

AGENDA

**MEETING OF THE BOARD OF
DIRECTORS' EXECUTIVE COMMITTEE
AND/OR OF THE BOARD OF DIRECTORS**



SAN ANTONIO RIVER AUTHORITY

February 16, 2011, 11:30 a.m.

**Estimated Presentation Time: 1.5 hours*

GENERAL AND CEREMONIAL ITEMS:

Estimated Presentation Time: 5 minutes

- 1. CALL TO ORDER BY THE CHAIRMAN, MR. GAYLON J. OEHLKE**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL BY THE SECRETARY, MR. ROBERTO G. RODRÍGUEZ**
 - Terry E. Baiamonte
 - Sally Buchanan
 - A.D. Kollodziej, Jr.
 - Hector R. Morales
 - Roberto G. Rodríguez
 - Gaylon J. Oehlke
- 4. CERTIFICATION OF A QUORUM BY THE SECRETARY**
- 5. INTRODUCTION OF VISITORS**
- 6. CITIZENS TO BE HEARD**

**Represents the time staff anticipate that it will take to make presentations or give briefings; does not include an estimate of the time required for discussions generated by Board members.*

7. **APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING HELD ON DECEMBER 8, 2010**
8. **PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING SAN ANTONIO RIVER AUTHORITY BOARD OF DIRECTOR REPRESENTATION ON THE COMMITTEE OF EIGHT FOR RIVER SOUTH AREA MANAGEMENT PLAN IMPLEMENTATION**
9. **DISCUSSION AND APPROPRIATE ACTION REGARDING A MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN ANTONIO RIVER AUTHORITY AND THE SAN ANTONIO RIVER FOUNDATION**

TIME CERTAIN:

- 12:00 Noon - Recess for Lunch
- 12:30 p.m. - Resume Meeting

10. **PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE AND THE 112TH CONGRESS**
11. **EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**
12. **PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**
13. **GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:**
 - **UPCOMING EVENTS CALENDAR,**
 - **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
 - **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

ITEMS FOR FUTURE CONSIDERATION

15. **NEXT MEETING DATE**
16. **ADJOURN**

Estimated Presentation Time: 1.5 hours

SAN ANTONIO RIVER AUTHORITY
General Statements

This meeting is wheelchair accessible. Accessible parking is located at 100 E. Guenther Street. Requests for an interpreter for the hearing impaired must be received at least 48 hours prior to the meeting, or, to arrange for special assistance to attend this meeting, please call the Operator at 210-227-1373.

The Board of Directors' Executive Committee of the San Antonio River Authority may discuss and/or take action on any item listed in this agenda while convened in open session. The Board of Directors of the San Antonio River Authority may also meet in Executive Session, pursuant to Section 551.071 of the Texas Government Code, to receive advice from legal counsel on any item listed in this agenda.

Executive Committee

Date: 02/16/2011

Approval of the Minutes

Submitted For: Suzanne B. Scott

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

**APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING HELD ON
DECEMBER 8, 2010**

Presenter

Mr. Oehlke, Committee Chairman

Estimated Presentation Time: 5 minutes

Recommendation

Motion to approve the minutes of the Executive Committee Meeting held on December 8, 2010, as presented.

Discussion

Vote

Attachments

December 8, 2010, Executive Committee Meeting Minutes

MINUTES

**MEETING OF THE BOARD OF
DIRECTORS' EXECUTIVE COMMITTEE**

SAN ANTONIO RIVER AUTHORITY

December 8, 2010, 1:30 p.m.



GENERAL AND CEREMONIAL ITEMS:

1. **CALL TO ORDER WAS MADE BY THE CHAIRMAN, MR. GAYLON J. OEHLKE, AT 1:33 P.M.**
2. **PLEDGE OF ALLEGIANCE WAS RECITED**
3. **THE COMMITTEE SECRETARY, MR. ROBERTO G. RODRÍGUEZ, CALLED THE ROLL AND REPORTED THE FOLLOWING COMMITTEE MEMBERS PRESENT:**

- Terry E. Baiamonte (1:46 p.m. arrival)
- Sally Buchanan
- A.D. Kollodziej, Jr.
- Hector R. Morales
- Roberto G. Rodríguez
- Gaylon J. Oehlke

4. **CERTIFICATION OF A QUORUM BY THE SECRETARY, MR. RODRÍGUEZ**
5. **INTRODUCTION OF VISITORS**

Ms. Sanchez announced the visitors who were present in the audience.

6. **CITIZENS TO BE HEARD**

Ms. Sanchez announced that there were no citizens signed up to speak.

7. APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING HELD ON NOVEMBER 10, 2010

Staff recommended a motion to approve the minutes of the Executive Committee meeting held on November 10, 2010, as presented.

Motion made by A.D. Kollodziej, Jr.

Seconded by Sally Buchanan

Vote: 5 - 0 Passed

Other: Terry E. Baiamonte (Absent)

8. DISCUSSION AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT, APPLICATION, AND REPORTING OF THE FISCAL INDEX

There being no action taken on this item, Mr. Oehlke called for Agenda Item 9.

9. DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE

There being no action taken on this item, Mr. Oehlke called for Agenda Item 10.

10. EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Legal Counsel reported there was nothing to report since the last agendaized discussion. Therefore, the Committee opted not to meet in Executive Session.

11. PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

There being no action taken on this item, Mr. Oehlke called for Agenda Item 12.

12. DISCUSSION AND APPROPRIATE ACTION REGARDING THE NEXT MEETING DATE

After Committee discussion, it was decided that January's Executive Committee meeting will be cancelled and only if necessary will the Committee meet in February. The General Manager will notify the Committee members should it be necessary for them to meet in February.

13. GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:

- **UPCOMING EVENTS CALENDAR,**
- **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
- **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

There being no action taken on this item, Mr. Oehlke called for Agenda Item 14.

14. ITEMS FOR FUTURE CONSIDERATION

Mr. Rodríguez requested a briefing to the Board be made regarding the sewer lines from SAWS on the Westside Creeks and asked what SARA's plans are regarding the sewer lines.

15. ADJOURN

There being nothing further to report, Mr. Oehlke called the meeting adjourned at 2:25 p.m.

PREPARED AND RECOMMENDED FOR COMMITTEE APPROVAL BY THE MANAGER.

SUZANNE B. SCOTT, General Manager

APPROVED BY THE BOARD OF DIRECTORS AT THE EXECUTIVE COMMITTEE MEETING HELD ON FEBRUARY 16, 2011.

