PLUM CREEK CONSERVATION DISTRICT
Easement Use Consideration Statement
December 20th, 2022

General Information

From time to time, Plum Creek Conservation District ("The District") has received requests for "approval" of certain projects that are in the planning stages for construction or development in the area of the District's easements or near the Project Sites (or "Lakes") that the District maintains under Agreements between the District and the Natural Resources Conservation Service. The purpose of this Statement is not to address every project under consideration by a landowner finding themselves is that circumstance but, rather, to outline the factors that the District takes into account when it receives such a request from a landowner. The goal is to set out the District's position on various types of requests while stating that this Statement still allows individuals to present a particularized proposal and ask for input or thoughts from the District. This Statement will contain several sections as follows:

1. Introduction and general rules.
2. Subdivision plat approval requests.
3. Easement modification requests.
4. Buildings of structures of various types.
5. Excavation or fill requests.
6. Livestock and fencing.
7. Use of the "works of improvement" or easement areas at the various sites.
8. Additional water flow or pollution from stormwater drainage.
9. Easement descriptions.

1. Introduction and General Rules.

Plum Creek Conservation District ("the District") is a political subdivision of the State of Texas created by a special act passed by the Texas Legislature. The original purpose of the District was to act as the primary local sponsor for long term maintenance of several small dams that were designed and constructed by what is now the National Resources Conservation Service ("NRCS") under a Federal Statute: The Small Watershed Protection Act. One of the first duties after the District was formed was to acquire easements that were to be used for the construction of small dams in the Plum Creek Watershed in Hays and Caldwell Counties in Texas. The dams were then designed and constructed by NRCS under the provisions of the Federal Act, PL 83-566. The general location of the dams was described in a "Small Watershed Work Plan" that originated with NRCS.

Ultimately there were two work plans. One was for the upper part of the watershed and the other for the lower part. Eventually the District acquired easements for the dams to be constructed and water to be impounded upstream from the location of the dams.

The District, as the Primary Local Sponsor, operates the dams under Agreements with the National Resources Conservation Service ("NRCS") imposing obligations stated in various Agreements to operate and maintain certain facilities that were constructed by NRCS under the Small Watershed Protection Act about 50 years ago.

As "Primary Local Sponsor" the District, was required to obtain easements that would allow the NRCS Dams and other "works of improvement" to be constructed. Generally and while there can be specific statements in a particular easement that set out use of the land covered by the easement's terms, the easements recite that the landowner in an area covered by one of those easements has the ability to make any use of the property burdened by the easement that does not interfere with the District's ability to make use of the easement.

Under Texas Law an easement describes the rights of a party to use property that is owned by another party. The easement terms are considered to be "primary" so the underlying landowner has the duty to avoid doing anything on the property in the area covered by an easement that would interfere with the easement owner's right of use as described in the terms of the easement. Because the purpose of the easement is to allow the construction, maintenance, operation, and even the alteration of the various "works of improvement" in the Small Watershed Protection Project, when a request is received the District has to understand exactly what is proposed and then determine whether there is anything in the proposal that would interfere with the District's rights under the terms of the Easement for the particular tract involved.

Because the dams and other "works of improvement" were designed by NRCS and the duties of the District are described in Agreements between the District and NRCS, and because the District does not have its own engineering staff to evaluate whether some request for construction or a change in the area that may be in an easement or impacted by the operation of a dam, the first action taken by the District, after an initial determination about whether there is something planned that may impact the operation of a particular dam, is to gather information about the proposal and then refer that information to NRCS for evaluation.

2. Subdivision Plat Approval Requests.

Plum Creek Conservation District is a political subdivision of the State of Texas and has only those powers expressed in legislation under which the District operates. None of those powers gives the District authority over the platting of subdivisions.

In cases of subdivisions proposed to be located near or on its easements, the District first refers development plans of various types to NRCS for engineering review and a determination about whether

there would be some impediment to the operation of the dam or other works of improvement with the construction and then operation of the planned development. While this question may seem to be straightforward, it is not always one that has an uncomplicated answer.

