



Memorandum of Understanding

Sole Source Aquifers – Safe Drinking Water Act

This memorandum of understanding (MOU) between the Texas Department of Transportation (TxDOT) and the Environmental Protection Agency (EPA) describes the consultation and review process for Federal-aid highway projects which may affect water quality in designated sole source aquifers. This MOU is pursuant to Section 1424(e) of the Safe Drinking Water Act (PL 93-523).

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ENVIRONMENTAL PROTECTION AGENCY, REGION 6
AND
THE TEXAS DEPARTMENT OF TRANSPORTATION
REGARDING
EPA'S REVIEW OF PROJECTS POTENTIALLY AFFECTING THE EDWARDS AQUIFER**

This Memorandum of Understanding ("MOU") is entered into by and between the Environmental Protection Agency, Region 6 ("EPA Region 6") and the State of Texas, acting by and through its Texas Department of Transportation ("TxDOT").

Whereas, §1424(e) of the Safe Drinking Water Act establishes the sole source aquifer program;

Whereas, EPA has designated the Edwards Aquifer as a sole source aquifer under §1424(e) of the Safe Drinking Water Act through two separate designations;

Whereas, first, in 1975, EPA designated that part of the Edwards Aquifer that exists in the San Antonio area ("Edwards I"), consisting of the Edwards I Streamflow Source Area and the Edwards I Recharge Zone, both of which are shown on **Exhibit A** (small scale) and **Exhibit B** (large scale);

Whereas, second, in 1988, EPA designated that part of the Edwards Aquifer that exists in the Austin Area ("Edwards II"), consisting of the Edwards II Streamflow Source Area, the Edwards II Recharge Zone, and the Edwards II Artesian Zone, all three of which are shown on **Exhibit A** (small scale) and **Exhibit C** (large scale);

Whereas, EPA has promulgated rules regarding "Review of Projects Affecting the Edwards Underground Reservoir, A Designated Sole Source Aquifer in the San Antonio, Texas Area," codified at 40 C.F.R. Part 149, Subpart B ("EPA's Edwards I rules");

Whereas, EPA's Edwards I rules, at 40 C.F.R. §149.103, require federal agencies (in this case, TxDOT as a delegee) to maintain lists of projects that require an environmental impact statement ("EIS") under the National Environmental Policy Act ("NEPA") and are located within the Edwards Aquifer I Streamflow Source Area and the Edwards I Recharge Zone, and revise the list at regular intervals and submit it to EPA;

Whereas, EPA's Edwards I rules, at 40 C.F.R. §149.104, also allow any person to submit a petition requesting the EPA Regional Administrator to review any particular project, regardless of whether it is the subject of an EIS, to determine if such project may contaminate the aquifer;

Whereas, EPA's Edwards I rules, at 40 C.F.R. §149.105 & 149.106, require the EPA Regional Administrator to review all federally funded EIS projects that may have an impact on ground water quality, and give the EPA Regional Administrator discretion to review non-EIS projects, either in response to a petition from the public or on his or her own motion, in which case he or she is required

to provide written notice to the federal agency (in this case, TxDOT as a delegee) of his decision to undertake a review;

Whereas, in 1997, EPA Region 6 and Federal Highway Administration ("FHWA") Region 6 voluntarily entered into a memorandum of understanding regarding EPA's review of projects potentially affecting sole source aquifers in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas under the sole source aquifer program ("1997 FHWA-EPA MOU");

Whereas, the Texas Commission on Environmental Quality has established regulations, known as the "Edwards Aquifer Rules" and codified at 30 Tex. Admin. Code Chapter 213, that are designed to protect water quality in the Edwards Aquifer;

Whereas, TxDOT projects are required to comply with applicable provisions of the Edwards Aquifer Rules, including the requirement to prepare a project-specific water pollution abatement plan, as applicable; and

Whereas, FHWA has delegated to TxDOT its responsibilities to comply with various federal environmental laws, including the Safe Drinking Water Act, with respect to highway projects in Texas by a memorandum of understanding dated December 16, 2014 ("FHWA-TxDOT NEPA Assignment MOU").