GAYLON J. OEHLKE, Chairman

ATTEST:

ROBERTO G. RODRÍGUEZ, Secretary

Executive Committee

Date: 02/16/2011

C8 Appointments

Submitted By: Karen Bishop

Division: Executive Offices

CAPTION

PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING SAN ANTONIO RIVER AUTHORITY BOARD OF DIRECTOR REPRESENTATION ON THE COMMITTEE OF EIGHT FOR RIVER SOUTH AREA MANAGEMENT PLAN IMPLEMENTATION

Presenter

Karen Bishop

Estimated Presentation Time: 10 minutes

The River South Area Management Plan governance structure relies upon a Committee of Eight (C8) to coordinate and oversee interagency policy and contract matters associated with Plan implementation. The C8 will consist of two appointments each from the Bexar County Commissioners Court, the San Antonio City Council, the SARA Board of Directors, the local congressional office(s) in which the National Park Service (NPS) has River South interests, and *ex officio* representation by the co-chairs of the San Antonio River Oversight Committee.

The C8 is an expansion of the C6 by two members to accommodate NPS interests. Current SARA Board members appointed to the C6 are Bexar County at-large representatives Sally Buchanan and Hector Morales.

Recommendation

Motion, to be crafted after discussion of this item, recommending for River Authority Board of Director approval two members to represent the Board on the Committee of Eight.

Discussion

Vote

Executive Committee

Date: 02/16/2011

San Antonio River Foundation MOU

Submitted For: Suzanne B. Scott

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

DISCUSSION AND APPROPRIATE ACTION REGARDING A MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN ANTONIO RIVER AUTHORITY AND THE SAN ANTONIO RIVER FOUNDATION

Presenter

Suzanne B. Scott

Estimated Presentation Time: 10 minutes

In September 2010 the General Manager of the River Authority and the Executive Director of the River Foundation were directed through their respective board leadership to develop a Memorandum of Understanding that could ensure continued success and collaboration to the mutual benefit of the missions and purposes of both entities.

The attached document, presented for board consideration, represents the collective work of the General Manager and the Executive Director. The Memorandum of Understanding (MOU) is organized in six articles summarized below:

Article I: Objectives: Recognizes that the two agencies share common objectives but with distinctly different roles and responsibilities.

Article II: Roles and Responsibilities: Delineates the roles of each entity. Recognizes the River Authority's statutory authority and governmental role and its agreements with other governmental partners to perform specific duties. Recognizes that the River Foundation is a private, separate fundraising entity that raises funds for projects that enhance the beauty and the use and appreciation of the entire San Antonio River and its tributaries in Bexar, Wilson, Karnes and Goliad counties.

Article III: River Authority and River Foundation Coordination of Projects and Activities: Sets out the details of process to develop a three-year rolling Action Plan to identify and agree upon projects and activities. For the purpose of the Action Plan, a project is defined as requiring a capital investment in real estate, building or physical improvements of all types, and identification of individual entity role/responsibility. For the purpose of the Action Plan, an activity is defined as tasks not related to a capital investment such as operation, maintenance, public information, education, marketing, special events, media, governmental relations, and tasks of similar character. The process will commence in January of each year with approval by each board in March for coordination with annual budget cycles of the agencies. The first plan for the upcoming fiscal year shall be approved by June 2011. Through the annual development of the Action Plan, River Authority and River Foundation will determine each entity's role/responsibility in each of the projects and/or activities to be identified in the Action Plan and the assigned contact person within each entity. They will also identify the proposed schedule, budget and funding for the project

and/or activity. The Action Plan will be updated no less than quarterly to reflect the addition and/or deletion of projects and/or activities, as needed, and to reflect changes to schedules, budget and funding.

Article IV: Approval of Projects and Activities: Recognizes that approvals of other entities may be needed and that the agencies will work together to coordinate the required approvals.

Article V: Communications: Establishes communication protocols including attendance at board meetings by executive staff and providing of regular updates; coordination on event planning; coordination of communication with other elected officials and agreement to provide appropriate acknowledgment of and credit to each entity on activities within the Action Plan.

Article VI: General Operation: Recognizes that River Foundation will maintain a minimum of five members on its board that will be appointed by the River Authority. The River Foundation will coordinate the role and responsibilities of its committees with the River Authority. River Authority agrees to lease space in its headquarters facility to the River Foundation and, with notice, allow for the use of meeting rooms and reservation of parking spaces for River Foundation meetings and events. River Authority may provide operations and maintenance of River Foundation facilities if the River Authority has the capability (financial, resources, skill/expertise) and agrees to the roles and responsibilities for such activity. In addition, the River Foundation agrees to establish an Operational Fund with a percentage of resources sufficient to sustain the maintenance responsibilities the River Foundation will fund. The agencies also agree to review the MOU annually.

The MOU reflects the genuine desire of both agencies to work collaboratively for the benefit of the San Antonio River. Immediately upon approval of the MOU by the boards of both agencies, the work on the first Action Plan will begin.

Recommendation

Motion indicating Executive Committee support for presenting the Memorandum of Understanding between the San Antonio River Authority and the San Antonio River Foundation to the San Antonio River Authority Board of Directors for approval.

Discussion

Vote

Attachments

MOU

MEMORANDUM OF UNDERSTANDING
Between San Antonio River Authority and San Antonio River Foundation

WHEREAS, the San Antonio River Authority (River Authority) formed the San Antonio River Foundation (River Foundation) on April 28, 2003, to assist the River Authority and other cooperating governmental entities in ensuring sustainable enhancements and management of the watersheds of the San Antonio River and its tributaries to benefit quality of life and the environment through charitable, scientific and educational activities; and

WHEREAS, since its creation the River Foundation has successfully raised private funding to support landscaping and public art enhancements to the Museum Reach and Mission Reach of the San Antonio River Improvements Project; and

WHEREAS, the mission of the River Foundation, a private non-profit organization, is to enhance the natural beauty, recreational use and public appreciation of the entire San Antonio River and its tributaries in Bexar, Wilson, Karnes and Goliad counties, and its established purpose is to operate exclusively to support charitable, scientific and educational activities that promote and encourage the conservation, stewardship, restoration, preservation, and enjoyment of the land and water resources of the San Antonio River and its tributaries; and

WHEREAS, the mission of the River Authority, a sovereign special purpose governmental entity, is to sustain and enrich life in the San Antonio River Watershed through innovative, sustainable, collaborative and customized watershed solutions; and

WHEREAS, the boards of directors of both the River Authority and the River Foundation believe that the adoption of an action plan between the two entities will ensure continued success and collaboration to the mutual benefit of the missions and purposes of both entities.