The easements held by the District not only allow construction of water control structures designed to regulate the flow of water in a stream impacted by rainfall events, but also allow the impoundment of water in areas above a dam (and, in some cases, downstream from a dam) that is designed and constructed to regulate stream flow after a rainfall event. However, neither the District nor NRCS makes any determination about whether any of the property in a planned development would be subject to flooding as a result of any rainfall event, but the sole examination is whether the District could still flow water over lands in the area of the easement in accord with State law and the terms of the easement. If the District is advised by NRCS that there would be some impediment or problem with plans related to any proposed development that could impact or affect the operation of a dam, the District responds by making the NRCS comments available to a landowner whenever it becomes aware of those problems in or with a planned development.

At the time the original easements were obtained for the Plum Creek and Lower Plum Creek Flood Protection Projects, the easements had descriptions of "general" or "blanket" easements and did not have specific descriptions using metes and bounds areas. The reason that there is no flooding determination is that NRCS is not a part of FEMA efforts to define and regulate flooding protection. The NRCS program for small watershed protection was developed and put into place years in advance of the law that created FEMA, the Federal Agency now generally in charge of flood protection and mitigation. Most of the easements described the use of a portion of a larger tract of land but did not put the area of the easement in a particular area. The actual area of the easement was to be determined during construction.

Generally, the area of the dam and other "works of improvement" that were originally built by NRCS are shown on the final construction plans made upon completion of the original works. For legal reasons, there were areas upstream of a constructed dam that would retain water impounded by the dam after a rainfall event. The dams were designed as "passive" structures with the purpose of regulating runoff in streams after a rainfall event. The amount of water generally behind a dam in the Project had three components. The first was a "sediment" pool that could have "permanent water" behind the dam. It was designed to have sediment accumulate in it over time but as originally constructed was never to contain more than 200 acre-feet of water. That amount of water made the dam "exempt" from having to obtain a water rights permit to impound State water under a Will Wilson Attorney General's Opinion issued in 1947. Above the area of the sediment pool was an area that was designed to hold more than the water in the sediment pool, but the amount of water varied with hydraulic conditions and the dam design for each structure. The design of the structures was to allow impounded water to be released via an outlet works at a controlled rate. If the rainfall event caused more than the amount of water for that structure's design to be retained, then the excess water flowing into a lake after a rainfall event would be released via flow in an auxiliary spillway until the water level in the lake was low enough to allow the

excess stored behind the dam but above the sediment pool to flow out of the lake using the outlet works designed and constructed in the dam.

The area that was to contain impounded water in the event of a particularly heavy rainfall event was originally estimated by NRCS to cover an area of two feet above the highest elevation of the emergency spillway, and the design of the spillway capacity was thought to be enough to release the remaining water flowing into the lake as it flowed into the lake.

All the calculations of capacity and area were related to data that were known at the time of the design and the dams were designed to be "low hazard" structures because there was very little residential and commercial development in the areas surrounding the location of the dams. Over time, several inputs into the design of the structures have changed.

For one thing, the areas surrounding many of the dams as originally constructed have been developed into residential and commercial areas. So, a number of the structures, or dams, are now classified as "high hazard" dams.

A second change has been that the rainfall records have changed so that now the rainfall even can be as much as 30% greater than the event used in the original planning for runoff into the structure.

A third change has been that the State of Texas has passed legislation to address dam safety throughout the State. That program is administered by the Texas Commission on Environmental Quality. Under Rules adopted by that agency, a primary local sponsor, as PCCD is still, is now considered the "owner" of one of the dams under Texas Dam Safety Rules. Those Rules require that a high hazard structure must be able to pass 78% of the PMF, or Probable Maximum Flood event. Because of changes in rainfall events and the other factors originally used to calculate capacities and determine performance, the result is that PCCD is responsible for a structure that may have to have more area upstream related to flooding and also have to have more capacity to store or pass incoming flows for a particular Lake.

The District is aware that there are existing and proposed subdivisions of property in the vicinity of dams maintained by the District under its agreements with NRCS and the District encourages owners of property in the vicinity of its easements to advise any purchasers of lands in areas in the vicinity of the dams, and streams on which the dams are located, that some or all of the property would be subject to flooding under a variety of circumstances so that the owners of those properties can acquire flood insurance. However, the platting or development of land in the area of the District's easements are things that are between a landowner and an appropriate local political subdivision.