Now, therefore, EPA Region 6 and TxDOT agree as follows with respect to FHWA-funded projects for which TxDOT has been delegated responsibility under the FHWA-TxDOT NEPA Assignment MOU:

1. For federal projects for which TxDOT has authority under the FHWA-TxDOT NEPA Assignment MOU, TxDOT and EPA Region 6 will follow the process detailed below.

2. TxDOT will submit for EPA Region 6's review any federally funded TxDOT project that **(a)** is partially or wholly located within the boundary of the EPA-designated Edwards I Streamflow Source Area, Edwards I Recharge Zone, Edwards II Streamflow Source Area, or Edwards II Recharge Zone; **(b)** is the subject of an Environmental Assessment (EA) or EIS; and **(c)** consists of one or more of the following project types (which are the four types of projects that normally require an EIS according to the FHWA's rules at 23 CFR §771.115(a)):

- a. A new controlled access freeway.
- b. A highway project of four or more lanes on a new location.
- c. Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way.
- d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

TxDOT may, at its discretion, submit for EPA Region 6's review, any other federally funded TxDOT project for which TxDOT determines such review is appropriate. Further, nothing in this MOU affects EPA Region 6's authority under 40 C.F.R. §149.102 to review any other specific project or project(s) that EPA Region 6 considers may potentially contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

3. A map showing the boundaries of the EPA-designated Edwards I Streamflow Source Area, Edwards I Recharge Zone, Edwards II Streamflow Source Area, and Edwards II Recharge Zone is attached as **Exhibit A** (small scale). Large scale maps showing these areas are attached as **Exhibit B** and **Exhibit C**. The boundaries of these zones and areas are also shown on EPA's interactive map of sole source aquifers, which is accessible on-line at <https://www.epa.gov/dwssa>. An additional zone, the Edwards II Artesian Zone, is depicted both on **Exhibit A** and **Exhibit C**, and on EPA's interactive map of sole source aquifers; however, this MOU does not apply to projects with the Edwards II Artesian Zone.

4. For any project that meets the conditions set forth above, TxDOT will provide to EPA Region 6 written notice of the availability of the draft EIS or draft EA for the project and either a paper or electronic copy (e.g., flash drive, CDs, etc.) of the draft EIS or draft EA on or around the same time the draft EIS or draft EA is made available for public review.

5. TxDOT will provide the notice described above by mailing it to the following address (or an alternative mailing address provided by EPA Region 6):

Mr. Omar T. Martinez
Sole Source Aquifer Coordinator
Ground Water/Underground Injection Control Section
Mail Code: 6WQ-SG

USEPA Region 6
1445 Ross Avenue
Suite 1200
Dallas, TX 75202

6. EPA Region 6 intends to provide any written comments to TxDOT within 45 calendar days of receiving a notice of availability as described above. However, no assumption of a determination of a lack of impacts can be assumed if EPA is unable to complete its review within that timeframe.

7. The process set forth above satisfies the requirement at 40 C.F.R. §149.103 to submit a list of EIS projects to EPA at regular intervals.

8. This MOU is entered into in accordance with EPA's sole source aquifer program. It does not modify or pertain to any other EPA programs.

9. Coordination under this MOU will preclude the requirements of the 1997 FHWA-EPA MOU with respect to any FHWA-funded projects for which TxDOT has assumed responsibility under the FHWA-TxDOT NEPA Assignment MOU.

10. Nothing in this MOU shall be construed as limiting or altering in any way EPA's authority to review projects and make determinations as provided in EPA's Edwards I rules or under Section 1424(e) of the Safe Drinking Water Act.

In witness thereof, the parties hereto have caused this MOU to be duly executed in duplicate as of the date of the last signature written below.

