, 704B, 705, 706, and 707; and that part of Bexar County tract 1404 included in blocks 408, 409, and 411; and that part of Bexar County tract 1902 included in blocks 317 and 318; and that part of Bexar County tract 1903

included in blocks 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 112, 121, 122, 123, 126, 127, 132B, and 138; and that part of Bexar County tract 1904 included in blocks 102, 106, 107, 108, 109, 110, 111, 118, 122, 201, 202, 209, 210B, 301, 309, 310, 311, and 404.

(c) District 3 is composed of Bexar County tracts 1105, 1106, 1107, 1108, 1601, 1701, 1702, 1704, 1705, 1809.01, 1809.02, 1810.01, 1811, 1901, 1905, 1906, 1907, 1910.01, 1910.02, 1911.01, and 1911.02; and that part of Bexar County tract 1101 included in blocks 101, 108, and 109; and that part of Bexar County tract 1104 included in block groups 3 and 4 and blocks 106, 202, 203, 204, and 205; and that part of Bexar County tract 1109 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 139, 140, 205, 206, 207, 208, 215, 216, 218, 219, 230A, 230B, 231, 232, 233, and 234; and that part of Bexar County tract 1110 included in block group 3 and blocks 202, 203, 204, 205, 402, 403, 404, 405, 411, 412, 413, 414, 418, 419, and 420; and that part of Bexar County tract 1202.85 included in blocks 609, 611, 612, and 616; and that part of Bexar County tract 1207 included in block groups 6, 7, 8, and blocks 101, 102, 103, 119, 401A, 401B, 402, 403, 404, 405, 406, 416, 420, 421, and 501; and that part of Bexar County tract 1209.01 included in blocks 101 and 140; and that part of Bexar County tract 1210 included in block groups 1, 2, and 3; and that part of Bexar County tract 1501 included in blocks 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 624, 625, and 626; and that part of Bexar County tract 1602 included in blocks 214, 303, and 310; and that part of Bexar County tract

1605 included in block groups 2 and 3 and blocks 117, and 118; and that part of Bexar County tract 1703 included in block groups 1, 2, 7, 8, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 311, 312, 321, 322, 323, 324, 327, 399, 405, 406, 414, 415, 505, 506, 513, 514, 605, 606, 612, 613, 614, and 615; and that part of Bexar County tract 1802 included in block groups 1, 2, 3, 4, 7, 8, and 9; and that part of Bexar County tract 1808 included in blocks 110B and 111; and that part of Bexar County tract 1812 included in blocks 401, 402, 408, 409, 410, 411, and 412; and that part of Bexar County tract 1813 included in block groups 1, 2, 3, 4, and 5; and that part of Bexar County tract 1902 included in block groups 1, 2, 4, 5, 6, 7, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 316, 319, 320, and 323; and that part of Bexar County tract 1903 included in blocks 109, 110, and 111; and that part of Bexar County tract 1904 included in blocks 203, 204, 205, 206, 207, 208, 210A, 211, 212, 213, 214, 215, 303, 304, 305, 306, 307, 308, 312, 313, 314, 401, 402, 403, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, and 417; and that part of Bexar County tract 1908 included in blocks 104, 109, 124, 126, 128, 129, 206, 207, 213, 214, 215, 222, 303, 308, 309, 310, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 335, and 336; and that part of Bexar County tract 1909 included in block groups 1, 2, 4, 5, 6, 7, 8, 9, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 314, 315, 316, and 318; and that part of Bexar County tract 1912 included in block group 4 and blocks 307, 308, 311, 312, 313, 314, 315, and 512; and that part of Bexar County tract 1913 included in blocks 211, 212, 213, 214, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 238, 239, 240, 241, 242, 243, 309,

311, 312, and 313; and that part of Bexar County tract 1914.04 included in blocks 202, 203, 204, 205, 206, 207, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, and 317.

(d) District 4 is composed of Bexar County tracts 1617, 1719.01, 1719.02, 1719.03, 1719.04, 1719.05, 1719.06, 1817.01, 1817.03, 1817.04, 1817.05, 1817.06, 1817.07, 1817.08, 1817.09, 1817.10, 1818.01, 1818.05, 1819, 1820, 1821, 1914.05, 1915.01, 1915.02, 1916, and 1918.03; and that part of Bexar County tract 1614.01 included in block 913B; and that part of Bexar County tract 1616 included in block groups 1 and 2 and blocks 304, 305, and 306; and that part of Bexar County tract 1618 included in block groups 1, 2, and 3; and that part of Bexar County tract 1720 included in block group 1 and blocks 201, 202, 203A, 203B, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292A, 292B, 293, 294, 295A, 295B, and 296; and that part of Bexar County tract 1812 included in block groups 1, 2, 3, 5, and blocks 403, 404, 405, 406, and 407; and that part of Bexar County tract 1815.02 included in block groups 5, 6, and 7; and that part of Bexar County tract 1816 included in block group 2 and blocks 101A, 101B, 101C, 102A, 102B, 103, 104A, 104B, 105A, 105B, 106, 107, 108A, 109A, 110A, 111A, 112, 113, 114, 122, 136A, 136B, 143A, 143B, 305, 306, 601, and 602; and that part of Bexar County tract 1818.02 included in block groups 2, 3, 4, 5, and blocks

102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; and that part of Bexar County tract 1818.03 included in blocks 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120A, 120B, and 301; and that part of Bexar County tract 1818.04 included in block groups 2, 3, 4, 5, 6, 7, and block 101; and that part of Bexar County tract 1914.01 included in block groups 2 and 3; and that part of Bexar County tract 1914.03 included in block groups 1 and 2; and that part of Bexar County tract 1914.04 included in block group 1 and blocks 201 and 301.

(e) District 5 is composed of Bexar County tracts 1216.01, 1317, 1416, 1418, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1606, 1607.85, 1610.85, 1611, 1612, 1613, 1614.85, 1615.01, 1615.02, 1619, and 1620; and that part of Bexar County tract 1216.03 included in blocks 106A, 106B, 201D, 201F, and 203; and that part of Bexar County tract 1216.04 included in block groups 1 and 2 and blocks 301A, 301B, 302, 303, 304, and 305; and that part of Bexar County tract 1217 included in block groups 2, 3, 4, 5, 6, and blocks 102A, 102B, 103, 104A, 104B, 105, 106, 107, 108, 109, 110A, and 110B; and that part of Bexar County tract 1218.02 included in block group 2; and that part of Bexar County tract 1219.01 included in block group 1 and blocks 201, 207B, 208, 209, 210, 319, and 320; and that part of Bexar County tract 1316.01 included in blocks 101, 102, 103A, 103B, 103C, 103D, 103E, 104A, 104B, 104C, 105A, 105B, 106, 107A, 107B, 108A, 108B, 109, 110, 113, 114, 117, 118A, 118B, 119A, 119B, 119C, 119D, 119E, 119F, 119G, 121A, 121B, 121C, 121D, 121E, 122, 124, 133, 134, 135, 136, 137, 138A, and 138B; and that part of Bexar County tract 1316.03 included in blocks 201 and 204; and that part of Bexar

County tract 1318 included in block group 3 and blocks 214, 215, 216, 218, 401, 411, 412, 413, 414, 415, 416, 417, 418, 424, 425, 426, 427, 428, 429, and 430; and that part of Bexar County tract 1415 included in block 901A; and that part of Bexar County tract 1417 included in blocks 101, 102, 103, 104, 105, 106, 107, 108A, 108B, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119A, 119B, 120, 121, 122, 124, 125, 126, 132A, 132B, 133, 134, 135, 136, 139, 140, 141, 142, 143, and 199; and that part of Bexar County tract 1419 included in block group 2 and blocks 101, 102, 103A, 103B, 104, 105, 106, 107, 108, 109, 110, 111A, 111B, 112A, 112B, 301A, 301B, 302, 309A, 310, 311, 312, 314, 315, 316, 317, 318, 319, 320A, 320B, 321, 322, 323, 324, 325, 326, 327, 328, 329A, 329B, 330A, 330B, 331, 332, and 399; and that part of Bexar County tract 1605 included in block groups 6, 7, 8, and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116; and that part of Bexar County tract 1609 included in block groups 3, 4, 5, and blocks 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, and 618; and that part of Bexar County tract 1614.01 included in blocks 913A, 913C, and 913D; and that part of Bexar County tract 1616 included in blocks 302, 303, 307A, 307B, and 308; and that part of Bexar County tract 1618 included in block group 4; and that part of Bexar County tract 1703 included in blocks 313, 314, 315, 316, 317, 318, 319, 401, 402, 403, 404, 407, 408, 409, 410, 411, 412, 413, 416, 417, 418, 419, 501, 502, 503, 504, 507, 508, 509, 510, 511, 512, 515, 516, 517, 518, 601, 602, 603, 604, 607, 608, 609, 610, 611, 616, and 617; and that part of Bexar County tract 1710 included in block groups 4,

5, and 6; and that part of Bexar County tract 1720 included in block 297.

(f) District 6 is composed of Bexar County tracts 1103, 1215.04, 1401, 1402, 1403, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1603, 1604, and 1608; and that part of Bexar County tract 1104 included in blocks 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 201, 206, 207, 208, 209, 210, 211, 212, 213, 214, and 215; and that part of Bexar County tract 1213 included in block groups 3, 4, and 5; and that part of Bexar County tract 1214.01 included in block groups 2 and 3 and block 101; and that part of Bexar County tract 1215.01 included in block group 3 and blocks 107, 111, 112, 113, 114, 115, 116, 117, 127, 128, 129, 130, 131, 232, 233, 234, 235, and 236; and that part of Bexar County tract 1215.02 included in block groups 1, 2, and 3; and that part of Bexar County tract 1215.03 included in block groups 1, 2, 5, 6, 7, and 8; and that part of Bexar County tract 1216.03 included in block 201A; and that part of Bexar County tract 1216.04 included in block group 4 and blocks 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, and 321; and that part of Bexar County tract 1304 included in block groups 3, 4, 5, 6, and blocks 214A, 215, 220, 221, 702, 703, 704A, 720, 726, 734, 735, 736, 737, 738, 739, and 740; and that part of Bexar County tract 1316.01 included in blocks 111, 112, 115A, 115B, 116, 120A, 120B, 120C, 123A, 123B, 125, 126, 127, 128A, 128B, 128C, 129A, 129B, 130, 131A, 131B, 131C, 131D, 132, 139, 140, 141, 142, and 143; and that part of Bexar County tract 1316.03 included in block groups 1, 3, 4, and blocks 202, 203A, 203B, 203C, 203D, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214A, 214B, 214C,

214D, 214E, 215A, 215B, 216A, 216B, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, and 227; and that part of Bexar County tract 1318 included in block group 1 and blocks 201, 202, 203A, 203B, 204A, 204B, 205, 206A, 206B, 206C, 207A, 207B, 208, 209, 210, 211, 212, 213, 217, 219, 220, 221, 222A, 222B, 223A, 223B, 224, 225, 226, 227, 228, 229, 230, 402, 403, 404, 405, 406, 407, 408, 409, 410, 419, 420, 421, 422, and 423; and that part of Bexar County tract 1404 included in block groups 1, 2, 3, and blocks 401, 402, 403, 404, 405, 406, 407, 410, 414, 415, 423, 424, 425, 426, 428, 429, and 430; and that part of Bexar County tract 1415 included in blocks 901B and 902; and that part of Bexar County tract 1417 included in block group 2 and blocks 123A, 123B, 127A, 127B, 127C, 128A, 128B, 129A, 129B, 130A, 130B, 131, 137A, 137B, 138A, and 138B; and that part of Bexar County tract 1419 included in blocks 113A, 113B, 113C, 114, 115, 303A, 303B, 304A, 304B, 305A, 305B, 306A, 306B, 307, 308, 309B, and 313; and that part of Bexar County tract 1501 included in block groups 1, 2, 3, 4, 5, and blocks 620, 621, 622, 623, 627, 628, and 629; and that part of Bexar County tract 1602 included in block group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 301, 302, 304, 305, 306, 307, 308, 309, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, and 321; and that part of Bexar County tract 1605 included in block groups 4 and 5; and that part of Bexar County tract 1609 included in block groups 1 and 7 and blocks 201, 202, 203, 204, 205, 206, 614, 615, 616, 617, 621, and 622.

(g) District 7 is composed of Bexar County tracts 1706, 1707, 1708, 1709, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1801, 1803, 1804, 1805.01,

1805.02, 1806, 1807.01, 1807.02, 1810.03, 1810.04, 1810.05, 1814.01, 1814.02, and 1815.01; and that part of Bexar County tract 1616 included in block 301; and that part of Bexar County tract 1710 included in block groups 1, 2, 3, 7, and 8; and that part of Bexar County tract 1802 included in block groups 5 and 6; and that part of Bexar County tract 1808 included in block groups 2 and 3 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110C, 112, 113, 114, and 115; and that part of Bexar County tract 1813 included in block group 6; and that part of Bexar County tract 1815.02 included in block groups 1, 2, 3, and 4; and that part of Bexar County tract 1816 included in block groups 4 and 5 and blocks 108B, 109B, 110B, 111B, 301, 302, 303, 304, 603, 604, 605, 606, 607, and 608; and that part of Bexar County tract 1818.02 included in block 101; and that part of Bexar County tract 1818.03 included in block group 2 and blocks 101, 102A, 102B, 102C, 103, 104, 105, 106, 107, 119, 302, 303, 304, 305, 306, and 307; and that part of Bexar County tract 1818.04 included in blocks 102, 103, 104, 105, 106, 107, 108, 109, and 110.

(h) District 8 is composed of that part of Comal County tract 3101 included in block group 5 and blocks 101, 102A, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113A, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 130, 131, 132, 133, 134, 135, 142, 143, 144, 145, 146, 147, 148, 149, 150, 201, 202, 211, 212, 213, 214, 225, 226, 243, 244, 245, 301, 302, 303, 304, 305, 309, 310, 312, 315, 316, 317, 318, 319, 320, 321, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, and 499; and that part of Comal County tract 3102 included in block group 2 and blocks 110, 111, 118,

125, 127A, 145, 146, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, and 325; and that part of Comal County tract 3103 included in blocks 112B, 212, and 520; and that part of Comal County tract 3104.01 included in block groups 3, 4, 5, 6, and blocks 102, 103, 104, 115, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220A, 220B, 220C, 221, 222, 223, 224, and 225; and that part of Comal County tract 3104.02 included in blocks 201, 206, 207, 208, 302, 401, 402, 403, 404, 405, 406, 407, 408, 410, 411, 412, and 413; and that part of Comal County tract 3105 included in blocks 110, 111, 113, 114, 115, 116, 117, 122, 123, 124, 125, 126, 127, 128, 129, 130, 135, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 147, 148, 149, 199X, 199Y, 210, 211, 212, 218, 219, 220, and 222; and that part of Comal County tract 3108 included in blocks 141, 142, 144, 145, 201, 202, 204, 205, 208, 212A, 212B, 214, 217, 218, 219, 220A, 220B, 220C, 221A, 221B, 222, 223A, 223B, 225, 226, 227, 228A, 228B, 228C, 229A, 229B, 230A, 230B, 231B, 232B, 251A, 251B, 252A, and 252B.

(i) District 9 is composed of that part of Comal County tract 3101 included in blocks 102B, 103, 113B, 114, 127, 128, 129, 136, 137, 138, 139, 140, 141, 203, 204, 205, 206, 207, 208, 209, 210, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, 306, 307, 308, 311, 313, 314, 322, 323, 324, 325, 326, 327, 431, and 432; and that part of Comal County tract 3102 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 126, 127B, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 147, 199, and 324; and that part of Comal County

tract 3103 included in block groups 3 and 4 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112A, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 523, 599, 599Y, and 599Z; and that part of Comal County tract 3104.01 included in blocks 101, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 199, and 220D; and that part of Comal County tract 3104.02 included in block group 1 and blocks 202, 203, 204, 205, 209, 210, 211, 212, 213, 301, 303, 304A, 304B, 305, 306, 307, 308, 309, 310, 311, 312, 313A, 313B, 314, 409, 414, 415, 416A, 416B, and 417; and that part of Comal County tract 3105 included in block groups 3 and 4 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 118, 119, 120, 121, 131, 132, 133, 134, 143, 199Z, 201, 202, 203, 204, 205, 206, 207, 208, 209, 213, 214, 215, 216, 217, and 221; and that part of Comal County tract 3106.01 included in blocks 189 and 190; and that part of Comal County tract 3107 included in blocks 330, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342A, 342B, 343, 344A, 344B, 345, 346, 347, 348, 349, 350, 351, and 352; and that part of Comal County tract 3108 included in block group 3 and blocks 101A, 101B, 102, 103, 104, 105, 106A, 106B, 106C, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116A, 116B, 117, 118, 119A, 119B, 120, 121, 122, 123, 124A, 124B, 124C, 124D, 124E, 125A, 125B, 126A, 126B, 127, 128, 129, 130, 131, 132, 133, 134A, 134B, 134C, 135, 136, 137, 138, 139, 140, 143, 199, 203, 206, 207, 209, 210, 211, 213A, 213B, 215A, 215B, 216A, 216B, 216C, 224, 231A, 232A, 233A, 233B, 234A, 234B, 235, 236A, 236B, 237A, 237B, 238, 239A, 239B, 239C, 240, 241, 242, 243, 244A, 244B,

244C, 245A, 245B, 246, 247, 248, 249A, 249B, 250A, 250B, 253, 254A, 254B, 255A, 255B, 256A, 256B, 257A, 257B, and 258; and that part of Comal County tract 3109 included in block group 3 and blocks 101, 102, 103, 104, 105, 106, 108, 110, 136, 137, 142, 143, 144, 145, 146, 147, 148, 149A, 149B, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165A, 165B, 166, 167A, 167B, 168, 169A, 169B, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180A, 180B, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277A, 277B, 277C, 277D, 277E, 278, 279A, 279B, 280, 281, 282, 283A, 283B, 284, 285, 286, 287, 288A, 288B, 289, 290, 291A, 291B, 292, 293, 294A, 294B, 295, 296, and 297; Guadalupe County tracts 2105.01, 2106.01, 2106.02, 2107.01, and 2107.03; and that part of Guadalupe County tract 2105.02 included in block groups 1 and 4 and blocks 201A, 201B, 201C, 202A, 202B, 203, 204, 205, 206, 207, 208, 209, 210A, 210B, 211A, 211B, 212, 213A, 213B, 213C, 213D, 214, 215A, 215B, 216A, 216B, 217A, 217B, 218A, 218B, 218C, 219, 220, 221, 222, 223, 224, 225, 226, 227A, 227B, 227C, 227D, 228, 229, 230A, 230B, 231, 232, 233, 234, 235A, 235B, 236, 237, 238, 239, 240, 241, 243, 299Y, 299Z, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318A, 318B, 319, 320, 321, 322, 323, 324A, 324B, 324C, 325A, 325B, 325C, 327A, 327B, 328A, 328B, 329, 330, 331, 332, 333, 334, and 335; and that part of

Guadalupe County tract 2107.04 included in block groups 1, 2, 4, 5, 6, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315A, 315B, 315C, 315D, 316, 317, and 318; and that part of Guadalupe County tract 2108 included in block groups 6 and 7 and blocks 415, 416A, 416B, 419, 501A, 501B, 502A, 502B, 503, 504, 505, 506, 507A, 507B, 508A, 508B, 509A, 509B, 510A, 510B, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529A, 529B, 529C, 529D, 530, 531, 532, 533, 534A, 534B, 534C, 534D, 535A, 535B, 536A, 536B, 536C, 537A, 537B, 538, 539, 555, 556A, 556B, 557, 558A, 558B, 558C, 559, 560A, 560B, 561A, 561B, 562A, 562B, 563A, 563B, and 564. District 9 also includes that part of Comal County tract 3106.01 included in block 194; that part of Comal County tract 3107 included in block 331; that part of Comal County tract 3109 included in block 141; that part of Guadalupe County tract 2105.02 included in block 242; and that part of Guadalupe County tract 2107.04 included in block 319.

(j) District 10 is composed of that part of Hays County tract 0101 included in blocks 137, 138, 142, 148, 237, 238, 239, 240, 241, 242, 243, 244, and 245; and that part of Hays County tract 0103.01 included in blocks 301, 302, 303, 304, 305, 306, 307, 402, 408, 409, 410, 411, 413, 503A, 503B, 504, 505, 506, 510B, 513, 514, 517A, 517B, 518, 519A, 519B, 519C, 520A, 520B, 521A, 521B, 522, 523, 525, 526A, 526B, 527, 528, 529, and 530; and that part of Hays County tract 0103.02 included in blocks 101, 102, 103, 104, 107, 109, 110, 111, 112, 113, 114, 201, 202A, 202B, 203A, 203B, 204, 205, 207, 208, 209, 210, 211, 212, 213, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228A, 228B, 229, 230, 231, 232, 233A, 233B,

234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, and 251; and that part of Hays County tract 0104 included in block group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 301, 302, 303, 304, 305, 306B, 307, 308, 309A, 309B, 316A, 316B, 317A, 317B, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330A, 330B, 331A, 331B, 332, 333, 334, 335, 336, 337A, 337B, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, and 399R; and that part of Hays County tract 0105 included in block group 2 and blocks 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 313, 314, 408, 409A, 409B, 411, 412, 413A, 413B, 414, 415, 416A, 416B, and 417; and that part of Hays County tract 0106 included in blocks 332, 333, 334, 335, and 337.

(k) District 11 is composed of Caldwell County BNA 9605 and that part of Caldwell County BNA 9601 included in blocks 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 348, 349, 350, 354, 355, 356, 357, 358, 359, 360, 361, 362, 405A, 405B, 405C, 405D, 405E, 406, 407A, 407B, 408, 409, 410A, 410B, 410C, 410D, 410E, 411A, 411B, 412A, 412B, 412C, 412D, 413A, 413B, 413C, 414A, 414B, 415B, 416A, 416B, 416C, 417, 418A, 418B, 419A, 419B, 420, 421, 422A, 422B, 423, 424, 425, 426, 427, 428, 429, 430A, 430B, 431A, 431B, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441A, 441B, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452,

453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, and 499; and that part of Caldwell County BNA 9602 included in blocks 209, 217, 218, 308, 309A, 309B, 309C, 310, 311, 312, 313, 314A, 314B, 314C, 314D, 315A, 315B, 316, 317, 318A, 318B, 319A, 319B, 319C, 320, 328, 329, 332, 333, and 334; and that part of Caldwell County BNA 9603 included in block groups 3 and 4 and blocks 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 217, and 218; and that part of Caldwell County BNA 9604 included in block group 3 and blocks 102, 103, 106, 107, 108, 109, 110, 119, 120, 121, 122, 123, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238A, 238B, 239, 240, 241, 242, 243, 244, and 245; and that part of Caldwell County BNA 9606 included in blocks 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 246, 288, 293, and 294; and that part of Caldwell County BNA 9607 included in block groups 4 and 5 and blocks 103, 104, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120A, 120B, 134, 137, 138, 139, 140, 141, 142A, 142B, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 204, 205, 206, 207, 208, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 258, 259, 260, 261, 262, 263, 264, 265, 266, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313A, 313B, 314, 315, 320, 321, 322, 323, 326, 327, 328, 329,

330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347; Hays County tract 0102; and that part of Hays County tract 0101 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 139, 140, 141, 143, 144, 145, 146, 147, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, and 236; and that part of Hays County tract 0103.01 included in block groups 1 and 2 and blocks 308, 309, 310, 311, 401, 403, 404, 405, 406, 407, 412, 414, 415, 416, 417, 418, 501A, 501B, 501C, 501D, 502A, 502B, 507A, 507B, 508A, 508B, 509A, 509B, 510A, 511, 512, 515, 516, and 524; and that part of Hays County tract 0103.02 included in blocks 105, 106, 108A, 108B, 206, 214A, 214B, 215, and 216; and that part of Hays County tract 0104 included in blocks 216, 217, 218, 219A, 219B, 220, 221A, 221B, 306A, 310A, 310B, 311, 312, 313, 314, and 315; and that part of Hays County tract 0105 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 116, 134, 135, 136, 137, 312, 401, 402A, 402B, 403A, 403B, 404, 405, 406, 407, 410A, 410B, 418, 419A, 419B, 420A, 420B, 421, 422, and 423; and that part of Hays County tract 0106 included in block groups 1 and 2 and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 336, 401A, 401B, 401C, 401D, 401E, 401F, 402, 403, 404, 405, 406, 407, 408, 411, 412, 413, 414, 415, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435A, 435B, 436, 437, 438, 439A, 439B, 440, 441, 442A, 442B, 442C,

443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, and 477; and that part of Hays County tract 0107 included in block groups 1, 3, 4, and blocks 201, 202, 203, 204, 205, 206, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255A, 255B, 256, 257, 258, 259, 260, 261, 262A, 262B, 262C, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293A, 293B, 294, 295, and 296; and that part of Hays County tract 0108.02 included in blocks 130, 137, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 501, 502, 524, 525, 532, 533, 534, 655, 656, 657, 663, 664, 673, 674, 675, and 676; and that part of Hays County tract 0109.02 included in blocks 123, 126, 127, 132B, 312, 313A, 313B, and 399; and that part of Hays County tract 0109.04 included in block groups 2, 4, 5, and blocks 101, 102A, 102B, 102C, 102D, 112, 113A, 113B, 113C, 114A, 114B, 114C, 115A, 115B, 301A, 301B, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 317, 318A, 318B, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333A, 333B, 334, 335, 336, 337, 338, 339, 340, 341, and 342. District 11 also includes that part of Caldwell County BNA 9601 included in block 415A; that part of Hays County tract 0106 included in block 409; that part of Hays County tract 0108.02 included in blocks 526 and 601; that part of Hays County tract 0109.02 included in block 125; that part of Hays County tract 0109.03 included

in block 223; and that part of Hays County tract 0109.04 included in block 104.

