

BLACKBURN CARTER

A Professional Corporation - Lawyers

4709 Austin Street, Houston, Texas 77004
Telephone (713) 524-1012 ♦ Telefax (713) 524-5165

www.blackburncarter.com

JAMES B. BLACKBURN, JR

MARY W. CARTER

CHARLES W. IRVINE

ADAM M. FRIEDMAN

MCNAUGHTON A. DUSON

MARY B. CONNER

MARY W. CARTER

Sender's E-Mail: mcarter@blackburncarter.com

June 16, 2010

Via Facsimile: (210) 302-3692 and

Email: enewberry@sara-tx.org

Ms. Erin Newberry

San Antonio River Authority

P.O. Box 839980

San Antonio, Texas 78283-9980

RE: Comments on Initially Prepared 2011 Regional Water Plan

Dear Ms. Newberry:

This letter conveys the written comments of The Aransas Project ("TAP") regarding the Initially Prepared 2011 Regional Water Plan ("IPP") submitted for public review and comment by Region L. TAP is a coalition of interested individuals and other stakeholders with concerns and issues regarding the IPP.

These concerns and issues arise primarily in the context of the Region L Planning Group's apparent avoidance of hard decisions on issues having to do with the local and rural communities and their economies included within the Region L planning area. We are also concerned about the very long lead time for certain of the water management strategies. So long, in fact, that it appears that these strategies are premature for inclusion in the 2012 State Water Plan.

Specifically, Region L appears to be disenfranchising agricultural and environmental interests in favor of interests related to large urban areas, and water purveyors. This translates into a water plan that enables every potential project regardless of actual need or timing.

Additionally, comments regarding impacts to San Antonio Bay and the endangered Whooping Crane that were raised during the Initially Prepared 2006 Regional Water Plan have been largely ignored. Because TAP's concerns focus on the Lower Guadalupe River Basin, water management strategies by GBRA are of particular note.

Water policy has been an ongoing and important issue in Texas for many years. In June 1997, Senate Bill 1 was signed by then Governor George W. Bush, which established a regionally based approach to state water policy and planning in Texas. The law emphasizes grassroots, local and regional decision-making with the goal that the water planning process is to provide that water supplies will satisfy future demand over a period of 50 years. Reasonable population growth and protecting downstream water rights are to be considered. The Regional Planning Groups are also required to identify and evaluate environmental issues raised by each of the water management strategies selected. Senate Bill 3, passed in 2007, creates a process, on

a basin by basin basis, to meet instream needs and freshwater inflows to affected bays and estuaries. However, all existing water permits are “grandfathered” and are not included in the process to meet instream needs or freshwater inflows.

The Region L Planning Group supports the legislative action through Senate Bill 3 establishing and funding an environmental flows process to integrate best available science and diverse regional stakeholder input into the process for selection of appropriate instream flow and freshwater inflow goals on a stream by stream and estuary by estuary basis. p. 8-9. The process is just getting underway for basins within the Region L planning area, and although eventually the results are to be included in regional water planning, the results from the two SB3 projects that have been completed, are less than encouraging that environmental water needs will indeed be met.

Let us be clear. TAP has filed litigation involving the Whooping Crane based on existing water use patterns in the Guadalupe - San Antonio River basin. We do not believe that the actions of Region L can address the “take” alleged in the litigation because of the absence of regulatory power in Region L and its inability to affect existing uses. However, the impacts of future actions can and must be addressed.

STATUTE AND REGULATIONS PROVIDE FOR CONSIDERATION OF ENVIRONMENTAL IMPACTS

The regional water plan “provides for the orderly development, management, and conservation of water resources, and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare; further economic development; and protect the agricultural and natural resources of that particular region.” TEXAS WATER CODE § 16.053(a). Further, this provision provides that each Regional Water Planning Group shall submit to the Development Board, a Regional Water Plan and identifies guidance for the preparation of the plan. The statute requires that the plan:

- (e)(1) is consistent with the guidance principles for the state water plan adopted by the Development Board under [Texas Water Code] § 16.051(d), . . .

TEXAS WATER CODE § 16.053(e)(1).

- (e)(4) has specific provisions for water management strategies to be used during a drought of record; . . .

TEXAS WATER CODE § 16.053(e)(4).