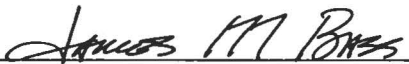
EPA REGION 6



Anne L. Idsal
Regional Administrator
Environmental Protection Agency, Region 6

Dated: 6/18/18

STATE OF TEXAS



James Bass
Executive Director
Texas Department of Transportation

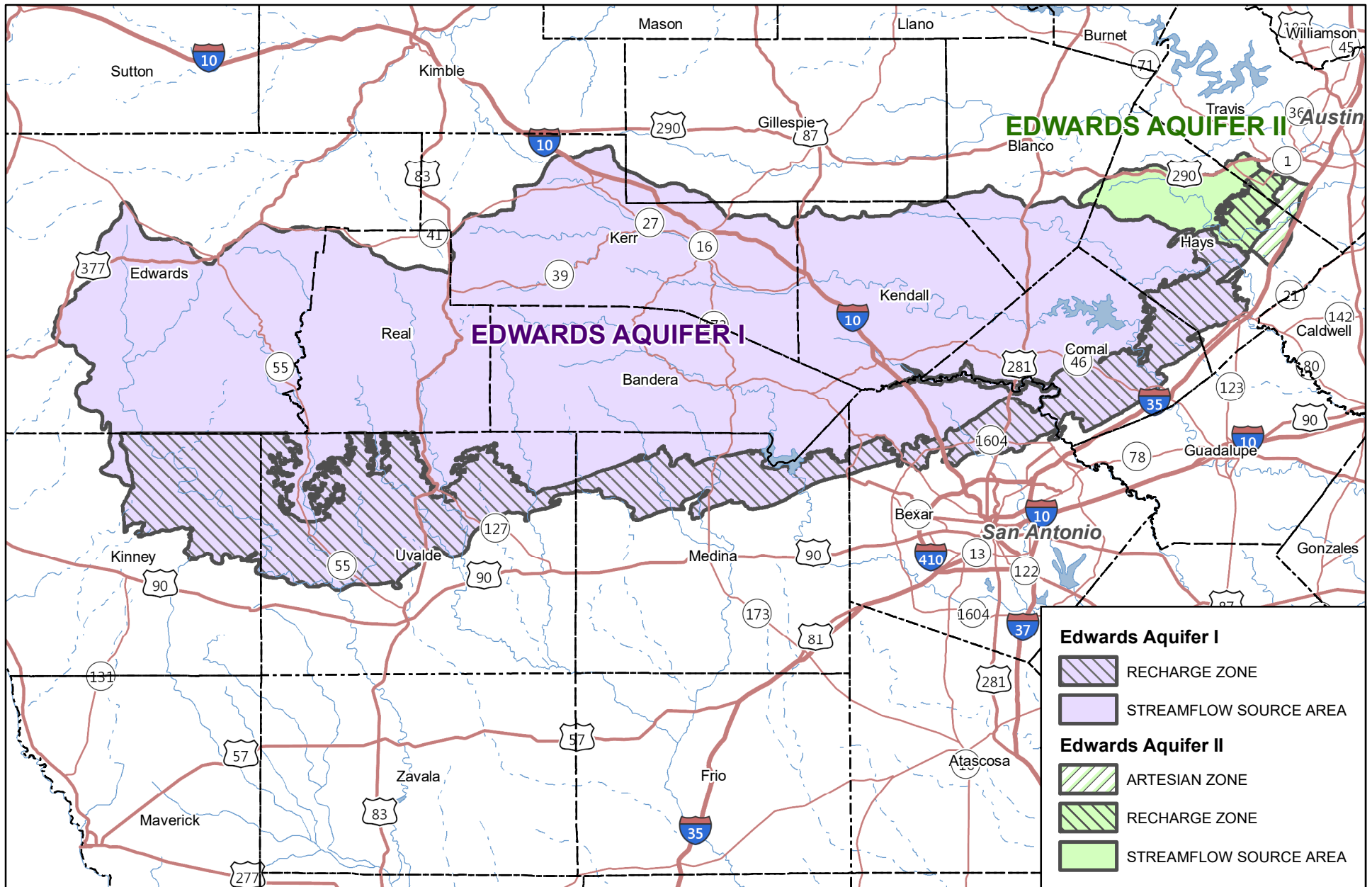
Dated: 5/25/18

EXHIBIT A

MAP OF EPA'S

EDWARDS AQUIFER I AND II SOLE SOURCE AQUIFER AREAS

(small scale)



