

**TCEQ DOCKET NO. 2015-1444-WR  
APPLICATION NO. 5838A**

**APPLICATION OF THE LOWER  
COLORADO RIVER AUTHORITY  
TO AMEND ITS WATER  
MANAGEMENT PLAN**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**APPLICANT LOWER COLORADO RIVER AUTHORITY'S  
RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The Lower Colorado River Authority (LCRA) submits this response to requests made to the Texas Commission on Environmental Quality (TCEQ) for a contested case hearing on LCRA's Application No. 5838A to amend the LCRA Water Management Plan (WMP) (Application),<sup>1</sup> pursuant to 30 Tex. Admin. Code § 55.254, and in support thereof would respectfully show the Commissioners the following:

**1. BACKGROUND**

The LCRA has applied to the TCEQ for an amendment to its WMP pursuant to Tex. Water Code § 11.122 and the TCEQ's rules, 30 Tex. Admin. Code chs. 295 & 297.

The WMP for the Lower Colorado River basin defines LCRA's water management programs and policies in accordance with the Final Order of Adjudication of the water rights for the Lower Colorado River Authority as it affects lakes Travis and Buchanan; the LCRA Enabling Act (Tex. Special Dist. & Local Laws Code ch. 8503); general law of the State of Texas, particularly chapter 11 of the Texas Water Code; the LCRA's Certificates of Adjudication Nos. 14-5478 (Lake Buchanan) and 14-5482 (Lake Travis), as amended; the Commission's Orders concerning the WMP; and the water policies of the Lower Colorado River Authority's Board of

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<sup>1</sup> LCRA intends for the term "Application" to refer to the application filed by LCRA in 2012 and the amended and restated application filed by LCRA in October 2014, as well as all responses to requests for information and supplemental information filed by LCRA related to both the original and amended and restated applications.

Directors. For the last four years, due to the extraordinary drought conditions that gripped central Texas, LCRA operated under a number of emergency orders issued by the Commission. Those orders allowed the LCRA to depart from the current WMP and suspend releases of stored water for irrigated agriculture for customers within the LCRA's Gulf Coast and Lakeside divisions and Pierce Ranch for four consecutive years. Further, in 2014 and 2015, emergency orders allowed LCRA to reduce its releases of stored water for instream flows for the state-threatened Blue Sucker fish. The Application and Draft Revised Order provide an updated and significantly different approach to managing the stored water in lakes Buchanan and Travis and substantially reduce the risk that emergency orders will be needed in future drought periods. If timely approved, the new WMP will allow some interruptible water to be supplied next year under a markedly improved plan. Absent such approval, LCRA will provide interruptible stored water pursuant to the 2010 WMP until the new plan is approved or unless drought conditions worsen, warranting further emergency relief.

## 2. PROCEDURAL HISTORY

The Application was received by the Commission on March 12, 2012, and was declared administratively complete on April 19, 2012. Technical review was completed in November 2012 and notice of the Application was mailed to all water right holders in the Colorado River basin and published in newspapers in 19 counties throughout the basin.<sup>2</sup> The comment period ended

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<sup>2</sup> The LCRA published notice of the application in the *Austin American-Statesman*, a newspaper of general circulation in Bastrop, Burnet, Caldwell, Fayette, Hays, Kerr, Lampasas, Llano, and Travis Counties on April 22, 2013; in the *Bastrop Advertiser*, a newspaper of general circulation in Bastrop County on April 25, 2013; in the *Bay City Tribune*, a newspaper of general circulation in Matagorda County on April 24, 2013; in the *Brenham Banner-Press*, a newspaper of general circulation in Austin, Fayette, Lee, and Washington Counties on April 25, 2013; in the *Burnet Bulletin*, a newspaper of general circulation in Burnet and Llano Counties on April 24, 2013; in the *Colorado County Citizen*, a newspaper of general circulation in Colorado County on April 24, 2013; in the *Columbus Banner Press*, a newspaper of general circulation in Austin, Colorado, and Fayette Counties on July 16, 2015; in the *Elgin Courier*, a newspaper of general circulation in Bastrop, Lee, and Travis Counties on July 15, 2015; in the *Fayette County Record*, a newspaper of general circulation in Fayette County on April 23, 2013; in the *Fredericksburg Standard-Radio Post*, a newspaper of general circulation in Gillespie County on April 24, 2013; in the *Lampasas Dispatch*

on May 28, 2013. On June 3, 2013, based on public comment and the ongoing drought conditions, the Executive Director (ED) determined that further evaluation of the Application was necessary. In May 2014, after review of more recent severe drought data, the ED's staff issued a draft report with recommendations related to the curtailment of interruptible stored water. Based on this report and further analyses and work with interested stakeholders, on October 31, 2014, the LCRA submitted a revised and supplemental application to further amend the WMP that was intended to replace the 2012 WMP application. As part of the TCEQ's review of the LCRA's revised and supplemental WMP application, the TCEQ held a stakeholder meeting on January 7, 2015, seeking comments on the revised and supplemental application and ED's draft report. In July 2015, the ED completed his review of the revised and supplemental application and prepared a draft Order Approving Amendments to the LCRA's WMP.