(l) District 12 is composed of Medina County BNA 9902 and that part of Medina County BNA 9903 included in blocks 201A, 201B, 201C, 202, 203, 204A, 204B, 204C, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223A, 223B, 223C, 224, 225A, 225B, 226A, 226B, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242A, 243, 244, 245, 247, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 358, 359A, 362A, 362B, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 401, 402A, 402B, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, and 435; and that part of Medina County BNA 9905 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153A, 153B, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173A, 173B, 174, 175, 176, 177, 178, 181A, 181B, 182, 201, 202, 203, 215, 222, 223, 224, 225, 235, 301, 302, 303, 307, 308, 315, 338, 350, 351, 353, 362, 430, 431, 437, 438, 439,

440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 461, 462, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, and 499; and that part of Medina County BNA 9906 included in blocks 152, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 226, 227, 228, 229, 230, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274; and that part of Medina County BNA 9907 included in blocks 101, 111, 112, 113, 114, 115, 116, 117, 118, 133, 134, 135, 136, 137, 138, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 165, 211A, 212, 213, 214, 215, 219A, 219B, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 340A, 340B, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358A, 358B, 359, 360A, 360B, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371A, 371B, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, and 413A.

(m) District 13 is composed of that part of Atascosa County BNA 9602 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146A, 146B, 147A, 147B, 207, 208, 209, 210, 211, 501A, 501B, 502, 503, 504, 505A, 505B, 506, 507A, 507B, 508A, 508B, 509, 511, 512, 513, 514, 515, 516,

517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531A, 531B, 532A, 532B, 533, 534A, 534B, 535, and 536; Medina County BNAs 9901 and 9904; and that part of Medina County BNA 9903 included in block group 1 and blocks 242B, 242C, 246A, 246B, 246C, 246D, 248, 249, 250, 251, 357A, 357B, 359B, 360, 361, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 436A, 436B, and 437; and that part of Medina County BNA 9905 included in blocks 179, 180, 183A, 183B, 184A, 184B, 185, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 216, 217, 218, 219, 220, 221, 226, 227, 228, 229, 230, 231, 232, 233, 234, 236, 237, 238, 239, 240, 241, 242, 243, 244, 304, 305, 306, 309, 310, 311, 312, 313, 314, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 352, 354, 355, 356, 357, 358, 359, 360A, 360B, 361, 363, 364, 365, 366, 367, 368, 369A, 369B, 370, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 432, 433, 434, 435, 436, 458, 459, 460, 463, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, and 497; and that part of Medina County BNA 9906 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 156, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 231, 232, 233, 275, 276, 277, 278, 279, 280, and 281; and that part of Medina County BNA 9907 included in blocks 102, 103, 104, 105, 106, 107A, 107B, 107C, 108, 109, 110,

119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 139, 140, 141, 142, 143, 144, 145, 146, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167, 201, 202, 203, 204, 205, 206A, 206B, 207, 208, 209, 210, 211B, 216, 217A, 217B, 218, 232A, 232B, 233, 234, 235, 236, 237, 238, 301, 302A, 302B, 303, 304, 305, 306, 307, 308, 309A, 309B, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 333, 334, 335, 336, 337, 338, 339, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413B, 414, 415, 416, 417, 418, 419, 420A, 420B, 420C, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, and 448. District 13 also includes that part of Atascosa County BNA 9602 included in block 510.

(n) District 14 is composed of that part of Uvalde County BNA 9502 included in block groups 3 and 4 and blocks 102, 103, 106, 117, 140, 142, 201, 202, 203, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216A, 216B, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239A, 239B, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 278, 279, 280, 281, 282, 283, 284, 285, 286, 288, 296, 297, 299, 299R, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, and 541; and that part of Uvalde County BNA 9503 included in block groups 2, 3, 4, 5, 6, and blocks 101B, 101C, 102, 103, 104, 105, 106, 107, 108, 109A, 109B, 110, 111, 112, 113, 114, 115, 116A, 116B, 116C, 117A, 117B, 118, 119, 120, 121, 122, 123, 124, 126, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156,

164A, 164B, 165, 166, 167, 168, 169, 170, 171, 172, 173, and 174; and that part of Uvalde County BNA 9504 included in block group 4 and blocks 314, 316, and 319; and that part of Uvalde County BNA 9505 included in block groups 2 and 3 and blocks 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126A, 126B, 126C, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139A, 139B, 140, 141, 142A, 142B, 143A, 143B, 144, 145, 146, 147, 148, 149A, 149B, 150, 151, and 152.

(o) District 15 is composed of Uvalde County BNA 9501 and that part of Uvalde County BNA 9502 included in block group 6 and blocks 101, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195A, 195B, 196A, 196B, 197, 205, 275, 276, 277, 287, 289, 290, 291, 292, 293, 294, 295, 501, 502, 503, 504, 505, 506, 507A, 507B, 508, 509A, 509B, 509C, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, and 597; and that part of Uvalde County BNA 9503 included in blocks 101A, 101D, 125, 127, 128, 129, 130, 131, 132, 157A, 157B, 158, 159, 160, 161, 162, 163, 175A, and 175B; and that part of Uvalde County BNA 9504 included in block groups 1 and 2 and blocks 301, 302,

303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 315, 317, 318, 320, 321, 322, 323, 324, 325, 326, 327, and 328; and that part of Uvalde County BNA 9505 included in blocks 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110B, 110C, 111, and 112.

(p) Each district described by this section includes only the part of the described geographic area that is included in the boundaries of the authority as provided by Section 1.04 of this article.

(q) In this section, the terms "tract," "block," "block group," and "BNA" (block numbering area) mean the geographic areas identified by those terms in the Redistricting Map Data Base for the State of Texas prepared by the Texas Legislative Council and distributed by the council to the State Data Center, Texas Department of Commerce, on March 22, 1991, for public distribution by the State Data Center.

Act of May 29, 1995, 74th Leg., R.S., ch. 261, § 1, 1995 Tex. Gen. Laws 2505, 2508.

SECTION 1.094 MODIFICATION OF DISTRICT LINES AFTER DECENNIAL CENSUS. (a) After each federal decennial census, or as needed, the board may modify the district lines described in Section 1.093 of this article. During March or April of an even- numbered year, the board by order may modify the district lines described in Section 1.093 of this article to provide that the lines do not divide a county election precinct except as necessary to follow the authority's jurisdictional boundaries.

(b) Modifications under this section may not result in:

(1) the dilution of voting strength of a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.), as amended;

(2) a dilution of representation of a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.), as amended;

(3) discouraging participation by a group covered by the federal Voting Rights Act (42 U.S.C. Section 1973c et seq.), as amended; or

(4) increasing or decreasing the number of districts in any county.

(c) A county election precinct established by a county in accordance with Chapter 42, Election Code, may not contain territory from more than one authority district.

Act of May 6, 1999, 76th Leg., R.S., ch. 163, § 1, 1999 Tex. Gen. Laws 634.

SECTION 1.10 SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE. (a) The South Central Texas Water Advisory Committee shall advise the board on downstream water rights and issues. The advisory committee consists of one member appointed by the governing body of each of the following counties and municipalities, except that Atascosa County may not have a representative on the advisory committee when the county has a representative member on the board:

(1) Atascosa;

(2) Caldwell;

(3) Calhoun;

(4) Comal;

(5) DeWitt;

(6) Goliad;

(7) Gonzales;

(8) Guadalupe;

(9) Hays;

(10) Karnes;

(11) Medina;

(12) Nueces;

(13) Refugio;

(14) San Patricio;

(15) Uvalde;

(16) Victoria;

(17) Wilson;

(18) the City of San Antonio;

(19) the City of Victoria; and

(20) the City of Corpus Christi.

(b) A member must be a resident or qualified voter of or engaged in business in a county all or part of which is included in the member's area of representation.

(c) The reimbursement of an advisory committee member for expenses is on the same terms as the reimbursement of board members. An advisory committee member is not entitled to compensation.

(d) An advisory committee member holds office until a successor is appointed.

(e) The authority shall send to each advisory committee member all the communications of the authority that are extended to board members and may participate in board meetings to represent downstream water supply concerns and assist in solutions to those concerns. Advisory committee members may not vote on a board decision.

(f) The advisory committee by resolution may request the board to reconsider any board action that is considered prejudicial to downstream water interests. If the board review does not result in a resolution satisfactory to the advisory committee, the advisory committee by resolution may request the commission to review the action. The commission shall review the action and may make a recommendation to the board. If the board determines that the board's action is contrary to an action of the commission affecting downstream interests, the board shall reverse itself.

(g) The advisory committee shall meet to organize and elect a presiding officer.

(h) The presiding officer of the advisory committee shall submit a report assessing the effectiveness of the authority to the commission and the authority by March 31 of each even - numbered year. The report must assess the effect on

downstream water rights of the management of the aquifer. The authority shall consider the report in managing the authority's affairs.

(i) The advisory committee's duties include:

(1) assisting the authority in developing the authority's demand management plan for the county that the representative represents;

(2) assisting the authority to implement the demand management plan; and

(3) performing other duties requested by the board that the representative may practicably perform.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.10, 1993 Tex. Gen. Laws 2350, 2357.

SECTION 1.11 GENERAL POWERS AND DUTIES OF THE BOARD AND AUTHORITY. (a) The board shall adopt rules necessary to carry out the authority's powers and duties under this article, including rules governing procedures of the board and authority.

(b) The authority shall ensure compliance with permitting, metering, and reporting requirements and shall regulate permits.

(c) The authority may issue orders to enforce this article or its rules.

(d) The authority may:

(1) issue or administer grants, loans, or other financial assistance to water users for water conservation and water reuse;

(2) enter into contracts;

(3) sue and be sued in its own name;

(4) receive gifts, grants, awards, and loans for use in carrying out its powers and duties;

(5) hire an executive director to be the chief administrator of the authority and other employees as necessary to carry out its powers and duties;

(6) delegate the power to hire employees to the executive director of the authority;

(7) own real and personal property;

(8) close abandoned, wasteful, or dangerous wells;

(9) hold permits under state law or under federal law pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) and its amendments;

(10) enforce inside the authority's boundaries Chapter 1901, Occupations Code, and rules adopted by the Texas Commission of Licensing and Regulation under that chapter; and

(11) require to be furnished to the authority water well drillers' logs that are

required by Chapter 1901, Occupations Code, to be kept and furnished to the Texas Commission of Licensing and Regulation.

(e) The authority shall make a good faith effort to award to minority-owned and women-owned businesses contracts issued under the powers and duties granted under this section in the amount of 20 percent of the total amount of those contracts. Not later than October 31 of every even-numbered year, the authority shall file with the governor and each house of the legislature a written report containing the following information for the previous two years for all businesses, for minority-owned and women-owned businesses classified by minority group and within each minority group classification, by gender, the total number of contracts issued by the authority; the total dollar amount of those contracts; and the total number of businesses submitting bids or proposals relating to such contracts and to the purpose of such contracts. In this subsection:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

(A) African Americans;

(B) American Indians;

(C) Asian Americans; and

(D) Mexican Americans and other Americans of Hispanic origin.

(3) "Women-owned business" means a business entity at least 51 percent of which is owned by women or, in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

(f) The authority may own, finance, design, construct, operate, or maintain recharge facilities. For the purpose of this subsection, "recharge facility" means a dam, reservoir, or other method of recharge project and associated facilities, structures, or works but does not include a facility to recirculate water at Comal or San Marcos Springs.

(f-1) The authority shall provide written notice of the intent to own, finance, design, construct, operate, or maintain recharge facilities to:

(1) each groundwater conservation district in the area in which the recharge facility will be located;

(2) the mayor of each municipality in the area in which the recharge facility will be located;

(3) the county judge of each county in the area in which the recharge facility will be located; and

(4) each member of the legislature who represents the area in which the proposed recharge facility will be located.

(f-2) Any entity within the county in which a recharge facility is to be constructed shall be provided opportunity for input and allowed to provide proposals for partnering with the authority to own, finance, design, construct, operate, or maintain the recharge facility.

(g) The authority has the power of eminent domain. The authority may not acquire rights to underground water by the power of eminent domain.

(h) *Repealed by Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 6.03, 2001 Tex. Gen. Laws 1880, 1962.*

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.11, 1993 Tex. Gen. Laws 2350, 2358; as amended by Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 6.03, 2001 Tex. Gen. Laws 1991, 2075; Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.01, 2007 Tex. Gen. Laws 4612, 4627; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.01, 2007 Tex. Gen. Laws 5848, 5901; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 5, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.115 RULEMAKING PROCEDURES. (a) The authority shall comply with the procedures provided by this section in adopting rules.

(b) The authority shall provide, by using the United States mail, notice of a proposed rule to all applicants and permit holders. The authority shall

publish in a newspaper of general circulation within the boundaries of the authority notice of a public hearing on a proposed rule at least 14 days before the date of the public hearing on the rule. The notice must include:

(1) the date, time, and place of the public hearing;

(2) a statement of the general subject matter of the proposed rule;

(3) the procedures for obtaining copies of the proposed rule and for submitting comments; and

(4) the deadline for submitting comments.

(c) The board shall allow at least 45 days for comment on a proposed rule, other than an emergency rule, before the board adopts the rule. The board shall consider all written comments and shall, in the order adopting the rule, state the reasons and justification for the rule and the authority's responses to the written comments.

(d) The meeting at which a proposed rule is adopted as a final rule must be an open meeting, and the public must be allowed to make comments on the proposed rule and the agency responses. A proposed rule becomes final and effective on the 10th day after the date the rule is adopted by the board.

(e) Notwithstanding Subsections (b) - (d) of this section, the board may adopt emergency rules in anticipation of imminent harm to human health, safety, or welfare, or if compliance with the

procedures provided in Subsections (b) - (d) of this section would prevent an effective response to emergency aquifer or springflow conditions. The board may adopt emergency rules five days after providing public notice. Emergency rules are effective immediately on adoption for a period of 120 days and may be renewed once for not more than 60 days.

(f) Subsections (b) - (d) of this section do not apply to the adoption of bylaws or internal procedures of the board and authority.

Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 6.01, 2001 Tex. Gen. Laws 1991, 2075.[1]

SECTION 1.12 SUNSET COMMISSION REVIEW. (a) *Repealed by Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193.*

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[1] Although not codified as an amendment to the Act, §§ 6.04 and 6.05 of ch. 966 are relevant to the Rulemaking Procedures of the Authority and provide as follows:

> **SECTION 6.04** A rule adopted by the Edwards Aquifer Authority before the effective date of this Act remains in effect until repealed, amended, or readopted. Nothing contained in this article shall be construed as repealing the applicability of the open meetings law, Chapter 551, Government Code, or the public information law, Chapter 552, Government Code, to the Edwards Aquifer Authority.
>
> **SECTION 6.05** The rules in 31 T.A.C. Part 20 shall continue in effect until replaced by rules adopted pursuant to this article. The secretary of state shall delete 31 T.A.C. Part 20.

(b) *Repealed by Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193.*

(c) *Repealed by Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193.*

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.12, 1993 Tex. Gen. Laws 2350, 2359; as amended by Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193.

SECTION 1.13 REUSE AUTHORIZED. Any regulation of the withdrawal of water from the aquifer must allow for credit to be given for certified reuse of the water. For regulatory credit, the authority or a local underground water conservation district must certify:

(1) the lawful use and reuse of aquifer water;

(2) the amount of aquifer water to be used; and

(3) the amount of aquifer withdrawals replaced by reuse.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.13, 1993 Tex. Gen. Laws 2350, 2359.

SECTION 1.14 WITHDRAWALS. (a) Authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act shall be limited in accordance with this section to:

(1) protect the water quality of the aquifer;

(2) protect the water quality of the surface streams to which the aquifer provides springflow;

(3) achieve water conservation;

(4) maximize the beneficial use of water available for withdrawal from the aquifer;

(5) recognize the extent of the hydrogeologic connection and interaction between surface water and groundwater;

(6) protect aquatic and wildlife habitat;

(7) protect species that are designated as threatened or endangered under applicable federal or state law; and provide for instream uses, bays, and estuaries.

(b) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

(c) Except as provided by Subsections (f) and (h) of this section and Section 1.26 of this article, for the period beginning January 1, 2008, the amount of permitted withdrawals from the aquifer may not exceed or be less than 572,000 acre-feet of water for each calendar year, which is the sum of all regular permits issued or for which an application was filed

and issuance was pending action by the authority as of January 1, 2005.

(d) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

(e) The authority may not allow withdrawals from the aquifer through wells drilled after June 1, 1993, except for replacement, test, or exempt wells or to the extent that the authority approves an amendment to an initial regular permit to authorize a change in the point of withdrawal under that permit.

(f) If the level of the aquifer is equal to or greater than 660 feet above mean sea level as measured at Well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at Well J-27, the authority may authorize withdrawal from the Uvalde pool, on an uninterruptible basis, of permitted amounts.

(g) The authority by rule may define other pools within the aquifer, in accordance with hydrogeologic research, and may establish index wells for any pool to monitor the level of the aquifer to aid the regulation of withdrawals from the pools.

(h) To accomplish the purposes of this article, the authority, through a program, shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum

springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law and to achieve other purposes provided by Subsection (a) of this section and Section 1.26 of this article. The authority from time to time as appropriate may revise the practices, procedures, and methods. To meet this requirement, the authority shall require:

> (1) phased adjustments to the amount of water that may be used or withdrawn by existing users or categories of other users, including adjustments in accordance with the authority's critical period management plan established under Section 1.26 of this article; or
>
> (2) implementation of alternative management practices, procedures, and methods.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.14, 1993 Tex. Gen. Laws 2350, 2360; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.02, 2007 Tex. Gen. Laws 4612, 4627; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.02, 2007 Tex. Gen. Laws 5848, 5901.

SECTION 1.15 PERMIT REQUIRED. (a) The authority shall manage withdrawals from the aquifer and shall manage all withdrawal points from the aquifer as provided by this Act.

(b) Except as provided by Sections 1.17 and 1.33 of this article, a person may not withdraw water from the aquifer or begin construction of a well or

other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority.

(c) The authority may issue regular permits, term permits, and emergency permits.

(d) Each permit must specify the maximum rate and total volume of water that the water user may withdraw in a calendar year.

(e) The authority shall conduct a contested case hearing on a permit application if a person with a personal justiciable interest related to the application requests a hearing on the application.

(f) The authority shall adopt rules establishing procedures for contested case hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.15, 1993 Tex. Gen. Laws 2350, 2360; as amended by Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 6.02, 2001 Tex. Gen. Laws 1991, 2075.

SECTION 1.16 DECLARATIONS OF HISTORICAL USE; INITIAL REGULAR PERMITS. (a) An existing user may apply for an initial regular permit by filing a declaration of historical use of underground water withdrawn from the aquifer during the historical period from June 1, 1972, through May 31, 1993.

(b) An existing user's declaration of historical use must be filed on or before March 1, 1994, on a form prescribed by the board. An applicant for a permit must timely pay all application fees

required by the board. An owner of a well used for irrigation must include additional documentation of the number of acres irrigated during the historical period provided by Subsection (a) of this section.

(c) An owner of a well from which the water will be used exclusively for domestic use or watering livestock and that is exempt under Section 1.33 of this article is not required to file a declaration of historical use.

(d) The board shall grant an initial regular permit to an existing user who:

(1) files a declaration and pays fees as required by this section; and

(2) establishes by convincing evidence beneficial use of underground water from the aquifer.

(e) To the extent water is available for permitting, the board shall issue the existing user a permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. If a water user does not have historical use for a full year, then the authority shall issue a permit for withdrawal based on an amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. If the total amount of water determined to have been beneficially used without waste under this subsection exceeds the amount of water available for permitting, the authority shall adjust the amount of water authorized for withdrawal under the permits proportionately to meet the amount available for permitting. An existing

irrigation user shall receive a permit for not less than two acre-feet a year for each acre of land the user actually irrigated in any one calendar year during the historical period. An existing user who has operated a well for three or more years during the historical period shall receive a permit for at least the average amount of water withdrawn annually during the historical period.

(f) The board by rule shall consider the equitable treatment of a person whose historic use has been affected by a requirement of or participation in a federal program.

(g) The authority shall issue an initial regular permit without a term, and an initial regular permit remains in effect until the permit is abandoned or cancelled.

(h) The board shall notify each permit holder that the permit is subject to limitations as provided by this article.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.16, 1993 Tex. Gen. Laws 2350, 2361; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.03, 2007 Tex. Gen. Laws 4612, 4628; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.03, 2007 Tex. Gen. Laws 5848, 5902.

SECTION 1.17 INTERIM AUTHORIZATION. (a) A person who, on the effective date of this article, owns a producing well that withdraws water from the aquifer may continue to withdraw and beneficially use water without waste until final action on permits by the authority, if:

(1) the well is in compliance with all statutes and rules relating to well construction, approval, location, spacing, and operation; and

(2) by March 1, 1994, the person files a declaration of historical use on a form as required by the authority.

(b) Use under interim authorization may not exceed on an annual basis the historical, maximum, beneficial use of water without waste during any one calendar year as evidenced by the person's declaration of historical use calculated in accordance with Subsection (e) of Section 1.16 of this article, unless that amount is otherwise determined by the authority.

(c) Use under this section is subject to the authority's comprehensive management plan and rules adopted by the authority.

(d) Interim authorization for a well under this section ends on:

(1) entry of a final and appealable order by the authority acting on the application for the well; or

(2) March 1, 1994, if the well owner has not filed a declaration of historical use.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.17, 1993 Tex. Gen. Laws 2350, 2361.