NOW, THEREFORE, BE IT RESOLVED that both the San Antonio River Authority and the San Antonio River Foundation have committed to work in unison under the terms of this Memorandum of Understanding, while maintaining each entity's independence and governance.

ARTICLE I: Objectives

- A. The River Authority and the River Foundation share a common objective to accomplish projects and programs that preserve and enhance the stewardship, enjoyment, ecosystem and economic benefits of the San Antonio River and its tributaries.
- B. The River Authority and the River Foundation recognize that each entity has defined roles and responsibilities in accomplishing a shared objective and agree to focus their respective resources toward tasks where each entity has the authority, responsibility and expertise to avoid duplication of efforts and promote synergy to advance complementary projects and activities.

ARTICLE II: Roles and Responsibilities

- A. The River Authority has the following roles and responsibilities for the San Antonio River:
 - a. All powers and duties granted by the State of Texas pursuant to Section 59 of Article 16 of the Constitution of Texas as originally authorized and subsequently amended. Generally, the River Authority has governmental responsibilities and expertise in the areas of: flood control, water quality, parks and recreation, environmental protection, utility service, water resource protection and development, asset management and maintenance and operation of river-related facilities,
 - b. The River Authority has agreed to perform specific roles and responsibilities for the project management, construction administration, operation and maintenance of the San Antonio River within Bexar County through separately executed Interlocal Agreements with the Bexar County Commissioners Court and the San Antonio City Council.
 - c. The River Authority Board of Directors annually approves a budget which includes programs, projects, and efforts to advance its mission and meet its roles and responsibilities.

- B. The River Foundation has the following roles and responsibilities for the San Antonio River:
 - a. The River Foundation raises and contributes private funding toward approved projects and programs to enhance the natural beauty, recreational use and public appreciation of the entire San Antonio River and its tributaries in Bexar, Wilson, Karnes and Goliad counties.
 - b. The River Foundation must remain fully qualified under the State of Texas and Federal law to engage in fundraising and receive philanthropic contributions.
 - c. The River Foundation may operate and maintain projects for which private funds have been applied and require specialized expertise.
 - d. The River Foundation serves as an advocate for the stewardship of the San Antonio River and its tributaries.

ARTICLE III: River Authority and River Foundation Coordination of Projects and Activities

- A. The River Authority and River Foundation agree to meet in January of each year to develop a three-year rolling River Authority and River Foundation Action Plan (Action Plan) to identify and agree upon projects and activities throughout the four-county River Authority district of Bexar, Wilson, Karnes and Goliad counties for which River Foundation private funding and/or collaboration with public funding could be used to enhance the natural beauty, recreational use and public appreciation of the entire San Antonio River and its tributaries. For the purpose of the Action Plan, a project is defined as requiring a capital investment in real estate, building or physical improvements of all types, and identification of individual entity role/responsibility. For the purpose of the Action Plan, an activity is defined as tasks not related to a capital investment such as operation, maintenance, public information, education, marketing, special events, media, governmental relations, and tasks of similar character.

- B. The Action Plan shall be approved by the board of each entity no later than March 30 of each year to ensure coordination with annual planning for each entity's fiscal year beginning July 1. The Action Plan for the 2011-2012 Fiscal Year shall be approved by the board of each respective entity no later than June 30 2011. Amendments to add or delete a new project or activity to the annual Action Plan or to modify project schedules or budgets may be made throughout the year jointly by the River Authority General Manager and River Foundation Executive Director. Such amendments shall be approved by the respective entity boards only if the amendment replaces a project in the current

year, or introduces a new project and/or activity in the current year valued at \$50,000 or more with funding sources and concepts previously identified. Projects and/or activities added, deleted or modified in the two subsequent years of the Action Plan must be approved jointly by the River Authority General Manager and River Foundation Executive Director and submitted for approval by the respective entity boards in March of the following year with the annual update to the Action Plan unless expenditures for these added subsequent-year projects and activities would occur in the current year and would require approval by the respective boards in accordance with operating policies and procedures.

- C. River Authority agrees to include in the annual Action Plan development process projects and/or activities within the following categories that either are initiated by the River Authority or brought to the River Authority for consideration:
 - a. Projects and/or activities for which private funding from any source has been or could be identified as the sole funding source or a partial funding source for project or program implementation.
 - b. Projects and/or activities that would propose the use of River Foundation property.
 - c. Mutual coordination of public information, communication, education, advocacy initiatives or special events that support projects and/or activities in the two categories above.

- D. River Foundation agrees to include in the annual Action Plan development process projects and/or activities within the following categories that either are initiated by the River Foundation or brought to the River Foundation for consideration:
 - a. Projects and/or activities, proposed privately or publicly, along the banks of the San Antonio River or its tributaries.
 - b. Demonstration of the River Foundation's financial capacity to support the projects, programs and activities it proposes to fund to the satisfaction of the River Authority.
 - c. Projects and/or activities for which public, governmental or funding from any source has been or could be identified as a potential source to support the project or activity.
 - d. Projects that would propose the use of River Authority and/or any other publicly owned property.
 - e. Projects and/or activities that propose involvement with other governmental entities within the River Authority's four-county district including projects and/or activities that require governmental entity review and approval.
 - f. Mutual coordination of public information, communication, education, advocacy initiatives and/or special events that support projects and/or activities in the five categories above.

- E. Through the annual development of the Action Plan, River Authority and River Foundation will:
 - a. Determine each entity's role/responsibility in each of the projects and/or activities to be identified in the Action Plan and the assigned contact person with each entity.
 - b. Identify the proposed schedule, budget and funding for the project and/or activity.
 - c. Update information in the Action Plan no less than quarterly to reflect the addition and/or deletion of projects and/or activities within the categories listed under Article III (C) and (D), and changes to schedules, budget and funding.

- F. The River Authority General Manager and the River Foundation Executive Director will meet no less than once a month to track progress and adherence to the Action Plan, address opportunities and challenges experienced with the Action Plan projects and/or activities and discuss new

projects/activities within the categories listed under Article III (C) and (D) that may be added to the Action Plan during the year.

- G. River Authority and River Foundation technical staff will meet no less than once every other month to coordinate the implementation of the projects and/or activities within the categories listed under Article III (C) and (D) included in the annual Action Plan or added to the Action Plan during the year.
- H. River Authority and River Foundation agree to make timely efforts to include the designated contact person/people, or representative, within the Action Plan in all meetings where the assigned project and/or activity would be discussed.
- I. Projects and/or activities within the categories listed under Article III (C) and (D) and located within the defined San Antonio River Improvements Projects should also be included in the Action Plan.