Notice of the revised and supplemental application and scheduled public meeting was mailed to all water rights holders in the Colorado River basin on July 8, 2015, and published in newspapers in 27 counties throughout the basin.<sup>3</sup> A public meeting was held at the TCEQ on

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*Record*, a newspaper of general circulation in Lampasas County on April 23, 2013; in the *Llano County Journal*, a newspaper of general circulation in Burnet and Llano Counties on April 24, 2013; in the *Marble Falls Highlander*, a newspaper of general circulation in Burnet and Llano Counties on April 23, 2013 and April 26, 2013; in the *Mason County News*, a newspaper of general circulation in Mason County on April 24, 2013; in *San Saba News & Star*, a newspaper of general circulation in San Saba County on April 25, 2013; in the *Wharton Journal-Spectator*, a newspaper of general circulation in Wharton County on April 24, 2013; and in the *Williamson County Sun*, a newspaper of general circulation in Williamson County on April 24, 2013.

<sup>3</sup> LCRA published notice of the application and the scheduled public meeting in the *Austin American-Statesman*, a newspaper of general circulation in Bastrop, Burnet, Caldwell, Fayette, Hays, Kerr, Lampasas, Llano, and Travis Counties on July 16, 2015; in the *Bastrop Advertiser*, a newspaper of general circulation in Bastrop County on July 16, 2015; in the *Bay City Tribune*, a newspaper of general circulation in Matagorda County on July 12, 2015; in the *Blanco County News*, a newspaper of general circulation in Blanco County on July 15, 2015; in the *Boerne Star*, a newspaper of general circulation in Kendall County on July 14, 2015; in the *Brenham Banner-Press*, a newspaper of general circulation in Austin, Fayette, Lee, and Washington Counties on July 15, 2015; in the *Burnet Bulletin*, a newspaper of general circulation in Burnet and Llano Counties on July 15, 2015; in the *Colorado County Citizen*, a newspaper of general circulation in Colorado County on July 15, 2015; in the *Columbus Banner Press*, a newspaper of general circulation in Austin, Colorado, and Fayette Counties on July 16, 2015; in the *Elgin Courier*, a newspaper of general circulation in Bastrop, Lee, and Travis Counties on July 15, 2015; in the *Fayette County Record*, a newspaper of general circulation in Fayette County on July 17, 2015; in the *Fredericksburg Standard-Radio Post*, a

July 20, 2015. The comment period closed on August 17, 2015. On September 25, 2015, the LCRA received notice that the above-referenced matter would be considered by the Commission at the November 4, 2015 agenda.

94 requests for contested case hearing were filed during the comment period that ended May 28, 2013. No additional hearing requests were filed during the comment period that ended on August 17, 2015.<sup>4</sup>

As of October 8, 2015, 69 requesters have unconditionally withdrawn their hearing requests, including Bonanza Beach Water Supply Corporation, Burnet County Commissioners' Court, Cassie Community Organization, the Coastal Conservation Association, Ducks Unlimited, Lago Vista Property Owners' Association, Llano County Commissioners' Court, Windermere Oaks Water Supply Corporation, and 61 individual requestors. 21 hearing requests remained outstanding on October 8, 2015, with numerous of those requestors filing letters with the Commission indicating an intent not to independently pursue a contested case hearing if the draft order is issued with relatively minor changes requested by the LCRA that have since been incorporated by the ED in a Draft Revised Order, released on October 1, 2015,

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newspaper of general circulation in Gillespie County on July 15, 2015; in the *Giddings Times & News*, a newspaper of general circulation in Lee County on July 16, 2015; in the *Junction Eagle*, a newspaper of general circulation in Edwards, Gillespie, Kerr, Kimble, Mason, Menard, and Sutton Counties on July 15, 2015; in the *Lexington Leader*, a newspaper of general circulation in Lee County on July 16, 2015; in the *Llano County Journal*, a newspaper of general circulation in Burnet and Llano Counties on July 15, 2015; in the *Marble Falls Highlander*, a newspaper of general circulation in Burnet and Llano Counties on July 14, 2015; in the *Mason County News*, a newspaper of general circulation in Mason County on July 15, 2015; in the *San Angelo Standard-Times*, a newspaper of general circulation in Sutton and Tom Green Counties on July 16, 2015; in the *Smithville Times*, a newspaper of general circulation in Bastrop County on July 16, 2015; in the *Canyon Broadcaster*, a newspaper of general circulation in Edwards, Real, and Uvalde Counties on July 15, 2015; in the *The Texas Mohair Weekly*, a newspaper of general circulation in Edwards and Real Counties on July 16, 2015; in the *Wharton Journal-Spectator*, a newspaper of general circulation in Wharton County on July 15, 2015; and in the *Williamson County Sun*, a newspaper of general circulation in Williamson County on July 15, 2015.

<sup>4</sup> Four requestors who had filed requests in 2013 re-urged their requests in 2015, including Garwood Irrigation Company, Central Texas Water Coalition, the Highland Lakes Firm Water Customer Cooperative, and the National Wildlife Federation.

including: the City of Austin,<sup>5</sup> the Central Texas Water Coalition,<sup>6</sup> and the Highland Lakes Firm Water Customer Cooperative.<sup>7</sup> The LCRA also believes that the changes incorporated in the Draft Revised Order address concerns raised by the other hearing requestors with standing such that a hearing will be unnecessary.