SECTION 1.18 ADDITIONAL REGULAR PERMITS. (a) To the extent water is available for permitting after the issuance of permits to existing users, the authority may issue additional regular

permits, subject to limits on the total amount of permitted withdrawals determined under Section 1.14 of this article.

(b) The authority may not consider or take action on an application relating to a proposed or existing well of which there is no evidence of actual beneficial use before June 1, 1993, until a final determination has been made on all initial regular permit applications submitted on or before the initial application date of March 1, 1994.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.18, 1993 Tex. Gen. Laws 2350, 2362.

SECTION 1.19 TERM PERMITS. (a) The authority may issue interruptible term permits for withdrawal for any period the authority considers feasible, but may not issue a term permit for a period of more than 10 years.

(b) Withdrawal of water under a term permit must be consistent with the authority's critical period management plan established under Section 1.26 of this article. A holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless:

(1) the level of the aquifer is higher than 675 feet above sea level, as measured at Well J-17;

(2) the flow at Comal Springs as determined by Section 1.26(c) of this article is greater than 350 cubic feet per second; and

(3) the flow at San Marcos Springs as determined by Section 1.26(c) of this article is greater than 200 cubic feet per second.

(c) A holder of a term permit may not withdraw water from the Uvalde pool of the aquifer unless the level of the aquifer is higher than 865 feet above sea level, as measured at Well J-27.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.19, 1993 Tex. Gen. Laws 2350, 2362; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.03, 2007 Tex. Gen. Laws 4612, 4628; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.04, 2007 Tex. Gen. Laws 5848, 5902.

SECTION 1.20 EMERGENCY PERMITS. (a) Emergency permits may be issued only to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.

(b) The term of an emergency permit may not exceed 30 days, unless renewed.

(c) The board may renew an emergency permit.

(d) The holder of an emergency permit may withdraw water from the aquifer without regard to its effect on other permit holders.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.20, 1993 Tex. Gen. Laws 2350, 2362.

SECTION 1.21 PERMIT RETIREMENT. (a) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of*

May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.

(b) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

(c) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.21, 1993 Tex. Gen. Laws 2350, 2362; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.

SECTION 1.21 CONTESTED CASE HEARINGS; REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS. (a) An applicant in a contested or uncontested hearing on an application under this Act or a party to a contested hearing may administratively appeal a decision of the board on an application by requesting written findings of fact and conclusions of law not later than the 20th day after the date of the board's decision.

(b) On receipt of a timely written request, the board shall make written findings of fact and conclusions of law regarding a decision of the board on an application under this Act. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 20th day

after the date the board receives the request. A party to a contested hearing may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the authority's office and must state the grounds for the request.

(d) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(e) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 6, § 1.21, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.211 DECISION; WHEN FINAL. (a) A decision by the board on an application under this Act is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(A) the board denies the request for rehearing; or

(B) the board renders a written decision after rehearing.

(b) A timely filed motion for rehearing is a prerequisite to a suit against the authority under Section 1.46 of this article challenging a decision in a contested hearing. A suit under Section 1.46 must be filed not later than the 60th day after the date on which the decision becomes final.

Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 6, § 1.211, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.22 ACQUISITION OF RIGHTS. (a) The authority may acquire permitted rights to use water from the aquifer for the purposes of:

(1) holding those rights in trust for sale or transfer of the water or the rights to persons within the authority's jurisdiction who may use water from the aquifer;

(2) holding those rights in trust as a means of managing overall demand on the aquifer; or

(3) holding those rights for resale.

(b) The authority may acquire and hold permits or rights to appropriate surface water or groundwater from sources inside or outside of the authority's boundaries.

(c) Notwithstanding any other provisions of law, the authority's acquisition of permitted rights to use water from the aquifer is eligible for financial assistance from:

(1) the water supply account of the Texas Water Development Fund under Subchapter D, Chapter 17, Water Code;

(2) the water loan assistance fund under Subchapter C, Chapter 15, Water Code; and

(3) the revenue bond program under Subchapter I, Chapter 17, Water Code.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.22, 1993 Tex. Gen. Laws 2350, 2362; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.05, 2007 Tex. Gen. Laws 4612, 4628; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.05, 2007 Tex. Gen. Laws 5848, 5902.

SECTION 1.23 CONSERVATION AND REUSE PLANS. (a) The authority may require holders of regular permits and holders of term permits to submit water conservation plans and, if appropriate, reuse plans for review and approval by the authority. The board by rule shall require a plan to be implemented after a reasonable time after a plan's approval.

(b) The board shall assist users in developing conservation or reuse plans.

(c) The authority biennially shall prepare and update enforceable and effective conservation and reuse plans as required by this article. Not later than January 1 of each odd- numbered year the authority shall submit the plan to the legislature.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.23, 1993 Tex. Gen. Laws 2350, 2363.

SECTION 1.24 LOANS AND GRANTS. (a) Notwithstanding any other provision of law, the authority is eligible as a lender district to receive loans from the Texas Water Development Board under the agricultural water conservation bond program under Subchapter J, Chapter 17, Water Code.

(b) The authority may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this article.

(c) The authority may issue grants or make loans to finance the purchase or installation of equipment or facilities. If the authority issues a grant for a water conservation, reuse, or water management project, the authority may require the beneficiary to transfer to the authority permitted rights to aquifer water equal to a portion of the water conserved or made available by the project.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.24, 1993 Tex. Gen. Laws 2350, 2363.

SECTION 1.25 COMPREHENSIVE MANAGEMENT PLAN. (a) Consistent with Section 1.14 of this article, the authority shall develop, by September 1, 1995, and implement a comprehensive water management plan that includes conservation, future supply, and demand management plans. The authority may not delegate the development of the plan under Section 1.42 of this article.

(b) The authority, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and underground water conservation districts within the authority's

boundaries, shall develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the authority and reviewed annually by the appropriate state agencies and the Edwards Aquifer Legislative Oversight Committee. The authority, advisory committee, Texas Water Development Board, and districts, in developing the plan, shall:

(1) thoroughly investigate all alternative technologies;

(2) investigate mechanisms for providing financial assistance for alternative supplies through the Texas Water Development Board; and

(3) perform a cost-benefit and an environmental analysis.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.25, 1993 Tex. Gen. Laws 2350, 2363.

SECTION 1.26 CRITICAL PERIOD MANAGEMENT PLAN. (a) The authority by rule shall adopt a critical period management plan consistent with Sections 1.14(a), (f), and (h) of this article. The plan must allow irrigation use to continue in order to permit the user to complete the irrigation of a crop in progress.

(b) In this section, "MSL" means the elevation above mean sea level, measured in feet, of the surface of the water in a well, and "CFS" means cubic feet per second. Not later than January 1, 2008, the authority shall, by rule, adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts indicated in

Tables 1 and 2 whether according to the index well levels or the Comal or San Marcos Springs flow as applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 35 percent under Table 2:

TABLE 1 –

CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES FOR THE SAN ANTONIO POOL

COMAL SPRINGS FLOW CFS	SAN MARCOS SPRINGS FLOW CFS	INDEX WELL J-17 LEVEL MSL	CRITICAL PERIOD STAGE	WITHDRAWAL REDUCTION – SAN ANTONIO POOL
<225	<96	<660	I	20%
<200	<80	<650	II	30%
<150	N/A	<640	III	35%
<100	N/A	<630	IV	40%

TABLE 2 –

CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES FOR THE UVALDE POOL

WITHDRAWAL REDUCTION – UVALDE POOL	INDEX WELL J-27 LEVEL MSL	CRITICAL PERIOD STAGE
N/A	N/A	I
5%	<850	II
20%	<845	III
35%	<842	IV

(c) A change to a critical period stage with higher withdrawal reduction percentages is triggered if the 10-day average of daily springflows at the Comal Springs or the San Marcos Springs or the 10-day average of daily aquifer levels at the J-17 Index Well drops below the lowest number of any of the trigger levels indicated in Table 1. A change to a critical period stage with lower withdrawal reduction percentages is triggered only when the 10-day average of daily springflows at the Comal Springs and the San Marcos Springs and the 10-day average of daily aquifer levels at the J-17 Index Well are all above the same stage trigger level. The authority may adjust the withdrawal percentages for Stage IV in Tables 1 and 2 if necessary in order to comply with Subsection (d) or (e) of this section.

(d) Beginning September 1, 2007, the authority may not require the volume of permitted withdrawals to be less than an annualized rate of 340,000 acre-feet, under critical period Stage IV.

(e) After January 1, 2013, the authority may not require the volume of permitted withdrawals to be less than an annualized rate of 320,000 acre-feet, under critical period Stage IV unless, after review and consideration of the recommendations provided under Section 1.26A of this article, the authority determines that a different volume of withdrawals is consistent with Sections 1.14(a), (f), and (h) of this article in maintaining protection for federally listed threatened and endangered species associated with the aquifer to the extent required by federal law.

(f) Notwithstanding Subsections (d) and (e) of this section, the authority may require further withdrawal reductions before reviewing and considering the recommendations provided under Section 1.26A of this article if the discharge of Comal Springs or San Marcos Springs declines an additional 15 percent after Stage IV withdrawal reductions are imposed under Subsection (b) of this section. This subsection expires on the date that critical period management plan rules adopted by the authority based on the recommendations provided under Section 1.26A of this article take effect.

(g) Notwithstanding the existence of any stage of an interim or final critical period adopted by the authority under this section, a person authorized to withdraw groundwater from the aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed for that stage, be allowed to finish a crop already planted in the calendar year during which the critical period is in effect.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.26, 1993 Tex. Gen. Laws 2350, 2363; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.06, 2007 Tex. Gen. Laws 4612, 4628; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.06, 2007 Tex. Gen. Laws 5848, 5903; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ___, § 7, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.26A DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT THROUGH RECOVERY

IMPLEMENTATION PROGRAM. (a) The authority, with the assistance of Texas A&M University, shall cooperatively develop a recovery implementation program through a facilitated, consensus-based process that involves input from the United States Fish and Wildlife Service, other appropriate federal agencies, and all interested stakeholders, including those listed under Subsection (e)(1) of this section. The recovery implementation program shall be developed for the species that are:

(1) listed as threatened or endangered species under federal law; and

(2) associated with the aquifer.

(b) The authority shall enter into a memorandum of agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders, not later than December 31, 2007, in order to develop a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit as outlined in Subsection (d) of this section.

(c) The authority shall enter into an implementing agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders to develop a program document that may be in the form

of a habitat conservation plan used in issuance of an incidental take permit as outlined in Subsection (d) of this section not later than December 31, 2009.

(d) The authority, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders shall jointly prepare a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit with the United States secretary of the interior, through the United States Fish and Wildlife Service and other appropriate federal agencies, under Section 4 or Section 6, Endangered Species Act of 1973 (16 U.S.C. Section 1533 or 1535), as applicable, based on the program developed under Subsection (a) of this section. The program document shall:

(1) provide recommendations for withdrawal adjustments based on a combination of spring discharge rates of the San Marcos and Comal Springs and levels at the J-17 and J-27 wells during critical periods to ensure that federally listed, threatened, and endangered species associated with the Edwards Aquifer will be protected at all times, including throughout a repeat of the drought of record;

(2) include provisions to pursue cooperative and grant funding to the extent available from all state, federal, and other sources for eligible programs included in the cooperative agreement under Subsection (c) of

this section, including funding for a program director; and

(3) be approved and executed by the authority, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and the United States Fish and Wildlife Service not later than September 1, 2012, and the agreement shall take effect December 31, 2012.

(e) Texas A&M University shall assist in the creation of a steering committee to oversee and assist in the development of the cooperative agreement under Subsection (c) of this section. The steering committee must be created not later than September 30, 2007. The initial steering committee shall be composed of:

(1) a representative of each of the following entities, as appointed by the governing body of that entity:

(A) the Edwards Aquifer Authority;

(B) the Texas Commission on Environmental Quality;

(C) the Parks and Wildlife Department;

(D) the Department of Agriculture;

(E) the Texas Water Development Board;

(F) the San Antonio Water System;

(G) the Guadalupe-Blanco River Authority;

(H) the San Antonio River Authority;

(I) the South Central Texas Water Advisory Committee;

(J) Bexar County;

(K) CPS Energy; and

(L) Bexar Metropolitan Water District or its successor; and

(2) nine other persons who respectively must be:

(A) a representative of a holder of an initial regular permit issued to a retail public utility located west of Bexar County, to be appointed by the authority;

(B) a representative of a holder of an initial regular permit issued by the authority for industrial purposes, to be appointed by the authority;

(C) a representative of a holder of an industrial surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(D) a representative of a holder of a municipal surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(E) a representative of a retail public utility in whose service area the Comal Springs or San Marcos Springs is located;

(F) a representative of a holder of an initial regular permit issued by the authority for irrigation, to be appointed by the commissioner of agriculture;

(G) a representative of an agricultural producer from the Edwards Aquifer region, to be appointed by the commissioner of agriculture;

(H) a representative of environmental interests from the Texas Living Waters Project, to be appointed by the governing body of that project; and

(I) a representative of recreational interests in the Guadalupe River Basin, to be appointed by the Parks and Wildlife Commission.

(f) The steering committee shall work with Texas A&M University to:

(1) establish a regular meeting schedule and publish that schedule to encourage public participation; and

(2) not later than October 31, 2007, hire a program director to be housed at Texas A&M University.

(g) Texas A&M University may accept outside funding to pay the salary and expenses of the program director hired under this section and any expenses associated with the university's participation in the creation of the steering committee or subcommittees established by the steering committee.

(h) Where reasonably practicable or as required by law, any meeting of the steering committee, the Edwards Aquifer area expert science subcommittee, or another subcommittee established by the steering committee must be open to the public.

(i) The steering committee appointed under this section shall appoint an Edwards Aquifer area expert science subcommittee not later than December 31, 2007. The expert science subcommittee must be composed of an odd number of not fewer than seven or more than 15 members who have technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limitations. The Bureau of Economic Geology of The University of Texas at Austin and the River Systems Institute at Texas State University shall assist the expert science subcommittee. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the expert science subcommittee.

(j) The Edwards Aquifer area expert science subcommittee shall, among other things,

analyze species requirements in relation to spring discharge rates and aquifer levels as a function of recharge and withdrawal levels. Based on that analysis and the elements required to be considered by the authority under Section 1.14 of this article, the expert science subcommittee shall, through a collaborative process designed to achieve consensus, develop recommendations for withdrawal reduction levels and stages for critical period management including, if appropriate, establishing separate and possibly different withdrawal reduction levels and stages for critical period management for different pools of the aquifer needed to maintain target spring discharge and aquifer levels. The expert science subcommittee shall submit its recommendations to the steering committee and all other stakeholders involved in the recovery implementation program under this section.

(k) The initial recommendations of the Edwards Aquifer area expert science subcommittee must be completed and submitted to the steering committee and other stakeholders not later than December 31, 2008, and should include an evaluation:

(1) of the option of designating a separate San Marcos pool, of how such a designation would affect existing pools, and of the need for an additional well to measure the San Marcos pool, if designated;

(2) of the necessity to maintain minimum springflows, including a specific review of the necessity to maintain a flow to protect the federally threatened and endangered species; and

(3) as to whether adjustments in the trigger levels for the San Marcos Springs flow for the San Antonio pool should be made.

(l) In developing its recommendations, the Edwards Aquifer area expert science subcommittee shall:

(1) consider all reasonably available science, including any Edwards Aquifer-specific studies, and base its recommendations solely on the best science available; and

(2) operate on a consensus basis to the maximum extent possible.

(m) After development of the cooperative agreement, the steering committee, with the assistance of the Edwards Aquifer area expert science subcommittee and with input from the other recovery implementation program stakeholders, shall prepare and submit recommendations to the authority. The recommendations must:

(1) include a review of the critical period management plan, to occur at least once every five years;

(2) include specific monitoring, studies, and activities that take into account changed conditions and information that more accurately reflects the importance of critical period management; and

(3) establish a schedule for continuing the validation or refinement of the critical period management plan adopted by the authority and the strategies to achieve the

program and cooperative agreement described by this section.

(n) In this subsection, "recharge facility" means a dam, reservoir, or other method of recharge project and associated facilities, structures, or works but does not include facilities designed to recirculate water at Comal or San Marcos Springs. The steering committee shall establish a recharge facility feasibility subcommittee to:

(1) assess the need for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities;

(2) formulate plans to allow the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities;

(3) make recommendations to the steering committee as to how to calculate the amount of additional water that is made available for use from a recharge project including during times of critical period reductions;

(4) maximize available federal funding for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities; and

(5) evaluate the financing of recharge facilities, including the use of management fees or special fees to be used for purchasing or operating the facilities.

(o) The steering committee may establish other subcommittees as necessary, including a hydrology subcommittee, a community outreach and education subcommittee, and a water supply subcommittee.

(p) On execution of the memorandum of agreement described by Subsection (b) of this section, the steering committee described by Subsection (e) of this section may, by majority vote of its members, vote to add members to the steering committee, change the makeup of the committee, or dissolve the committee. If the steering committee is dissolved, the program director hired under Subsection (f) of this section shall assume the duties of the steering committee.

(q) The authority shall provide an annual report to the governor, lieutenant governor, and speaker of the house of representatives not later than January 1 of each year that details:

(1) the status of the recovery implementation program development process;

(2) the likelihood of completion of the recovery implementation program and the cooperative agreement described by Subsection (c) of this section;

(3) the extent to which the recommendations of the Edwards Aquifer area expert science subcommittee are being considered and implemented by the authority;

(4) any other actions that need to be taken in response to each recommendation;

(5) reasons explaining why any recommendation received has not been implemented; and

(6) any other issues the authority considers of value for the efficient and effective completion of the program and the cooperative agreement under this section.

Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.06, 2007 Tex. Gen. Laws 4612, 4630; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.06, 2007 Tex. Gen. Laws 5848, 5904.

SECTION 1.27 RESEARCH. (a) The authority shall complete research on the technological feasibility of springflow enhancement and yield enhancement that, immediately before September 1, 1993, is being conducted by the Edwards Underground Water District.

(b) The authority may conduct research to:

(1) augment the springflow, enhance the recharge, and enhance the yield of the aquifer;

(2) monitor and protect water quality;

(3) manage water resources, including water conservation, water use and reuse, and drought management measures; and

(4) develop alternative supplies of water for users.

(c) The authority may schedule demonstration projects for purposes of Subsection (b)(1) of this section.

(d) The authority may contract with other persons to conduct research.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.27, 1993 Tex. Gen. Laws 2350, 2364.

SECTION 1.28 TAX; BONDS. (a) The authority may not levy a property tax.

(b) The authority may issue revenue bonds to finance the purchase of land or the purchase, construction, or installation of facilities or equipment. The authority may not allow for any person to construct, acquire, or own facilities for transporting groundwater out of Uvalde County or Medina County.

(c) Bonds issued by the authority are subject to review and approval of the attorney general and the commission. If the attorney general finds that the bonds have been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register the bonds. Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

(d) The authority board may organize proceeds of the bonds into funds and accounts and may invest the proceeds as the authority board determines is appropriate.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.28, 1993 Tex. Gen. Laws 2350, 2364.

SECTION 1.29 FEES. (a) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 36, Water Code, that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority. The authority may not increase aquifer management fees by more than eight percent per year.

(c) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

(d) *Repealed by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.09, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.09, 2007 Tex. Gen. Laws 5848, 5908.*

(e) In developing an equitable fee structure under this section, the authority may establish different fee rates on a per acre-foot basis for different

types of use. The fees must be equitable between types of uses. The fee rate for agricultural use shall be based on the volume of water withdrawn and may not be more than $2 per acre-foot. The authority shall assess the fees on the amount of water a permit holder is authorized to withdraw under the permit.

(f) The authority may impose a permit application fee not to exceed $25. The authority may impose fees to recover administrative costs associated with actions other than the filing and processing of applications and registrations. The fees may not unreasonably exceed the administrative costs.

(g) The authority may impose a registration application fee not to exceed $10.

(h) Fees assessed by the authority may not be used to fund the cost of reducing withdrawals or retiring permits or of judgments or claims related to withdrawals or permit retirements.

(i) The authority and other stakeholders, including state agencies, listed under Section 1.26A of this article shall provide money as necessary to finance the activities of the steering committee and any subcommittees appointed by the steering committee and the program director of the recovery implementation program under Section 1.26A of this article. The authority shall provide, as necessary, up to $75,000 annually, adjusted for changes in the consumer price index, to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.29, 1993 Tex. Gen. Laws 2350, 2364; as amended by Act

of May 28, 2001, 77th Leg., R.S., ch. 966, § 2.61, 2001 Tex. Gen. Laws 1991, 2022; Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.07, 2007 Tex. Gen. Laws 4612, 4633; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.07, 2007 Tex. Gen. Laws 5848, 5908; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ____, § 8, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.30 RIVER DIVERSIONS. (a) The commission may issue to an applicant a special permit to divert water from the Guadalupe River from a diversion point on the river downstream of the point where the river emerges as a spring.

(b) A permit issued to a person under this section must condition the diversion of water from the Guadalupe River on a limitation of withdrawals under the person's permit to withdraw water from the aquifer.

(c) A permit issued under this section must provide that the permit holder may divert water from the Guadalupe River only if:

(1) the diversion is made instead of a withdrawal from the aquifer to enhance the yield of the aquifer; and

(2) the diversion does not impair senior water rights or vested riparian rights.

(d) A permit issued in accordance with this section is subordinate to permitted water rights for which applications were submitted before May 31, 1993, and vested riparian rights.

(e) Sections 11.028 and 11.033, Water Code, do not apply to a permit issued under this section.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.30, 1993 Tex. Gen. Laws 2350, 2365.

SECTION 1.31 MEASURING DEVICES. (a) The owner of a nonexempt well that withdraws water from the aquifer shall install and maintain a measuring device approved by the authority designed to indicate the flow rate and cumulative amount of water withdrawn by that well. This requirement may be waived by the authority on written request by a well owner to use an alternative method of determining the amount of water withdrawn.

(b) The authority is responsible for the costs of purchasing, installing, and maintaining measuring devices, if required, for an irrigation well in existence on September 1, 1993.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.31, 1993 Tex. Gen. Laws 2350, 2365.

SECTION 1.32 REPORTS. Not later than March 1 of each year, and on a form prescribed by the authority, each holder of a permit shall file with the authority a written report of water use for the preceding calendar year.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.32, 1993 Tex. Gen. Laws 2350, 2366.

SECTION 1.33 WELL METERING EXEMPTION. (a) A well that produces 25,000 gallons of water a day or less for domestic or livestock use is exempt from metering requirements.

(b) Exempt wells must register with the authority or with an underground water conservation district in which the well is located.

(c) A well serving a subdivision requiring platting does not qualify for an exempt use.

(d) A well drilled on or before June 1, 2013, for any purpose authorized under this article is exempt from the requirement to obtain a withdrawal permit provided that the well:

(1) is not capable of producing more than 1,250 gallons of water a day; or

(2) is metered and does not produce more than 1.4 acre-feet of water in a calendar year.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.33, 1993 Tex. Gen. Laws 2350, 2366; as amended by Act of May 20, 2013, 83rd Leg., R.S., ch. 783, 2013 Tex. Gen. Laws 1998.

SECTION 1.34 TRANSFER OF RIGHTS. (a) In this section:

(1) "Developed land" means historically irrigated land that has been physically altered by the installation of utilities or construction of roads, parking lots, driveways, foundations, structures, buildings, stormwater collection systems, public parks, or athletic fields or by similar improvements.

(2) "Historically irrigated land" means land irrigated during the historical period, as described by Section 1.16 of this Act, that provided the basis for the issuance of an initial regular permit for irrigation use and is identified as the place of use in the initial regular permit.