- (e)(5) includes but is not limited to consideration of the following:

- C. . . . all potentially feasible water management strategies including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies . . .

- F. Appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries and arms of the Gulf of Mexico and the effective plans on navigation; . . .

TEXAS WATER CODE § 16.053(e)(5).

The Board may approve a regional water plan only if it has determined that,

The plan is consistent with long term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles adopted under section 16.051(d).

TEXAS WATER CODE § 16.053(h)(7)(C).

Section 16.051(d) provides that the Water Development Board shall adopt by rule, guidance principles for the state water plan which reflect the public interest of the entire state. (emphasis added). State Water Planning Guidelines are found in 31 TEX. ADMIN. CODE § 358 and Guidelines for the Regional Water Planning Groups are found in 31 TEX. ADMIN. CODE § 357.

The guidelines for development of Regional Water Plans (31 TEX. ADMIN. CODE § 357) contain several provisions for protection of natural resources and environmental water needs such as bay and estuary flows. The stated goals of the regional plan mirror the goals stated in the statute. 31 TEX. ADMIN. CODE § 357.5(a). Further, Regional Water Plans shall be consistent with Chapter 358 relating to state water planning guidelines. 31 TEX. ADMIN. CODE § 357.5(c).

In developing regional water plans, the planning groups shall, ensure that water management strategies are adjusted to provide for appropriate environmental water needs, including instreams flows and bays and estuaries inflows. Evaluation shall use environmental information resulting from existing site specific studies or in the absence of such information shall use state environmental planning criteria. . .

31 TEX. ADMIN. CODE § 357.5(e)(1).

The planning group shall provide specific recommendations of water management strategies based on identification, analysis and comparison of all water management strategies the regional water planning group determines to be potentially feasible so that the cost effective water management strategies which are environmentally sensitive are considered and adopted unless the regional water planning group demonstrates that adoption of such strategy is not appropriate. . .

31 TEX. ADMIN. CODE § 357.5(e)(4).

In developing a regional water plan, a regional water planning group shall consider environmental water needs including instream flows and bay and estuary inflows.

31 TEX. ADMIN. CODE § 357.5(l).

The regional water plan development shall include any identified threats to the agricultural and natural resources of the regional water planning area due to water quantity problems or water quality problems related to water supply.

31 TEX. ADMIN. CODE § 357.7(a)(1)(L).

Evaluations of all water management strategies the regional water planning group determines to be potentially feasible must include for each threat to agricultural and natural resources identified, a discussion of how that threat will be addressed or affected by the water management strategies evaluated.

31 TEX. ADMIN. CODE § 357.7(a)(8)(C).

A further requirement in § 357.14(2)(c) is that the regional water plan be consistent with long term protection of the state's water resources, agricultural resources and natural resources as embodied in § 358. . . Consideration of a balance of economic, social, aesthetic and ecological viability is a principle in the development of the State Water Plan, and consideration of environmental water needs including instream flows and bay and estuary inflows is also included. 31 TEX. ADMIN. CODE § 358.3(b)(6)(19).

The requirements set out above have not been met by the Region L planning process. There is no discussion in detail of environmental impacts associated with various alternatives, including impacts on Whooping Cranes. There is no detailed assessment of the future viability of agricultural interests. There is no detailed discussion of either the threat to agriculture and environment or how that threat will be addressed. In short, Region L has seemingly placed a wish-list of projects in the plan and stopped the analysis at that point. That is contrary to the regional water planning process created by the Texas Legislature.

Regional water planning was passed to implement a desire for local input into the state water planning process. We submit that the consideration of environmental water needs and rural needs have largely been overlooked in favor of urban and urban economic issues by Region L, and the Region L Planning Group has failed to do the job tasked by the legislature.

TAP'S CONCERN REGARDING ECONOMIC AND ENVIRONMENTAL IMPACTS

Of specific concern to TAP are the environmental and economic impacts that certain projects will have on San Antonio Bay and the endangered Whooping Crane. San Antonio Bay will be clearly impacted by a number of the alternatives, yet there is very limited mention of these potential impacts. Twenty-three Whooping Cranes died during the winter of 2008-2009, yet that fact is never mentioned in the Region L plan although "concern" about Whooping Cranes is mentioned in several places. The impact of Region L water planning can have a direct and significant impact on the future of the Whooping Crane wintering population along San Antonio and Aransas Bays. This is not unimportant. This goes to the heart of the feasibility of

any of these strategies. And the same is true for the social and economic impacts that this plan and its reallocation of water from the lower to the upper basin will have on agricultural livelihoods and rural life-styles.