Sole Source Aquifers

Edwards Aquifer I and II

0 5 10 20 30 40 Miles



Dallas, TX
February 13, 2018

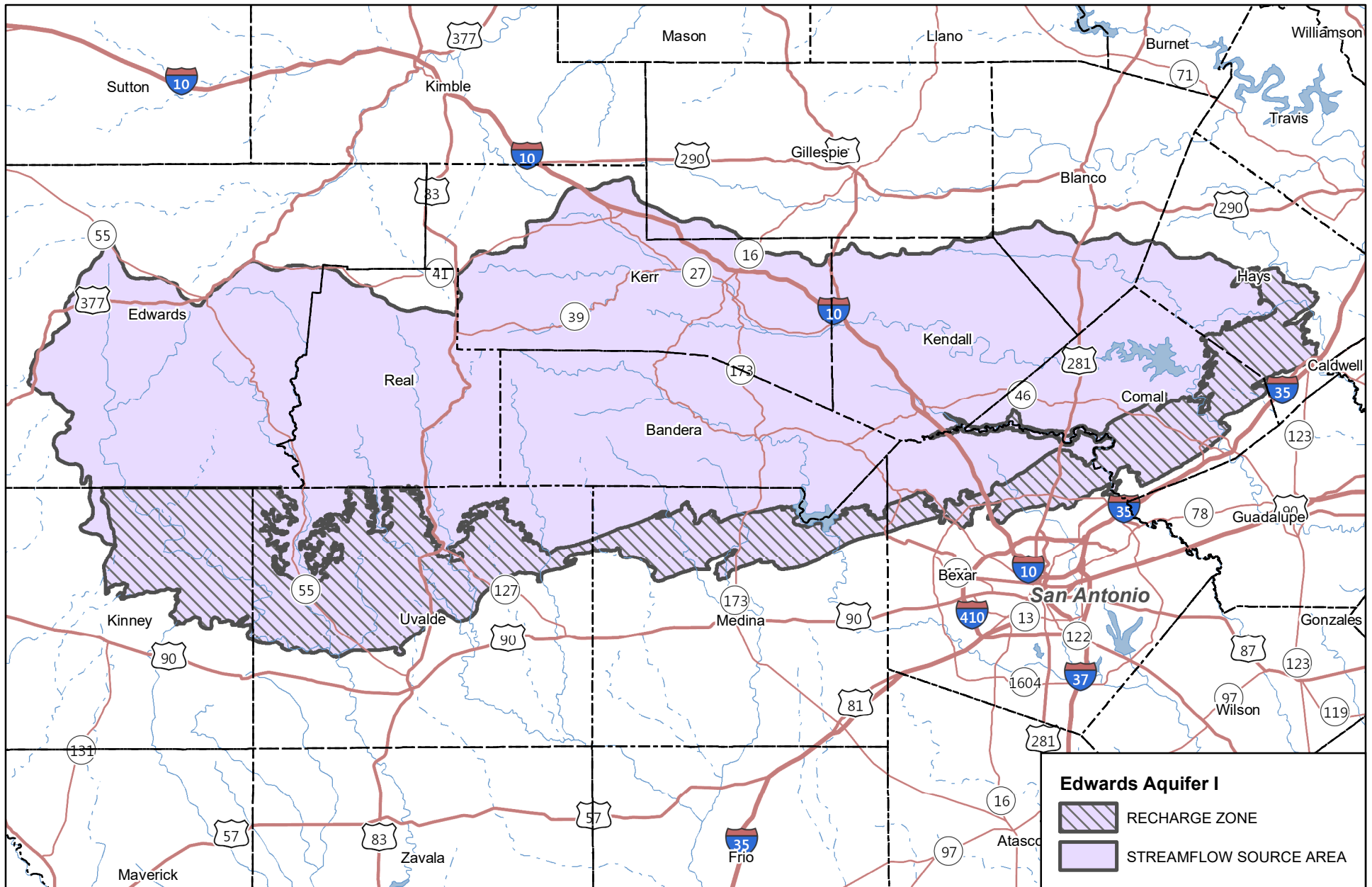
Surface Water
EPA Region 6 Team

EXHIBIT B

MAP OF EPA'S

EDWARDS AQUIFER I SOLE SOURCE AQUIFER AREA

(large scale)