(3) "Land no longer practicable to farm" means historically irrigated land:

(A) that has not been irrigated for more than five years; and

(B) for which the owner of the land has submitted to the authority documentation demonstrating that because of development on land in close proximity to the historically irrigated land, agricultural activities performed on the land, including crop dusting or other applications of pesticides, have the potential to compromise the health and safety of a farm operator or of persons occupying or residing on property in close proximity to the land.

(b) Water withdrawn from the aquifer must be used within the boundaries of the authority.

(c) The authority by rule may establish a procedure by which a person who installs water conservation equipment may sell the water conserved.

(d) Except as otherwise provided by this section, a permit holder may lease permitted water rights, but a holder of a permit for irrigation use may not lease more than 50 percent of the irrigation rights initially permitted. The user's remaining irrigation water rights must be used in accordance with the original permit and must pass with transfer of the irrigated land.

(e) Subject to approval by the authority, the owner of historically irrigated land may sever all or a portion of the remaining water rights for the historically irrigated land which has become developed land in the same proportion as the proportion of developed land and undeveloped land or for which the owner of the historically irrigated land has demonstrated that all or a portion of the land is land no longer practicable to farm. Water rights used for irrigation tied to a portion of land that cannot be developed because of its topography or its location in a floodplain may be included in the proportion of land considered developed land. Water rights for use in irrigation severed under this subsection may change in purpose or place of use. Rules adopted to implement this subsection may not expand the type of land considered developed land or land considered land no longer practicable to farm. The approval of a severance under this section is subject to a contested case hearing in accordance with authority rules.

(f) The authority may adopt rules to provide for a holder of an initial regular permit for use in irrigation to lease all or part of the water rights for use in irrigation granted in the initial permit to another person for irrigating land, including land not described in the initial regular permit, located in the authority. Rules adopted under this subsection may allow the holder of an initial regular permit to use the water rights temporarily for irrigation at a location other than the land described in the initial regular permit.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.34, 1993 Tex. Gen. Laws 2350, 2366; as amended by Act

of May 24, 2019, 86th Leg., R.S., ch. ___, § 1, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.35 PROHIBITIONS. (a) A person may not withdraw water from the aquifer except as authorized by a permit issued by the authority or by this article.

(b) A person holding a permit issued by the authority may not violate the terms or conditions of the permit.

(c) A person may not waste water withdrawn from the aquifer.

(d) A person may not pollute or contribute to the pollution of the aquifer.

(e) A person may not violate this article or a rule of the authority adopted under this article.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.35, 1993 Tex. Gen. Laws 2350, 2366.

SECTION 1.36 ENFORCEMENT. (a) The authority may enter orders to enforce the terms and conditions of permits, orders, or rules issued or adopted under this article.

(b) The authority by rule shall provide for the suspension of a permit of any class for a failure to pay a required fee or a violation of a permit condition or order of the authority or a rule adopted by the authority.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.36, 1993 Tex. Gen. Laws 2350, 2366.

SECTION 1.361 OPEN OR UNCOVERED WELLS. (a) If the owner or lessee of land on which an open or uncovered well is located fails or refuses to close or cap the well in compliance with Chapter 1901, Occupations Code, and the authority's rules:

(1) the authority may take enforcement action as authorized by this article to require the owner or lessee to close or cap the well; or

(2) a person, firm, or corporation employed by the authority may go on the land and close or cap the well safely and securely.

(b) Reasonable expenses incurred by the authority in closing or capping a well constitute a lien on the land on which the well is located.

(c) The lien described by Subsection (b) arises and attaches on recordation of, in the deed records of the county where the well is located, an affidavit executed by any person conversant with the facts stating the following:

(1) the existence of the well;

(2) the legal description of the property on which the well is located;

(3) the approximate location of the well on the property;

(4) the failure or refusal of the owner or lessee, after notification, to close or cap the well before the expiration of 10 days after the notification;

(5) the closing or capping of the well by the authority, or by an authorized agent, representative, or employee of the authority; and

(6) the expense incurred by the authority in closing or capping the well.

(d) This section does not affect the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

Act of May 27, 2019, 86th Leg., R.S., ch. ____, § 9, § 1.361, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.37 ADMINISTRATIVE PENALTY. (a) The authority may assess an administrative penalty against a person who violates this article or a rule adopted or order issued under this article in an amount of not less than $100 or more than $1,000 for each violation and for each day of a continuing violation.

(b) In determining the amount of the penalty, the authority shall consider:

(1) the history of previous violations;

(2) the amount necessary to deter future violations;

(3) efforts to correct the violation;

(4) enforcement costs relating to the violation; and

(5) any other matters that justice may require.

(c) If after an examination of the facts the authority concludes that the person did commit a violation, the authority may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed, and recommending the amount of the proposed penalty.

(d) The authority shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the authority written consent to the report, including the recommended penalty, or make a written request for an informal review by the authority.

(f) If the person charged with committing the violation consents to the penalty recommended by the authority or fails timely to request an informal review, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(g) If the person charged with committing a violation requests an informal review as provided by Subsection (e) of this section, the authority shall

conduct the review. The authority shall give the person written notice of the results of the review.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (g) of this section, the person may make to the authority a written request for a hearing.

(i) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) Before the expiration of 30 days after the date the authority's order is final as provided by Section 2001.144(a), Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subdivision (3) of Subsection (j) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the authority's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the authority by certified mail.

(l) If the authority receives a copy of an affidavit under Subdivision (2) of Subsection (k) of this section, it may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding

that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the authority may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the authority:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning

on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the authority.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.37, 1993 Tex. Gen. Laws 2350, 2366; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ____, § 10, 2019 Tex. Gen. Laws ____, ____-__.

SECTION 1.38 INJUNCTION BY AUTHORITY. (a) The authority may file a civil suit in a state district court for an injunction or mandatory injunction to enforce this article and the authority's rules. The authority may recover reasonable attorney fees in a suit under this section.

(b) In an enforcement action by the authority against a governmental entity for a violation of authority rules, the limits on the amount of fees, costs, and penalties that the authority may impose under this section constitute a limit of liability of the governmental entity for the violation. This subsection does not prohibit the recovery by the authority of fees and costs under this article in an action against a governmental entity.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.38, 1993 Tex. Gen. Laws 2350, 2368; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ____, § 11, 2019 Tex. Gen. Laws ____, ____-___.

SECTION 1.39 SUIT FOR MANDAMUS. The commission may file a civil suit for an order of mandamus against the authority to compel the authority to perform its duties under this article or to compel the authority to enforce this article against a violator. The commission may recover attorney fees from the authority in a suit under this section.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.39, 1993 Tex. Gen. Laws 2350, 2368.

SECTION 1.40 CIVIL PENALTY. (a) The commission or authority may file a civil action in state district court for a civil penalty for a violation of this article or a rule adopted or permit or order issued under this article.

(b) The commission or authority may recover a civil penalty of not less than $100 or more than $10,000 for each violation and for each day of violation and attorney fees.

(c) A civil penalty or attorney fees collected by the authority under this section shall be paid to the authority.

(d) A civil penalty or attorney fees collected by the commission under this section shall be deposited to the credit of the general revenue fund.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.40, 1993 Tex. Gen. Laws 2350, 2368.

SECTION 1.41 REPEALER; TRANSFERS; RULES. (a) Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is repealed, and the Edwards Underground Water District is abolished.

(b) All files and records of the Edwards Underground Water District pertaining to control, management, and operation of the district are transferred from the Edwards Underground Water District to the authority on the effective date of this article.

(c) All real and personal property, leases, rights, contracts, staff, and obligations of the Edwards Underground Water District are transferred to the authority on the effective date of this article.

(d) On September 1, 1993, all unobligated and unexpended funds of the Edwards Underground Water District shall be transferred to the authority.

(e) *Repealed by Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 6.03, 2001 Tex. Gen. Laws 1991, 2075.*

(f) The authority shall be automatically substituted for the Edwards Underground Water District in any judicial or administrative proceeding to which, on the effective date of this article, the Edwards Underground Water District is a party.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.41, 1993 Tex. Gen. Laws 2350, 2368; as amended by Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 6.03, 2001 Tex. Gen. Laws 1991, 2075.

SECTION 1.42 EFFECT ON OTHER DISTRICTS. (a) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer after the effective date of this article only as provided in this section. This article does not affect a water reclamation or conservation district that manages and controls only water from a resource other than the aquifer.

(b) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer to the extent that those management activities do not conflict with and are not duplicative of this article or the rules and orders of the authority.

(c) Except as otherwise provided by this article, the board may delegate the powers and duties granted to it under this article. The board shall delegate all or part of its powers or duties to an underground water conservation district on the district's request if the district demonstrates to the satisfaction of the board that:

(1) the district has statutory powers necessary for full enforcement of the rules and orders to be delegated;

(2) the district has implemented all rules and policies necessary to fully implement the programs to be delegated; and

(3) the district has implemented a system designed to provide the authority with adequate information with which to monitor

the adequacy of the district's performance in enforcing board rules and orders.

(d) In making the determination under Subsection (c) of this section, the board may consider the district's past performance and experience in enforcing powers and duties delegated to it by the board. The board may deny a request for delegation of powers or duties by a district if the district has previously had a delegation terminated under Subsection (e) of this section.

(e) If the authority determines that a district has failed adequately to enforce or implement any rules or orders delegated under this section, the authority immediately shall provide to the district notice that sets forth the reasons for its determination and the actions that the district must take to retain the delegated authority. Not later than the 10th day after the date the notice is given, the district must demonstrate its commitment and ability to take the actions set forth in the notice. If, at the end of the 10-day period, the authority does not find that the district will adequately enforce its rules and orders, the authority immediately shall resume full responsibility for implementation and enforcement of those rules and orders. The authority shall provide to the district notice that the delegation of authority to it has been terminated. After the termination notice is given, the authority of the district to manage or control water in the aquifer is limited to the authority granted by Subsection (b) of this section.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.42, 1993 Tex. Gen. Laws 2350, 2368.

SECTION 1.43 CREATION OF UNDERGROUND WATER CONSERVATION DISTRICT. An underground water conservation district may be created in any county affected by this article as provided by Subchapter B, Chapter 52, Water Code.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.43, 1993 Tex. Gen. Laws 2350, 2369.

SECTION 1.44 COOPERATIVE CONTRACTS FOR ARTIFICIAL RECHARGE. (a) The authority may contract with any political subdivision of the state under Chapter 791, Government Code, to provide for artificial recharge of the aquifer, through injection wells or with surface water subject to the control of the political subdivision, for the subsequent retrieval of the water by the political subdivision or its authorized assignees for beneficial use within the authority.

(b) The authority may not unreasonably deny a request to enter into a cooperative contract under this section if the political subdivision agrees to:

(1) file with the authority records of the injection or artificial recharge of the aquifer; and

(2) provide for protection of the quality of the aquifer water and of the rights of aquifer users in designating the location of injection wells or recharge dams, the methods of injection or recharge, and the location and type of retrieval wells.

(c) Except as provided by Subsection (c-1), the political subdivision causing artificial recharge of the aquifer is entitled to withdraw during any 12-month period the measured amount of water actually injected or artificially recharged during the preceding 12-month period, as demonstrated and established by expert testimony, less an amount determined by the authority to:

(1) account for that part of the artificially recharged water discharged through springs; and

(2) compensate the authority in lieu of users' fees.

(c-1) A political subdivision or municipally owned utility causing artificial recharge of a portion of the aquifer that contains groundwater with a total dissolved solids concentration of more than 5,000 milligrams per liter is entitled to withdraw the measured amount of water actually injected or artificially recharged.

(d) The amounts of water withdrawn under this section are not subject to the maximum total permitted withdrawals provided by Section 1.14 of this article.

(e) The authority may contract for injection or artificial recharge under this section only if provision is made for protecting and maintaining the quality of groundwater in the receiving part of the aquifer, and:

(1) the water used for artificial recharge is groundwater withdrawn from the aquifer;

(2) the water is recharged through a natural recharge feature; or

(3) the water is injected by a municipally owned utility owned by the City of New Braunfels, and:

(A) the water has a total dissolved solids concentration of less than 1,500 milligrams per liter and is not domestic wastewater, municipal wastewater, or reclaimed water as those terms are defined by 30 T.A.C. Chapter 210, effective October 31, 2018;

(B) the injection well terminates in a portion of the aquifer that contains groundwater with a total dissolved solids concentration of more than 5,000 milligrams per liter; and

(C) if the water injected is state water, the utility has a water right or contract for use of the water that does not prohibit use of the water in an aquifer storage and recovery project.

(e-1) The injection or withdrawal of water under Subsection (c-1) or (e)(3) must comply with requirements imposed under Subchapter G, Chapter 27, Water Code.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.44, 1993 Tex. Gen. Laws 2350, 2369; as amended by Act of May 28, 2001, 77th Leg., R.S., ch. 966, § 2.62, 2001 Tex. Gen. Laws 1991, 2022; as amended by Act of May

26, 2019, 86th Leg., R.S., ch. ____, § 1, 2019 Tex. Gen. Laws ____; ____-___.

SECTION 1.45 RECHARGE DAMS. (a) The authority may own, finance, design, construct, operate, and maintain recharge dams and associated facilities, structures, or works in the contributing or recharge area of the aquifer if the recharge is made to increase the yield of the aquifer, the recharge project does not impair senior water rights or vested riparian rights, and the recharge project is not designed to recirculate water at Comal or San Marcos Springs.

(b) The commission shall determine the historic yield of the floodwater to the Nueces River basin. The historic yield is equal to the lesser of:

(1) the average annual yield for the period from 1950 to 1987; or

(2) the annual yield for 1987.

(c) Only the amount of floodwater in excess of the historic yield as determined by the commission may be impounded by a recharge dam built or operated under this section.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 1.44, 1993 Tex. Gen. Laws 2350, 2370; as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1351, § 2.08, 2007 Tex. Gen. Laws 4612, 4634; Act of May 28, 2007, 80th Leg., R.S., ch. 1430, § 12.08, 2007 Tex. Gen. Laws 5848, 5908.

SECTION 1.46 SUITS. (a) A person, firm, corporation, or association of persons affected by and dissatisfied with any provision or with any rule or order made by the authority is entitled to file a suit

against the authority or its directors to challenge the validity of the law, rule, or order.

(b) Only the authority, the applicant, and parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case hearing. An appeal of a decision on a permit application must include the applicant as a necessary party.

(c) A suit under this section must be filed in a court of competent jurisdiction in any county in which the authority is located. The suit may be filed only after all administrative appeals to the authority are final.

(d) The burden of proof is on the petitioner, and the challenged law, rule, order, or act is to be considered prima facie valid. The review on appeal is governed by either Section 2001.038 or Section 2001.174, Government Code, as appropriate.

(e) The authority may recover attorney's fees, costs for expert witnesses, and other costs incurred by the authority before the court on the same basis as Chapter 36, Water Code, provides for a groundwater conservation district to recover those fees and costs.

Act of May 27, 2019, 86th Leg., R.S., ch. ____, § 12, § 1.46, 2019 Tex. Gen. Laws ____, ____-___.

ENDNOTES

1. Although not codified as an amendment to the Act, §§ 2.10 and 2.11 of Act of May 28, 2007, 80th Leg., R.S., ch. 1351, 2007 Tex. Gen. Laws 4612, 4634 (H.B. 3) and §§ 12.10 and 12.11 of Act of May 28, 2007, 80th

Leg., R.S., ch. 1430, 2007 Tex. Gen. Laws 5848, 5908 - 5909 (S.B. 3) are relevant to the Authority and provide as follows:

> **SECTION 2.10** [H.B. 3]. (a) Before January 1, 2012, a suit may not be instituted in a state court contesting:
>
> (1) the validity or implementation of this article; or
>
> (2) the groundwater withdrawal amounts recognized in Section 2.02 of this Act.
>
> (b) If applicable, a party that files a suit in any court shall be automatically removed from the steering committee established under Section 1.26A, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as added by this article.
>
> (c) A suit against the Edwards Aquifer Authority may not be instituted or maintained by a person who owns, holds, or uses a surface water right and claims injury or potential injury to that right for any reason, including any actions taken by the Edwards Aquifer Authority to implement or enforce Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended. This section does not apply to suits brought pursuant to Section 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

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SECTION 12.10 [S.B. 3]. (a) Before January 1, 2012, a suit may not be instituted in a state court contesting:

(1) the validity or implementation of this article; or

(2) the groundwater withdrawal amounts recognized in Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended by this Act.

(b) If applicable, a party that files a suit in any court shall be automatically removed from the steering committee established under Section 1.26A, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as added by this Act.

(c) A suit against the Edwards Aquifer Authority may not be instituted or maintained by a person who owns, holds, or uses a surface water right and claims injury or potential injury to that right for any reason, including any actions taken by the Edwards Aquifer Authority to implement or enforce Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended. This section does not apply to suits brought pursuant to Section 1.45,

Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

****

SECTION 2.11 [H.B. 3]. The change in law made by this article applies only to a cause of action filed on or after the effective date of this article. A cause of action that is filed before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose.

****

SECTION 12.11 [S.B. 3]. The change in law made by this article applies only to a cause of action filed on or after the effective date of this article. A cause of action that is filed before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose.

2. Although not codified as an amendment to the Act, §§ 2, 3 of Act of May 24, 2019, 86th Leg., R.S., ch. ____, 2019 Tex. Gen. Laws ____, ____-___ (H.B. 3656) is relevant to the Authority and provides as follows:

SECTION 2 [H.B. 3656]. Rules adopted by the Edwards Aquifer Authority before the effective date of this

Act relating to the severance of water rights from historically irrigated land and actions taken by the authority under those rules are validated and confirmed in all respects.

****

SECTION 3 [H.B. 3656]. The change in law made by this Act to Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, applies only to a transfer, and the contracts or other transaction documents of any kind related thereto, including documents related to the extension of credit, hereinafter collectively referred to as "transfer," effective on or after the effective date of this Act. The change in law made by this Act to Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, does not affect the validity of a transfer effective before the effective date of this Act. A transfer effective before the effective date of this Act is governed by the provisions of Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, and the rules of the Edwards Aquifer Authority in effect at the time the transfer became effective. Transfers effective before the effective date of this Act, that have not been rescinded, and are not subject to pending litigation are hereby conclusively validated in all respects.

ARTICLE 2

SECTION 2.01 DEFINITION. In this article, "district" means the Uvalde County Underground Water Conservation District.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.01, 1993 Tex. Gen. Laws 2350, 2370.

SECTION 2.02 VALIDATION. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are validated in all respects. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are valid as though they originally had been legally authorized or accomplished.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.02, 1993 Tex. Gen. Laws 2350, 2370.

SECTION 2.03 BOUNDARIES. Pursuant to the petition to the Commissioners Court of Uvalde County, Texas, requesting the creation of the district, the district includes the territory contained within the boundaries of Uvalde County.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.03, 1993 Tex. Gen. Laws 2350, 2370.

SECTION 2.04 FINDING OF BENEFIT. All the land and other property included within the boundaries of the district will be benefited by the validation of the district.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.04, 1993 Tex. Gen. Laws 2350, 2370.

SECTION 2.05 POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapters 50 and 52, Water Code, applicable to underground water conservation districts created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article.

(b) The district may develop and implement a drought response plan, with reasonable rules, using water levels as observed in the Uvalde Index Well YP-69-50-302.

(c) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Water Commission.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.05, 1993 Tex. Gen. Laws 2350, 2370.

SECTION 2.06 LEVY OF TAXES. The levy and collection of taxes by the district are governed by Subchapter H, Chapter 52, Water Code, except that the district may not levy a maintenance and operating tax at a rate that exceeds two cents per $100 assessed valuation unless an election held in the district authorizes a higher rate.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.06, 1993 Tex. Gen. Laws 2350, 2370.

SECTION 2.07 PENDING LITIGATION. This article does not apply to or affect litigation

pending on the effective date of this article in any court of competent jurisdiction in this state to which the district is a party.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 2.07, 1993 Tex. Gen. Laws 2350, 2370.

ARTICLE 3

SECTION 3.01 LEGISLATIVE OVERSIGHT. (a) The Edwards Aquifer Legislative Oversight Committee is composed of:

(1) three members of the senate appointed by the lieutenant governor; and

(2) three members of the house of representatives appointed by the speaker of the house of representatives.

(b) The committee shall examine and report to the legislature on the effectiveness of the state and local governmental entities in meeting the purposes of the Edwards Aquifer Authority.

(c) The board shall continually oversee and review:

(1) the activities of the Edwards Aquifer Authority and the implementation of that authority's enabling legislation;

(2) the activities of the South Central Texas Water Advisory Committee;

(3) compliance with federal law relating to threatened or endangered species related to management of underground or surface water in the Edwards Aquifer region;

(4) water pollution control activities in the Edwards Aquifer region; and

(5) the activities of soil and water conservation districts and river authorities in the Edwards Aquifer district that affect the management of the aquifer.

(d) Not later than the last business day of each even-numbered year, the Edwards Aquifer Authority shall prepare and deliver a report to the committee on the authority's operations. The report must contain a summary of issues related to the authority's operations that affect the continuing implementation of this Act or require an amendment to this Act.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 3.01, 1993 Tex. Gen. Laws 2350, 2370; as amended by Act of May 27, 2019, 86th Leg., R.S., ch. ____, § 13, 2019 Tex. Gen. Laws ____, ____-___.

SECTION 3.02 NOTICE OF AVAILABLE WATER. The Texas Natural Resource Conservation Commission shall notify the Edwards Aquifer Authority of any water available for appropriation in the Guadalupe-Blanco River Basin as the commission discovers the available water.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 3.02, 1993 Tex. Gen. Laws 2350, 2371.

SECTION 3.03 SUNSET COMMISSION REVIEW OF GUADALUPE-BLANCO RIVER AUTHORITY.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 3.03, 1993 Tex. Gen. Laws 2350, 2371; repealed by Act of

May 16, 1995, 74th Leg., R.S., ch. 524, § 1, 1995 Tex. Gen. Laws 3280.

SECTION 3.04 COOPERATION. All state and local governmental entities are hereby directed to cooperate with the authority to the maximum extent practicable so that the authority can best be able to accomplish the purposes set forth under Article 1. The authority shall, on or before January 1, 1995, submit a report to the governor, lieutenant governor, and speaker of the house of representatives evaluating the extent to which other entities have cooperated with and assisted the authority.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 3.04, 1993 Tex. Gen. Laws 2350, 2371..

ARTICLE 4

SECTION 4.01 FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Water Commission.

(b) The Texas Water Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 4.01, 1993 Tex. Gen. Laws 2350, 2371..

SECTION 4.02 EFFECTIVE DATES. This Act takes effect September 1, 1993, except Section 1.35 of Article 1 takes effect March 1, 1994.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 4.02, 1993 Tex. Gen. Laws 2350, 2371..

SECTION 4.03 EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Act of May 30, 1993, 73rd Leg., R.S., ch. 626, § 4.03, 1993 Tex. Gen. Laws 2350, 2371.

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EXPERT REPORT OF
STEPHEN ANSOLABEHERE

I. Background and Qualifications

1. I am a professor of Government in the Department of Government at Harvard University in Cambridge, MA. Formerly, I was an Assistant Professor at the University of California, Los Angeles, and I was Professor of Political Science at the Massachusetts Institute of Technology, where I held the Elting R. Morison Chair and served as Associate Head of the Department of Political Science. I directed the Caltech/MIT Voting Technology Project from its inception in 2000 through 2004, am the Principal Investigator of the Cooperative Congressional Election Study, a survey research consortium of over 250 faculty and student researchers at more than 50 universities, and serve on the Board of Overseers of the American National Election Study. I am a consultant to CBS News' Election Night Decision Desk. I am a member of the American Academy of Arts and Sciences (inducted in 2007).