### 3. DETERMINATION OF AFFECTED PERSONS

The requirement for establishing standing is to ensure that there is a real controversy between the parties which will actually be determined by the judicial declaration sought.<sup>8</sup> The legislature has defined an “affected person” as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing and directed the TCEQ to establish rules identifying factors for making a determination of whether a person is an affected person in a contested case hearing.<sup>9</sup>

TCEQ rules make clear that a contested case hearing can only be requested by: 1) the TCEQ Commissioners, 2) the TCEQ Executive Director, 3) the Applicant, and 4) any “affected person”.<sup>10</sup> The critical question with respect to contested case hearing requests is whether the person requesting the hearing is an “affected person.”<sup>11</sup> An interest that is common to members of the general public does not qualify as a personal justiciable interest.<sup>12</sup> Accordingly, a request for a contested case hearing must include a brief, but specific, description of the person's location and distance relative to the activity that is the subject of the Application.<sup>13</sup> In addition, the person must do more than just provide a conclusory statement in the request that he or she

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<sup>5</sup> See Letter from Greg Meszaros, filed September 18, 2015 and recorded in the Chief Clerk's Integrated Database on September 18, 2015.

<sup>6</sup> See Letter from Cynthia C. Smiley, filed August 17, 2015 and recorded in the Chief Clerk's Integrated Database on August 17, 2015.

<sup>7</sup> See Letter from Patricia Erlinger Carls, filed August 17, 2015 and recorded in the Chief Clerk's Integrated Database on August 17, 2015.

<sup>8</sup> *Tex. Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

<sup>9</sup> TEX. WATER CODE § 5.115(a). See also 30 TEX. ADMIN. CODE § 55.256(a).

<sup>10</sup> 30 TEX. ADMIN. CODE § 55.251(a).

<sup>11</sup> *Tex. Comm'n on Env'tl. Quality v. Sierra Club*, 455 S.W.3d 228, 234 (Tex. App.—Austin, 2014).

<sup>12</sup> 30 TEX. ADMIN. CODE § 55.256(a).

<sup>13</sup> 30 TEX. ADMIN. CODE § 55.251(c)(2).

will be harmed by the proposed change. The person must describe briefly, but specifically, how and why he or she will be affected by the change proposed in the Application in a manner not common to members of the general public.<sup>14</sup>

When determining whether an individual or entity is an "affected person," all relevant factors are to be considered by the Commission, including: 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; 4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and 5) the likely impact of the regulated activity on use of the impacted natural resource by the person.<sup>15</sup> In performing this review, the Commission enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying, such as the likely impact of the regulated activity on the health, safety, and use of property by the requestor and on the use of natural resources.<sup>16</sup>

The Application before the Commission was filed under Chapter 11 of the Texas Water Code, and as such, only interests that relate to issues governed by Chapter 11 are justiciable in this matter.<sup>17</sup>

Numerous hearing requests filed in 2013 identified recommendations related to areas of concern with the original application filed in 2012. The LCRA's revised and supplemental

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* § 55.256(c).

<sup>16</sup> See *Sierra Club*, 455 S.W.3d at 234 (noting the discretion to be afforded TCEQ in determining whether to grant a hearing request, including consideration of the likely impact of the activity on the health, safety, and use of property by the requestor and on the use of natural resources); *Tex. Comm'n on Env'tl. Quality v. City of Waco*, 413 S.W.3d 409, 419-420 (Tex. 2013).

<sup>17</sup> Although Section 5.115 of the Texas Water Code and 30 Tex. Admin. Code § 55.256 of the TCEQ's rules refer to economic interest as a potential basis for affected party status, the interest claimed must not only be affected by the application, the Commission must also evaluate whether the interest is one that is protected by the law under which the application will be considered. Chapter 11 does not protect or regulate an economic interest in operating a business or property values. 30 TEX. ADMIN. CODE § 256(c)(1). See *Sierra Club*, 455 S.W.3d at 240 (finding that it was reasonable to determine that concerns about traffic and railway accidents were not reasonably related to the application because TCEQ has no jurisdiction over those issues; finding that it was reasonable to determine that concerns about publicity for a business were not sufficient to grant affected party status).

application filed in 2014 and 2015 included substantial changes, such as including updated hydrology, the evaluation of inflow conditions when determining the amount of interruptible stored water supply that can be provided, consideration of forecasted hydrologic conditions, and a higher lake level at which water for interruptible customers would be cut off.

As discussed below, many of the hearing requests filed in 2013 fail to identify how the requestor(s) would be harmed or affected in a way that is distinct from the general public, thus rendering the request insufficient to find them an “affected person.” Furthermore, to the extent that these requestors have not supplemented their hearing requests from 2013 and their concerns have been addressed by the extensive changes subsequently made to the Application and the Draft Revised Order under consideration, there is no longer a controversy that warrants designation as an affected person.<sup>18</sup> Similarly, to the extent that the Executive Director has included changes in the Draft Revised Order that specifically incorporate the changes requested by those who have indicated general support for the proposed WMP with these changes, there is no longer a controversy that warrants a contested case hearing.

#### **4. EVALUATION OF HEARING REQUESTS FOR PERMIT NO. 5838**

The following hearing requests should not be granted for the reasons set forth below.