ARTICLE IV: Approval of Projects and Activities

- A. The approved Action Plan, and its amendments, will serve as the project plan for the River Foundation as it relates to projects and activities proposed to enhance the natural beauty, recreational use and public appreciation of the entire San Antonio River and its tributaries in Bexar, Wilson, Karnes and Goliad counties.
- B. The River Foundation and River Authority recognize that projects and activities implemented along the San Antonio River and its tributaries require various levels of public approvals to comply with local ordinances, local practices, state regulations and federal permitting requirements.
- C. The River Foundation and River Authority agree to work cooperatively to reach agreement on the designated roles and schedule of the appropriate public review and approval of project designs, construction and operation. The River Authority and River Foundation understand that required approvals will vary depending upon the project and may involve both compliance with formal approval processes as defined by local ordinance, state statute or federal public law and informal processes as defined through governmental expectations, practices and accepted public process.
- D. Upon agreement on the defined approval process for a project or activity, the River Authority- and River Foundation-designated staff will work together to ensure conformance with the approval process to achieve the most effective use of both private and public funding resources.
- E. The River Foundation and the River Authority may have approval requirements as defined by each entity's respective policies or practice. Both entities are responsible for integrating these approval processes at the appropriate time so not to hinder any public review process that may be required on projects within the Action Plan.

ARTICLE V: Communications

- A. The approved Action Plan will designate staff from the River Foundation and from the River Authority assigned to each project and activity within the plan. These respective designees are required to coordinate and communicate on the development and implementation of the project

and activity and report progress to the River Authority General Manager and the River Foundation Executive Director upon request.

- B. The River Authority General Manager, or designee, will be invited to attend each meeting of the River Foundation Board of Directors and will be requested no less than twice a year to provide a presentation to the River Foundation Board on the implementation of the Action Plan projects and activities and other matters of mutual interest to the entities.
- C. The River Authority General Manager, or designee, will be invited to attend River Foundation Executive Committee meetings and community meetings where issues on the development and implementation of Action Plan projects and activities would be on the agenda.
- D. The River Foundation Executive Director, or designee, will be invited to attend each meeting of the River Authority Board of Directors and will be requested no less than twice each year to provide a presentation to the River Authority Board on the implementation of the Action Plan projects and activities and other matters of mutual interest to the entities.
- E. The River Foundation Executive Director, or designee, will be invited to attend River Authority advisory committee meetings and community meetings where issues on the development and implementation of Action Plan projects and activities would be on the agenda.
- F. Both the River Foundation and River Authority agree to seek input, assistance and coordination first from each other when planning and implementing special events relating to projects and activities of mutual interest. Each entity shall not commit resources of the other without mutual approval from the River Authority General Manager and the River Foundation Executive Director.
- G. To promote coordination on project planning and implementation, the River Foundation Executive Director and the River Authority General Manager agree to inform each other of communication activities with elected officials representing all or part of Bexar, Wilson, Karnes and Goliad counties regarding projects in the Action Plan and other activities of mutual interest.
- H. The River Foundation and the River Authority agree to provide credit to each other and other governmental partners in news releases, videos, advertisements, signage and publications produced by the entities relating to projects and activities approved within the Action Plan. The actual wording of how the entity will be credited may vary with each project and activity and should be agreed to by the designated staff member(s) assigned to the project or activity.

Article VI: General Operation

- A. The River Foundation agrees to maintain a minimum of five members of its Board of Directors appointed by the River Authority Board of Directors. The five members may be members of the River Authority Board of Directors or designated appointees from the River Authority Board of Directors. These five members shall have no distinction from other members of the River Foundation Board of Directors and shall enjoy and adhere to all the same rights, privileges and requirements as other members of the River Foundation Board of Directors.

- B. The River Foundation will coordinate with the River Authority on the role, responsibilities and tasks of its committees to avoid duplication with the role, responsibilities and tasks of the River Authority.

- C. The River Authority agrees to allow the River Foundation's use of the River Authority's Headquarter facility by means of a lease agreement. The lease agreement shall include details of space use, parking, authorized access passes and rent payments and related issues. Scheduling of the use of meeting rooms shall be coordinated through the River Authority. If scheduling conflicts or room usage conflicts arise, the River Authority event shall take priority over the River Foundation event. If appropriate notice is provided, River Authority shall reserve public parking in the front lot for meetings as designated by the River Foundation.

- D. The River Authority may assume operations and maintenance responsibilities for River Foundation facilities depending upon the River Authority's capability to provide required maintenance. The discussions of these operations and maintenance requirements for each proposed project shall be included in the development of the annual Action Plan and, upon general agreement on the roles and responsibilities, a separate operations and maintenance agreement may be executed to detail each entity's responsibilities in the operations and maintenance of implemented projects

- E. The River Foundation agrees to establish an Operational Fund with a percentage of resources sufficient to sustain the maintenance responsibilities the River Foundation will fund. The River Foundation and the River Authority will mutually agree on the amount of resources to be allocated in the Operational Fund to ensure that the required maintenance standards will be adequately achieved through the Operational Fund. The River Foundation agrees to share information regarding the allocation and use of the Operational Fund for projects and activities in which the River Authority and the River Foundation may have joint roles and responsibilities previously approved by the Action Plan.

- F. The River Foundation and the River Authority agree to review the Memorandum of Understanding annually to determine if modifications are required to continue to promote the most effective, efficient and responsive working relationship between the two entities or if the agreement should be terminated.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS, THE _____ DAY OF _____, 2011.

SUZANNE B. SCOTT, GENERAL MANAGER
SAN ANTONIO RIVER AUTHORITY

ESTELA AVERY, EXECUTIVE DIRECTOR
SAN ANTONIO RIVER FOUNDATION

GAYLON J. OEHLKE, BOARD CHAIRMAN
SAN ANTONIO RIVER AUTHORITY

NICK HOLLIS, BOARD CHAIRMAN
SAN ANTONIO RIVER FOUNDATION

ATTEST:

STEPHEN T. GRAHAM, ASSISTANT GENERAL MANAGER
SAN ANTONIO RIVER AUTHORITY

SEAL

Executive Committee

Date: 02/16/2011

State and Federal Legislative Activities Update

Submitted For: Brian Mast

Submitted By: Lupe Sanchez

Division: Intergovernmental and Comm Relations **Department:** Intergovernmental Relations

CAPTION

PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE AND THE 112TH CONGRESS

Presenter

Brian Mast

Estimated Presentation Time: 20 minutes

82nd State Legislature Update:

SARA Directors and staff participated in The Greater Chamber of Commerce's VIVA Legislative Day in Austin on Tuesday, February 15. SARA-specific meetings were held with Representatives Doug Miller, Lyle Larson, John Kuempel, Mike Villarreal and Chairman Allan Ritter as well as the Deputy Committee Director of the Senate Natural Resources Committee. Additional legislative meetings scheduled by the Greater San Antonio Chamber of Commerce were also attended by SARA Directors and staff.

