

December 8, 2023

DETERMINATION OF NO EFFECT

TO ALL POTENTIALLY INTERESTED AGENCIES:

Pursuant to the environmental assessment requirements of 31 Texas Administrative Code (TAC) § 363.14 and 363.16, the Texas Water Development Board (TWDB) staff has determined that proposed action identified below may be exempted from formal environmental review requirements:

Canyon Regional Water Authority, Caldwell County, Texas
Hays-Caldwell Water Treatment Plant Improvement Project
Texas Water Development Fund, Project No. 21767
Total Project Cost: \$5,000,000
Loan No. L1000609

The Canyon Regional Water Authority (Authority) is proposing to use a \$5,000,000 Texas Water Development Fund loan to design and construct improvements for the Hays Caldwell Water Treatment Plant (WTP) Improvements project (Phase 1 of 2). Phase 1 improvements within the existing Hays Caldwell WTP were reviewed under a TWDB Determination of No Effect (DNE), dated March 16, 2017, which is now greater than 5 years old. This DNE is being issued for both the Hays-Caldwell WTP Improvement Project (Phase 1) and San Marcos River Intake Replacement (Phase 2). Although Phase 2 is no longer financed through TWDB as of January 2023, because the projects are interconnected. Supplemental agency coordination was conducted to update the DNE; address potential impacts of the proposed river intake structure, and to address the proposed listing of an aquatic mussels, including the Guadalupe orb (*Cyclonaias necki*), Guadalupe fatmucket (*Lampsilis necki*), or false spike (*Fusconaia mitchelli*). The 2017 DNE review did not include an evaluation of these species because they were not petitioned for listing as endangered at that time. No impacts to protected species are expected as a result of the proposed project.

Project Description

Improvements to the Hays County WTP (Phase 1) includes the following components: (1) ozone production facility; (2) new ozone system and electrical building; (3) new 1.0-million-gallon ground storage tank (GST); (4) repair/replacement of existing 1.0-million-gallon ground storage tank; (5) replacement of existing raw water pump station; and (6) site, piping and electrical improvements.

Our Mission

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Additional project scope elements to be funded by the Authority's bond sales were added to the project scope in 2021: (1) construction of decant ponds and decant pump station; (2) installation of a new clarifier; (3) addition of flow split structure; (4) addition of high service pumps to the High Service Pump Station; (5) relocation and implementation of new chemical storage and chemical feed skid systems, and (6) various civil, yard piping, electrical and instrumentation control improvements associated with the project.

Phase II of the project components which are not currently financed through TWDB include: (1) a new intake structure and screen; (2) 250 linear feet of intake pipe; and (3) 26-inch diameter line that will hydraulically connect the intake structure screen to the pump station wet well. The intake pipe will be installed using trenchless technology such as boring or horizontal directional drilling to minimize disturbance to the San Marcos River and its banks. A 38 by 41-foot construction impact area within the San Marcos River is anticipated, approximately 0.9 mile west of Martindale, Caldwell County, Texas. The project also includes temporary dewatering of a small portion of the San Marcos River during construction.

Agency Coordination

To ensure that there will be no adverse environmental impacts associated with the construction, the Authority re-coordinated with three regulatory agencies, the Texas Historical Commission (THC), U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service, and Texas Parks and Wildlife Department (TPWD). The respondents and summary of the results of coordination are described below.

Texas Historical Commission

In accordance with Section 106 of the National Historic Preservation Act; Antiquities Code of Texas; and other applicable regulations, THC SHPO staff concurred with Authority correspondence dated January 18, 2018, that WTP improvements within the existing facility will have no direct impacts to cultural resources/historic properties are expected because of the project (THC Tracking Nos. 201805659, Permit No. 2296). The THC SHPO staff concurred with Authority correspondence dated September 14, 2018, that WTP improvements within the existing facility will have no direct impacts to cultural resources/historic properties are expected because of the project (THC Tracking Nos. 201812647).