##### **4.1. Garwood/Lehrer-Lewis Interests**

Garwood/Lehrer-Lewis Interests (G/L/L) submitted a request for contested case hearing on the Application on May 23, 2013, and resubmitted the request on August 14, 2015. G/L/L and the LCRA have a contractual relationship as defined in a 1998 Purchase Agreement for the Garwood water rights and a 1987 Agreement. In the hearing request, G/L/L asserts that it will be affected in ways not common to the general public because, it further asserts, the LCRA is

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<sup>18</sup> See *Sierra Club*, 455 S.W.3d at 239-40 (noting that the administrative record supporting the denial of affected person status included the Executive Director’s conclusion regarding certain concerns that such concerns were common to all and were addressed in the review of the application and reflected in various conditions of the draft license).

construing its water supply obligations under those agreements incorrectly. As noted in the hearing request, those agreements specify the manner and circumstances in which water would be made available to farmers in the Garwood irrigation division.

The Application and Draft Revised Order state that the supply of water to the Garwood irrigation division is pursuant to prior agreements.<sup>19</sup> The Draft Revised Order further states that nothing in the order shall be construed to support one construction or another of the agreements.<sup>20</sup> G/L/L does not identify how or why it believes it would be affected by this Application, and in fact, the Draft Revised Order clearly confirms that G/L/L has no justiciable interest that would be affected by this Application. The concern G/L/L identifies related to how LCRA construes the agreements is more than sufficiently addressed in the Draft Revised Order, and the Commission accordingly has the discretion to deny the request.<sup>21</sup> Because the request does not identify a justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Therefore, the hearing request submitted by Garwood/Lehrer-Lewis Interests should be denied.

#### **4.2. Brian Timothy Banigan**

Brian Timothy Banigan submitted a request on May 8, 2013, for a contested case hearing on the Application. In his hearing request, Mr. Banigan merely states that he is a property owner on Lake Buchanan and suggests changes to the proposed amendment as drafted in 2013. Mr. Banigan fails to identify a personal justiciable interest that would be affected by the Application. Mr. Banigan fails to state how or why he believes he would be impacted. Mr. Banigan does not indicate that he holds a water right, riparian right or water contract with the

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<sup>19</sup> See, e.g. Draft Revised Order, Findings of Fact 17.r. and 36.

<sup>20</sup> See Draft Revised Order, Conclusion of Law 2.

<sup>21</sup> *Supra Sierra Club*, 455 S.W.3d at 234.

LCRA that has the potential to be impacted by the Application. While Mr. Banigan says he owns property on the lake, the Burnet County Appraisal District records reveal that Mr. Banigan's property, while near the lake, is not waterfront to or on the lake.<sup>22</sup> See TEX. R. EVID. 902(5). Furthermore, Mr. Banigan fails to include a statement as to how or why he would be impacted in a way not common to the general public. The request fails to meet the requirements of 30 Tex. Admin. Code § 55.251(c) by failing to identify how he is an affected party. Because his request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Mr. Banigan did not seek to actively participate in LCRA's stakeholder process nor has he filed any further comments on the Application or Draft Revised Order. To the extent that his interests were similar to those of others along Lakes Travis and Buchanan, his interests have been represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestor may have had when the hearing request was filed in 2013.<sup>23</sup>

Therefore, the hearing request submitted by Brian Timothy Banigan should be denied.

#### **4.3. Steve & Sharen Comstock**

Steve and Sharen Comstock submitted one request for a contested case hearing on the Application on May 9, 2013. Steve Comstock withdrew his request on October 8, 2015, but it is not clear whether the withdrawal was also filed on behalf of Sharen Comstock. In the event Ms.

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<sup>22</sup> See Attachment A, *available* at: <https://propaccess.trueautomation.com/Map/View/Map/85/12402/2016>.

<sup>23</sup> *Id.*

Comstock's request is still in place, it should be denied. In their original hearing request, Mr. and Mrs. Comstock state that they are property owners on Lake Travis and customers of Jonestown Water Supply Company. They are concerned about property values and recreational use of the lake. However, Mr. and Mrs. Comstock fail to identify a personal justiciable interest that would be affected by the Application. Furthermore, being a retail customer of an entity that has a raw water contract with the LCRA does not create the necessary interest to support party status.<sup>24</sup> Instead, this is an interest clearly common to members of the general public. Mr. and Mrs. Comstock do not indicate that they hold a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Because their request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that these requestors are affected persons using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Steve and Sharen Comstock did not seek to actively participate in LCRA's stakeholder process nor have they filed any further comments on the Application or Draft Revised Order. To the extent that their interests were similar to those of others along Lakes Travis and Buchanan, their interests have been represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestors may have had when the hearing request was filed in 2013.<sup>25</sup>

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<sup>24</sup> See *Garwood Irrigation Co. v. Lower Colorado River Auth.*, 387 S.W.2d 746, 752 (Tex. Civ. App.—Austin 1965, writ ref'd n.r.e.) (intervenor end-customers of irrigation company did not have standing in dispute regarding contract between water authority and irrigation company because intervenors did not have any rights for which they have any redress).

<sup>25</sup> *Sierra Club*, 455 S.W.3d at 234.

Therefore, any remaining hearing request submitted by Sharen Comstock should be denied.