Edwards Aquifer I

0 4.75 9.5 19 28.5 38 Miles



Dallas, TX
February 13, 2018

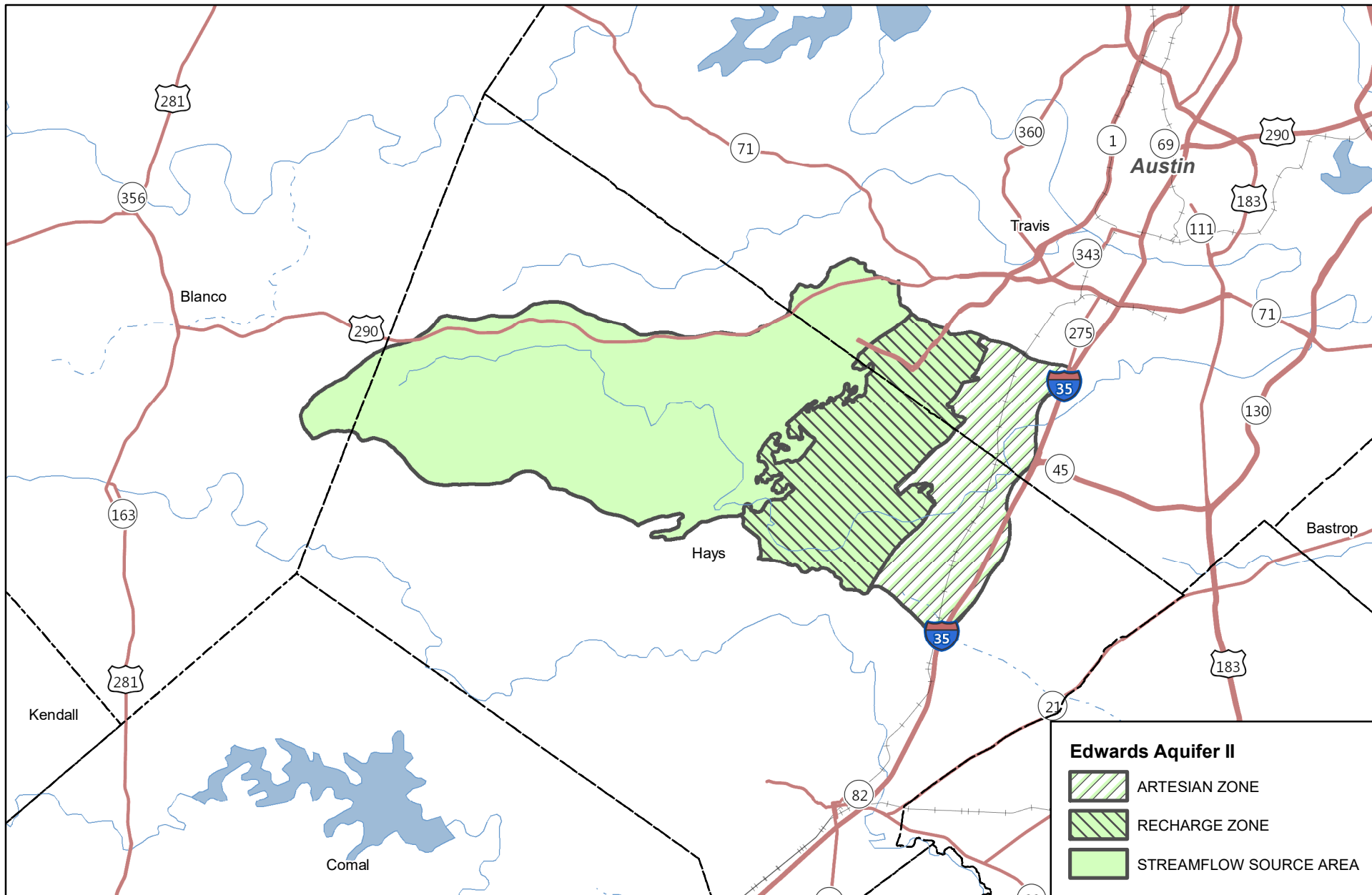
Surface Water
Team
EPA Region 6

EXHIBIT C

MAP OF EPA'S

EDWARDS AQUIFER II SOLE SOURCE AQUIFER AREA

(large scale)



Edwards Aquifer II

Dallas, TX
February 13, 2018

Surface Water
Team
EPA Region 6