Recently the District has received requests related to subdivision platting when developers are faced with local requirements to have storm water detention facilities included in proposed subdivision plats. The District has taken the position of referring those types of requests to NRCS for determinations about whether the use of the Lakes for storm water detention is permissible according to NRCS. The most recent response from NRCS states that:

NRCS does not allow flood control dams it has designed to be used as detention/retention storage on a case by case basis. When local stormwater runoff regulations require detention/retention storage facilities the NRCS strongly recommends those be followed as if the flood control dam was not there. [The site in question in this instance] is not designed for fully developed land use conditions in its watershed , therefore, following the local runoff regulations will aid in the proper function of the dam site.

3. Easement Modification Requests.

There can be several different types of Requests received for modification of easement terms. Some of those involved restatement of the easement area to one having a "metes and bounds" description. Others can involve stating changes in the elevations that are used to describe the easement area. Some can involve specific changes to the terms of an easement to address specific uses that would be proposed.

In terms of restating an easement area by using metes and bounds descriptions, one factor that is considered by the District is that the Agreements between the District and NRCS now have a clause stating that: "All land rights must be identified by metes and bounds survey conducted by a professional land surveyor." The District has responded to that statement in Agreements with NRCS by noting that is presents a significant change from what was originally required of the District when it obtained land rights and that the District was not able to immediately comply with that change. The result is that the District has been addressing requests for modification of the descriptions in easements on a case by case basis.

One of the problems facing the District in restating the areas covered by an easement is that the area that is subject to having water on it as a result of any rainfall event is an estimate and is based on assumptions within the estimate of several things. Those things include assumptions of rainfall intensity and duration, runoff characteristics in the watershed that feeds the stream impounded by the Dam, and the area of the watershed the has runoff into the Lake formed behind the dam. The District did not design, nor did it construct the dam and other "works of improvement" at any of the Sites for which it is primary local sponsor. The District has no consulting engineers under contract to review developments or other improvement that may impact the continued operation of any of the dams to assure that they will continue to function as originally conceived and designed. The District also now has certain responsibilities to the Texas Commission on Environmental Quality and to the Texas State Soil and Water Conservation Board with respect to the Dam and operation of each of the Lakes the District maintains. The TCEQ requirements are also things that have come into existence during the period PCCD has been acting as primary local sponsor. The District has to take whatever steps it can to assure that all the requirements Imposed in Agreements with NRCS and by the TCEQ Dam safety program are met and those things could impact the description of the area that is impacted by a particular dam.

Another thing that is now in the Agreements with NRCS is a statement that PCCD is to: ",,, work with various governments involved in flood protection and/or real estate businesses to inform upstream

landowners of the flood potential of new or existing development below the top of the dam elevation." While that statement does not directly impact the description of the area covered by an easement, it does point to the fact that there could be an area outside the stated easement area that is subject to having stormwater on it because of a particular extreme storm event.

If there is a request to modify an easement to state it by metes and bounds, or to alter elevations used to describe an easement area, the following things are to accompany the request:

1. A statement of the basis for the request detailing calculations showing that the existing easement in the area of or to the elevation of the proposed modification or release is no longer required for the operation of the flood control project;
2. A survey showing the proposed easement elevation or modification or the area proposed to be released relative to the District's flood control easement area and specifying land surface elevations in the area proposed for release as well as the elevation of the top of nearest downstream dam. Such survey shall bear the seal of a Registered Professional Surveyor of the State of Texas; and
3. If the request is being submitted in conjunction with a proposed or planned subdivision of the property covered by the PCCD easement, then a copy of the proposed subdivision plat or a metes and bounds descriptions of the property before and after the proposed subdivision including a depiction of the location of the PCCD easements prepared by and bearing the seal of a registered land surveyor will also need to be provided; and
4. A suggested recordable form for the easement modification or release if there is an application to modify or release all or a part of a PCCD easement covering a particular property. This document should be in a format that is acceptable to Caldwell and/or Hays County for recording and will need to be approved by the District's Attorney and the regional office of NRCS.

In addition, the Request will be required to address the following:

Indemnification: The applicant will be required to provide a draft of a recordable release and indemnification document or use the provide a willingness to execute such a document in the form approved by the District's Attorney, to be recorded with any construction, development or excavation activity described in the application or associated with any platting or subdivision activity described in the application for property that is included within any of the District's easements. The indemnification will be required to recognize the existence of the appropriate impounding structure or structures that might be impacted by the proposed application and acknowledge that any damage associated with backwater flows or elevations of water associated with the existence of the structure or structures are not compensable. The document will also release the District from any such claims for damages associated with the work described in the application and be binding on successors and assigns of the property.