United States Army Corps of Engineers

In accordance with Section 404 of the Clean Water Act; and Section 10 of the Rivers and Harbors Act of 1899, the USACE, Fort Worth District Office, Regulatory Branch staff were given the opportunity to review the proposed project. The raw water intake that would result in temporary impacts to the San Marcos River (a navigable waterway) that may

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qualify as waters of the United States under the jurisdiction of the USACE. Additionally, the construction of the raw intake may require a temporary staging area on the other side of the river. The raw water intake will use trenchless method for pipeline installation to minimize disturbance to the San Marcos River and aquatic resources or species.

On December 1, 2020, USACE determined the discharge of dredged or fill materials into waters of the United States associated with this project appears to qualify for Nationwide Permit 39 for Commercial and Institutional Developments. (Project No. SWF-2018-00320, December 1, 2020), which expired in March 2022.

On October 11, 2022, SWCA requested recertification of the expired USACE permit. On November 29, 2022 USACE responded with a request for a biological assessment (BA) for an aquatic mussel, Guadalupe Orb (*Cyclonaias necki*), which is proposed for listing, has proposed critical habitat in the project vicinity.

In a Biological Assessment dated May 2023, the SWCA field team reported that there were no native freshwater mussels within the project area. However, the project has a single proposed Waters of the U.S. crossing that required notification and review under Nationwide Permit General Condition 18 related to Endangered Species. The project crosses potential habitat of three species that are proposed for listing as endangered under the Endangered Species Act. Based on the BA, the project will not affect the Guadalupe orb (*Cyclonaias necki*), the Guadalupe fatmucket (*Lampsilis necki*), or the false spike (*Fusconaia mitchelli*). No designated or proposed critical habitat units occur within the project area. The purpose of the BA is to support a federal interagency consultation (if necessary) between the U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS) in accordance with Section 7(a)(2) of the Endangered Species Act (ESA). The project is not anticipated to impact the three aquatic species. No designated or proposed critical habitat units occur within the project area.

On July 3, 2023, the USACE reviewed this project under the pre-construction notification procedures of Nationwide Permit General Condition 32 Federal Register, Vol. 86, No. 8, Wednesday, January 13, 2021. The USACE determined the discharge of dredged or fill materials into waters of the United States associated with this project appears to qualify for Nationwide Permit 58 for Utility Line Activities for Water and Other Substances. USACE verification for the construction of this activity under this nationwide permit is valid until March 14, 2026, unless prior to that date the nationwide permit is suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of the nationwide permit on a regional or national basis. The USACE will issue a public notice announcing the changes when they occur. Furthermore, activities that have commenced, or are under contract to commence, in reliance on a nationwide permit will remain authorized provided the activity is completed within 12 months of the date of the nationwide permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with

33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). Continued confirmation that an activity complies with the specifications and conditions, and any changes to the nationwide permit, is the responsibility of the permittee.

The USACE review of this project also addressed its effects on threatened and endangered species. Based on the information provided, USACE determined this project will not affect any species listed as threatened or endangered by the USFWS, or critical habitat, within the permit area. The Authority is responsible for meeting the requirements of General Condition 18 on endangered species.

Texas Parks and Wildlife Department

The TPWD Wildlife Habitat Assessment Program staff reviewed the project per the Texas Parks and Wildlife Code (TPW Code) (Chapters 12, 64, 67, and 68) and responded on September 6, 2011 (TPWD Project No. 40607). SWCA Environmental Consultants on behalf of the Authority responded regarding plans to incorporate TPWD recommendations, where applicable. The TPWD recommendations that are related to any regulatory requirements are reflected in the environmental conditions of this environmental finding.

Floodplain Administrator

The project is partially within a 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA). Projects involving construction in the 100-year floodplain, including replacement or borings, require a floodplain development permit from the local floodplain administrator prior to construction in the 100-year floodplain.