#### **4.4. Blake Davidson**

Blake Davidson submitted a request on April 30, 2013, for a contested case hearing on the Application. On September 28, 2015, Mr. Davidson submitted a statement to the Commissioners' Integrated Database in which he requested to have all personal information removed from TCEQ's database and to discontinue mailing information to his address. The statement suggests that there was likely an intent to withdraw from any proceedings in which he might otherwise participate (so as to no longer receive any correspondence and be removed from being listed as a participant). In the event that Mr. Davidson's request is still in place, it should be denied. In his hearing request, Mr. Davidson suggests changes to the proposed amendment as drafted in 2013. However, Mr. Davidson fails to identify a personal justiciable interest that would be affected by the Application. Mr. Davidson fails to state how or why he believes he would be impacted. Mr. Davidson does not indicate that he holds a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Furthermore, Mr. Davidson fails to include a statement as to how or why he would be impacted in a way not common to the general public. The request fails to meet the requirements of 30 Tex. Admin. Code § 55.251(c) of identifying how the requestor believes he is an affected party. Because his request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Mr. Davidson did not seek to actively participate in LCRA's stakeholder process nor has he filed any further comments on the Application or Draft Revised Order. To the extent that his interests were similar to those of others along Lakes Travis and Buchanan, his interests have been represented by the Central

Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestor may have had when the hearing request was filed in 2013.<sup>26</sup>

Therefore, the hearing request submitted by Blake Davidson should be denied.

#### **4.5. Susan Denn and Robert Schmidt**

Susan Denn and Robert Schmidt submitted one request on May 8, 2013, for a contested case hearing on the Application. In the hearing request, Ms. Denn and Mr. Schmidt state that they own waterfront property on Lake Travis and suggest changes to the proposed amendment as drafted in 2013. However, Ms. Denn and Mr. Schmidt fail to identify a personal justiciable interest that would be affected by the Application. Ms. Denn and Mr. Schmidt fail to state how or why they believe they would be impacted. Ms. Denn and Mr. Schmidt do not indicate that they hold a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Furthermore, Ms. Denn and Mr. Schmidt fail to include a statement as to how or why they would be impacted in a way not common to the general public. The request fails to meet the requirements of 30 Tex. Admin. Code § 55.251(c) by failing to identify how they are an affected party. Because the request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that these requestors are an affected person or persons using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Susan Denn and Robert Schmidt did not seek to actively participate in LCRA's stakeholder process nor did they file any further comments on the Application or Draft Revised Order. To the extent that their interests

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<sup>26</sup> *Sierra Club*, 455 S.W.3d at 234.

were similar to those of others along Lakes Travis and Buchanan, their interests have been represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestors may have had when the hearing request was filed in 2013.<sup>27</sup>

Therefore, the hearing request submitted by Susan Denn and Robert Schmidt should be denied.

#### **4.6. Kimbra K. Henry**

Kimbra K. Henry submitted a request on May 21, 2013, for a contested case hearing on the Application. In her hearing request, Ms. Henry identifies issues that should be considered. However, Ms. Henry fails to identify a personal justiciable interest that would be affected by the Application. Ms. Henry fails to state how or why she believes she would be impacted. Ms. Henry does not indicate that she holds a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Furthermore, Ms. Henry fails to include a statement as to how or why she would be impacted in a way not common to the general public. The request fails to meet the requirements of 30 Tex. Admin. Code § 55.251(c) of identifying how the requestor believes she is an affected party. Because her request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Ms. Henry did not seek to actively participate in LCRA's stakeholder process nor has she filed any further comments on the Application or Draft Revised Order. To the extent that her interests were similar to those of

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<sup>27</sup> *Id.*

others along Lakes Travis and Buchanan, her interests have been represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestor may have had when the hearing request was filed in 2013.<sup>28</sup>

Therefore, the hearing request submitted by Kimbra K. Henry should be denied.

#### **4.7. Carol & Russell Lynch**

Carol and Russell Lynch submitted one request on May 1, 2013, for a contested case hearing on the Application. Carol Lynch withdrew her request by letter dated September 26, 2015, but it is not clear whether the withdrawal was also filed on behalf of Russell Lynch. In the event Mr. Lynch's request is still in place, it should be denied. In their original hearing request, Mr. and Mrs. Lynch state that they live on a cove of the lake, and they are concerned about lake levels and their water supply drying up. However, Mr. and Mrs. Lynch fail to identify a personal justiciable interest that would be affected by the Application. Mr. and Mrs. Lynch do not indicate that they hold a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Because their request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that these requestors are affected persons using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Carol and Russell Lynch did not seek to actively participate in LCRA's stakeholder process nor have they filed any further comments on the Application or Draft Revised Order. To the extent that their interests were similar to those of others along Lakes Travis and Buchanan, their interests have been

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<sup>28</sup> *Id.*

represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestors may have had when the hearing request was filed in 2013.<sup>29</sup>

Therefore, any remaining hearing request submitted by Russell Lynch should be denied.