In addition, the Request shall be subject to payment of appropriate fees to the District as follows:

Fees: Each application will require the payment of the fee, as listed in the District's Fee Schedule, for review of the application, site inspection, and legal review for each request for proposed construction of buildings, roadways, and cuts/fills within and District flood control easement. If any construction, excavation, or fill is commenced prior to formal approval by the Board of Directors of the District; then the required fee will be 150% of that fee listed in the District Fee Schedule. Each request

for modification or release of an easement area or elevation will require the payment of the fee, as listed in the District's Fee Schedule, for review of the request, site inspection, legal review, and Caldwell or Hays County filing fees for the easement modification or release. Any required fees, including estimates and deposits for unknown costs, must be paid before review of the application commences.

4. Buildings and Structures of Various Types.

As noted above, the District is now required to ",,, work with various governments involved in flood protection and/or real estate businesses to inform upstream landowners of the flood potential of new or existing development below the top of the dam elevation." The District has been conveying this information in each instance that it receives a Request for construction of some improvement in the area that is close to, or in, an easement area. As a result, the District will require a statement in each response to any Request that the language quoted above is included. The District has also been encouraging those who would market property in the area to advise prospective owners of the availability and desirability of an owner obtaining Flood Insurance to cover any potential damage from water that could be impounded by the Dam that the District is obligated to maintain under its Agreements with NRCS.

When the District becomes aware of some activity planned for the area surrounding one of the dams for which the District is the Primary Local Sponsor under the terms of an Agreement between the District and NRCS the practice of the District is to have the proposed work reviewed by NRCS for an initial determination of whether the operation or capacity of the Lake impacted by the design would be altered. There are times that NRCS has recommendations for changes in design of the proposed work and those recommendations are then passed along to those proposing the development.

5. Excavation or Fill Requests.

In addition to an engineering review of the impacts of the proposed improvements, the District must also be aware of and consider that impacts of any design on State requirements on reservoirs like those constructed by NRCS. Among other things, that requires the District to be aware of any "improvement" that could result in a change in the character of the impoundment from being "exempt" from permitting under State Law to one requiring a permit. That means that the District has to be cognizant of anything that could impact property owners outside the area of easements held by the District as well as the "sediment" pool capacity of the area upstream of the dam. (The sediment capacity has an upper limit of 200 acre-feet in order for the dam to be exempt from the State requirement for a Water Rights permit.) In addition, there are other requirements under Texas law that may come into play with the review of any planned development in the area above one of the Dams. Among those things is an examination of whether a particular improvement would cause water to be impounded or diverted onto property not owned by the Applicant.

Again, the first step in the process of evaluating the impacts of planned structures is a review by NRCS engineers on the impacts that the planned structure might have on the operations of the dam and related lake to control flood waters. As noted above, the impacts could be nothing more than to let an

owner know that floodwater may flow across land that is to be used with the consequential impact of flood water damage. However, there could also be impacts on the capacity of the dam to impound water in a lake or on the area that impounded water could be after a rainfall event.

As with other requests, if a determination is made that there could be an impact on the functioning of the dam and its associated lake, the person proposing the structure or other change is notified. While there could be alterations made in the design of the proposed structure to assure that there is no impact from the planned construction, the rule is that there can be nothing constructed that would interfere with the operation of the dam and related "works of improvement" as flood control structures under the original NRCS design or under Federal or State laws that have come into effect since the original design and construction.

Two types of things that are always of interest to the District and to NRCS are excavations of fill activities that may impact the amount of water that could be Impounded after a rainfall event and whether there would be property outside the initial area contemplated that could be impacted by the retarded water flow. So Requests that seem to indicate that there will be excavation close to the area of "normal" water retention and even those areas that may be subject to having impounded water over them will be of special interest to both NRCS and the District.

6. Livestock and Fencing.

Over the years the District has received a number of questions and has observed a number of problems related to livestock use of easement areas, both those having dams and other works of improvement on them and on areas that are intended for just having impounded water.

There are provisions in many of the easement that allow the District to build fences to protect the dams and works of improvement from damage caused by overgrazing or by erosional trails created by livestock paths from areas that do not regularly have water to water impounded by the dams. There are also some easements that contain special provisions on fencing.