Bills of note which have been filed recently or heard in committee:

- HB 1007 which addresses dissolving Bexar Met was filed by Representative Lyle Larson.
- SB 18 has been voted favorably out of the Senate State Affairs Committee.

112th Federal Congress Update:

Suzanne Scott and Steve Graham respectively attended the Greater Chamber of Commerce's SA to DC and Texas Water Conservation Association's Texas Water Day.

Recommendation

Motion to be crafted, if necessary, after Board discussion.

Discussion

Vote

Attachments

HB 1007 Larson Bexar Met Bill

SB 18 Bill Analysis

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a conservator for and authorizing the dissolution of the Bexar Metropolitan Water District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 1. In obedience to the provisions of Article 16, Section 59 of the Constitution of Texas, there is hereby created Bexar Metropolitan Water District. [~~hereinafter in this Act sometimes called the "District."~~]

SECTION 2. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 to read as follows:

Sec. 1A. In this Act:

(1) "Board" means the District's Board of Directors.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Director" means a Board member.

(4) "District" means the Bexar Metropolitan Water District.

(5) "System" means a water utility owned by a municipality with a population of more than one million that includes portions of the Edwards and Trinity Aquifers.

Sec. 34. (a) The Commission shall appoint as conservator for the District an individual who, at the time of the individual's appointment:

(1) has demonstrated a high level of expertise in water utility management;

(2) is not a Director; and

(3) has no financial interest in the District or any entity that has a contract with the District or that is likely to

develop a contractual relationship with the District.

(b) The conservator's term expires on the earlier of:

(1) the date the conservatorship for which the conservator is appointed dissolves under Section 39; or

(2) the date the Commission, in consultation with the System, determines that the duties of the conservator under this Act have been discharged.

Sec. 35. (a) A conservator appointed under Section 34 is entitled to receive a salary for performing those duties.

(b) The District shall pay the compensation of the conservator.

Sec. 36. (a) A conservator appointed under Section 34 is entitled to reimbursement of the reasonable and necessary expenses incurred by the conservator in the course of performing duties under this Act.

(b) The District shall pay any reasonable and necessary expenses incurred by the conservator.

Sec. 37. (a) The conservator shall advise the Board on matters relating to the District's rehabilitation. The Board shall work cooperatively with the conservator to improve the Board's ability to manage and operate the District in a professional manner.

(b) The conservator shall:

(1) complete an inventory of and evaluate each distinct water system in the District to determine:

(A) the District's infrastructure associated with that water system;

(B) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure in that water system; and

(C) the adequacy of the water supply sources, water storage facilities, distribution systems, and related infrastructure located in that water system's service area to

supply current and projected demands in that service area;

(2) identify any District assets whose sale or transfer to another appropriate public water utility would be likely to improve:

(A) service to the former District customers who would be served by that utility; or

(B) the District's overall efficiency;

(3) compile a list and copies of existing contracts to which the District is a party, including for each contract:

(A) effective and termination dates;

(B) general scope of the goods and services involved;

(C) obligations of the District, including financial obligations; and

(D) general benefit to the District; and

(4) develop a comprehensive rehabilitation plan for the District that:

(A) identifies strategies for restoring the District's financial integrity and developing a system of sound financial management;

(B) describes a standard of ethics, professionalism, and openness expected of each Director and employee of the District;

(C) provides a mechanism to enforce compliance with District policies, including procurement policies;

(D) identifies ways to enhance the District's operational efficiency and improve the District's provision of redundancy in water services; and

(E) provides for educating the Board and management personnel on improving management practices and complying with District policy and state and federal laws and regulations.

Sec. 38. The conservator shall report to the Commission and the Bexar Metropolitan Water District Oversight Committee regularly

on the progress the conservator has made in carrying out the duties under Section 37.

Sec. 39. (a) If a majority of the votes in an election held under Section 40 do not favor dissolution, and the conservator reports to the Commission that the District has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, the Commission shall evaluate the condition of the District and determine whether:

(1) the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers; and

(2) the conservatorship is no longer necessary.

(b) After an evaluation under Subsection (a), the Commission may issue an order dissolving the conservatorship if the Commission determines that the District has been sufficiently rehabilitated and the conservatorship is no longer necessary.

(c) The Commission may not dissolve the conservatorship before an election is held under Section 40.

Sec. 40. (a) On the next uniform election date following the 60th day after the date of preclearance under Section 5 of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c) of all provisions of the Act enacting this section that are subject to that preclearance, the Commission shall hold an election in the District on the question of dissolving the District and disposing of the District's assets and obligations. If the Commission determines that preclearance under Section 5 of the federal Voting Rights Act of 1965 is not required, the Commission shall hold the election on the next uniform election date that falls at least 60 days after the date the Commission makes that determination.

(b) The order calling the election must state:

(1) the nature of the election, including the proposition to appear on the ballot;

(2) the date of the election;

- (3) the hours during which the polls will be open; and
- (4) the location of the polling places.

(c) The Commission shall give notice of an election under this section by publishing once a week for two consecutive weeks a substantial copy of the election order in a newspaper with general circulation in the District. The first publication of the notice must appear not later than the 35th day before the date of the election.

(d) The ballot for an election under this section must be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District and the transfer of all the District's assets, liabilities, and duties to the water utility of the municipality with the largest population in the area formerly served by the District."

Sec. 41. (a) If a majority of the votes in the election held under Section 40 favor dissolution, the term of each person who is serving as a Director of the District on the date of the canvass of the election expires on that date.

(b) Under the Commission's oversight, the conservator shall transfer or assign to the System the:

(1) rights and duties of the District associated with the provision of water services, including existing contracts, assets, and liabilities of the District; and

(2) files and records of the District that pertain to the control, management, and operation of the District.

(c) After the conservator has transferred the property, assets, and liabilities as prescribed by this section, the conservator shall file a written report with the Commission summarizing the conservator's actions in dissolving the District.

(d) Not later than the 10th day after the date the Commission receives the report and determines that the requirements of this section have been fulfilled, the Commission shall enter an order dissolving the District and releasing the conservator from any

further duty or obligation.