At this time, litigation has been filed in federal court in Corpus Christi alleging that the state water rights permit system has caused a “take” of Whooping Cranes at their wintering grounds in and around San Antonio Bay. The relationship of water use to the survival of the Whooping Crane is the “thousand pound gorilla” in the room. It is a huge issue. However, in reading the Region L plan, one would be challenged to understand the direct and significant implications of the relationship between inflows and the cranes. This is a perfect example of the problem with the plan – the fact that certain important issues are neglected rather than addressed directly.

Although Aransas County is not within the Region L Planning Area, several persons from Aransas County presented comments at a Region L meeting outlining the importance of San Antonio Bay to their economic well-being. Charlie Smith, Commissioner from Aransas County, talked about the importance of tourism to the area economy (including bird watching, especially during the Whooping Crane season). Bubba Casterline, Commissioner from Aransas County, talked about the importance of fishing to his family over generations and to other area fishermen. Dr. Ron Outen also spoke about the importance of San Antonio Bay to the economies in the Rockport/Fulton area from recreation and fishing. Issues regarding the impacts on San Antonio Bay and the endangered Whooping Crane were also raised in comments on the IPP 2006 Regional Water Plan.

With regard to these issues, the Executive Summary of the IPP identifies environmental benefits and concerns associated with implementation of the regional water plan. Specifically, the Executive Summary states, “potential reduction in freshwater inflows to bays and estuaries, including associated effects on wetland and marsh habitat and marine species, are identified as matters of concern. Primary concerns focus upon the potential effects of the . . . GBRA New Appropriation (Lower Basin) on freshwater inflows to the Guadalupe estuary.” p. ES-20. Further, “potential conflicts with stream segments identified by TPWD as ecologically significant are associated with . . . GBRA New Appropriation (Lower Basin). . . .” p. ES-21. It appears that the Lower Guadalupe River Basin will be shouldering the burden for the needs of the Upper Guadalupe River Basin without there ever being an honest and open disclosure of those impacts. That is simply not what the law requires.

Additionally, certain of the water management strategies in the IPP appear to be premature for inclusion. This plan is for a certain time period yet it includes many proposals that are not projected to be needed in that time frame. The question is – why? Why not follow the concept of the planning process and try to truly understand needs and impacts within a certain time frame. Why go beyond the concepts of the Texas Legislature? A comparison of supply and demand projections to determine needs (to be filled by water management strategies) is contained in Section 4A. Table 4A-3 identifies water demand and supply (needs) (acre-feet per year) for the GBRA. Table 4A-3 shows GBRA total system demand at 279,484 acre-feet per year in 2060 and 238,440 in 2030. Total supply shows 262,776 acre-feet per year in 2060 and 262,989 acre-feet in 2030. This indicates no need system-wide until 2050 when 995 acre-feet per year are needed, and 2060 when 16,708 acre-feet per year are needed. *See also* Table 2-15, p. 2-51 – 2-53 and Appendix D, Table 3. Table 4B.3.4-1 (p. 4B.3-12) states that projected need

in upper portion of GBRA district is offset by management supplies in the lower portion of the GBRA district. This translates into the Lower Basin being under siege to shoulder the burden for the upper basin requirements. Lower Basin and agricultural and bay and estuary needs are taking second place to Upper Basin needs.

As the IPP notes, it is evident that implementation of all recommended water management strategies is not likely to be necessary in order to meet projected needs within the planning period. p. 4B.1-10. The water management strategies have been recommended for the following reasons even though perhaps not needed:

To recognize both the long lead times and the uncertainty associated with risk factors that may prevent implementation of water management strategies and necessitate replacement strategies;

To preserve flexibility for water user groups or wholesale water suppliers to select the most feasible projects among several consistent with the Regional Plan and therefore ensure that such projects are potentially eligible for permitting and funding;

To serve as additional supplies in the event that rules, regulations, or other restrictions limit use of any plan strategy;

To ensure adequate supplies in the event of a drought more severe than that which occurred historically.

p. 4B.1-10.