Decision to Grant a Determination of No Effect

The decision to grant a Determination of No Effect is allowed because the specified project elements should not cause significant adverse impacts to the quality of the environment. Documentation supporting this determination is on file at the TWDB.

This determination shall be revoked if it is found that the project no longer meets the requirements for a categorical exclusion from a full environmental review as a result of changes in the project;

- (1) the project involves extraordinary circumstances as described in 31 TAC § 363.14:
or
- (2) the project may violate or has violated federal, state, local, or tribal laws.

The proposed project must comply with the following special and standard environmental conditions:

Special Environmental Condition

- Consistent with Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, the proposed project will comply with the terms and conditions of United States Army Corps of Engineers Nationwide Permit 58 for Utility Line Activities for Water and Other Substances (USACE No. SWF-2018-00320).
- Consistent with the Endangered Species Act of 1973, as amended, the Migratory Bird Treaty Act, and Texas Wildlife Code Chapter 64 (Texas Parks and Wildlife Department Project No. 40607), vegetation clearing must be excluded during the general bird nesting season, March 15 through September 15, to avoid adverse impacts to breeding birds. If vegetation clearing during this time is unavoidable, the area proposed for disturbance will be surveyed by a qualified biologist during the nesting period to identify occupied nests. If occupied nests are observed during surveys, a vegetation buffer area of no less than 150 feet in diameter will remain around the nest until all young have fledged. State and federal regulations as currently interpreted do not permit incidental take.
- Consistent with the Flood Insurance Reform Act of 2004, federal Executive Order 11988, Texas Water Code Section 16.315, and local floodplain development ordinances, a floodplain development permit will be obtained from the local floodplain administrator prior to construction in a Special Flood Hazard Area.
- The General Land Office will be contacted regarding permitting for the water intake structure prior to its construction.

TPWD Recommendations/Conditions for Projects with Potential Habitat of Protected Species or with Statutory Considerations

- As per an agreement with the Texas Parks and Wildlife Department (TPWD), Wildlife Habitat Assessment Program (TPWD Project No. 40607). The following measures will be followed in order to protect the San Marcos River and its aquatic species and resources.
 - The water intake point is proposed to be located in an area that does not provide suitable habitat for federally listed endangered species. Construction impacts will be minimized as described below under recommendations for Aquatic Resources and Aquatic Species in the approved Aquatic Resource Relocation Plan, dated March 2023.
 - Construction impacts aquatic resources and aquatic Species will be *minimized by using recommendations for in the approved Aquatic Resource Relocation Plan, dated March 2023.*

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- In order to comply Texas Parks and Wildlife Code, Sections 12.0011(b)(1) and 12.301 A permitted biologist will be engaged to relocate native aquatic resources in conjunction with an approved TPWD permit to Introduce any Fish, Shellfish, or Aquatic Plants into Public Waters (AIP) and approved AARP.
 - The Applicant will employ a qualified biologist to conduct pre-construction surveys of the project area prior to initiating construction activities that may affect the San Marcos River.
 - Personnel and equipment access to the San Marcos River will be limited to the minimum necessary to conduct temporary dewatering activities and construction of the intake structure. Riparian vegetation impacts will be minimized to the extent feasible and will not be driven over when extremely wet. Heavy equipment will not be stored in riparian vegetation areas. Protective mats will be utilized in vegetated areas during construction to reduce soil and root disturbance. Formal approval of the AARP by TPWD will be obtained prior to initiating dewatering, maintenance, or construction related activities.
 - Double silt fences will be employed along the San Marcos Riverbank to avoid increasing the turbidity of the river.
 - A contingency plan will be in place to address potential accidental stream disruptions or accidental release of tunneling material to project-area waters. If accidental release of tunneling material should occur, the Texas Parks and Wildlife Region 2 Kills and Spills Team should be contacted immediately.
 - If equipment comes in contact with inland streams or water bodies during construction, such as at temporary crossings, and in order to minimize the risk of transporting zebra mussels or other aquatic invasive species on construction equipment and materials, the *TPWD Clean/Drain/Dry Procedures and Zebra Mussel Decontamination Procedures for Contractors Working in Inland Public Waters* will be adhered to for equipment and materials entering or leaving waters at the project site.
- The following measures will be implemented as protective measures for the state-listed timber rattlesnake (*Crotalus horridus*):
 - The Applicant will inform project employees and contractors of the potential for timber rattlesnake to occur in the project area. Personnel will be instructed to avoid contact with snakes if encountered and allow all native snakes to leave the project area unharmed.
 - The Applicant will inform project employees and contractors to maintain low vehicle and equipment speeds in the project area to help avoid harm to the