If there are special provisions on fencing those will be honored unless it is obvious that the fencing installed does not protect the dams or other "works of improvement" from damage caused by livestock. Normally the District will not object to livestock grazing on the dams or on other areas that are considered to be in the "works of improvement", such as constructed spillway areas that must be maintained to pass large flows of water after rainfall events. However, the District will monitor the areas of the dams and other "works of improvement" and make determinations about whether an owner's stocking rate is in excess of one that would prevent excess erosion or impact the establishment of the vegetative cover required to maintain a dam or other area. If there is a concern about overgrazing or trails caused by animals in searching for water, the District will initially bring the problem to the attention of the owner of the land where the damage is being observed and making a request that the animals be removed until the vegetative cover is re-established or the eroded areas are repaired.

If there is damage caused by trails of livestock established to obtain water, the District may seek to have the landowner pay for the repairs. That is particularly true if the problem has been observed prior to damage being noted but no action is taken to control livestock movement.

The District is aware that some landowners allow others to run livestock over an owner's land. The District's position is that the landowner is responsible for not interfering with the easement holders rights to maintain the dam so the District will always approach the landowner to prevent or correct any observed problems.

The dams are inspected regularly by both NRCS and TCEQ. If either of those two agencies observe problems with overgrazing or other activities that may lead to erosion on structural problems that should be corrected the landowner will be provided with copies of the reports. IF the problems are related to landowner operations either directly or indirectly because of tenants' actions, the landowner may be brought into an action to correct any observed damage.

If the District's actions related to livestock grazing or trails is not sufficient to prevent a perceived problem from becoming worse, the District may take action to build additional fencing and to exclude livestock that are causing the damage. The District will then seek to recover expenses and costs related to the damage from a landowner.

7. Use of the "Works of Improvement" or Easement Areas at the Various Sites.

The District is aware that, because of urban development. That several landowners have planned, or existing, uses of the areas covered by the District's easements for what can be considered "recreational" purposes. The priority of the District is that no recreational use of an area covered by an easement held by the District interfere with the purpose of the easement: allowing the construction and operation of a flood control structure under the provisions of the Small Watershed Protection Program. Many recreational uses of the easement areas do not interfere or harm the area to the extent that there would be interference with the District's use of the are under the terms of its easement. However, there are some that require special consideration.

One of those uses could be "trails" for walking or bicycling in the area of an easement that would not normally have water but could after a rainfall event. The District expects that if such a use is allowed, the responsible owner of the land allowing that use will advise users that water may suddenly be impounded after a rainfall event and there is no responsibility on the part of the District to prevent damage to property or people using the area should such an event happen.

It should be noted that the dams constructed are not designed for vehicular traffic or any type. Use of the surface of the top of a dam from vehicular traffic, even such vehicles as golf carts or ATVs, could result it damage to the surface of a dam that would have to be corrected. IF such damage does occur the District would seek reimbursement for the amount it would take to repair the damage.

There are other actions that could be taken by a landowner that could also result in damage to a dam or other works of improvement. For example, the District must maintain the surface of the Dams with appropriate vegetation. "Appropriate vegetation" is not something that will allow deep roots to penetrate through the dam surface and such vegetation will be removed. There can be constructed paths for carts of various kinds but the construction details on the dam or on surfaces close to a dam or other "works of improvement" are subject to review and approval by NRCS and the District to assure that there is no construction that interferes with the primary purpose of the use of the dam for flood control purposes.

The District also faces questions from time to time about the use of water in the Lake that are formed upstream of the dams. The water impounded in the Lakes is State Owned Surface Water and use is subject to provisions in the Texas Water Code. Generally, the water can be accessed by livestock for drinking purposes but there can be questions about whether the livestock must be kept confined to areas that are owned by an individual who allows access to the water for that use.

The State Water impounded behind the dams that are maintained by the District are restricted to use for "Domestic and Livestock" purposes. There have been situations where the entire surface of water of a lake has been used for recreational purposes. State Water Law requires that such a use must be allowed by an appropriate permit issued by TCEQ. Only one of the District's Lakes has such a permit. IN addition, with properties under the impounded water now having multiple owners, there can be questions raised by individual owners of land covered by the District's easements about whether those on the surface should be confined to areas owned be the person giving them access to the water impounded.

8. Additional Water flow and Pollution from Stormwater Drainage.

During the period of time since the District became the Primary Local Sponsor for the Plum Creek Small Watershed projects, the District has observed changes in the character of the land draining into the Lakes of the Project. Originally the land was largely rural existing in large tracts used primarily for ranching but also with some row crop agricultural operations. Over the decades much of the land in the original drainage area, particularly in Hays County, has been urbanized and subdivided. Those changes have produced impacts that varied from those considered in original designs.