#### **4.8. Patricia P. Porter**

Patricia P. Porter submitted a request on May 7, 2013, for a contested case hearing on the Application. Ms. Porter states that she owns property that includes lake views and is concerned by the potential for diminished property values. However, Ms. Porter fails to identify a personal justiciable interest that would be affected by the Application. Mere ownership of land with a lake view does not confer affected person status. Ms. Porter does not identify a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Because her request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Ms. Porter did not seek to actively participate in LCRA's stakeholder process nor has she filed any further comments on the Application or Draft Revised Order. To the extent that her interests were similar to those of others along Lakes Travis and Buchanan, her interests have been represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft

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<sup>29</sup> *Sierra Club*, 455 S.W.3d at 234.

Revised Order sufficiently address any general or specific concerns the requestor may have had when the hearing request was filed in 2013.<sup>30</sup>

Therefore, the hearing request submitted by Patricia P. Porter should be denied.

#### **4.9. Michael T. Sullivan**

Michael T. Sullivan submitted a request on May 8, 2013, for a contested case hearing on the Application. In his hearing request, Mr. Sullivan identifies some general concerns with the proposed amendment as drafted in 2013. However, Mr. Sullivan fails to identify a personal justiciable interest that would be affected by the Application. Mr. Sullivan fails to state how or why he believes he would be impacted. Mr. Sullivan does not indicate that he holds a water right, riparian right or water contract with the LCRA that has the potential to be impacted by the Application. Even if Mr. Sullivan had asserted any such interest at the time of his 2013 request, a review of the Travis County Appraisal District public records reveals that Mr. Sullivan no longer owns the property listed in his hearing request and, as such, could not assert any water right or riparian right associated with that property.<sup>31</sup> See TEX. R. EVID. 902(5). Furthermore, Mr. Sullivan fails to include a statement as to how or why he would be impacted in a way not common to the general public. The request fails to meet the requirements of 30 Tex. Admin. Code § 55.251(c) of identifying how the requestor believes he is an affected party. Because his request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in 30 Tex. Admin. Code § 55.256.

Since the 2013 comment period closed, LCRA engaged in an extensive stakeholder process. Like many of the individual hearing requestors from 2013, Mr. Sullivan did not seek to actively participate in LCRA's stakeholder process nor has he filed any further comments on the

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<sup>30</sup> *Id.*

<sup>31</sup> See Attachment B, *available at* [http://propaccess.traviscad.org/clientdb/Property.aspx?prop\\_id=144259](http://propaccess.traviscad.org/clientdb/Property.aspx?prop_id=144259).

Application or Draft Revised Order. To the extent that his interests were similar to those of others along Lakes Travis and Buchanan, his interests have been represented by the Central Texas Water Coalition, which has indicated support for the Draft Revised Order. The Commission has discretion to deny the request on the grounds that the Application and Draft Revised Order sufficiently address any general or specific concerns the requestor may have had when the hearing request was filed in 2013.<sup>32</sup>

Therefore, the hearing request submitted by Michael T. Sullivan should be denied.

## 5. OTHER HEARING REQUESTS

The following additional individuals or organizations also filed hearing requests. Each hearing request based on organizational standing identified one or more individuals who would otherwise have standing to request a hearing in their own right.<sup>33</sup> The LCRA does not oppose the granting of affected party status to these individuals or organizations: (1) the City of Austin, (2) Highland Lakes Firm Water Customer Cooperative (HLFWCC); (3) Colorado Water Issues Committee (CWIC); (4) Central Texas Water Coalition (CTWC); (5) National Wildlife Federation (NWF); (6) STP Nuclear Operating Company (STPNOC); (7) Texas Farm Bureau; (8) Laurance Armour III; (9) Daniel Berglund; (10) Wayne Bulgerin; (11) Ronald Gertson; and (12) Haskell Simon.

## 6. CONCLUSION

For the foregoing reasons, the LCRA respectfully requests that the Commission determine that a contested case hearing is not necessary on the Application and Draft Revised Order and deny the outstanding hearing requests where the requestors have failed to demonstrate they are affected persons. Alternatively, if the Commission determines that further

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<sup>32</sup> *Sierra Club*, 455 S.W.3d at 234.

<sup>33</sup> Although each organization identified at least one individual who would otherwise have standing in his or her own right, LCRA has not evaluated whether every single individual associated with an organization for purposes of establishing organizational standing meets the requirements for standing in their own right.

information may be needed to dispose of these hearing requests, the LCRA requests that the Commission issue an order referring the matter to the State Office of Administrative Hearings (SOAH), instruct SOAH to convene, on an expedited basis, a preliminary hearing to determine party status and the need for a contested case hearing, and further delegate to the Executive Director the authority to sign the Draft Revised Order should the Administrative Law Judge (ALJ) determine that no affected persons continue to seek a contested case hearing in this matter. An expedited process could greatly increase the opportunity for LCRA to operate lakes Buchanan and Travis in 2016 pursuant to an amended WMP that is updated with new hydrology, is more protective of firm customers, and has widespread stakeholder support across the basin.

Respectfully submitted,

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See attached list.