This approach seems contrary to the clear goal of regional water planning which is to allow local interests to sort out issues and make hard choices. These are not choices. This is simply a listing without proper information or impacts.

The remainder of our comments will be directed at the following recommended and alternative water management strategies and their impacts:

GBRA-Exelon Project;
GBRA New Appropriation (Lower Basin);
GBRA Mid-Basin (Surface Water);
Lower Guadalupe Water Supply Project for Upstream Needs; and
Lower Guadalupe Water Supply Project for Upstream Needs at Reduced Capacity.

WATER MANAGEMENT STRATEGIES

Our comments include both recommended water management strategies and alternative water strategies. Water management strategies maximizing use of available resources, include the GBRA Exelon project, which is identified as yielding 49,126 acre-feet per year. p. 4B.1-5. Water management strategies that involve new surface water appropriations include the GBRA new appropriation (Lower Basin) at 11,300 acre-feet per year and GBRA Mid-Basin Project (Surface Water) at 25, 000 acre-feet per year. p. 4B.1-8.

Alternative water management strategies have been identified as technically evaluated, and subject to an appropriate amendment process, could replace a recommended water management strategy in the 2011 Regional Water Plan. These strategies include the Lower Guadalupe Water Supply Project for upstream GBRA needs (60,000 acre-feet per year), and the Lower Guadalupe Water Supply Project for upstream GBRA needs at reduced capacity (35,000 acre-feet per year). p. 4B.1-8.

A. GBRA Exelon Project

The GBRA-Exelon project involves the development of the “reliable supply of 49,126 acre-feet per year of cooling water to the Exelon Generation Company, LLC for the development of a nuclear power plant in Victoria, County south of Victoria, Texas.” p. 4B.1-17. It should be noted that the Exelon Project is shown in Table 4A-3 as needing 75,000 acre-feet per year during the decades 2020 – 2060. But the Exelon Water Management Strategy Summary Sheet indicates Decade Needed is 2010 – 2020. 4C.10. It is TAP’s understanding that review by the Nuclear Regulatory Commission of Exelon’s Early Site Permit Application will not be completed until mid 2012 at the earliest. If that permit is issued, it is valid for 20 years and renewable for an additional 20 years. A “combined operating license” application may be submitted during this 40 year time period, and review of the combined operating license could take several years even if it is submitted immediately. Therefore, the GBRA-Exelon Project likely will not be needed in the 2010-2020 decade, and could wait to be included as a recommended water management strategy until the next Regional Planning Process when more information will be known about the status of the proposed nuclear power plant.

Volume II of the IPP gives a more thorough description of each water management strategy. 4C.10 is the GBRA – Exelon Project. Among environmental factors, it is identified that the wintering population of the endangered Whooping Crane at Aransas National Wildlife Refuge is located adjacent to lower San Antonio Bay and that some reduction in freshwater inflows to the Guadalupe Estuary will be associated with greater utilization of existing water rights. It is also identified that the GBRA-Exelon Project and the LGWSP for Upstream GBRA Needs use portions of the same water. Should the GBRA-Exelon Project be recommended, the LGWSP for Upstream GBRA Needs at Reduced Capacity would be available according to the IPP. Both the LGWSP for Upstream GBRA Needs and the LGWSP for Upstream GBRA Needs at Reduced Capacity are Alternative Water Management Strategies in the IPP. Appendix D, Table 1. One of them presumably will be moved to “Recommended” status depending on the Exelon Project. However, these interrelationships are not well explained or developed.

There are regulatory uncertainties associated with the Exelon proposal. Only an early site permit has been applied for. Exelon is under no obligation to ever develop any further permit application at this time. To date, there has been no application for the combined operating license from the NRC as well as various other permits (TCEQ, USACE, GLO, TWDB, Coastal Coordination Council Review). Additionally, certain studies may be required for permitting, which include assessment of changes in freshwater inflows to bays and estuaries, habitat mitigation plan, environmental studies, and cultural resources studies and mitigation. 4C.10-26. Although environmental factors for the GBRA-Exelon Project include a mention of the wintering population of the endangered Whooping Crane and the possibility of some reduction in freshwater inflows to the Guadalupe estuary, no serious analysis is included and is clearly necessary for a true understanding of the importance of this heretofore unused water.