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state-listed threatened timber rattlesnake and other native wildlife that may occur.

- The Applicant will inform project employees and contractors that state-listed threatened species and other wildlife observed during construction should be allowed to safely leave the site or be relocated by a permitted individual to a nearby area with similar habitat that would not be disturbed by construction.
- Disturbed areas in riparian zones will be reseeded with native grasses and forbs.
- The length of trenches left open at any given time during construction will be minimized. Trenching/backfilling activities will be kept close together. Trenches and excavation areas will be covered overnight and/or inspected every morning or if left open longer than two daylight hours to ensure no wildlife species have been trapped. If trenches cannot be backfilled the day of initial trenching, then escape ramps will be installed every 300 feet, in the form of short lateral trenches or wooden planks sloping to the surface at an angle of less than 45 degrees, at a ratio one horizontal foot for every one foot of depth.
- If state-listed species are encountered, the animals will be allowed to leave the area safely. State-listed species will be handled only by persons with authorization obtained through the Texas Parks and Wildlife Department.
- For slope stabilization and revegetation, no-till drilling, hydromulching (avoiding plastic ingredients), and/or hydroseeding will be used rather than erosion control blankets or mats, which pose an entanglement hazard to wildlife. If erosion control blankets or mats cannot be avoided, products that contain no netting or loosely woven natural fiber netting will be used, avoiding any type of plastic netting.
- A speed limit will be observed (25 miles per hour, or less) within the project site, to allow personnel to see protected wildlife in the vehicle path and avoid harming them.
- The judicious placement of sediment control fence will be used to exclude protected wildlife from the construction area. An exclusion fence will be buried at least six inches and be at least 24 inches high. The exclusion fence will be maintained for the project's life and removed after construction is completed and the disturbed site is revegetated. For linear project components, such fencing will be installed and maintained for only the active construction area. Construction personnel will be advised to examine the inside of the exclusion area daily to determine if any wildlife species have been trapped inside the area of impact and provide safe egress opportunities prior to initiation of construction activities.

Standard Environmental Conditions¹

- No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and impacts on known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 Texas Administrative Code Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission. The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the Owner.

- No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.

If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U. S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the encounter area until authorized by the Owner.

¹ TWDB Supplemental Contract Conditions and Instructions for Construction Services for Projects Funded through State Programs– November, 2018, [TWDB-0552](#)