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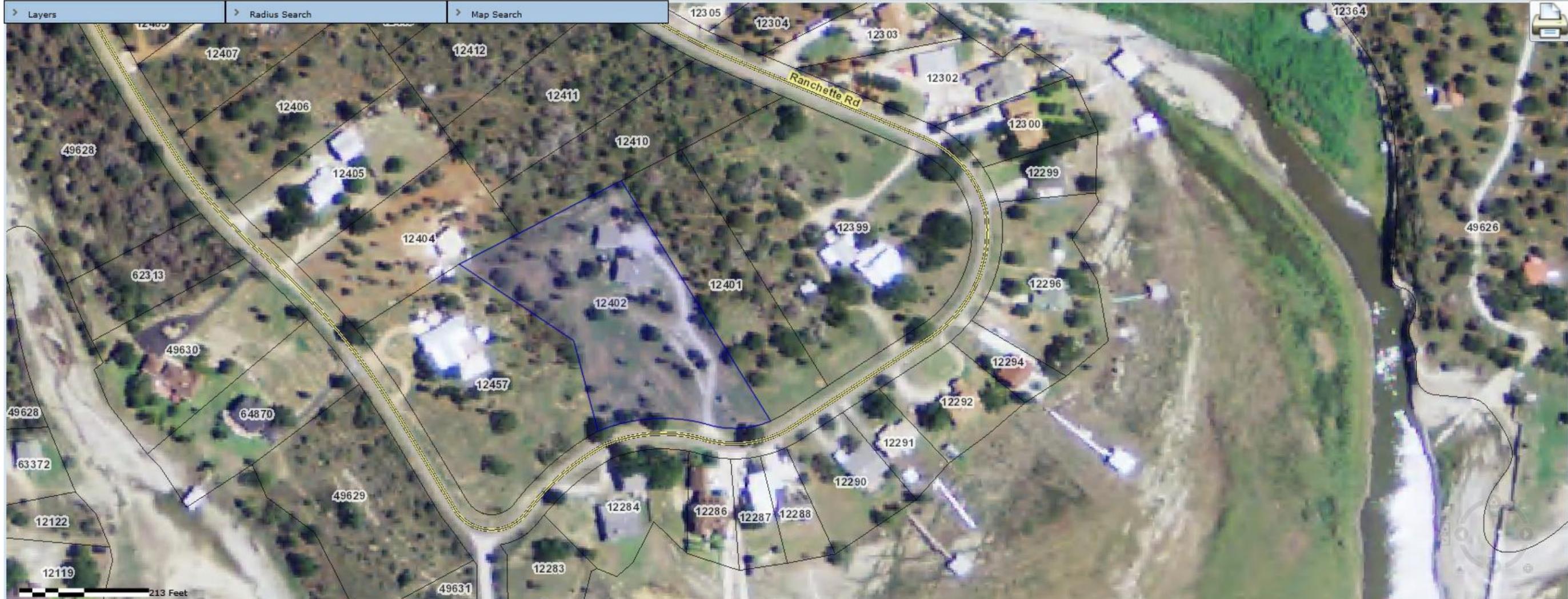
**Attachment A**

Map of Brian T. Banigan's Property  
(public document from Burnet CAD online)

Property Search Results > Property ID 12402 BANIGAN BRIAN & MERCEDES for Year 2016

Details Map New Search Help

|   |   |  |   |
|---|---|--|---|
| <b>Account</b><br>Property ID: 12402<br>Geo. ID: 04100-0500-00005-000<br>Type: Real<br>Legal Description: S4100 DONALL ESTATES LOT 5 & 6 UNIT 5 | <b>Location</b><br>Situs Address: 1835 CR 140<br><br>Neighborhood:<br>Mapsc0:<br>Jurisdictions: GBU, RSP, SBU, WCD, CAD, ESD5 | <b>Owner</b><br>Owner Name: BANIGAN BRIAN & MERCEDES<br>Mailing Address: , PO BOX 70, BURNET, TX 78611 | <b>Property</b><br>Appraised Value: N/A |
|---|---|--|---|



**ATTACHMENT A**

**Attachment B**

Michael T. Sullivan – Result of Property Search

(public document from Travis CAD online)

**Travis CAD**

**Property Search Results > 144259 MCCARTER A NELSON & H KAY for Year 2015**

**Property**

**Account**

Property ID: 144259 Legal Description: LOT 1443A LAKEWAY SEC 17 AMENDED PLAT OF LTS 1443&1444  
 Geographic ID: 0143760410 Agent Code:  
 Type: Real  
 Property Use Code:  
 Property Use Description:

**Location**

Address: 123 ROCKET Mapsco: 489X  
 TX 78734  
 Neighborhood: LAKEWAY N. CENTRAL Map ID: 014277  
 Neighborhood CD: R1800

**Owner**

Name: MCCARTER A NELSON & H KAY Owner ID: 1588592  
 Mailing Address: 123 ROCKET % Ownership: 100.0000000000%  
 AUSTIN, TX 78734  
 Exemptions: HS, OTHER

**Values**

(+) Improvement Homesite Value: + \$401,085  
 (+) Improvement Non-Homesite Value: + \$0  
 (+) Land Homesite Value: + \$120,000  
 (+) Land Non-Homesite Value: + \$0 Ag / Timber Use Value  
 (+) Agricultural Market Valuation: + \$0 \$0  
 (+) Timber Market Valuation: + \$0 \$0  
 -----  
 (=) Market Value: = \$521,085  
 (-) Ag or Timber Use Value Reduction: - \$0  
 -----  
 (=) Appraised Value: = \$521,085  
 (-) HS Cap: - \$0  
 -----  
 (=) Assessed Value: = \$521,085