Sec. 42. If the majority of votes favor dissolution in an election held under Section 40, this Act expires on the second anniversary of the date the Commission enters an order dissolving the District.

Sec. 43. (a) If a majority of the votes in an election held under Section 40 do not favor dissolution, the conservator appointed under Section 34 continues to serve until the conservatorship is dissolved under Section 39.

(b) The Commission may order the District to implement any part of the rehabilitation plan developed under Section 37.

Sec. 44. (a) The System may integrate the services and infrastructure of the District into the System.

(b) The System may operate the former District as a special project under the System's existing senior lien revenue bond ordinances. All the obligations and liabilities of the former District and new obligations of the System entered into for the benefit of the former District ratepayers are payable from revenue derived from the operation of the special project and not payable from revenue of the System.

(c) Once the conservator has transferred the assets, liabilities, and duties to the System, the System shall provide affordable and reliable water services to the former ratepayers of the District.

Sec. 45. (a) For a 24-month period following the transfer of the employment of any employee of the former District, the System may not terminate that employee, except for cause, if the employee:

(1) is vested in the retirement program of the District on the effective date of the Act enacting this section; and

(2) earns an annual base salary of less than \$50,000 on the effective date of the Act enacting this section.

(b) An employee who qualifies under Subsection (a) and who is terminated by the System has the same opportunity for appeal as a

person employed by the System who is not an employee of the former District.

(c) The System is not required to employ an employee of the District if that person was formerly terminated from, or resigned in lieu of termination from the System.

Sec. 46. From the effective date of the Act enacting this section until the date election results under Section 40 are certified to the Secretary of State, the attorney general may not approve any public security, as defined by Chapter 1201, Government Code, of the District unless:

(1) the Commission consents in writing before approval;

or

(2) the District provides written evidence that issuing the public security represents a refunding of outstanding debt for the purpose of realizing debt service savings in each year that outstanding obligations are refunded and that results in a cumulative net present value savings of three percent compared to refunded debt service.

Sec. 47. (a) From the effective date of the Act enacting this section until the date election results under Section 40 are certified to the Secretary of State, a contract to which the District is a party must include a provision that the contract is subject to:

(1) review by the System; and

(2) termination, including the termination of all rights, duties, obligations, and liabilities of the District or the System under the contract, if the contract is assumed by the System.

(b) A person is not entitled to compensation for loss or other damages resulting from the termination of the contract under Subsection (a)(2).

SECTION 3. Not later than the 60th day after the effective date of this Act, the Texas Commission on Environmental Quality

shall appoint a conservator for the Bexar Metropolitan Water District as required by Section 34, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act.

SECTION 4. (a) The 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 under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) 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.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

BILL ANALYSIS

Senate Research Center
82R59 AJA-F

S.B. 18
By: Estes, et al.
State Affairs
2/2/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Fifth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation, commonly referred to as the "takings clause." Section 17 of Article I of the Texas Constitution, prohibits a person's property from being taken, damaged, or destroyed for public use without adequate compensation, unless by consent of that person.

S.B. 18 makes changes, additions, and deletions, to various provisions in Texas law in an attempt to reform the power, limitations, process, and various other aspects of the power of eminent domain and condemnation in this state.

As proposed, S.B. 18 amends current law relating to the use of eminent domain authority.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2206, Government Code, as follows:

CHAPTER 2206. New heading: EMINENT DOMAIN

Creates Subchapter A from existing text and adds a new subchapter heading, as follows:

SUBCHAPTER A. LIMITATIONS ON PURPOSE AND USE OF PROPERTY ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) Makes no changes to this subsection.

(b) Prohibits a governmental or private entity from taking private property through the use of eminent domain if the taking is not for a public use. Makes a conforming change.

(c) Provides that this section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for certain projects and purposes, including the operations of a common carrier pipeline, rather than a common carrier subject to Chapter 111 (Common Carriers, Public Utilities, and Common Purchasers), Natural Resources Code, and Section B(3)(b) (relating to the petroleum oil producing business in Texas), Article 2.01, Texas Business Corporation Act.

(d) and (e) Makes no changes to these subsections.

Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) Provides that this section applies only to an easement acquired by an entity for the purpose of a pipeline to be used for oil or gas exploration or production activities.

(b) Authorizes a property owner whose property is acquired through the use of eminent domain under Chapter 21 (Eminent Domain), Property Code, for the purpose of creating an easement through that owner's property to construct streets or roads, including gravel, asphalt, or concrete streets or roads, at any locations above the easement that the property owner chooses.

(c) Provides that the portion of a street or road constructed under this section that is within the area covered by the easement:

(1) is required to cross the easement at or near 90 degrees; and

(2) is prohibited from exceeding 40 feet in width, causing a violation of any applicable pipeline regulation, or interfering with the operation and maintenance of any pipeline.

(d) Requires the property owner to submit plans for the proposed construction to the owner of the easement at least 30 days before the date on which construction of an asphalt or concrete street or road that will be located wholly or partly in an area covered by an easement used for a pipeline is scheduled to begin.

Adds Subchapter B, as follows:

SUBCHAPTER B. PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS

Sec. 2206.051. SHORT TITLE. Authorizes this subchapter to be cited as the Truth in Condemnation Procedures Act.

Sec. 2206.052. APPLICABILITY. Provides that the procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity.

Sec. 2206.053. VOTE ON USE OF EMINENT DOMAIN. (a) Requires a governmental entity, before the governmental entity initiates a condemnation proceeding by filing a petition under Section 21.012 (Condemnation Petition), Property Code, to authorize the initiation of the condemnation proceeding at a public meeting by a record vote.

(b) Authorizes the adoption of a single ordinance, resolution, or order for all units of property to be condemned if the motion required by Subsection (e) indicates that the first record vote applies to all units of property to be condemned and the minutes of the governmental entity reflect that the first vote applies to all of those units.

(c) Requires that a separate record vote be taken for each unit of property if more than one member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated.

(d) Authorizes a governmental entity, for the purposes of Subsections (a) and (c), to treat multiple units of property as one unit if two or more units of real property are owned by the same person.

(e) Requires that the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, be made in a form substantially similar to the following: "I move that the (name of governmental entity) authorize the use of the power of eminent domain to acquire (describe the property) for (describe the public use)." Provides that the description of the property required by this subsection is sufficient if the description of the location of and interest in the property that the governmental entity seeks to acquire is substantially similar to the description that is or could properly be used in a petition to condemn the property under Section 21.012, Property Code.