2. I have worked as a consultant to the Brennan Center in the case *McConnell v. FEC,* 540 US 93 (2003). I have testified before the U. S. Senate Committee on Rules, the U. S. Senate Committee on Commerce, the U. S. House Committee on Science, Space, and Technology, the U. S. House Committee on House Administration, and the Congressional Black Caucus on matters of election administration in the United States. I filed an amicus brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U. S. Supreme Court in the case

of *Northwest Austin Municipal Utility District Number One v. Holder,* 557 US 193 (2009). I am consultant for the Rodriguez plaintiffs in *Perez v. Perry*, currently before the District Court in the Western District of Texas (No. 5:11-cv-00360 W. D. Tex), and the Gonzales intervenors in *State of Texas v. United States* before the District Court in the District of Columbia (No. 1:11-cv-01303); I consulted for the Department of Justice in *State of Texas v. Holder*, before the District Court in the District of Columbia (No. 1:12-cv-00128); I consulted for the Guy plaintiffs in *Guy v. Miller* in Nevada District Court (No. 11-OC-00042-1B, Nev. Dist. Ct., Carson City); I am consultant for the Romo plaintiffs in *Romo v. Detzner* in Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490) and Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412).

3. My areas of expertise include American government, with particular expertise in electoral politics, representation, and public opinion, as well as statistical methods in social sciences. I am author of numerous scholarly works on voting behavior and elections, the application of statistical methods in social sciences, legislative politics and representation, and distributive politics. This scholarship includes articles in such academic journals as the Journal of the Royal Statistical Society, the American Political Science Review, the American Economic Review, the American Journal of Political Science, Legislative Studies Quarterly, the Quarterly Journal of Political Science, Electoral Studies, and Political Analysis. I have published articles on issues of election law in the Harvard Law Review, Texas Law Review, Columbia Law Review, New York University Annual Survey of Law, and the Election Law Journal, for which I am a

member of the editorial board. I have coauthored three scholarly books on electoral politics in the United States, The End of Inequality: Baker v. Carr and the Transformation of American Politics, Going Negative: How Political Advertising Shrinks and Polarizes the Electorate, and The Media Game: American Politics in the Media Age. I am coauthor with Ted Lowi, Ben Ginsberg, and Ken Shepsle of American Government: Power and Purpose, a college textbook on American government. I teach PhD level and undergraduate level courses on American government generally, as well as more specialized courses on elections, representation, and public opinion, and PhD level courses on applied statistics for social sciences. My curriculum vita with publications list is attached to this report.

4. I have been hired by the City of San Antonio acting by and through the San Antonio Water System in this case to assess representation on and the authority of the Edwards Aquifer Authority. I am retained for a rate of $400 per hour, which is my standard consulting rate.

II. Sources of Information

5. I relied on information provided to me from the Edwards Aquifer Authority (EAA) and from the EAA website. This information included EAA rules, budgets, permits, and shapefiles for maps. EAA also shared with me a report from the Texas Legislative Council showing populations of EAA Districts in 1995 (shown in Table 1 below). The EAA provided me with data files with information that defined the 2001-2011 EAA Districts and the 2012 Districts.

6. I relied on information provided to me from the San Antonio Water System (SAWS). This information included permits and invoices for management fees.

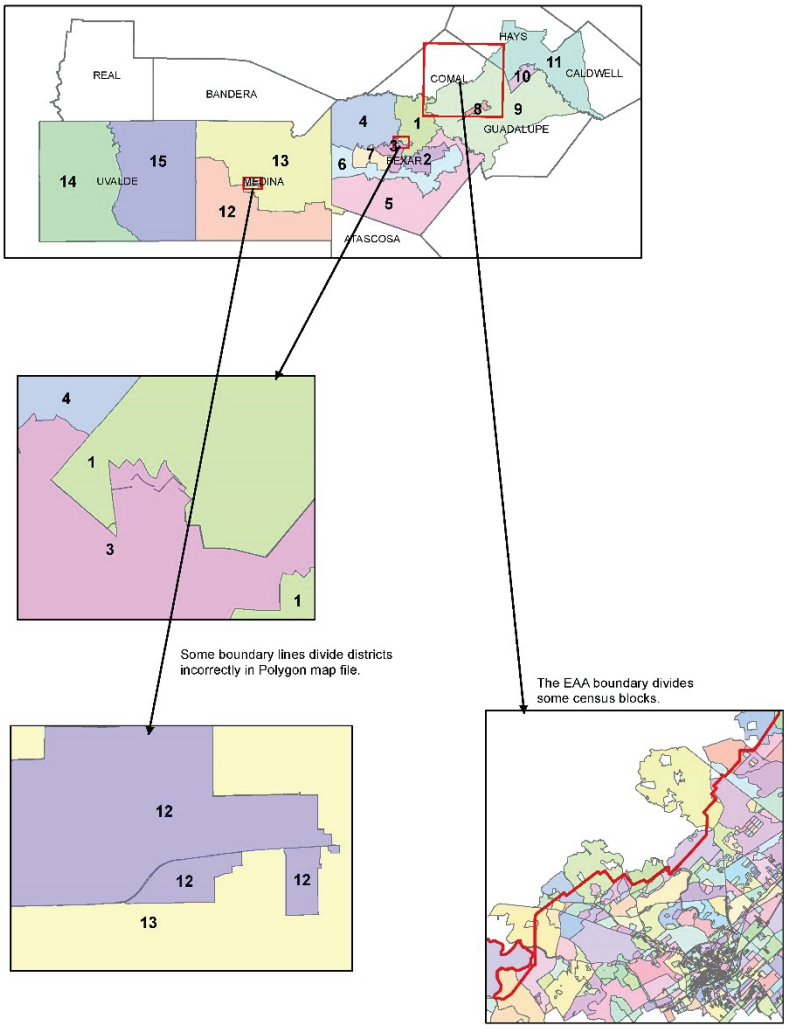
7. I relied on information from the U. S. Bureau of the Census, especially data files including population counts at the level of Census blocks. These are used in computing district populations for the 2001-2011 and the 2012 maps. I also relied on the population projections tool of the Texas State Data Center: http://txsdc.utsa.edu/Data/TPEPP/Projections/Data.aspx

8. I used ArcGIS to construct maps and calculate population statistics for districts. I was provided with 2010 block equivalence file for every district in the 2001-2011 EAA district map. I was also provided with a shape file that defined the geographic areas included in each district in the 2012 EAA district map. It should be noted that the block- equivalence files and the shape files are not the same sort of file. The block equivalence files map the census data directly into the districts. The shape files define areas encompassed by the districts (i.e., how various polygons drawn on a map define district and block boundaries). The shape files for districts must be overlaid on the shape files for Census areas (blocks or block groups) in order to translate Census population counts into districts.

9. There were various problems with the shape file that was provided to us for the 2012 map. Figure 1 demonstrates some of the issues I encountered. First, the shape file did not cleanly allocate polygons to districts. Many of these appear to be blocks corresponding to highways, and have no population.

See the insets for Bexar and Medina counties on the lower left of Figure 1. Second, the boundary of the EAA does not correspond to existing Census Block lines. See the inset on the lower right of Figure 1. Most of these differences arise on the northern boundary of the EAA in Comal and Hays Counties. This accounts for almost all of the population differences between the 2010 and 2012 map. Third, there were two areas in the EAA under the 2001-2011 district map that do not appear to be in the envelope of the EAA in the shape file for 2012. These are an area in Comal County near the Comal-Bexar border and an area in Atascosa County. These irregularities create small discrepancies in population counts between the 2001-2011 map and the 2012 map that I was not able to resolve fully. My calculations of total populations of districts and of the entire EAA area reflect these discrepancies, which in total amount to about two-tenths of one percent difference in total population. These discrepancies have no substantive effects on any conclusions that I reach.

10. I dealt with these discrepancies as follows. First, I ignored all errant lines, such as highway blocks that were not correctly allocated in the map. Second, wherever blocks were split I divided the population of those blocks in proportion to the geographic area on each side of the dividing line. Other ways of apportioning the population in split blocks made no substantive difference. Third, I excluded the small portions of Comal and Atascosa not in the 2012 EAA District shapefile.


REAL
BANDERA
HAYS
COMAL
CALDWELL
GUADALUPE
BEXAR
UVALDE
MEDINA
ATASCOSA
Some boundary lines divide districts incorrectly in Polygon map file.
The EAA boundary divides some census blocks.

III. Findings

A. Summary

11. In my opinion the EAA has general governmental authorities. Its actions affect the general welfare of all people in the area it governs. The disproportionate use, as reflected in statistics on discharge of water from the aquifer, is municipal and industrial, rather than agricultural. Its powers extend beyond the sorts of powers of agencies that the Supreme Court determined to justify exceptions to *Reynolds v. Sims* and subsequent one person, one vote rulings. For example, the EAA can require reductions in water use across all users in the event of severe droughts, it regulates the use, transfer, and issuance of permits for pumping water, and it regulates road construction, fire protection, and storage facilities for purposes of pollution prevention. (Below, see Section D (2) and (3).)

12. The districts of the EAA exhibit enormous population inequalities, with the most populous district having 30 times as many people as the least populous district. (Section E (2))

13. Existing districts do not match the legislature's goal of protection of the aquifer. Districts are defined by areas and by counties. Representation is not tied to structure of the aquifer, landownership, historic water use, current water use, or contribution to the operation of the activities of the EAA. (Section E (3) and F)

14. The consequence of the district structure is that Bexar County -- which contains 75 percent of all

people in the EAA and pays for 75 percent of the operations of the Authority -- has only 47 percent of the seats on the Board of the EAA. (Section F) The people who bear higher burdens for paying for the EAA operations and programs have disproportionately lower voting rights.

B. Standards for Evaluation

15. My evaluation of representation in the EAA proceeds along three lines. First, what population deviations exist in the agency? If the EAA is considered to fall under *Reynolds v. Sims* and subsequent cases, then populations must be sufficiently equal. Second, what governmental powers does the EAA have? The Supreme Court has allowed exceptions to equal population districting under very special circumstances. Third, do the existing districts map into any existing legal rationale for districts, such as landownership or water use, or into the express functions or objectives of the EAA? Even in those exceptional cases, the voting rights and representation were tailored to the contribution to the function of and the operation of the agencies in question.

16. My first line of evaluation is the degree of equality of populations among the EAA's districts. I evaluate the population of districts in the EAA against a standard of a 10 percent population deviation between the most populous district and the least populous district. This standard is accepted for state legislative seats, city council districts, school districts, and other agencies with general governmental powers. Populations of the EAA districts are discussed in section E below.

17. My second line of evaluation is the nature of the authority of the EAA and the burdens and benefits resulting from its activities. In a series of cases following *Reynolds v. Sims*, the Supreme Court of the United States extended the one person, one vote rule to utility districts, school districts, county commissions, and a wide range of governmental entities. (E.g., *Cipriano v. City of Houma* 395 U. S. 705, *Avery v. Midland County* 390 U. S. 474, *Kramer v. Union School* District 395 U. S. 621, and *Hadley v. Junior College District* 397 U. S. 50)

18. These decisions offer specific guidance about the sorts of powers and extent of influence of a government body that would require equal population representation in elections. In *Avery v. Midland County*, the Supreme Court of the United States held that the one person, one vote principle extended to a county commission because the commission's actions affect the citizenry broadly and because the commission has general governmental powers. (390 U.S. 482-484) In *Avery* the Court enumerates some such functions of government that are general or normal governmental functions. These include administrative or budgetary decisions that affect construction of roads, recreation facilities, hospitals, and schools, (390 U. S. 484); the administration of public welfare services; setting tax rates, issuing bonds, and equalizing tax assessments; and determining the districts of local schools and of its own election. (390 U. S. 477) These also include decisions not to exercise government powers, such as to prevent the construction of an airport or a library

or not to participate in a federal program (in the Avery example a federal food stamp program). The key feature of these programs is that they affect all citizens of the county. (390 U. S. 484)

19. The Supreme Court of the United States has allowed unequal district populations and unequal distributions of voting rights in governmental agencies that have sufficiently specific purposes, limited powers, and do not regulate the conduct of individuals. In my evaluation, I examine the EAA relative to the situations in *Salyer Land Company v. Tulare Lake Basin Water Storage District* 410 U. S. 719 (1973) and *Ball v. James*. My reading of these opinions guides my evaluation of the circumstances of the EAA and my examination of the basis of representation on the Board of the EAA.

20. *Salyer* involved a water storage and reclamation district in California that existed "for the purpose of acquiring, storing, and distributing water for farming." (410 U. S. 719) State law allowed only landowners to vote in the election of districts of this water district. The Tulare Basin Water Storage District covered "193,000 acres of intensively cultivated, highly fertile farm land…[and] its population consists of 17 persons, including 18 children, most of whom are employees of one or another of the four corporations that farm 85% of the land in the district." (410 U. S. 723)

21. The Supreme Court of the United States held that the specific circumstances of the Tulare Basin Water Storage District were such that an exception to one person, one vote might be acceptable.

Specifically, an exception was allowed for two reasons. First, the Court applied a two-pronged test to determine whether the function of the district was sufficiently narrow and its powers sufficiently limited or specific:

> (a) The activities of appellee district fall so disproportionately on landowners as a group that it is not unreasonable that the statutory framework focuses on the land benefited, rather than on people as such.[1] 410 U. S. 719, 726-728
>
> (b) Although the appellee district has some governmental powers, it provides none of the general public services ordinarily attributed to a governing body. 410 U. S. 719, 728-729.

Key criteria on which to evaluate the EAA, then, are (i) whether the burdens and benefits for the district operation are spread broadly or fall very disproportionately to some people or users and (ii) whether the EAA has powers "ordinarily attributed to a governing body."

22. Second, the Court stated that the voting rights in the Tulare Lake Basin Water District were

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[1] Critical to the majority's reasoning was the fact that the benefits and burdens of operating the water storage system fell disproportionately on landowners. Specifically, "The costs of the projects are assessed against district land in accordance with the benefits accruing to each tract held in separate ownership. *Id.* §§ 46175, 46176. And land that is not benefited may be withdrawn from the district on petition. *Id.* § 48029." (410 U. S. 724)

reasonable because they followed the rationale on which the District was based and operated. "Since assessments against landowners are the sole means by which expenses of appellee district are paid, it is not irrational to repose the franchise in landowners, but not residents." (410 U. S. 719, 730-31) Key criteria for assessing rationality of the existing districts, then, are (i) whether the voting rights are apportioned based on landownership, or perhaps in the case of the EAA water rights or use, and (ii) whether voting rights reflect who pays for the operation of the EAA.

23. *Ball v. James* involved the Salt River Project Agricultural Improvement and Power District, a water and power district that "stores and delivers untreated water to the owners of 236,000 acres of land in central Arizona." (451 U. S. 355) As with the Tulare Lake Basin Water District, the Salt River District is primarily a water reclamation district, and the procedure for electing its board of directors, "in essence, limits voting eligibility to landowners and apportions voting power according to the amount of land a voter owns." (451 U. S. 357) The Court also draws out the historical origins of the Salt River district. "The history of the District began in the efforts of Arizona farmers in the 19th Century to irrigate the arid lands of the Salt River Valley," and the district evolved out of a private arrangement among farmers and their agreements with the government about setting up a public management entity for power and water storage. (451 U.S. 357-361) This aspect of the Court's opinion suggests that the historical origins of the entity may be informative

about understanding the rationale for voting rights, the second criterion above for assessing whether to allow a districting system to be exempt from the one person, one vote standard.

24. In *Ball*, the Court further clarified the criteria for carving out an exception to the one person, one vote standard. Specifically, it clarified further what is meant by general governmental services and functions and what is meant by narrow purpose.

> First, the District cannot impose ad valorem property taxes or sales taxes. It cannot enact any laws governing the conduct of citizens, nor does it administer such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, or welfare services (451 U.S., 365)
>
> Second, ...[the Salt River] District and Association do not own, sell, or buy water, nor do they control the use of any water they have delivered. The District simply stores water behind its dams, conserves it from loss, and delivers it through project canals.... The constitutionally relevant fact is that all water delivered by the Salt River District, like the water delivered by the Tulare Lake Basin Water Storage District, is distributed according to land ownership, and the District does not and cannot control the use to which the landowners who are entitled to the water choose to put it. (451 U.S. 367-368)

From this I extract several criteria for determining what are general governmental functions, including

(i) the power to levy ad valorem property taxes or sales taxes, (ii) the power to enact laws governing the conduct of citizens, and (iii) the administration of government services or provision of public goods, such as streets, sanitation, schools, hospitals, and welfare services. On the matter of general versus narrow purpose, the Court indicates that a key criterion is the power to regulate the use of the water not just provide for its distribution and storage.

25. In addition to holding that the Salt River District had narrow purpose and limited powers, the Court in *Ball* held that the scheme of representation reflected that limited purpose and the "disproportionate relationship the District's functions bear to the specific class of people whom the system makes eligible to vote." (451 U. S. 370) This indicates a final criterion for evaluation. Even if the powers of the EAA are limited and its purpose narrow, its districts of the EAA Board must still reflect the disproportionate burdens and effects of the EAA's functions.

C. The Edwards Aquifer

26. Edwards Aquifer is essential to all aspects of life in South-Central Texas. When it enacted the Edwards Aquifer Act, the Texas State Legislature stated that the aquifer is "vital to the general economy and welfare of this state":

> The legislature finds that the water in the unique underground system of water-bearing formations known as the Edwards-Balcones Fault Zone Aquifer has a hydrologic interrelationship to the Guadalupe, San

> Antonio, San Marcos, Comal, Frio, and Nueces river basins, is the primary source of water for the residents of the region, and is vital to the general economy and welfare of this state. The legislature finds that it is necessary, appropriate, and a benefit to the welfare of this state to provide for the management of the aquifer through the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.[2]

27. The Edwards Aquifer is an underground artesian aquifer that extends in an arc approximately 180 miles through South-Central Texas. Municipal, industrial, and agricultural interests in this area have long relied on and shared this resource. Spring flow from the aquifer is essential for maintaining the habitat of federally-protected endangered species.[3]

28. The Aquifer water is disproportionately put to Municipal and Industrial use rather than Agriculture (Irrigation and Livestock). According to statistics compiled by the EAA, spring flow accounts for 38.3 percent of water discharged from the Aquifer. Municipal and Industrial use accounts over 40 percent of water discharged from the Aquifer: 38.8 percent of Edwards Aquifer water discharged from the Edwards Aquifer is for Municipal use and 3.4 percent is for Industrial use – a combined total of 42.2

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[2] Edwards Aquifer Authority Act, Section 1.06 (a).

[3] Many reports provide background on the aquifer. The EAA's own website offers a succinct description of the aquifer and its importance to the region. http://www.edwardsaquifer.org/scientific-research-and-reports/edwards-aquifer-overview.

percent. Irrigation and Livestock account for 18 percent and 2 percent respectively, or a combined 20 percent of water discharged from the aquifer. Municipal and Industrial use, then, is roughly twice as large as Agricultural use.[4] This indicates to me that Edwards Aquifer water does not disproportionately benefit Agricultural use; instead, the primary uses of the water are Municipal and Industrial and Spring Flow. This is a very different circumstance than in the Tulare Lake Basin Water District, where Agricultural accounted for 85 percent of water use, or the Salt River District, where Agriculture accounted for 60 percent of water use.

29. The Edwards Aquifer provides almost all of the water for the City of San Antonio and surrounding counties, for all uses, and for over 2 million people.[5] More than 90 percent of the drinking water for the City of San Antonio comes from the Edwards Aquifer.[6]

30. I am not expert in geology or hydrology, but a rudimentary understanding of the Edwards Aquifer is helpful to assess how the representation in the EAA reflects the structure of the Aquifer itself. My understanding is based on historic documents archived at the EAA website and on research reports and articles referenced below.

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[4] http://www.edwardsaquifer.org/educators/about-the-aquifer/water-uses

[5] This calculation is the total population of the areas in the Edwards Aquifer Authority, not the entire Aquifer.

[6] https://www.saws.org/your_water/waterresources/projects/edwards.cfm

31. The Edwards Aquifer is divided into three zones: (i) Recharge Zone, (ii) Artesian Zone, and (iii) Drainage or Catchment Area.[7] The Recharge Zone is an area where rivers and streams cross the permeable surface and go underground, where they refill the aquifer. The Artesian Zone is an area where underground water, under pressure is forced to the surface and emerges through artesian wells and springs. The Drainage or Catchment Area lies to the north of the Recharge Zone and consists of the Edwards Plateau, hilly terrain where rainfall feeds creeks and rivers that cross the Recharge Zone, where much of the water enters the Aquifer.[8] See Map 1.[9]

32. Below the Artesian Zone lies a Saline Water (or Bad Water) Zone.[10]

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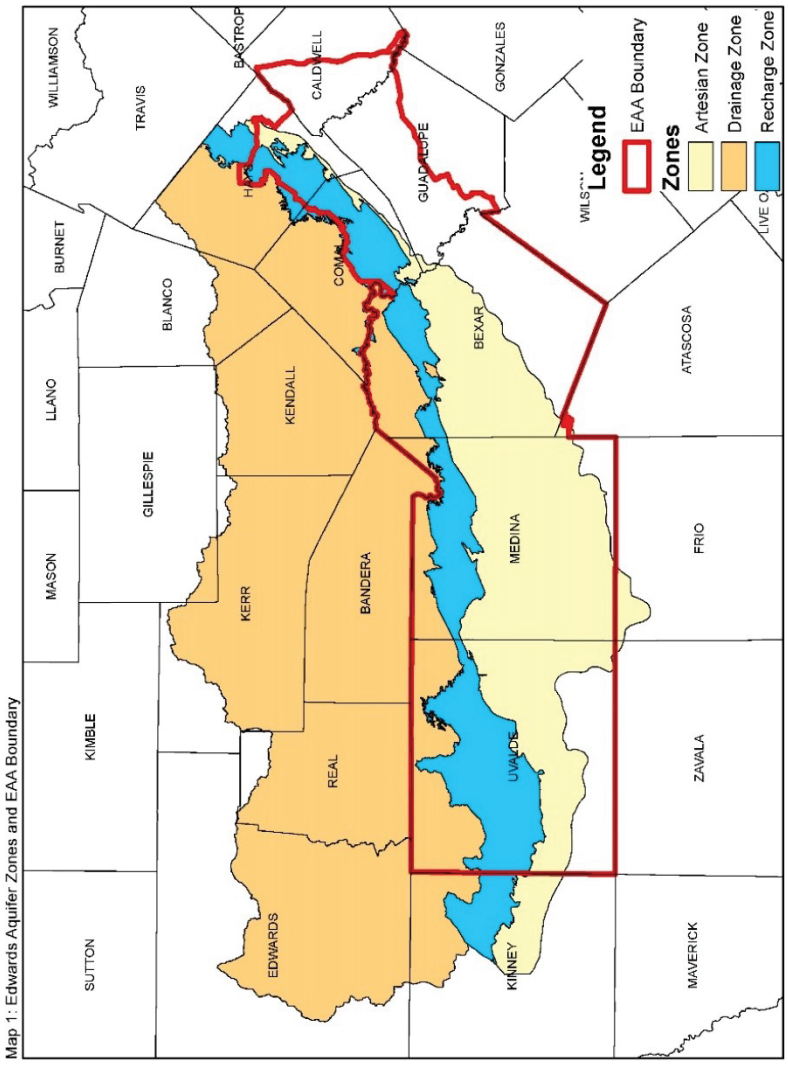
[7] An excellent description of the Edwards Aquifer geology and water flows is Burchett, C. R., Rettman, P. L., and Boning, C. W., 1986, The Edwards Aquifer - Extremely Productive, But. A Sole-Source Water Supply for San Antonio and Surrounding Counties in South-Central Texas, U. S. Geological Survey and Edwards Underground Water District, San Antonio, TX. http://www.edwardsaquifer.org/documents/1986_Burchett-etal_AquiferProductive-but.pdf. See also Edwards Aquifer Authority, Hydrological Data Report for 2011, EAA, 2012, http://www.edwardsaquifer.org/document_display_list.php?subCat=49.

