



United States Department of the Interior

FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200

Austin, Texas 78758

512 490-0057

FAX 490-0974



MAY 06 2005

MAY 10 2005

Suzanne Zarling
Executive Director, Water Services
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78758

Consultation # 2-15-2005-T-0120

Dear Ms. Zarling:

This responds to your April 19, 2005, letter requesting the U.S. Fish and Wildlife Service's (Service) opinion as to whether the *Optional Enhanced Measures for the Protection of Water Quality in the Edwards Aquifer*, which appends the Texas Commission on Environmental Quality's (TCEQ) existing Edwards Aquifer rule, qualifies as a regional plan for purposes of our joint 2000 MOU.

The LCRA/Service 2000 MOU concerned providing surface water to developments in western Travis and northern Hays counties and stated that LCRA would participate in formal section 7 consultation with the Corps and the Service for the 290 waterline construction to supply existing development. It further stated that any new development was to obtain Endangered Species Act compliance by (1) following final water quality measures put forth by an environmental impact study, (2) by consulting directly with Service, or (3) by complying with a regional solution acceptable to the Service. Specifically, "(3) If a regional solution, acceptable to the Service is developed and implemented, then New Development in compliance with the approved regional standards could be provided water service." This was memorialized in the October 13, 2000, Biological Opinion (BO) with the U.S. Army Corps of Engineers regarding impacts to the golden cheeked warbler and Barton Springs salamander from construction of LCRA's 290 waterline.

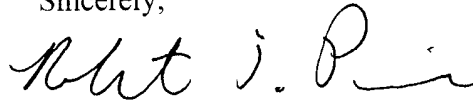
On February 14, 2005, the Service transmitted to the Texas Governor and TCEQ a concurrence of no take for certain listed species for optional water quality standards with the Edwards rules that allow developers to obtain approval for development anywhere over the Edwards Aquifer through authorization from TCEQ. TCEQ regulates and monitors developers who choose to comply with the above referenced optional measures. The Service believes that if the optional water quality measures are followed that development will not take the Barton Springs salamander and four other listed species. We believe this is a regional water quality solution as mentioned in the 2000 MOU.

**TAKE PRIDE[®]
IN AMERICA** 

Further, the Service has been working with Hays County in a water quality planning effort that resulted in a draft set of water quality standards for the Barton Springs segment of the Edwards Aquifer that may be finalized in May 2005. If these standards are finalized in a form that the Service can concur will not result in take of Barton Springs salamanders, then these standards will also meet the 290 waterline BO definition of a regional plan.

We believe that the TCEQ optional enhanced measures qualify as a regional plan, although the opinions in this letter are not rules. These opinions are not legally binding, and they do not have the force and effect of law. We appreciate the opportunity to work with you in protecting and recovering federally listed species in Texas. For additional questions regarding this opinion, please contact me at 512-490-0057, extension. 248 or at the above address.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Pine". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert T. Pine
Supervisor

cc: Mary Ambrose, TCEQ
Wayne Lea, Corps of Engineers