(f) Authorizes the governing body of a governmental entity to adopt a single ordinance, resolution, or order by a record vote that delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity if a project for public use described by Section 2206.001(c)(3) (relating to water supply, wastewater, flood control, and drainage projects) will require the governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location.

(g) Provides that an ordinance, resolution, or order adopted under Subsection (f) is not required to identify specific properties that the governmental entity will acquire. Requires that the ordinance, resolution, or order identify the general area to be covered by the project or the general route that will be used by the

governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project.

Adds Subchapter C, as follows:

SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY; EXPIRATION OF AUTHORITY. (a) Provides that this section does not apply to an entity that was created or that acquired the power of eminent domain on or after December 31, 2012.

(b) Requires an entity, including a private entity, authorized by the state by a general or special law to exercise the power of eminent domain, to submit to the comptroller of public accounts (comptroller), not later than December 31, 2012, a letter stating that the entity is authorized by the state to exercise the power of eminent domain and identifying each provision of law that grants the entity that authority. Requires the entity to send the letter by certified mail, return receipt requested.

(c) Provides that the authority of an entity to exercise the power of eminent domain expires on September 1, 2013, unless the entity submits a letter in accordance with Subsection (b).

(d) Requires the comptroller, not later than March 1, 2013, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, the presiding officers of the appropriate standing committees of the senate and the house of representatives, and the Texas Legislative Council a report that contains the name of each entity that submitted a letter in accordance with this section and a corresponding list of the provisions granting eminent domain authority as identified by each entity that submitted a letter.

(e) Requires the Texas Legislative Council to prepare for consideration by the 84th Legislature, Regular Session, a nonsubstantive revision of the statutes of this state as necessary to reflect the state of the law after the expiration of an entity's eminent domain authority effective under Subsection (c).

SECTION 2. Amends Section 21.0111, Property Code, as follows:

Sec. 21.0111. New heading: DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) Requires an entity, rather than a governmental entity, with eminent domain authority that wants to acquire real property for a public use to disclose to the property owner at the time an offer to purchase or lease the property is made, by certified mail, return receipt requested, any and all appraisal reports produced or acquired by the entity relating specifically to the owner's property and prepared in the

10 years preceding the date of the offer, rather than all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer.

(b) Requires a property owner to disclose to the entity seeking to acquire the property, rather than the acquiring governmental entity, any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Requires that such disclosure take place not later than the earlier of the 10th day after the date of receipt of an appraisal report or the third business day before the date of a special commissioners hearing if an appraisal report is to be used at the hearing, rather than within 10 days of receipt of appraisal reports but no later than 10 days prior to the special commissioner's hearing.

(c) Prohibits an entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain from including a confidentiality provision in an offer or agreement to acquire the property. Requires the entity to inform the owner of the property that the owner has the right to discuss any offer or agreement regarding the entity's acquisition of the property with others, or keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter 552 (Public Information), Government Code.

(d) Creates this subsection from existing text. Makes conforming changes.

SECTION 3. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0113, as follows:

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) Requires an entity with eminent domain authority that wants to acquire real property for a public use to make a bona fide offer to acquire the property from the property owner voluntarily.

(b) Provides that an entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

SECTION 4. Amends Section 21.012, Property Code, as follows:

Sec. 21.012. CONDEMNATION PETITION. (a) Authorizes an entity with eminent domain authority, rather than the United States, this state, a political subdivision of this state, a corporation with eminent domain authority, or an irrigation, water improvement, or water power control district created by law, if the entity wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, to begin a condemnation proceeding by filing a petition in the proper court. Makes a conforming change.

(b) Requires that the petition include certain provisions, including that the petition state with specificity the public use for which the entity intends to acquire the property, rather than state the purpose for which the entity intends to use the property, and that the petition state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113. Makes nonsubstantive changes.

(c) Requires an entity that files a petition under this section to provide a copy of the petition to the property owner by certified mail, return receipt requested.

SECTION 5. Amends Section 21.014(a), Property Code, as follows:

(a) Requires the judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned to appoint three disinterested real property owners, rather than freeholders, who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. Requires the judge appointing the special commissioners to give preference to persons agreed on by the parties and to provide each party a reasonable period to strike one of the three commissioners appointed

by the judge. Requires, rather than authorizes, the judge to appoint a replacement if a person fails to serve as a commissioner or is struck by a party to the suit.

SECTION 6. Amends Section 21.015(a), Property Code, as follows:

(a) Requires the special commissioners in an eminent domain proceeding to promptly schedule a hearing for the parties at the earliest practical time but prohibits the special commissioners from scheduling a hearing to assess damages before the 20th day after the date the special commissioners were appointed. Requires the special commissioners to schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held. Makes a nonsubstantive change.

SECTION 7. Amends Section 21.016(b), Property Code, to require that notice of the hearing be served on a party not later than the 20th day, rather than the 11th day, before the day set for the hearing.

SECTION 8. Amends Section 21.023, Property Code, as follows:

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. Requires an entity with eminent domain authority to disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that the owner or the owner's heirs, successors, or assigns may be entitled to repurchase the property under Subchapter E or request from the entity certain information relating to the use of the property and any actual progress made toward that use; and the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.

Deletes existing text requiring disclosure in writing to the property owner that the owner or the owner's heirs, successors, or assigns are entitled to repurchase the property if the public use for which the property was acquired through eminent domain is canceled before the 10th anniversary of acquisition and the repurchase price is the fair market value of the property at the time the public use was canceled. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.025, as follows:

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.
(a) Requires an entity that is not subject to Chapter 552 (Public Information), Government Code, and is authorized by law to acquire private property through the use of eminent domain, notwithstanding any other law, to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) Provides that an entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. Requires that a request under this section contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Requires the entity to respond to a request in accordance with the Texas Rules of Civil Procedure (TRCP) as if the request was made in a matter pending before a state district court.

(d) Provides that exceptions to disclosure provided by this chapter and TRCP apply to the disclosure of information under this section.

(e) Provides that jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) Authorizes the court to award the requestor's reasonable attorney's fees incurred to compel the production of the information if the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section.

SECTION 10. Amends Section 21.042(d), Property Code, as follows:

(d) Requires the special commissioners, in estimating injury or benefit under Subsection (c), to consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but prohibits them from considering an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic. Defines "direct access" in this subsection.

SECTION 11. Amends Sections 21.046(a) and (b), Property Code, as follows:

(a) Requires, rather than authorizes, a department, agency, instrumentality, or political subdivision of this state to provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq., rather than the Federal Uniform Relocation Assistance Advisory Program, 23 U.S.C.A. 501, et seq. Makes a nonsubstantive change.