[8] See Burchett et al. page 9, and EAA, Hydrological Data Report for 2011, pages 4-7.

[9] Source of Map 1 is Edwards Aquifer Authority.

[10] See Burchett et al., pages 32 and 33, EAA, Hydrological Data Report for 2011, pages 4-7 and 63-65.



33. The Edwards Aquifer has several natural ground-water divides, defined by the geology and flow of water through the Aquifer. What is called the Balcones Edwards Aquifer (sometimes called the San Antonio system) within the Edwards Aquifer is defined by a ground-water divide near Brackettville Texas at the Western end of the San Antonio system,

and a ground-water divide near Kyle, Texas, just north of San Marcos Springs, defines the Eastern end of this system. North of the divide at Kyle, Texas, is the Barton Springs Edwards system, which discharges to the Colorado River in Austin.[11]

34. Based on the maps from the EAA, the San Antonio system of the Edwards Aquifer and Catchment area contains all or part of the following counties: Bandera, Bexar, Blanco, Comal, Edwards, Frio, Gillespie, Hays, Kendall, Kerr, Kinney, Medina, Real, and Uvalde.[12] The northern tip of Atascosa County, containing the city of Lytle, and the eastern most corner of Guadalupe County lie in the Artesian Zone (see map 1). The Artesian Zone runs through Hays, Comal, Bexar, Atascosa, Medina, Uvalde, and Kinney Counties (reading Map 1 East to West).

D. The Edwards Aquifer Authority

(1) Description

35. The Edwards Aquifer Authority (EAA) was created by an Act of the Texas State Legislature in 1993 and went into effect in 1996.

36. The geographic jurisdiction of the EAA covers most of the Artesian and Recharge Zones of the San Antonio System of the Edwards Aquifer. The counties included partly or entirely in the EAA are Atascosa (part), Bexar (entire), Caldwell (part), Comal (part), Guadalupe (part), Hays (part), Medina (entire), and Uvalde (entire). See Map 1.

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[11] John M. Sharp, Jr., and Jay L. Banner, "The Edwards Aquifer: A Resource in Conflict" GSA Today, Volume 7 (No. 8, August, 1997): 2-9. See especially pages 3-4.

[12] Burchett, et al., page 2.

37. The geography of the EAA follows the geography of the San Antonio system of the Edwards Aquifer. First, the EAA includes the boundaries of the Artesian and Recharge Zones, except for the portion in Kinney County. Second, the Drainage or Capture area is largely excluded from the geographic area represented in the EAA. These are Bandera, Blanco, Edwards, Gillespie, Kendall, Kerr, and Real Counties. Portions of Hays and Comal Counties that contain the Capture area are excluded from the EAA. Third, the EAA includes roughly half of Caldwell County even though maps of the Aquifer show no portion of the Artesian, Capture, or Recharge Zones in those areas. Roughly half of Guadalupe County is in the EAA even though only a small part (the most western corner) of this County is in the Edwards Aquifer proper. See Map 1.

(2) Origins

38. Both *Salyer Land Company v. Tulare Lake Water Basin District* and *Ball v. James* involved reclamation districts that had evolved out of private associations of landowners to meet needs of water storage and flood control among agricultural users. The EAA has different origins and was created to meet general use needs. Specifically, the EAA came about in response to drought, in response to general needs to maintain the water supply for all users in this area of the State, and in response to federal enforcement of the Endangered Species Act.

39. The precursor to the EAA was the Edwards Underground Water District (EUWD). It was created in 1959 in response to the worst drought on record in Texas history, and was charged with conserving and

protecting the water in the Aquifer. That district lacked authority to restrict pumping, and the 1968 Texas Water Plan strongly discouraged overuse of the Edwards Aquifer and recommended that withdrawals not exceed 400,000 acre-feet per year.[13] The average recharge in 1993 was 447,600 acre-feet per year.[14]

40. The original composition of the EUWD included Uvalde, Medina, Bexar, Comal and Hays Counties originally, but Uvalde and Medina withdrew in 1989. At the time that the EAA was created by statute in 1993, the EUWD did not include Uvalde or Medina Counties.[15] Uvalde and Medina Counties were not part of the district out of which the EAA evolved, which is quite a different situation than in *Salyer* and *Ball*.

41. A second factor contributing to the creation of the EAA was a lawsuit filed in 1991 by the Lone Star Chapter of the Sierra Club against the U. S. Fish and Wildlife Service to strengthen protection of endangered species that depend on the Aquifer. (See *Sierra Club v. Babbitt* 995 F. 2d 571 (1993).) In the United States District Court in the Western District of Texas, Judge Lucius Bunton held that protecting endangered species in the Comal and San Marcos Springs "requires pumping controls to avoid jeopardy

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[13] The 1968 State Water Plan is available at the website of the Texas Water Development Board: http://www.twdb.texas.gov/waterplanning/swp/1968/.

[14] http://www.tceq.texas.gov/field/eapp/history.html

[15] Tracé Etienne-Gray, "Edwards Underground Water District," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/mwe01), accessed November 01, 2013. Published by the Texas State Historical Association.

to the species by maintaining aquifer levels to assure a minimum spring flow at Comal Springs."[16] Judge Bunton's decision encouraged the Texas Legislature to act: "The next session of the Texas Legislature offers the last chance for adoption of an adequate state plan before the 'blunt axes' of Federal intervention have to be dropped."[17] Senate Bill 1477, which created the EAA, was a direct response to this case.[18]

42. The EAA did not grow out of private arrangement among farmers and other landholders, as in the cases of *Salyer* or *Ball*.[19] Nor did it emerge with a single, narrow purpose of maintaining agricultural resources or of reclamation. The EAA evolved out of the EUWD in response to general problems of water use in the area of the San Antonio system of the Edwards Aquifer and federal concerns about endangered species. The EAA was provided more general and stronger powers in order to deal with general water use by all people in the area, pollution of the water, and protection of endangered species.

(3) Authority

43. The mission of the EAA is to protect the Edwards Aquifer. Specifically, it is charged with (a) conserving

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[16] Robert L. Gulley and Jenna B. Cantwell, "The Edwards Aquifer Water Wars: The Final Chapter?" 4 *Texas Water Journal* 1 (February 2013), page 6.

[17] Ibid.

[18] Ibid, page 7. See also the website of the EAA, under the heading legislation: http://www.edwardsaquifer.org/legislation-and-rules/the-eaa-act. Accessed November 5, 2013.

[19] See *Ball v. James* 451 U. S. 355, 358 (1981).

and controlling the water in the Edwards Aquifer,[20] (b) protecting the quality of water in the Edwards Aquifer, and (c) protecting endangered species in the Edwards Aquifer.

44. It is my opinion that the EAA has general governmental powers and falls into the category of government bodies that are required to have equal population districting. It has powers to regulate the use of water; it has power to regulate the conduct of individuals; it has the power to provide general government services and to govern the administration of roads, fire protection, and other functions. It does not have the power to levy ad valorem property taxes or sales taxes. The EAA is a qualitatively different government entity than the agencies in *Salyer* and *Ball*. It has much broader powers than managing the storage and distribution of water. It governs water use, conduct of citizens, and administration of normal government functions.

45. First, the general legislative charge of EAA provides broad powers. Legislative mandate grants the EAA "*all* powers necessary to protect the aquifer" (emphasis added).

> **SECTION 1.08 GENERAL POWERS.** (a) The authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer. The authority has all of the rights, powers, privileges,

[20] Section 101 of the Edwards Aquifer Act says the "district is required for effective control of the resource."

> authority, functions, and duties provided by the general law of this state, including Chapters 50, 51, and 52, Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction.

46. Second, the EAA has the power to regulate water use and land use, not just provide for its storage and distribution. Specifically, the EAA implemented a permitting system to regulate pumping from the aquifer. Permits are based on historic use and determinations of *beneficial use*. All permits, including any new permits, must fall within the overall limit on total actual pumping of 572,000 acre-feet per year. The EAA has mandated that municipal and industrial users follow Best Management Practices; the EAA has the power to mandate use cutbacks in the event that water levels hit a critical stage, in the event of a drought; and the EAA has the authority to regulate water use on people's property, such as for landscaping. (See Section 715, especially Subsection C, of the EAA Rules.) Under the EAA Act, EAA enforces a prohibition on the exportation of water from the district. The EAA has considered, but not implemented, Impervious Cover Restrictions, which may limit general development on the surface. Current rules contain some restrictions on land use, such as restrictions on the use of coal-tar in paving and general pollution restrictions. (See Chapter 713, Subchapter H). Further, the EAA can force individual landowners to cap wells on their property, even if the

landowner did not dig the well or use it. The landowner may be required to bear the cost. See Section 713, subchapter D. As discussed below, the EAA further can use its fees to regulate water use. In short the EAA can and does regulate the conduct of all people in its jurisdiction, and it can regulate the use of water.

47. Third, the EAA has direct power over the provision of basic local public goods and services and local government functions in the area. EAA rules apply to municipal and industrial use of water generally and identify specific municipal uses of water in normal local government functions. (See Section 702, 117) Examples are current EAA rules that affect the provision of (i) fire protection (Chapter 713, Subchapter F), (ii) road construction (Chapter 713, Subchapter H), (iii) management of solid waste and wastewater (Chapter 713, Subchapter F), (iv) spills from above ground and under ground storage tanks (Chapter 713, Subchapter G) and (v) provision of education programs.[21]

48. Fourth, the EAA has the power to raise revenue by levying fees on permit holders and direct fees on pumping of water. Aquifer management fees are based on Aquifer use, in terms of type of use and total use. The EAA distinguishes between Municipal, Industrial and Agricultural (Irrigation) use and

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[21] The 2013 EAA Operating Budget has a line item for Education, page 34. http://www.edwardsaquifer.org/administration/budgets. These expenditures provide for development of educational materials and provision of education programs for elementary, high school and college students. For example http://data.edwardsaquifer.org/display_education_portal.php

charges management fees on a per acre- foot of water basis. (Section 709.19) Fees are charged to pay for general operations of the EAA (Section 709.23). The General Manager of the EAA may also use fees "to encourage water conservation," and specifically to encourage non-agricultural users to use less water. (Section 709.25) In this way, fees are used both to raise revenue for the EAA and to regulate behavior of users.

49. The taxing authority of the EAA is limited. It cannot levy ad valorem property taxes or sales taxes. Rather it raises its revenue almost entirely from fees on users and those with pumping rights. Importantly, the revenue collected from these fees come disproportionately from Bexar County, and disproportionately from Municipal and Industrial, not Agricultural users. (See Section F below.)

50. Fifth, the EAA has power to draw districts governing its own election. It is my understanding that the districts drawn in 2012 were constructed by and approved by the EAA itself.

51. The EAA is granted broad governmental powers in order to fulfill its mission of protecting the amount of water, quality of water, and endangered species that depend on the water of the Edwards Aquifer. The EAA has the power to enact legislation that governs the conduct of citizens and the normal functions of the government, such as fire, road construction, land use, and sanitation. The EAA specifically has the power to regulate the use of water, such as for landscaping or firefighting, after the water has been delivered from the aquifer; it has the power to limit use of water in times of drought; it has the power to use its fees to

regulate use of water by municipal and industrial users, even in the absence of drought.

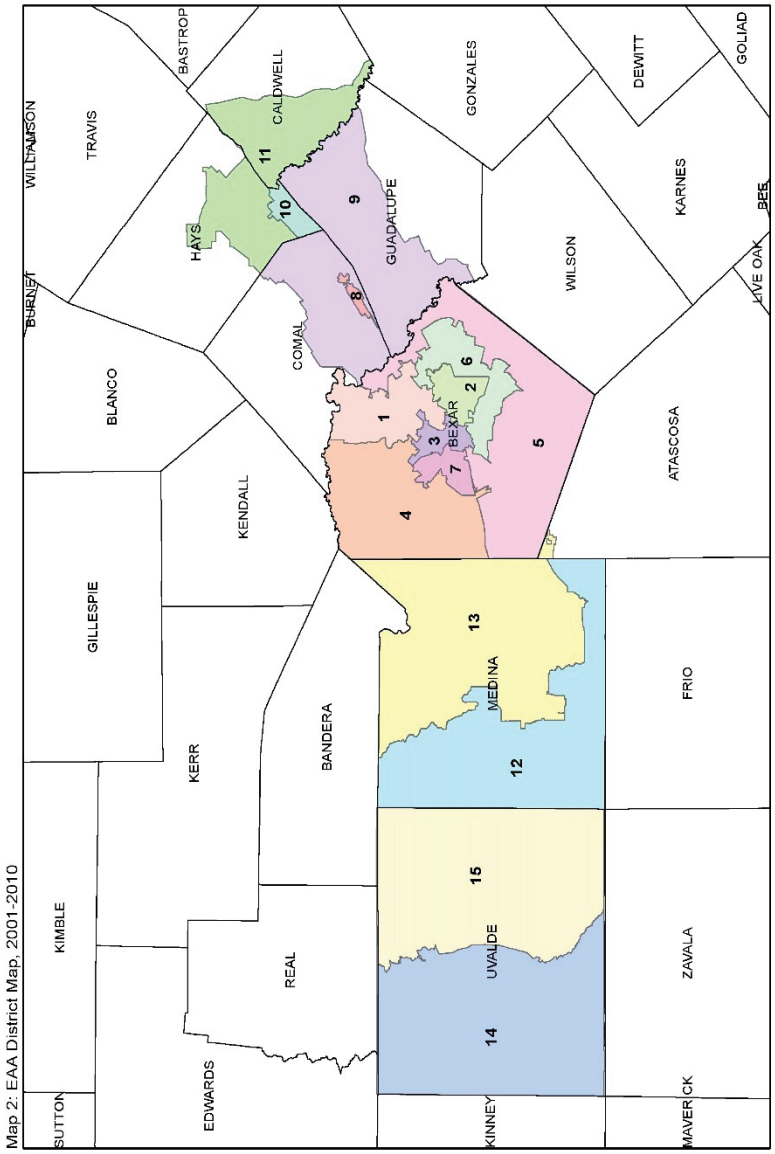
D. Representation in the EAA

52. The EAA is governed by a 17-member board. Fifteen of these members are voting- members in making decisions of the EAA, and each is elected by popular vote from single member districts. Two non-voting members are appointed.

(1) Description of Districts

53. The districts of the EAA were first drawn in 1995. They were redrawn in 2001 and 2012. Map 2 shows the configuration of the districts drawn in 2001 and in place as of 2010. Map 3 shows the configuration of districts that were drawn in 2012 and are proposed as districts to be used for the remainder of this decade. Both maps overlay the district boundaries over the map of the zones of the Aquifer.

54. Both the 2001-2011 district plan and the 2012 district plan follow the general approach set in place in the 1995 plan. There are seven districts entirely inside Bexar County, numbered 1 to 7 in both the 2001 and 2012 plans. There are four districts to the west of Bexar County, two entirely inside Medina County (numbers 12 and 13) and two entirely inside Uvalde County (numbers 14 and 15). There are four districts to the east of Bexar County, two in the area of Comal and Guadalupe Counties and two in the area of Hays and Caldwell Counties.


Map 2: EAA District Map, 2001-2010
WILLIAMSON
TRAVIS
BASTROP
CALDWELL
GONZALES
DEWITT
GOLIAD
HAYS
GUADALUPE
KARNES
BEE
BURNET
WILSON
LIVE OAK
COMAL
BLANCO
BEXAR
ATASCOSA
GILLESPIE
KENDALL
KERR
BANDERA
MEDINA
FRIO
KIMBLE
REAL
UVALDE
ZAVALA
SUTTON
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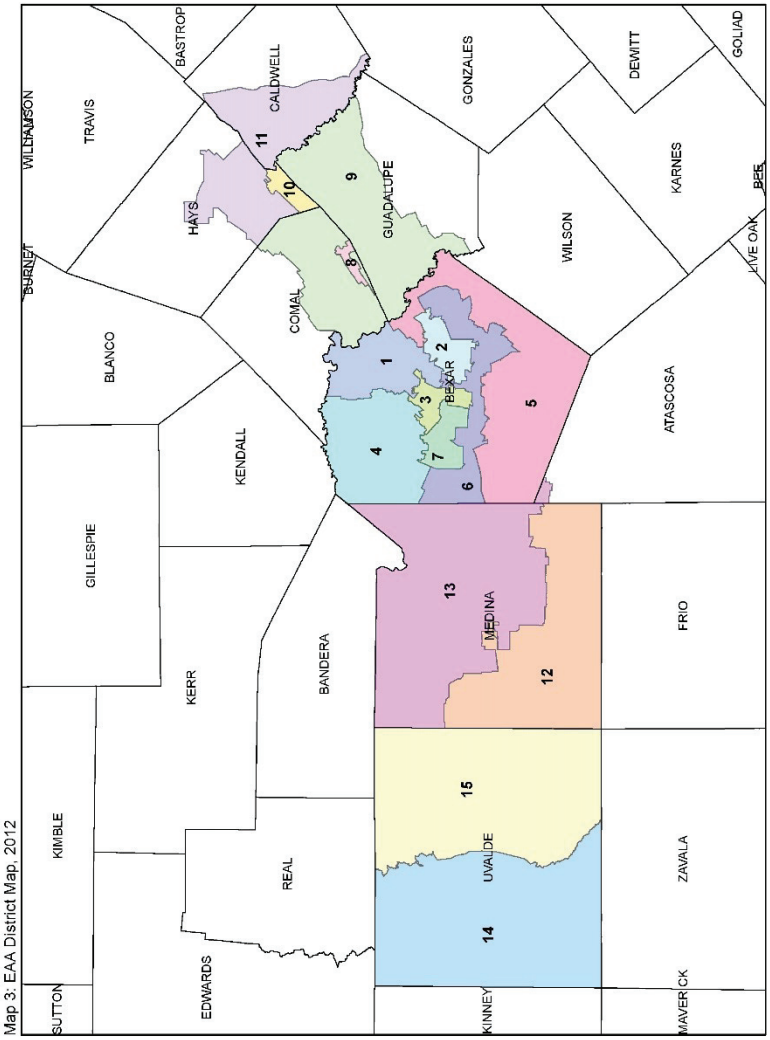

(2) Population

55. The standard for equal population districting in state and local elections is that population deviations of not more than 10 percentage points, from the most populous to the least populous district, are permitted across districts in government agencies with general governmental authority.

56. The populations of the 2012 districts of the EAA differ by far more than this standard. Table 1 presents the populations of the districts in the 2001-2011 map, using the 2010 Census figures and the populations of the districts in the 2012 map, using the 2010 Census figures. The total population count differs slightly owing to irregularities in the shape files for the 2012 districts that I was provided.

57. The most populous district in this plan has almost 300,000 persons; the least populous district has a population of 10,000 persons. The most populous district, then, has 30 times as many people as the least populous district.

58. In addition to population counts, the table presents the ratio of each district's population to the ideal district population. The ideal district population is the population of each district if all districts had identical populations. The most populous districts – 1 and 4, both in Bexar County – have more than two times as many people as they would under equal population districting. The votes in these districts count for half of what they would were the district populations equalized.

59. The least populous districts – 10 and 15, in Hays and Uvalde Counties, respectively – have ratios of .09 and .07. That means that these districts have populations that are 9 percent and 7 percent of the population that they would have under equal population districting. To put this matter another way, a vote cast in these districts is 11 to 14 times more than a vote cast in the ideal district.

60. All but one of the districts in Bexar County have more voters than they would under equal population

districting. Only District 2 is close to the population of the ideal district. All but one of the districts outside of Bexar County have many fewer people in them than they would under equal population districting. District 9, which spans Comal and Guadalupe County, is close to the population of the ideal district, and none of the districts outside of Bexar has excess numbers of people.

61. Revision of districts between 2010 and 2012 made small changes in the general picture of the districting map, and broad differences in populations remain after redistricting. Interestingly, there was some effort to equalize population inside Medina County. From 2001-2011, District 13 in Medina had roughly twice as many people as District 12. Realignment of district boundaries made these two districts nearly equal in population (at 24,150 and 24,424). It is unclear why the redistricting sought to equalize population *within* this one county, but left gross population disparities between counties and within other counties in the EAA.

Table 1. Population of EAA Districts							
District	County	1995-2000 Map		2001-2011 Map		2012 Map	
		Population (1990 Census)	Ratio	Population (2010 Census)	Ratio	Population (2010 Census)	Ratio
1	Bexar	182,033	1.99	318,804	2.32	293,980	2.15
2	Bexar	107,393	1.18	121,020	0.88	146,591	1.07
3	Bexar	177,866	1.95	190,269	1.38	230,175	1.68
4	Bexar	183,051	2.01	440,374	3.21	299,628	2.19
5	Bexar	180,192	1.97	237,632	1.73	255,881	1.87
6	Bexar	178,390	1.95	211,113	1.54	256,956	1.88
7	Bexar	176,469	1.93	195,908	1.43	231,416	1.69
8	Comal	10,969	0.12	11,369	0.08	17,770	0.13
9	Comal/Guadalupe	60,931	0.67	152,204	1.11	144,068	1.05
10	Hays	11,535	0.13	13,556	0.10	11,722	0.09
11	Hays/Caldwell	47,519	0.52	92,132	0.67	92,066	0.67
12	Medina	8,840	0.10	16,450	0.12	24,150	0.18
13	Medina/Atascosa	20,721	0.23	32,605	0.24	24,430	0.18
14	Uvalde	14,953	0.16	15,963	0.12	16,188	0.12
15	Uvalde	8,387	0.09	10,442	0.08	10,217	0.07
Ideal		91,283	1.00	137,323	1.00	137,016	1.00

62. Other aspects of the redistricting map show a small effort toward reducing population inequalities, but not much. For example, in Comal County, roughly 6,000 people were added to District 8 in Comal County, increasing that district's ratio of population relative to the ideal population from .08 to .13, and lowering the ratio of District 9 from 1.11 to 1.05. But District 8 is still far below the ideal, and has far less population than District 9.

63. In Bexar County, District 4 had 440,000 persons in 2010, and its population was reduced to 300,000; the population of District 1 had 313,000 persons in 2010, and its population was reduced to 294,000. To compensate, the populations of every other district in the County were increased. The most populous district in 2010 (District 4) had 3.7 times the population as the least populous district (District 2). Redistricting reduced the population disparity within the County, but the most populous district in the County (District 4) still has twice the population of the least populous district (District 2). Worse still, every district in Bexar County now has more population than the equal population ideal.

64. Following the most recent redistricting, population deviations remain extremely large, despite efforts to make marginal improvements in population disparities within some counties. The ratio of the most populous district to the least populous district is 30:1 under the 2012 plan.

65. Since 1995, the population disparities have worsened. Table 1 presents the 1990 census statistics for the 1995 EAA district lines, as calculated by the Texas Legislative Council. In 1995, the ratio of the

most population district to the least populous district was 22:1. Following the 2012 adjustment to district boundaries, that ratio is 30:1.

66. The population disparities have worsened within counties. Within Bexar the ratio of the most populous to least populous district was 1.7:1 in 1995; today it is 2.0:1. The gap in per capita representation in Hays and Comal has also worsened over this period.

67. There is also a growing gap between Uvalde and Medina and the other Counties. The populations of Uvalde and Medina Counties have grown little over the past 20 years. Hays and Comal Counties, however, have grown rapidly. From 1990 to 2010 the populations of the areas covered by districts 12, 13, 14, and 15 (Medina and Uvalde Counties) rose from 52,901 persons to 74,979. From 1990 to 2010 populations of the areas covered by districts 8, 9, 10, and 11 (Comal, Caldwell, Hays, and Guadalupe Counties) rose from 130,954 persons to 265,688.