**Taxing Jurisdiction**

Owner: MCCARTER A NELSON & H KAY  
 % Ownership: 100.0000000000%  
 Total Value: \$521,085

| Entity          | Description                       | Tax Rate | Appraised Value | Taxable Value | Estimated Tax               | Tax Ceiling |
|-----------------|-----------------------------------|----------|-----------------|---------------|-----------------------------|-------------|
| 03              | TRAVIS COUNTY                     | 0.456300 | \$521,085       | \$341,868     | \$1,559.94                  |             |
| 07              | LAKE TRAVIS ISD                   | 1.407500 | \$521,085       | \$381,868     | \$5,374.79                  | \$5,401.73  |
| 0A              | TRAVIS CENTRAL APP DIST           | 0.000000 | \$521,085       | \$521,085     | \$0.00                      |             |
| 21              | CITY OF LAKEWAY                   | 0.170000 | \$521,085       | \$516,085     | \$877.35                    |             |
| 2J              | TRAVIS COUNTY HEALTHCARE DISTRICT | 0.126400 | \$521,085       | \$341,868     | \$432.12                    |             |
| 52              | TRAVIS CO ESD NO 6                | 0.100000 | \$521,085       | \$521,085     | \$521.09                    |             |
| Total Tax Rate: |                                   | 2.260200 |                 |               |                             |             |
|                 |                                   |          |                 |               | Taxes w/Current Exemptions: | \$8,765.29  |
|                 |                                   |          |                 |               | Taxes w/o Exemptions:       | \$11,777.56 |

**Improvement / Building**

Improvement #1: 1 FAM DWELLING State Code: A1 Living Area: 3557.0 sqft Value: \$401,085

**ATTACHMENT B**

| Type | Description      | Class CD | Exterior Wall | Year Built | SQFT   |
|------|------------------|----------|---------------|------------|--------|
| 1ST  | 1st Floor        | WP - 6   |               | 1992       | 2423.0 |
| 2ND  | 2nd Floor        | WP - 6   |               | 1992       | 1134.0 |
| 011  | PORCH OPEN 1ST F | * - 6    |               | 1992       | 36.0   |
| 011  | PORCH OPEN 1ST F | * - 6    |               | 1992       | 273.0  |
| 011  | PORCH OPEN 1ST F | * - 6    |               | 1992       | 110.0  |
| 041  | GARAGE ATT 1ST F | WP - 6   |               | 1992       | 754.0  |
| 095  | HVAC RESIDENTIAL | * - *    |               | 1992       | 3557.0 |
| 251  | BATHROOM         | * - *    |               | 1992       | 3.0    |
| 522  | FIREPLACE        | * - 6    |               | 1992       | 2.0    |
| 604  | POOL RES CONC    | * - 6    |               | 1992       | 1.0    |
| 252  | BEDROOMS         | * - *    |               | 1992       | 4.0    |
| 250  | HALF BATHROOM    | * - *    |               | 1992       | 1.0    |
| 447  | SPA CONCRETE     | * - 6    |               | 1995       | 1.0    |

**Land**

| # | Type | Description | Acres  | Sqft     | Eff Front | Eff Depth | Market Value | Prod. Value |
|---|------|-------------|--------|----------|-----------|-----------|--------------|-------------|
| 1 | LAND | Land        | 0.8143 | 35471.00 | 0.00      | 0.00      | \$120,000    | \$0         |

**Roll Value History**

| Year | Improvements | Land Market | Ag Valuation | Appraised | HS Cap  | Assessed  |
|------|--------------|-------------|--------------|-----------|---------|-----------|
| 2016 | N/A          | N/A         | N/A          | N/A       | N/A     | N/A       |
| 2015 | \$401,085    | \$120,000   | 0            | 521,085   | \$0     | \$521,085 |
| 2014 | \$360,977    | \$150,000   | 0            | 510,977   | \$0     | \$510,977 |
| 2013 | \$344,464    | \$125,000   | 0            | 469,464   | \$0     | \$469,464 |
| 2012 | \$372,874    | \$125,000   | 0            | 497,874   | \$0     | \$497,874 |
| 2011 | \$344,464    | \$125,000   | 0            | 469,464   | \$9,982 | \$459,482 |

**Deed History - (Last 3 Deed Transactions)**

| # | Deed Date  | Type | Description   | Grantor                            | Grantee                            | Volume | Page  | Deed Number  |
|---|------------|------|---------------|------------------------------------|------------------------------------|--------|-------|--------------|
| 1 | 10/28/2013 | WD   | WARRANTY DEED | SULLIVAN<br>MICHAEL T &<br>SUSAN G | MCCARTER A<br>NELSON & H KAY       |        |       | 2013198880TR |
| 2 | 7/1/2004   | WD   | WARRANTY DEED | KASTEN KEITH &<br>KATHERINE E      | RELOCATION<br>ADVANTAGE LLC        | 00000  | 00000 | 2004129563TR |
| 3 | 7/1/2004   | WD   | WARRANTY DEED | RELOCATION<br>ADVANTAGE LLC        | SULLIVAN<br>MICHAEL T &<br>SUSAN G | 00000  | 00000 | 2004129564TR |

**Questions Please Call (512) 834-9317**

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**ATTACHMENT B**