B. GBRA New Appropriation

The GBRA New Appropriation (Lower Basin) (4C.14) water management strategy involves diversion of up to 189,484 acre-feet per year under a new appropriation from the Guadalupe River in Calhoun County to municipal and industrial users in GBRA's ten county district, and authorization to impound up to 200,000 acre-feet in Calhoun County. This application (No. 12482) for surface water rights is pending before the Texas Commission on Environmental Quality. With a 100,000 acre-foot off channel reservoir, the firm supply from this strategy is only 11,300 acre-feet per year. If fresh groundwater from the lower Guadalupe basin is added to this strategy, then the plan must be amended in order for the modified strategy to be recommended for implementation. p. 4B.1-19.

Here again the wintering population of the endangered Whooping Cranes is identified and some reductions in freshwater inflows to the Guadalupe Estuary are identified associated with scalping high flows by the new appropriation. This strategy is identified as being needed in the 2020 to 2030 decade. However, implementation of this water management strategy is identified as meeting projected demands for current and future GBRA customers through the next 50 years and beyond. p. 4C.14-1.

GBRA New Appropriation (Lower Basin) is subject to senior water rights, full application of environmental flow standards adopted pursuant to § 11.1471 of the Texas Water Code and the Texas Commission on Environmental Quality permitting process. p. 4C.14, Summary Sheet. Implementation issues for this project include TCEQ diversion and storage permits (pending), permits from the USACE, GLO, GLO easement for use of state owned land and TPWD permit. Studies may be required such as habitat mitigation plan, environmental studies and cultural resource studies and mitigation. Land will be acquired through either negotiation or condemnation.

Further, there are clearly major impacts to San Antonio Bay associated with this application. For example, it is not explained how the SB3 bay and estuary studies would apply to this proposal that is currently pending at TCEQ. According to documentation filed by the Texas Attorney General in federal litigation, only 12.5% of the water yield of this project can be required to be dedicated to freshwater inflows, yet the impact of this water diversion would be substantial and significant. This is the type of disclosure and honest discussion that is required and has not occurred. It appears to us, that at the very least, the GBRA New Appropriation in the Lower Basin should not be included as recommended in this water plan, but rather could wait at least until the next water plan in 2016-2017.

C. GBRA Mid-Basin (Surface Water)

The GBRA Mid-Basin (Surface Water) involves an intake and pump station on the Guadalupe River, a transmission pipe line from Gonzales to San Marcus through Luling, and off-channel reservoir in Gonzales County, transmission booster pump stations and water treatment plant expansions and enhancements at Luling and San Marcus. 4C.15, Summary Sheet. The decade needed is identified at 2010-2020 and the quantity of water is identified as 25,000 acre-feet per year.

Potential downstream effects are identified from the modification of existing flow regime below the Gonzales diversion. Environmental factors include conversion of existing habitats and land uses within the pipeline right-of-way and off-channel reservoir site. This project is subject to senior water rights, full application of environmental flow standards adopted pursuant to Section 11.1471 of the Texas Water Code and the TCEQ permitting process. An application has been submitted to the TCEQ and has been declared administratively complete. 4C.15-1. This strategy would provide supplemental water supplies directly to customers in Hays and Caldwell Counties, and indirectly to customers in Comal, Guadalupe and Kendall Counties by replacement or reduction of Canyon Reservoir supplies currently delivered to the San Marcus WTP in the long term. p. 4C.15-1.

GBRA is currently considering at least three formulations of the Mid-Basin Project using available surface water and/or groundwater supply sources to ensure approximately 25,000 acre-feet per year. p. 4C.15-1. Because this water management strategy is in the early formulation stage, it certainly appears appropriate to postpone inclusion until the next water plan when more information will be available.

D. The Lower Guadalupe Water Supply Project for Upstream GBRA Needs at Reduced Capacity

The Lower Guadalupe Water Supply Project for Upstream GBRA Needs at Reduced Capacity (4C.11) involves the diversion of up to 60,000 acre-feet of presently underutilized surface water rights from the GBRA Calhoun canal system, transmission to an approximate 16,500 acre-feet off channel reservoir, transmission of 35,000 acre-feet of firm supply to water treatment plants near Luling, San Marcus, New Braunfels, and Canyon Reservoir and integration into municipal water supply systems. p. 4B.1 17-18.