68. The people in the western portion of the EAA have gained representation at the expense of the people in the eastern and central portions of the EAA simply because of population growth. These changes in districts do not appear to reflect changes in landownership, water use, or the objectives of limiting water use, protecting water quality, or protecting endangered species.

69. This trend will continue over the coming decades if the districts remain configured along the same lines as they are currently. Table 2 presents population projections for the counties in the EAA (except

Atascosa). These data are generated from the Texas State Data Center Population Projection tool.

70. Uvalde County is projected to gain 5,000 persons from 2010 to 2030. Medina County is projected to gain 50,000 persons. Those two counties have 4 seats. Bexar County is projected to gain 730,000 persons. The rising discrepancies in per capita representation will grow not only between Bexar and the other counties, but also between the western counties in the EAA and the eastern counties in the EAA, especially Hays and Comal. Hays and Comal have 4 seats between them. Hays County is expected to gain 250,000 persons and Comal County, 100,000 persons. In other words, over the next 20 years, Hays and Comal are expected to gain more than 6 times as many people as Uvalde and Medina will gain. At the end of this time Hays and Comal will have 9 times as many people as Uvalde and Medina, but they will have the same representation on the EAA Board as Uvalde and Medina. Unless there is significant adjustment for population – an adjustment more extensive than what was done between 2010 and 2012 – disparities in representation will continue to worsen over the next several decades.

Table 2. Projected Populations of Counties in the EAA, 2010 to 2030 (Migration Rate = 2000-2010 Rate)			
County	2010	2020	2030
Bexar	1,715,000	2,066,000	2,446,000
Caldwell	38,000	49,000	63,000
Comal	108,000	152,000	204,000
Guadalupe	134,000	186,000	253,000
Hays	157,000	258,000	406,000
Medina	46,000	57,000	69,000
Uvalde	26,000	29,000	31,000
Total	2,222,000	2,797,000	3,472,000
Source: Projections from the Texas State Data Center Population Projections online tool. http://txsdc.utsa.edu/Data/TPEPP/Projections/Data.aspx.			
Note: These are whole county projections. The projections for Comal, Guadalupe and Hays are for the entire county, rather than for the portions of those counties in the EAA. TSDC does not offer projections for the parts of the counties that are in the EAA districts. Projections rounded to nearest 1,000.			

71. The configuration of districts has implications for specific types of people and water users. Table 3 presents two such examples, racial groups and city residents. First, Hispanics are a majority of the Voting Age Population (51.8%) in the area encompassed by the Edwards Aquifer Authority. Hispanics are a majority of the population in 6 of 15 (40%) of districts under the 2012 Map. Four of the 7 districts in Bexar County are majority Hispanic, and

2 of the 8 districts covering the other counties are majority Hispanic.

72. Second, people who live in cities, as designated by the Census, and are thus Metropolitan users, comprise 82% of the population. They are the majority of the population in 14 of 15 districts, with the exception being District 13 in Medina County. Representation of municipal interests is not just a concern of San Antonio, but of every city in the EAA.

73. Comparison of the last column of Table 3 with the last two columns in Table 1 reveals that the districting scheme treats different kinds of municipal users differently. All but one of the districts contain populations, the majority of which dwell in cities. That is, with the exception of District 13, city voters are the majority of voters in each district. The city voters in Bexar County have much less representation than the city voters elsewhere in the EAA precisely because every District in Bexar County is under represented. Notably, 60 percent of people (and 58% of the Voting Age Population) in District 15 in Uvalde County live in cities in that part of the county.

Table 3. Population Characteristics of Districts in the 2012 EAA District Map				
District	County	Percent Hispanic VAP	Percent Black + Hispanic VAP	Percent of Population in Cities
1	Bexar	31.6%	37.7%	86.2%
2	Bexar	43.8%	73.4%	75.6%
3	Bexar	72.0%	76.0%	100.0%
4	Bexar	38.6%	43.7%	86.1%
5	Bexar	66.5%	71.3%	72.4%
6	Bexar	66.7%	73.2%	72.4%
7	Bexar	71.8%	77.8%	99.4%
8	Comal	49.1%	50.8%	93.3%
9	Comal/	25.2%	30.3%	67.1%
10	Hays	49.3%	54.1%	83.1%
11	Hays/	35.0%	40.0%	76.2%
12	Medina/	57.1%	61.2%	51.2%
13	Medina	36.5%	37.3%	34.8%
14	Uvalde	75.7%	76.1%	69.8%
15	Uvalde	48.2%	48.8%	60.1%
EAA		51.8%	58.6%	82.0%

(3) Other Possible Bases of Representation

74. I see no justification for the districts based on landownership, water use, land use, or the structure of the Aquifer. If the courts decided that the EAA had narrow purposes and lacked general government powers, it must still be the case that the districts of the EAA board have a basis tied to the original purpose of the EAA.

75. First, landownership is not the basis for voting or representation in the EAA. In the cases of *Salyer* and

Ball voting rights were restricted to landownership, owing to the very narrow purpose and limited powers of those districts. The EAA districts are not tied to landownership and voting rights are not restricted to landowners. Nor are the districts tied to an historic agricultural system, such as the Farmers Association in *Ball*. The analogy to *Salyer* and *Ball*, then, breaks down entirely in considering on what basis the EAA districts are drawn. The reasoning in *Salyer* and *Ball*, then, cannot justify the existing EAA districts because the voting rights and districts in the EAA are not based on landownership, acreage, or historical agricultural use. I am not saying that this ought to be the basis, only that it is not.

76. Considerations based on acreage would create further issues regarding the inequities between Districts 8 and 10 and the rest of the area. These two districts have very small populations and very small acreage. (See Map 3)

77. Second, historic water use is not the basis for voting rights or representation in the EAA. Representation on the EAA Board does not reflect the pumping rights established by the EAA Act. There is no evidence that redrawing of districts from 1995 through 2012 reflects shifts in pumping rights.

78. Third, representation does not reflect the burdens of maintaining the EAA. In the case of *Ball* and *Salyer*, the landowners paid a disproportionate share of the operation of those districts. In this case, as shown in the next section, Bexar County pays for 75 percent of the operation of the EAA.

79. Fourth, representation on the EAA board does not reflect different types of use. The rules of the EAA

distinguish three types of users: Agricultural, Municipal and Industrial, and Spring flow. Representation of agriculture could not be the purpose behind the districts. If it were, then agricultural votes would be a majority of a majority of districts. However, people in cities are the majority of a majority of districts, both in population and voting age population. As shown in Table 3 in only one district are agricultural interests a majority of the population or the voting age population.

80. Relatedly, it should be noted that according to the 2013 EAA Operating Budget, Municipal and Industrial users pay 98 percent of the fees collected for operating revenues of the EAA.

81. Fifth, representation does not reflect the structure of the aquifer that the EAA was set up to protect. One might argue that the districts are structured so as to reflect the interests reflected in the water itself and the structure of the aquifer. Were that the idea behind the districts, one would expect to see districts that reflected the features of the aquifer in a consistent way. But that is not the case.

82. The district boundaries do not reflect the underlying structure of the Edwards Aquifer. It is unclear exactly what representation of the aquifer itself would mean, but if that were the rationale I would expect to see district lines that reflected the Aquifer in some consistent way. For example, perhaps every district would be an equal mix of Artesian, Recharge, and Capture Zones. Or, every district might be structured to reflect just one of these interests. The lines, however, do not consistently follow any one approach to the natural structure of

the Aquifer itself. The boundary that divides Uvalde County into Districts 14 and 15 runs north-south and creates two districts, each of which has all three water interests. By contrast, the boundary that divides Medina into Districts 12 and 13 runs roughly east-west and creates one district with only Artesian Zone (12) and another district (13) with Artesian, Recharge, and Capture Zones. Before redistricting, this boundary ran more in a north-south orientation.

83. It is unclear how the districts match the legislature's goal of protecting water use, water quality, and endangered species. None of the theories I have considered, including those rooted in cases in which acreage was the basis of representation, fits the situation in the EAA. In any event, the EAA has general government authority. It regulates water use and land use, unlike the situations in *Salyer* and *Ball*. It can regulate the conduct of individuals. Its activities affect the administration of normal government functions so as fire protection, roads, and sanitation. The EAA, thus, fits under the one person, one vote rule.

E. Revenue and Policy

(1) General Findings of Research on the Consequences of Inequality

84. Academic research on the effects of unequal population representation in democratically elected bodies has documented the substantial and systematic effects of unequal representation on the decision-making of those governmental bodies and the resulting public policies. Unequal representation affects the opportunity to form coalitions and the weight that any one interest or segment of society has on government decision-making. Effects on public

policy include inequities in the contribution to the revenue of the governing body, inequities in distribution of resources of the governing body, and distortions in the public laws and rules in favor of those who are overrepresented.[22]

(2) Revenues of the EAA

85. The revenue for the EAA comes from fees charged to permit holders for the use of water. Permits are classified by type of use, and fees are charged according to that use, agricultural (irrigation), municipal, and industrial.

86. The Texas State Legislature caps fees for agricultural use (irrigation) at $2 per acre- foot. The fee on all other users for EAA General Operating Revenues is $47 per acre-foot.[23] These are called Management Fees in the filings with the EAA. Ninety-eight percent of general revenues of the EAA come from fees on Municipal and Industrial Users; 1.5% come from fees on irrigation.

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[22] The literatures on these matters are large. On revenues, see, for example, Cary M. Atlas, Thomas W. Gilligan, Robert J. Hendershott, and Mark A. Zupan, "Slicing the federal government net spending pie: Who wins, who loses, and why," *American Economic Review* 85 (1995), 624-629. On policy distortion see, for example, Matthew D. McCubbins and Thomas Schwartz, "Congress, the Courts, and Public Policy: Consequences of the One Man, One Vote Rule, *American Journal of Political Science* 32 (1988): 388-415. On distribution of public expenditures and on distortion of policy, see, for example, Stephen Ansolabehere and James M. Snyder, Jr., *The End of Inequality*, New York: W.W. Norton, 2008, esp. Chapters 9 and 10.

[23] Edwards Aquifer Authority, 2013 Operating Budget, Adopted November 13, 2012, page 25.

87. The Edwards Aquifer Habitat Conservation Plan Fund (EAHCP) is a separate fund of approximately $20 million in revenue.[24] Revenue for this fund comes entirely from management fees of $37 per acre-foot, which is levied entirely on Municipal and Industrial users. These are called "Program Fees" in the invoices to the EAA. This brings the total charge for water use on Municipal and Industrial users to $84 per acre- foot, while the charge on Irrigation is just $2 per acre-foot.

88. Bexar County accounts for 75 percent of the Aquifer Management Fees for General Operations and 75 percent of the Program Management Fees for the EAHCP Fund. According to the budget documents of the EAA, there are a total of $18.2 million in Management Fees for General Operations. The San Antonio Area Water System (SAWS) paid $11.9 million for SAWS's management fees and $1.7 million for the management fees of the Bexar Metropolitan Water District (which is now part of SAWS). Hence, $13.6 million of the $18.2 Million management fees collected by the EAA for General Operations – 74.7 percent – came from SAWS.[25] Additionally, large Industrial firms in Bexar County, such as Martin Marietta Materials and Vulcan Construction Materials, paid fees of several hundred thousand dollars, bringing the total liability to people and firms in Bexar to well in excess of 75 percent of total revenues.[26]

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[24] Ibid, page 5.

[25] Invoices for management fees were provided to me by SAWS. Total management fees are reported in EAA, 2013 Operating Budget, page 22.

[26] See 2009 Comprehensive Annual Financial Report, Table 4.

90. Similarly, SAWS accounts for 75 percent of program fees for the EAHCP. SAWS paid $9.4 million in management fees for the 2013 EAHCP Program, and another $1.3 million for the Bexar Metropolitan Water District's share – a total of $10.7 million in program fees for the EAHCP. The total program management fees collected for EAHCP by the EAA come to $14.3 million. In other words, SAWS paid roughly 75 percent of all program fees for the EAHCP.

91. Bexar County accounts for 75 percent of the population of the EAA, 75 percent of the revenue of the EAA and receives only 47 percent of the representation on the EAA governing board. The financial burden for the operations of the EAA are born disproportionately by Bexar County, but that County is not accorded a proportionate say in how those revenues are spent or what the EAA does.

Signed,

/s/

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2008-present	Professor, Department of Government, Harvard University
1998-2009	Elting Morison Professor, Department of Political Science, MIT (Associate Head, 2002-2005)
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FELLOWSHIPS AND HONORS

American Academy of Arts and Sciences	2007
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PUBLICATIONS

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2010 The Future of Nuclear Power, Revised.

2006 *The Future of Coal*. MIT Press. Continued reliance on coal as a primary power source will lead to very high concentrations of carbon dioxide in the atmosphere, resulting in global warming. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – develop a road map for technology research and development policy in order to address the challenges of carbon emissions from expanding use of coal for electricity and heating throughout the world.

2003 *The Future of Nuclear Power*. MIT Press. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – examines the what contribution nuclear power can make to meet growing electricity demand, especially in a world with increasing carbon dioxide emissions from fossil fuel power plants.

2002 Election Day Registration." A report prepared for DEMOS. This report analyzes the possible effects of Proposition 52 in California based on the experiences of 6 states with election day registration.

2001 *Voting: What Is, What Could Be.* A report of the Caltech/MIT Voting Technology Project. This report examines the voting system, especially technologies for casting and counting votes, registration systems, and polling place operations, in the United States. It was widely used by state and national governments in formulating election reforms following the 2000 election.

2001 An Assessment of the Reliability of Voting Technologies." A report of the Caltech/MIT Voting Technology Project. This report provided the first nationwide assessment of voting equipment performance in the United States. It Zas prepared for the Governor's Select Task Force on Election Reform in Florida.

Chapters in Edited Volumes

2012 "Using Recounts to Measure the Accuracy of Vote Tabulations: Evidence from New Hampshire Elections, 1946-2002" in Confirming Elections, R. Michael Alvarez, Lonna Atkeson, and Thad Hall, eds. New York: Palgrave, Macmillan.

2010 "Dyadic Representation" in Oxford Handbook on Congress, Eric Schickler, ed., Oxford University Press.

2008 Voting Technology and Election Law" in *America Votes!,* Benjamin Griffith, editor, Washington, DC: American Bar Association.

2007 "What Did the Direct Primary Do to Party Loyalty in Congress" (with Shigeo Hirano and James M. Snyder Jr.) in *Process, Party and Policy Making: Further New Perspectives on the History of Congress*, David Brady and Matthew D. McCubbins (eds.), Stanford University Press, 2007.

2007 "Election Administration and Voting Rights" in *Renewal of the Voting Rights Act*, David Epstein and Sharyn O'Hallaran, eds. Russell Sage Foundation.

2006 "The Decline of Competition in Primary Elections," (with John Mark Hansen, Shigeo Hirano, and James M. Snyder, Jr.) *The Marketplace of Democracy*, Michael P. McDonald and John Samples, eds. Washington, DC: Brookings.

2005 "Voters, Candidates and Parties" in *Handbook of Political Economy*, Barry Weingast and Donald Wittman, eds. New York: Oxford University Press.

2003 "Baker v. Carr in Context, 1946 – 1964" (with Samuel Isaacharoff) in *Constitutional Cases in Contex*t, Michael Dorf, editor. New York: Foundation Press.

2002 "Corruption and the Growth of Campaign Spending" (with Alan Gerber and James Snyder). *A User's Guide to Campaign Finance*, Jerry Lubenow, editor. Rowman and Littlefield.

2001 "The Paradox of Minimal Effects," in Henry Brady and Richard Johnston, eds., *Do Campaigns Matter*? University of Michigan Press.

2001 "Campaigns as Experiments," in Henry Brady and Richard Johnson, eds., Do *Campaigns Matter*? University of Michigan Press.

2000 "Money and Office," (with James Snyder) in David Brady and John Cogan, eds., *Congressional Elections: Continuity and Change*. Stanford University Press.

1996 "The Science of Political Advertising," (with Shanto Iyengar) in *Political Persuasion and Attitude Change*, Richard Brody, Diana Mutz, and Paul Sniderman, eds. Ann Arbor, MI: University of Michigan Press.

1995 "Evolving Perspectives on the Effects of Campaign Communication," in Philo Warburn, ed., *Research in Political Sociology*, vol. 7, JAI.

1995 "The Effectiveness of Campaign Advertising: It's All in the Context," (with Shanto Iyengar) in *Campaigns and Elections American Style*, Candice Nelson and James A. Thurber, eds. Westview Press.

1993 Information and Electoral Attitudes: A Case of Judgment Under Uncertainty," (with Shanto Iyengar), in *Explorations in Political Psychology*, Shanto Iyengar and William McGuire, eds. Durham: Duke University Press.

Working Papers

2009 "Sociotropic Voting and the Media" (with Marc Meredith and Erik Snowberg), American National Election Study Pilot Study Reports, John Aldrich editor.

2007 "Public Attitudes Toward America's Energy Options: Report of the 2007 MIT Energy Survey" CEEPR Working Paper 07-002 and CANES working paper.

2006 "Constituents' Policy Perceptions and Approval of Members' of Congress" CCES Working Paper 06-01 (with Phil Jones).

2004 "Using Recounts to Measure the Accuracy of Vote Tabulations: Evidence from New Hampshire Elections, 1946 to 2002" (with Andrew Reeves).

2002 "Evidence of Virtual Representation: Reapportionment in California," (with Ruimin He and James M. Snyder).

1999 "Why did a majority of Californians Yote to lower their own power?" (with James Snyder and Jonathan Woon). Paper presented at the annual meeting of the American Political Science Association, Atlanta, GA, September, 1999. Paper received the award for the best paper on Representation at the 1999 Annual Meeting of the APSA.

1999 "Has Television Increased the Cost of Campaigns?" (with Alan Gerber and James Snyder).

1996 "Money, Elections, and Candidate Quality," (with James Snyder).

1996 "Party Platform Choice - Single- Member District and Party-List Systems," (with James Snyder).

1995 "Messages Forgotten" (with Shanto Iyengar).

1994 Consumer Contributors and the Returns to Fundraising: A Microeconomic Analysis," (with Alan Gerber), presented at the Annual Meeting of the American Political Science Association, September.

1992 Biases in Ecological Regression," (with R. Douglas Rivers) August, (revised February 1994). Presented at the Midwest Political Science Association Meetings, April 1994, Chicago, IL.

1992 "Using Aggregate Data to Correct Nonresponse and Misreporting in Surveys" (with R. Douglas Rivers). Presented at the annual meeting of the Political Methodology Group, Cambridge, Massachusetts, July.

1991 "The Electoral Effects of Issues and Attacks in Campaign Advertising" (with Shanto Iyengar). Presented at the Annual Meeting of the American Political Science Association, Washington, DC.

1991 "Television Advertising as Campaign Strategy: Some Experimental Evidence" (with Shanto Iyengar). Presented at the Annual Meeting of the American Association for Public Opinion Research, Phoenix.

1991 "Why Candidates Attack: Effects of Televised Advertising in the 1990 California Gubernatorial Campaign," (with Shanto Iyengar). Presented at the Annual Meeting of the Western Political Science Association, Seattle, March.

1990 "Winning is Easy, But It Sure Ain't Cheap." Working Paper #90-4, Center for the American Politics and Public Policy, UCLA. Presented at the Political Science Departments at Rochester University and the University of Chicago.

Research Grants

1989-1990 Markle Foundation. "A Study of the Effects of Advertising in the 1990 California Gubernatorial Campaign." Amount: $50,000

1991-1993 Markle Foundation. "An Experimental Study of the Effects of Campaign Advertising." Amount: $150,000

1991-1993 NSF. "An Experimental Study of the Effects of Advertising in the 1992 California Senate Electoral." Amount: $100,000

1994-1995 MIT Provost Fund. "Money in Elections: A Study of the Effects of Money on Electoral Competition." Amount: $40,000

1996-1997 National Science Foundation. "Campaign Finance and Political Representation." Amount: $50,000

1997	National Science Foundation. "Party Platforms: A Theoretical Investigation of Party Competition Through Platform Choice." Amount: $40,000
1997-1998	National Science Foundation. "The Legislative Connection in Congressional Campaign Finance. Amount: $150,000
1999-2000	MIT Provost Fund. "Districting and Representation." Amount: $20,000.
1999-2002	Sloan Foundation. "Congressional Staff Seminar." Amount: $156,000.
2000-2001	Carnegie Corporation. "The Caltech/MIT Voting Technology Project." Amount: $253,000.
2001-2002	Carnegie Corporation. "Dissemination of Voting Technology Information." Amount: $200,000.
2003-2005	National Science Foundation. "State Elections Data Project." Amount: $256,000.
2003-2004	Carnegie Corporation. "Internet Voting." Amount: $279,000.
2003-2005	Knight Foundation. "Accessibility and Security of Voting Systems." Amount: $450,000.
2006-2008	National Science Foundation, "Primary Election Data Project"
2008-2009	Pew/JEHT. "Measuring Voting Problems in Primary Elections, A National Survey." Amount: $300,000

2008-2009 Pew/JEHT. "Comprehensive Assessment of the Quality of Voter Registration Lists in the United States: A pilot study proposal" (with Alan Gerber). Amount: $100,000.

2010-2011 National Science Foundation, "Cooperative Congressional Election Study," $360,000

2010-2012 Sloan Foundation, "Precinct-Level U. S. Election Data," $240,000.

2012-2014 National Science Foundation, "Cooperative Congressional Election Study, 2010-2012 Panel Study" $425,000

2012-2014 National Science Foundation, "2012 Cooperative Congressional Election Study," $475,000

Professional Boards

Editor, Cambridge University Press Book Series, Political Economy of Institutions and Decisions.

Member, Board of Overseers, American National Election Studies, 1999 to present.

Member, Board of the Reuters International School of Journalism, Oxford University, 2007 to present.

Member, Academic Advisory Board, Electoral Integrity Project, 2012 to present.

Contributing Editor, *Boston Review*, The State of the Nation.

Associate Editor, Public Opinion Quarterly, 2012 to present.

Editorial Board of American Journal of Political Science, 2005 to present.

Editorial Board of Legislative Studies Quarterly, 2005 to present.

Editorial Board of Public Opinion Quarterly, 2006 to present.

Editorial Board of the Election Law Journal, 2002 to present.

Editorial Board of the Harvard International Journal of Press/Politics, 1996 to 2008.

Editorial Board of Business and Politics, 2002 to Present.

Scientific Advisory Board, Polimetrix, 2004 to 2006.

Special Projects and Task Forces

Principal Investigator, Cooperative Congressional Election Study, 2005 – present.

MIT Energy Innovation Study, 2009-2010.

MIT Energy Initiative, Steering Council, 2007-2008

Co-Director, Caltech/MIT Voting Technology Project, 2000-2004.

Co-Organizer, MIT Seminar for Senior Congressional and Executive Staff, 1996-2007.

MIT Coal Study, 2004-2006.

MIT Energy Research Council, 2005-2006.

MIT Nuclear Study, 2002-2004.

Voting Technology Task Force Leader, Election Reform Initiative of the Constitution Project, 2001 to 2002.

REPORT ON CITIZEN, ADULT CITIZEN POPULATION, REGISTERED VOTERS, AND TURNOUT IN THE ELECTORAL DISTRICTS OF THE EDWARDS AQUIFER AUTHORITY

Stephen Ansolabehere
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April 9, 2016

I. STATEMENT OF INQUIRY

1. I have been asked to examine the number of Citizens, Citizens of Voting Age, Registered Voters, and Turnout in each of the districts in the electoral districts of the Edwards Aquifer Authority.