(b) Requires, rather than authorizes, this state or a political subdivision of this state, as a cost of acquiring real property, to pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

SECTION 12. Amends the heading to Section 21.047, Property Code, to read as follows:

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 13. Amends Section 21.047, Property Code, by adding Subsection (d), as follows:

(d) Requires the court, if a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113, to abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

(1) all costs as provided by Subsection (a) (relating to entitling special commissioners to adjudge the costs of an eminent domain proceeding and the allotment of additional costs); and

(2) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation.

SECTION 14. Amends Subchapter E, Chapter 21, Property Code, as follows:

**SUBCHAPTER E. New heading: REPURCHASE OF REAL PROPERTY FROM
CONDEMNING ENTITY**

Sec. 21.101. New heading: RIGHT OF REPURCHASE. (a) Entitles a person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, to repurchase the property as provided by this subchapter if the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use, no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date, or the property becomes

unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition. Deletes existing text providing that this subchapter, except as provided in Subsection (b), applies only to a real property interest acquired by a governmental entity through eminent domain for a public use that was cancelled before the 10th anniversary of the date of acquisition.

(b) Provides that, in this section, "actual progress" means the completion of two or more of the following actions:

(1) the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(3) the hiring of and performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan or plat that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(5) application for a state or federal permit to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(6) the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner's property was acquired; or

(7) for a governmental entity, the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described by Subdivisions (1)-(6) before the 10th anniversary of the date of acquisition of the property. Deletes existing text providing that this subchapter does not apply to a right-of-way under the jurisdiction of certain entities.

(c) Authorizes a district court to determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Sec. 21.102. New heading: NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED. Requires an entity, not later than the 180th day after the date the entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101, to send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing certain information, including an identification of the public use for which the property had been acquired and a statement that the public use was canceled before the property was used for the public use, no actual progress was made toward the public use, or the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition. Deletes existing text requiring a governmental entity not later than the 180th day after the date of the cancellation of public use for which real property was acquired through eminent domain from a property owner under Subchapter B (Procedure) to send a notice containing certain information.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) Authorizes a property owner or the owner's heirs, successors, or assigns, on or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, to request that the condemning entity make a determination and provide a statement and other relevant information regarding:

(1) whether the public use for which the property was acquired was canceled before the property was used for the public use;

(2) whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an itemized description of the progress made, if applicable; and

(3) whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) Requires that a request under this section contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Requires the entity, not later than the 90th day following the date of receipt of the request for information, to send a written response by certified mail, return receipt requested, to the requestor.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Requires the property owner or the owner's heirs, successors, or assigns, not later than the 180th day after the date of the postmark on a notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner or the owner's heirs, successors, or assigns is entitled to repurchase the property interest in accordance with Section 21.101,

to notify the entity of the person's intent to repurchase the property interest under this subchapter. Makes a nonsubstantive and a conforming change.

(b) Requires the entity, as soon as practicable after receipt of a notice of intent to repurchase under Subsection (a), to offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain, rather than for the fair market value of the property at the time the public use was cancelled. Provides that the person's right to repurchase the property expires on the 90th day after the date on which the entity makes the offer. Makes nonsubstantive and conforming changes.

SECTION 15. Amends Section 202.021, Transportation Code, by adding Subsection (j), as follows:

(j) Provides that the standard for determination of the fair value of the state's interest in access rights to a highway right-of-way is the same legal standard that is applied by the Texas Transportation Commission (TTC) in the:

(1) acquisition of access rights under Subchapter D (Acquisition of Property), Chapter 203 (Modernization of State Highways; Controlled Access Highways); and

(2) payment of damages in the exercise of the authority, under Subchapter C (Control of Access), Chapter 203, for impairment of highway access to or from real property where the real property adjoins the highway.

SECTION 16. Amends Section 54.209, Water Code, as follows:

Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. Prohibits a district from exercising the power of eminent domain outside the district boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by Section 49.462 (Definitions);

(3) an exclusive easement through a county regional park; or

(4) a site or easement for a road project.

Deletes existing text providing an exception under Subdivision (2). Deletes existing text prohibiting a district from exercising the power of eminent domain outside the district boundaries to acquire a site for a trail on real property designated as a homestead as defined by Section 41.002 (Definition of Homestead), Property Code. Makes conforming changes.

SECTION 17. (a) Repealer: Section 552.0037 (Certain Entities Authorized to Take Property Through Eminent Domain), Government Code.

(b) Repealer: Section 21.024 (Production of Information by Certain Entities Considered to be Critical Infrastructure), Property Code.

SECTION 18. Makes application of Chapter 2206, Government Code, and Chapter 21, Property Code, as amended by this Act, prospective.

SECTION 19. Makes application of the change in law made by this Act to Section 202.021, Transportation Code, prospective.

SECTION 20. Makes application of the changes in law made by this Act to Section 54.209, Water Code, prospective.

SECTION 21. Effective date: September 1, 2011.

Executive Committee

Date: 02/16/2011

Executive Session: Whooping Crane Lawsuit

Submitted For: Karen Bishop

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

**EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071
FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V.
SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

Presenter

Steve Raabe and David Ross

Estimated Presentation Time: 10 minutes

Discussion

Executive Committee

Date: 02/16/2011

Whooping Crane Lawsuit Briefing

Submitted For: Karen Bishop

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Presenter

Steve Raabe and David Ross

Estimated Presentation Time: 10 minutes

Recommendation

Motion to be crafted, if necessary, after Board discussion.

Discussion

Vote

Date: 02/16/2011

GM's Report / Items for Future Consideration / Next Meeting Date

Submitted For: Suzanne B. Scott

Submitted By: Lupe Sanchez

Division: Executive Offices

Information

13.

CAPTION

GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:

- **UPCOMING EVENTS CALENDAR,**
- **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
- **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

Presenter

Suzanne B. Scott

Estimated Presentation Time: 10 minutes

Discussion

Information

14.

CAPTION

ITEMS FOR FUTURE CONSIDERATION

Presenter

Mr. Oehlke, Committee Chair

Estimated Presentation Time: 5 minutes

Discussion

Information

15.

CAPTION

NEXT MEETING DATE

Presenter

Mr. Oehlke, Committee Chair

Estimated Presentation Time: 5 minutes

Unless otherwise decided by the Committee, the next Executive Committee meeting will be Wednesday, March 9, 2011, at 2:00 p.m.

Discussion

Executive Committee

Item #: 16.

Date: 02/16/2011

Adjourn

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

ADJOURN

Presenter

Mr. Oehlke, Committee Chairman
