



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Post Office Box 1306
Albuquerque, N.M. 87103

In Reply Refer To:
R2/ES/032769

SEP 04 2007

The Honorable Rick Perry
Governor of Texas
P.O. Box 12428
Austin, Texas 78711-2428

Dear Governor Perry:

In a letter dated February 14, 2005, the U.S. Fish and Wildlife Service (Service) concurred that non-Federal landowners and other non-Federal managers using these voluntary measures in Appendix A to the Texas Commission on Environmental Quality's (TCEQ) technical guidance manual for the Edwards Aquifer Protection Program would have the support of the Service that "no take" under the Endangered Species Act (ESA) would occur unless projects:

1. Occur outside the area operating under the Edwards Aquifer rules that may affect federally listed species.
2. Result in water quality impacts that may affect federally listed species not specifically named below.
3. Result in impacts to federally listed species that are not water quality related.
4. Occur within 1 mile of spring openings that provide habitat for the covered federally listed species.

The voluntary water quality protection measures protect the following species from potential water quality impacts that may have otherwise resulted from development over the Edwards Aquifer region (Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties):

Barton Springs salamander (*Eurycea sosorum*)
Fountain darter (*Etheostoma fonticola*)
Georgetown salamander (*Eurycea naufragia*)
San Marcos salamander (*Eurycea nana*)
San Marcos gambusia (*Gambusia georgei*)

Our concurrence was not a delegation of the Service's responsibilities under the ESA, but rather an acknowledgment that the TCEQ rules address known threats to the identified species. TCEQ and the Service share the goal of protecting the quality of Edwards Aquifer water for both human and biological needs. Listed species serve as indicators of water quality for both species and human uses. The voluntary water quality protection measures reflect our common goals while satisfying the regulatory missions of both the State of Texas and the Service. The Service is committed to continued collaboration with TCEQ in a monitoring and adaptive management program. Staff from the Service and TCEQ are currently monitoring Edwards Aquifer water quality, and in some cases, biological resources, using all available data. This information will be shared and used for trend analyses. My understanding is that if the analysis of Edwards Aquifer monitoring information indicates water quality degradation that may impact the aforementioned species, then TCEQ and the Service would meet to evaluate the causes and, if necessary, take additional actions. This adaptive management program assures that the optional technical guidance measures (applied in conjunction with Edwards Rules) will protect listed species.

The Service approves proposed changes to TCEQ's Appendix A of the Edwards Aquifer Rules. All the proposed changes are minor modifications/clarifications of the original Appendix A or changes that will provide protection at least equivalent to that in the original document. The proposed changes:

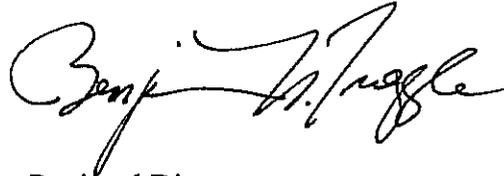
1. Clarify in the Introduction where TCEQ has the authority to review plans and provide clear guidance as to types of plans subject to review and when Service review will be necessary.
2. Clarify that variances to the measures provided in Appendix A cannot be approved by TCEQ under the concurrence.
3. Highlight that geological assessments are required in the contributing zone.
4. Modify language to clarify roads for which hazardous material traps are required.
5. Provide guidance on the management of sensitive features discovered during construction activities other than utility trenching (already included).
6. Highlight inspection requirements for sewers and storm drains.
7. Clarify that disturbance of stream buffers is not consistent with "no take" concurrence under Appendix A.
8. Define "larger, rural lot subdivision."
9. Clarify the mechanism and timing of legal documents to prevent alteration of buffer areas located within lot lines.
10. Improve readability of some figures in the document.
11. Clarify "non-exempt" water bodies for flow control discharge requirements in Section 5.

The Honorable Rick Perry

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Thank you for your continued commitment to conservation. I look forward to further enhancing the partnership between the State of Texas and the Service. If you have questions or need assistance, please contact Adam Zerrenner, Field Supervisor of our Austin Ecological Services Field Office, at 512-490-0057.

Sincerely,

A handwritten signature in black ink, appearing to read "Benji A. Trugle". The signature is fluid and cursive, with the first name "Benji" being larger and more prominent than the last name "Trugle".

Regional Director