LGWSP for Upstream GBRA Needs at Reduced Capacity also identifies the wintering population of endangered Whooping Cranes at Aransas National Wildlife Refuge located adjacent to lower San Antonio Bay as an environmental factor for consideration. Additionally, some reduction in freshwater inflows to the Guadalupe Estuary associated with greater utilization of existing water rights is identified as an impact on water resources. If fresh groundwater from the lower Guadalupe River basin is added to this strategy, its character would be changed and an amendment process would be required for it to become a recommended strategy in the 2011 Regional Water Plan. p. 4C.11-1. The possibility of adding fresh groundwater to this strategy is of great concern.

This description also includes information about impacts to migratory birds. “One of the most well known of these migratory birds is the Whooping Crane (*grus americana*), which is listed as endangered by both the U.S. Fish and Wildlife Service and TPWD. A growing population of Whooping Cranes winter in and near the Aransas National Wildlife Refuge located adjacent to Mesquite Bay and the southern and western portions of San Antonio Bay. . . . Detailed research studies by Texas A&M University are underway at this time to identify and better understand factors affecting Whooping Crane population. . .” p. 4C.11-15. What kind of analysis of impacts is this? And furthermore, if these “detailed research studies by Texas A&M University” include the San Antonio Guadalupe Estuarine System (SAGES Report) linking freshwater inflows and marsh community dynamics in San Antonio Bay to Whooping Cranes, it is important to note that this report was severely criticized by the major wildlife agencies as well

as by individuals. The SAGES report is not a defensible piece of scientific research in its present form and goes counter to the great weight of scientific research in the peer-reviewed literature. But the more important point is that the issue of impacts is not evaluated and not included. There is no way that the Region L members are adequately informed about this issue.

E. Lower Guadalupe Water Supply Project for Upstream GBRA Needs

The Lower Guadalupe Water Supply Project for Upstream GBRA Needs (4C.12) involves the diversion of up to 75,000 acre-feet per year, transmission to an approximate 19,000 acre-feet off channel reservoir, transmission of 60,000 acre-feet of firm supply to water treatment plants near Luling, San Marcus, New Braunfels, and Canyon Reservoir, and integration into municipal water supply systems. p. 4B.1-18. Again, the possibility of adding fresh groundwater is raised, which is of great concern. p. 4C.12-1.

This strategy also identifies wintering population of endangered Whooping Cranes at Aransas National Wildlife Refuge located adjacent to lower San Antonio Bay and some reduction in freshwater inflows to the Guadalupe Estuary associated with greater utilization of existing water rights may occur. If the GBRA-Exelon water management strategy is recommended, then this strategy will be replaced by the Lower Guadalupe Water Supply Project for Reduced Needs. However, both these strategies are listed as “Alternative Water Management Strategies.” Appendix D, Table 1. This strategy also identifies that “detailed research studies by Texas A&M University are underway at this time to identify and better understand factors affecting Whooping Crane population.” 4C.12-10. Again, if these detailed research studies by Texas A&M University include the San Antonio Guadalupe estuarine system (SAGES Report) linking freshwater inflows and marsh community dynamics in San Antonio Bay to Whooping Cranes, note that this report was criticized by the major wildlife agencies as well as by individuals.

This strategy also notes that according to the 2011 IPP, 2060 water needs in the upper and middle Guadalupe Basin total about 44,000 acre-feet per year. The LGWSP for Upstream GBRA Needs Project is sized to deliver up to 60,000 acre-feet per year, approximately 22,000 acre-feet per year more than the projected needs. This 22,000 acre-feet per year delivered as raw water to Lake Dunlap is held in reserve to meet needs beyond the year 2060 projected timeline. p. 4C.12-17, even though the decade needed is identified as 2010-2020.

CONCLUSION

In these comments, we have tried to demonstrate one clear area of deficiency – the failure to honestly discuss and evaluate the issue of the impact of these water alternatives on the lower basin, San Antonio Bay, the Whooping Crane, the coastal life-style and the agricultural lifestyle. These are important issues that the Texas Legislature specifically addressed in statutory provisions. It is also premature to include certain of the strategies both because they are not necessary during this time period, and because the strategies provide supplies far exceeding needs over the planning period.

Ms. Erin Newberry
June 16, 2010
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Sincerely,

BLACKBURN CARTER, P.C.

by James B. Blackburn Jr
James B. Blackburn, Jr. *by JC*