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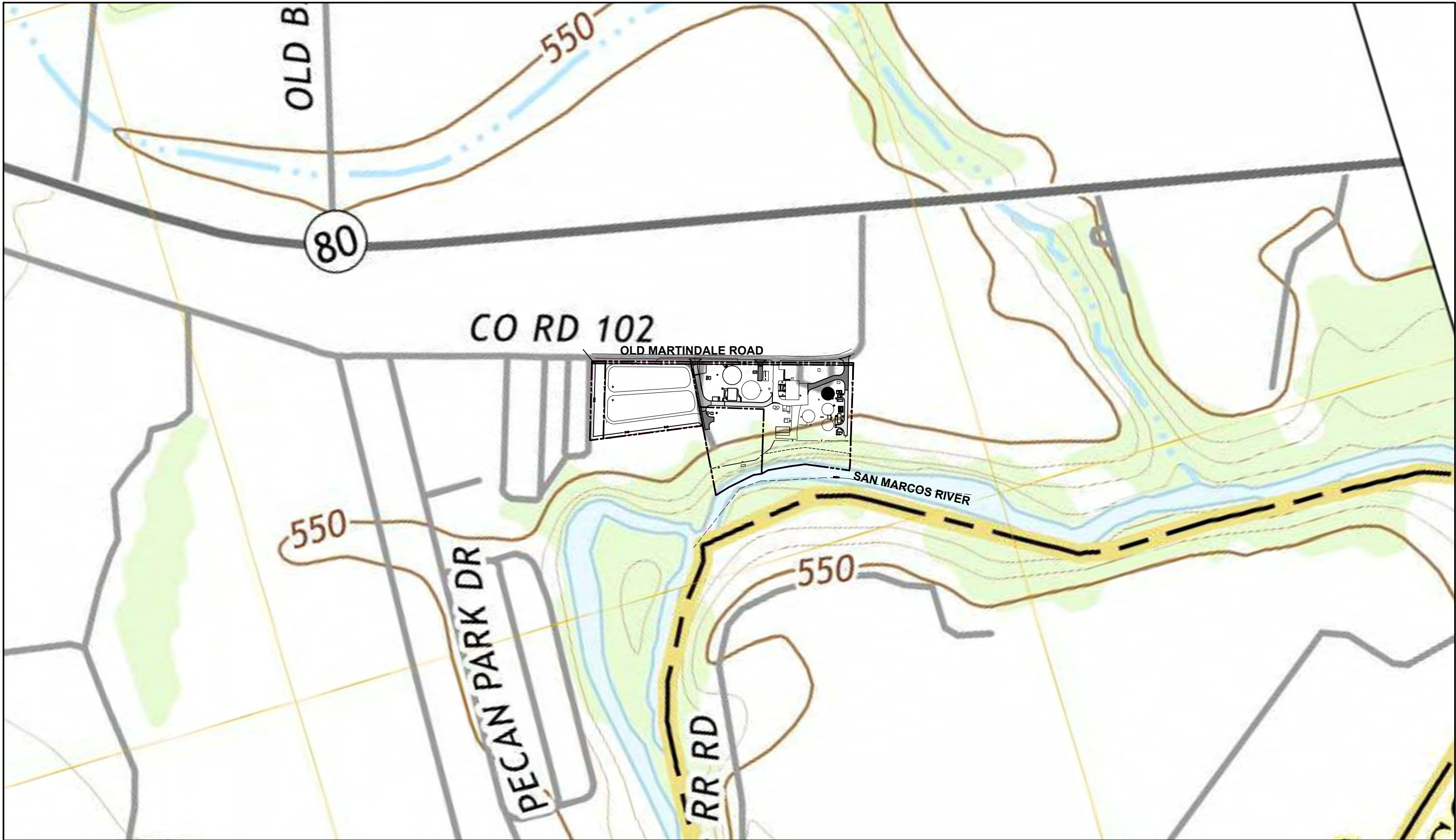
Comments regarding this determination may be submitted to the Director of Regional Water Project Development, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or via email at RWPD-Environmental@twdb.texas.gov.

Sincerely,

T. Clay Schultz, Ph.D., Director
Regional Water Project Development

Enclosure

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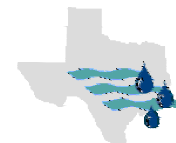


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0 200' 400'
22"x34" SCALE: 1"=200'
11"x17" SCALE: 1"=400'



CANYON REGIONAL WATER AUTHORITY
HAYS/CALDWELL WATER TREATMENT PLANT IMPROVEMENTS
ENLARGED USGS EXHIBIT



CANYON REGIONAL
water authority