II. BACKGROUND AND QUALIFICATIONS

2. I am a professor of Government in the Department of Government at Harvard University in Cambridge, Massachusetts. Formerly, I was an Assistant Professor at the University of California, Los Angeles, and I was Professor of Political Science at the Massachusetts Institute of Technology, where I held the Elting R. Morison Chair and served as Associate Head of the Department of Political Science. At UCLA and MIT, I taught PhD-level courses on applied statistics in the social sciences. I directed the Caltech/MIT Voting Technology Project from its inception in 2000 through 2004, and I am the Principal Investigator of the Cooperative Congressional

Election Study, a survey research consortium of over 250 faculty and student researchers at more than 50 universities. In addition, I am a consultant to CBS News' Election Night Decision Desk. I am a member of the American Academy of Arts and Sciences (inducted in 2007).

3. I have testified before the U.S. Senate Committee on Rules, the U.S. Senate Committee on Commerce, the U.S. House Committee on Science, Space, and Technology, the U.S. House Committee on House Administration, and the Congressional Black Caucus on matters of election administration in the United States. I filed an amicus brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009). I filed an amicus brief with Professors Nathaniel Persily, Bernard Grofman, Charles Stewart, and Bruce Can in support of Appellees in the case of *Evenwel v. Abbott*, before the Supreme Court of the United States (Docket Number 14-940, Decided April 4, 2016.) I have served as a consultant for or continue to serve as a consultant for the following parties in the following matters: the Brennan Center in the case of *McConnell v. FEC*, 540 U.S. 93 (2003); the Rodriguez plaintiffs in *Perez v. Perry*, before the U. S. District Court for the Western District of Texas (No. 5:11-cv-00360); the Gonzales intervenors in *State of Texas v. United States* before the U.S. District Court for the District of Columbia (No. 1:11-cv-01303); the Department of Justice in *State of Texas v. Holder*, before the

U.S. District Court for the District of Columbia (No. 1:12-cv-00128); the Department of Justice in *Veasey v. Perry*, before the U.S. District Court for the Southern Division of Texas (No. 2:13cv00193); the San Antonio Water System intervenor in *LULAC v. Edwards Aquifer Authority* in the U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG); the Guy plaintiffs in *Guy v. Miller* before the U.S. District Court for Nevada (No. 11-OC-00042-1B); the Bethune-Hill plaintiffs in *Bethune-Hill v. Virginia State Board of Elections* in the U. S. District Court for the Eastern District of Virginia (No. 3:14cv852); the Harris plaintiffs in *Harris v. McCrory* before the U. S. District Court for the Middle District of North Carolina (No. 1:2013cv00949); the Florida Democratic Party in *In re Senate Joint Resolution of Legislative Apportionment* before the Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490); and the Romo plaintiffs in *Romo v. Detzner* before the Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412).

4. My areas of expertise include American government, American electoral politics and public opinion, as well as statistical methods in social sciences. I am the author of numerous scholarly works on voting behavior and elections, with a particular focus on the application of statistical methods. This scholarship includes articles in such academic journals as the Journal of the Royal Statistical Society, the American Political Science Review, the American Economic Review, the American Journal of Political Science, Legislative Studies Quarterly, the

Quarterly Journal of Political Science, Electoral Studies, and Political Analysis. I have published articles on issues of election law in the Harvard Law Review, Texas Law Review, Columbia Law Review, New York University Annual Survey of Law, and the Election Law Journal, for which I am a member of the editorial board. I have coauthored three scholarly books on electoral politics in the United States, The End of Inequality: Baker v. Carr and the Transformation of American Politics, Going Negative: How Political Advertising Shrinks and Polarizes the Electorate, and The Media Game: American Politics in the Media Age. I am a coauthor with Ted Lowi, Ben Ginsberg, and Ken Shepsle of American Government: Power and Purpose, a college textbook on American government. My curriculum vita with a list of publications is attached to my initial report in this case.

5. I am retained at the rate of $400 per hour.

III. SOURCES OF INFORMATION

6. I relied on population data provided by the U.S. Bureau of the Census. The Census Bureau produces data files for total population and population 18 years of age or older (Voting Age Population or VAP) from the 2010 Census Enumeration.

7. I relied on data on the citizen voting age population (CVAP) from the American Community Survey (ACS). CVAP is the number of persons who are 18 years or older and citizens of the United States. The Census Bureau

conducts an annual survey of 3 million persons nationwide called the (ACS) to measure citizenship and other demographic characteristics. The Census Bureau releases a five-year average of the ACS for purposes of analysis at the level of block groups, which is designed for analysis of local geographies, such as district boundaries. I relied on the 2008-2012 ACS 5-Year Summary, which is available at http://www.census.gov/acs/www/data_documentation/summary_file/.

8. I used the 2008-2012 ACS 5-Year Summary because the mid-year is 2010, which corresponds to the census enumeration. For further discussion on the use of ACS to measure CVAP in the State of Texas, see Stephen Ansolabehere, "Response to Professor Rives Rebuttal Report on the Use of the American Community Survey and Estimates of the Citizen Voting Age Population," in *Perez v. Perry*, before the U. S. District Court for the Western District of Texas (No. 5:11-cv-00360), August 30, 2011.

9. I was provided with a 2010 block equivalence file for every district in the 2001-2011 EAA district map. I was also provided with a shape file that defined the geographic areas included in each district in the 2012 EAA district map. I used these files to determine which Census blocks are in which electoral districts of the EAA under the 2001 map and the 2012 map.

10. The CVAP for each district was estimated as the percent of persons within each county who are adult citizens times the number of adult citizens

in each district. An alternative estimate was constructed using the block group level CVAP data from the ACS. This estimate assumed that CVAP of the split block groups (e.g., those divided across multiple electoral districts) were split according to the percent of persons in each block group that resides in each district. The estimates were very close to each other. Table 1 presents the first estimates, as those had very low standard errors and did not rest on assumptions about how block groups were split.

11. The amicus brief that I filed along with Nathaniel Persily, Bernard Grofman, Charles H. Stewart III, and Bruce Cain in *Evenwel v. Abbott* lays out my concerns with the use of ACS data and use of registration and turnout data for apportionment of legislative districts. I have the same concerns with the use of the ACS data and registration and turnout data for apportionment of the EAA districts. Of note, the ACS estimates of population and voting age population are not calibrated to the 2010 Census Enumeration. The Census Enumeration data are the standard for estimating the population as of April of the Census year (e.g., 2010). They offer a complete enumeration and are not subject to sampling error. The ACS is a very high quality survey of approximately 3 million people (out of 300 million people) nationwide, but as a survey, the estimates are subject to random error due to sampling. At lower levels of aggregation (such as block groups or districts within counties, such as the EAA districts) there is more noise in the ACS data than at higher levels of aggregation (such as Congressional Districts), and thus a greater

chance of discrepancies owing to sampling error. The ACS figures released by the Bureau of the Census are 5-year averages, and do not adjust for trending within the population as a whole or subgroups of the population. The aggregate estimates of the population of the state of Texas from the ACS 5-year average from 2008 to 2012, for which the mid-year is 2010, and the 2010 Census Enumeration figures are very close to each other. However, in the Texas context, the five- year average can be inaccurate for specific subgroups or areas among which there is more rapid population growth than the population as a whole. (See Stephen Ansolabehere, "Response to Professor Rives Rebuttal Report on the Use of the American Community Survey and Estimates of the Citizen Voting Age Population," in *Perez v. Perry*, before the U. S. District Court for the Western District of Texas (No. 5:11-cv-00360), August 30, 2011.)

12. Registration and Turnout Data are from Texas Legislative Council for 2010 and 2012, available at ftp://ftpgis1.tlc.state.tx.us/elections/.

IV. FINDINGS

A. VAP and CVAP

13. There was a highly unequal distribution of the number of Adults (VAP) and Adult Citizens (CVAP) across electoral districts in the Edwards Aquifer Authority under the 2001-2011 Map. Columns 3 and 4 of Table 1 present the VAP of each of the electoral districts and the ratio of the VAP of each district to the VAP of the ideal district in which all districts have identical

numbers of adult citizens. Columns 3 and 4 of Table 2 present the CVAP of each of the electoral districts and the ratio of the CVAP of each district to the CVAP of the ideal district in which all districts have identical numbers of adult citizens.

14. As with my assessment of total population, District 4 was the most under- represented district in the 2001-2011 Map, with more than three times as many adults and adult citizens as the ideal district.

15. District 15 was the most over-represented district in the 2001-2011 Map, with 7 percent (one-fourteenth) of the ideal number adults and of the ideal number of adult citizens.

16. Six of the seven Bexar County districts had more adults and more adult citizens than the ideal district under the 2001-2011 map.

17. Seven of the eight districts not in Bexar County had fewer adults and fewer adult citizens than the ideal district under the 2001-2011 map.

18. Each of districts 8, 10, 12, 14, and 15 had less than 20 percent of the ideal district VAP and less than 20 percent of the ideal CVAP under the 2001-2011 Map. That is, these districts had less than one-fifth as many people as the ideal district. In fact, each of these districts had less than one-seventh as many adults or adult citizens as the ideal district.

19. Under the current EAA electoral districts, the 2012 Map, there is a highly unequal distribution

of the number of Adults and Adult Citizens. Columns 5 and 6 of Tables 1 and 2 presents the VAP and CVAP of each of the electoral districts and the ratio of the VAP and CVAP of each district to the ideal populations under an equal apportionment of representation.

20. District 4 is the most under-represented district in the 2012 Map, with more than two times as many adults and adult citizens as the ideal district.

21. District 15 is the most over-represented district in the 2012 Map, with 7 percent (one-fourteenth) of the ideal number adults and ideal number of adult citizens.

22. All seven of the Bexar County districts have more adults and more adult citizens than the ideal district under the 2012 Map.

23. Seven of the eight districts not in Bexar County have fewer adults and fewer adult citizens than the ideal district under the 2012 Map.

24. Each of districts 8, 10, 12, 13, 14, and 15 has less than 20 percent of the ideal district CVAP under the 2012 Map. That is, these districts have less than one- fifth as many adult citizens as the ideal district under the current map.

25. My initial report in this case found considerable inequalities in representation based on total population. Here, the Adult and Adult Citizen populations are considered as the hypothetical (but not necessarily valid) basis for representation. The results in Tables 1 and 2

reveal that inequalities in representation on the same scale described in my original report exist if one uses VAP or CVAP as the measuring rod. Some electoral districts in the EAA have 3 times as many Adults or Adult Citizens as they would have under an equal VAP or equal CVAP plan, while other districts have less than 10 percent as many Adults or Adult Citizens as they would have under an equal VAP or equal CVAP plan. Across all three measures of the population of the electorate – total population, adult population and adult citizen population—there are tremendous inequities in representation of persons under the electoral districts of the EAA.

B. <u>Registration and Turnout</u>

26. Another hypothetical (but not necessarily valid) basis for measuring representation is in terms of voters – Registered Voters and Turnout. Once again, the electoral districts of the EAA show high inequalities in representation of voters.

27. Tables 3 and 4 present the number of registered voters and total turnout (the number of persons who cast ballots) in 2012 under the 2001-2011 EAA districts and under the 2012 EAA districts.

28. There was a highly unequal distribution of the number of registered voters and of turnout across electoral districts in the EAA under the 2001-2011 Map. Columns 3 and 4 of Table 3 present the number of Registered voters in each of the districts under the 2001-2011 Map, and Columns 5 and 6 of Table 3 present the Total Turnout in the 2001-2011 Map.

29. District 4 was the most under-represented district in the 2001-2011 Map in terms of total numbers of registered voters and total turnout. This district had more than three times as many registered voters and numbers of people who voted as it would have had under an apportionment that equalized the apportionment according to registration or turnout.

30. District 8 was the most over-represented district in the 2001-2011 Map, using registration or turnout as the standard for representation.

31. Six of the seven Bexar County districts had more registered voters and fewer votes cast than the ideal district under the 2012 Map.

32. Seven of the eight districts not in Bexar County had fewer registered voters and fewer votes cast than the ideal district under the 2012 Map.

33. Each of districts 8, 10, 12, 14, and 15 had less than 20 percent of the ideal district number of registered voters under the 2001-2011 Map. That is, these districts had less than one-fifth as many registered persons as the ideal district.

34. Under the 2012 Map, there is a highly unequal distribution across districts in the number of Registered Voters and Total Voters. Table 4 presents the number of registered voters and total turnout in 2012 for each of the electoral districts, as well as the ratio of the districts' registration and turnout relative to what an equal apportionment would imply.

35. District 1 is the most under-represented district in the 2012 Map, using registration or turnout as the metric. This district has more than two times as many registered voters or voters as the ideal district.

36. District 15 is the most over-represented district in the 2012 Map, with less than 10 percent as many registered voters or voters as the ideal district.

37. Six of seven Bexar County districts have more registered voters and more voters than the ideal district under the 2012 Map.

38. Seven of the eight districts not in Bexar County have fewer registered voters and fewer voters than the ideal district under the 2012 Map.

39. Each of districts 8, 10, 12, 14, and 15 has less than 20 percent of the ideal district voter registration and less than 20 percent of the ideal voter turnout under the 2012 Map.

40. Tables 5 and 6 present vote registration and turnout statistics in the EAA districts under the 2001-2011 map and un the 2012 map.

41. Under the 2001-2011 map, districts 1, 3, 4, 5, 6, 7 and 9 have registration in excess of the ideal (equal) district registration. The remaining districts have registration less than the ideal district registration.

42. Under the 2012 map, districts 1, 3, 4, 5, 6, 7, and 9 have registration in excess of the ideal (equal) district registration. The remaining districts

have registration less than the ideal district registration.

43. Under the 2001-2011 map, districts 1, 3, 4, 5, 6, 7 and 9 have turnout in excess of the ideal (equal) district turnout. It should be noted that districts 3, 5, 7, and 11 are within 10 percent of the ideal turnout. The remaining districts have registration less than the ideal district registration.

44. Under the 2012 map, districts 1, 3, 4, 5, 6, 7 and 9 have turnout in excess of the ideal (equal) district registration. The remaining districts have registration less than the ideal district registration.

45. The maximum deviation is the difference between the most under represented (having excess people) and the most over represented (having too few people compared to the ideal district) according to various criteria. The criteria examined in Table 7 are total population, adults (VAP), adult citizens (CVAP), registration and turnout. (For a definition of the maximum population deviation, see Evenwel v. Abbot, United States Supreme Court, Docket Number 14-940, Decided April 4, 2016, slip opinion, page 3, footnote 2.)

46. Under the 2001-2011 map, the maximum deviation is 313% for total population, 309% for adults, 310% for adult citizens, 311% for 2012 registration, 346% for 2012 turnout, 330% for 2014 registration, and 342% for 2014 turnout.

47. Under the 2012 map, the maximum deviation is 212% for total population, 209% for adults, 209%

for adult citizens, 228% for 2012 registration, 266% for 2012 turnout, 232% for 2014 registration, and 280% for 2014 turnout.

48. My initial report in this case found considerable inequalities in representation based on total population. Voting Age Population, Citizen Voting Age Population, Voter registration and Voter Turnout statistics show equally large disparities in representation under both the 2001-2011 and 2012 EAA Electoral District Map. Across all measures of population and representation of voters examined there are tremendous inequities in representation of persons under the electoral districts of the EAA.

49. A final perspective on the inequities in representation is to aggregate the populations in the Bexar County districts, and compare those to the ideal or equal population apportionment under the 2012 Map. The EAA districts in Bexar County have on average 178,481 adults per district, and those districts outside of Bexar County had on average 31,652 adults per district. The EAA districts in Bexar County have on average 162,470 adults citizens per district, and those districts outside of Bexar County had on average 30,053 adult citizens per district. The EAA districts in Bexar County have on average 125,229 registered voters per district, and those districts outside of Bexar County had on average 29,413 registered voters per district. The EAA districts in Bexar County have on average 73,455 voters (in the 2012 election) per district, and those districts outside of Bexar County had on average 18,271 voters per district. In other

words, the average EAA district in Bexar County had more than 4 times as many people, adults, adult citizens, registered voters or voters as the average EAA district outside of Bexar County.

Table 1. Adult Population (VAP) of EAA Electoral Districts, 2001-2011 Map and 2012 Map, 2010 Census Enumeration VAP Data					
District	County	2001-2011 Map		2012 Map	
		Adult Population	Ratio (v. Ideal)	Adult Population	Ratio (v. Ideal)
1	Bexar	238,087	2.37	218,281	2.18
2	Bexar	84,140	0.84	101,545	1.01
3	Bexar	144,589	1.44	172,597	1.72
4	Bexar	318,409	3.16	227,101	2.27
5	Bexar	169,357	1.68	180,949	1.80
6	Bexar	151,740	1.51	184,643	1.84
7	Bexar	144,558	1.44	164,253	1.64
8	Comal	8,452	0.08	13,004	0.13
9	Comal/ Guadalupe	111,194	1.11	104,786	1.04
10	Hays	10,839	0.11	9,294	0.09
11	Hays/ Caldwell	72,572	0.72	71,332	0.71
12	Medina	12,092	0.12	17,796	0.18
13	Medina/ Atascosa	24,337	0.24	18,229	0.18
14	Uvalde	11,421	0.11	11,178	0.12
15	Uvalde	7,526	0.07	7,598	0.07
Ideal		100,621	1.00	100,172	1.00

Table 2. Adult Citizen Population (CVAP) of EAA Electoral Districts, 2001-2011 Map and 2012 Map, 2008-2012 ACS CVAP Data					
District	County	2001-2011 Map		2012 Map	
		Adult Citizen Population	Ratio (v. Ideal)	Adult Citizen Population	Ratio (v. Ideal)
1	Bexar	211,694	2.29	194,989	2.12
2	Bexar	80,208	0.87	97,232	1.06
3	Bexar	126,039	1.37	152,672	1.66
4	Bexar	291,933	3.17	198,742	2.16
5	Bexar	157,503	1.71	169,720	1.85
6	Bexar	140,081	1.52	170,436	1.85
7	Bexar	129,884	1.41	153,496	1.67
8	Comal	8,148	0.09	12,536	0.14
9	Comal/ Guadalupe	108,285	1.17	102,014	1.11
10	Hays	9,711	0.11	8,399	0.09
11	Hays/ Caldwell	67,048	0.73	65,677	0.71
12	Medina	11,619	0.13	17,186	0.19
13	Medina/ Atascosa	23,265	0.25	17,305	0.19
14	Uvalde	10,770	0.12	10,612	0.12
15	Uvalde	6,609	0.07	6,698	0.07
Ideal		92,211	1.00	91,884	1.00

Table 3. 2012 Voter Registration and Turnout in EAA Electoral Districts, Under the 2001-2011 Map					
District	County	Voter Registration		Turnout	
		2012 Voter Registration	Ratio (v. Ideal)	2012 Votes Cast	Ratio (v. Ideal)
1	Bexar	199,629	2.63	136,589	3.03
2	Bexar	55,679	0.73	28,526	0.63
3	Bexar	87,162	1.14	45,980	1.02
4	Bexar	242,247	3.20	158,005	3.51
5	Bexar	104,546	2.23	52,278	1.16
6	Bexar	110,102	2.00	56,936	1.26
7	Bexar	90,943	1.20	45,116	1.00
8	Comal	5,051	0.07	2,313	0.05
9	Comal/ Guadalupe	114,090	1.51	78,112	1.73
10	Hays	10,433	0.14	5,335	0.12
11	Hays/ Caldwell	70,076	0.92	39,543	0.88
12	Medina	6,968	0.09	4,085	0.09
13	Medina/ Atascosa	21,922	0.29	13,274	0.29
14	Uvalde	9,308	0.12	4,497	0.10
15	Uvalde	6,499	0.09	3,938	0.09
Ideal		75,807	1.00	45,077	1.00

Table 4. 2012 Voter Registration and Turnout in EAA Electoral Districts, Under the 2012 Map					
District	County	Voter Registration		Turnout	
		2012 Voter Registration	Ratio (v. Ideal)	2012 Votes Cast	Ratio (v. Ideal)
1	Bexar	176,847	2.38	120,934	2.75
2	Bexar	68,460	0.93	36,620	0.83
3	Bexar	103,343	1.39	53,083	1.21
4	Bexar	174,441	2.35	118,499	2.69
5	Bexar	119,931	1.62	61,351	1.39
6	Bexar	119,218	1.61	62,952	1.43
7	Bexar	114,368	1.54	60,677	1.38
8	Comal	9,896	0.13	5,351	0.12
9	Comal/ Guadalupe	109,245	1.47	75,074	1.71
10	Hays	7,097	0.10	3,654	0.08
11	Hays/ Caldwell	64,370	0.87	36,302	0.83
12	Medina	12,764	0.17	6,858	0.16
13	Medina/ Atascosa	16,126	0.22	10,501	0.24
14	Uvalde	9,308	0.13	4,497	0.10
15	Uvalde	6,499	0.09	3,938	0.09
Ideal		75,807	1.00	45,077	1.00

Table 5. 2014 Voter Registration and Turnout in EAA Electoral Districts, Under the 2001-2011 Map					
District	County	Voter Registration		Turnout	
		2014 Voter Registration	Ratio (v. Ideal)	2014 Votes Cast	Ratio (v. Ideal)
1	Bexar	206,832	2.57	83,048	3.53
2	Bexar	57,562	0.71	13,762	0.52
3	Bexar	91,460	1.13	27,262	1.04
4	Bexar	271,178	3.37	92,799	3.53
5	Bexar	110,240	1.37	27,365	1.04
6	Bexar	114,814	1.42	31,156	1.19
7	Bexar	95,669	1.19	25,098	0.96
8	Comal	10,276	0.13	2,849	0.11
9	Comal/ Guadalupe	117,186	1.45	46,796	1.78
10	Hays	9,418	0.12	2,834	0.11
11	Hays/ Caldwell	76,875	0.95	26,251	1.00
12	Medina	5,943	0.07	2,135	0.09
13	Medina/ Atascosa	25,040	0.31	8,505	0.32
14	Uvalde	9,530	0.12	2,580	0.10
15	Uvalde	6,762	0.08	2,629	0.10
Ideal		80,586	1.00	26,254	1.00

Table 6. 2014 Voter Registration and Turnout in EAA Electoral Districts, Under the 2012 Map					
District	County	Voter Registration		Turnout	
		2014 Voter Registration	Ratio (v. Ideal)	2014 Votes Cast	Ratio (v. Ideal)
1	Bexar	190,871	2.37	75,817	2.88
2	Bexar	73,814	0.92	18,109	0.69
3	Bexar	107,776	1.34	30,978	1.21
4	Bexar	193,394	2.40	72,845	2.77
5	Bexar	127,357	1.58	34,064	1.30
6	Bexar	131,789	1.64	36,053	1.37
7	Bexar	122,754	1.52	32,624	1.24
8	Comal	10,276	0.13	2,849	0.11
9	Comal/ Guadalupe	121,257	1.50	48,704	1.86
10	Hays	7,622	0.09	2,215	0.08
11	Hays/ Caldwell	69,690	0.86	23,704	0.90
12	Medina	13,368	0.17	3,902	0.15
13	Medina/ Atascosa	17,615	0.22	6,738	0.26
14	Uvalde	9,530	0.12	2,580	0.10
15	Uvalde	6,762	0.08	2,629	0.10
Ideal		80,586	1.00	26,254	1.00

Table 7. Maximum Deviation in Between Most and Least Represented Districts' Percentages of the Ideal Population		
	Maximum Deviation	
Criterion	2001-2011 Map	2012 Map
Total Population (Census, 2010)	313%	212%
Adults (VAP) (Census, 2010)	309%	209%
Adult Citizens (CVAP) (ACS, 2008-2012)	310%	209%
Registration 2012	311%	228%
Turnout 2012	346%	266%
Registration 2014	330%	232%
Turnout 2014	342%	280%

Signed,

/s/ April 9, 2016

Stephen Ansolabehere Date

Cambridge, MA