One of those impacts is that there have been increasing discharges of treated sewage effluent into Plum Creek and its tributaries that are in the area of the Small Watershed Project. There has been at least one instance where the District has become involved in a hearing on a proposed discharge because of the changes in flow in the stream and because of water quality concerns. The district is also a participant in a group formed to monitor and react to water quality problems that could be observed in the Watershed. The group was formed after monitoring of the water quality in various places in Plum Creek within the boundaries of the District revealed sections of the stream that had impaired water quality from what was expected under TCEQ standards. Because of impaired water quality, the

Environmental Protection Agency considered establishing a Total Maximum Daily Load rule for discharges into Plum Creek at various locations. The Plum Creek Watershed Partnership was formed to forestall the imposition of such a Rule.

The District is charged in its agreements with NRCS to participate in monitoring and protecting the water quality of streams feeding into the Lakes in the Project and the District participates in the Partnership. In part, to fulfill that obligation in the NRCS Agreements.

The District has also received complaints from time to time about water quality problems in Lakes and streams flowing into Lakes. In most instances the District has participated with other entities, such as TCEQ, various municipalities, and entities like the Guadalupe-Blanco River Authority to address those complaints when they arrive.

The District has also received complaints from at least one landowner about the increased flow into a Lake that, according to a landowner, resulted from discharges of treated effluent. The District has no authority over such discharges because TCEQ is the sole agency in Texas with that authority. Under Texas las an entity holding a discharge permit issued by TCEQ has the right to use any watercourse for conveying its discharged water. Therefore, it would be an unusual thing for the District to become involved in a permit hearing related to planned discharges of treated sewage from either a water quality or water volume perspective.

In addition to issues related to treated sewage, the District also faces problems from time to time with the contents of stormwater flowing into Plum Creek and the Lakes in the project related to urban runoff. That type of runoff can produce materials flowing into the Lakes of the Project that can clog outlet works and cause increasing maintenance costs for the District related to removal and disposal of the polluting material. The District is aware of Federal Environmental Protection Rules governing stormwater runoff and the District expects that those Rules will be implemented and followed by the appropriate political subdivisions. However, it observed problems persist, and communication about the problem does not produce an appropriate response, the District may seek to recover its excess costs of maintenance from the areas that are producing the problem.

9. Easement Descriptions.

The original easements obtained by the District for use in constructing the Works of Improvement in the Plum Creek Watershed Project and Lower Plum Creek Watershed Project did not include precise area descriptions. Rather, the easements were “general” and stated that works of improvement or impoundment of water by the works of improvement would cover an approximate number of acres out of certain tracts that were then described by citations to title documents that were of record. The clear intent was to allow the works of improvement to be constructed and water to be impounded by the dams constructed to regulate the storm water flow that entered a watercourse where a dam was to be located.

Under a Texas Case decided by the Texas Supreme Court in 2020, the easements were to be interpreted in a manner that allowed the intent of the easement grant to be given effect. The name of that Case is Southwestern Electric Power v. Lynch,

IN requirements for Primary Local Sponsors, the Natural Resources Conservation Service had changed the requirements for land rights so that those must be described by metes and bounds as determined by a surveyor. The metes and bounds descriptions tend to show limits on the surface of the area of the easements. However, that surface area description is not true to the intent of the original easements terms.

The metes and bounds descriptions that satisfy the requirements of NRCS are of an area predicted to by impacted upstream from the works of improvement by rainfall from a 100-year 24-hour rainfall event. The actual area impacted by water impounded by one of the dams constructed under the Small Watershed Protection Project could be larger or smaller than the description. That is particularly true because the area is an estimate based on several assumptions. Those assumptions include the area of the watershed above the structure that contributes water into the structure, the runoff coefficient that gives an estimate of how rapidly the water falling on the watershed upstream will run off and find its wat into the pool of water impounded by the structure, and the most recent calculation of the maximum rate of rain that will fall on the upstream watershed during a storm event.

Since the original time of the design of the various works of improvement there have been changes primarily in the amount of rain in a storm during a 24-hour period and the rate at which the water will run off from where it lands during a storm mainly because of development in areas in the upstream watersheds.

The District's position is that it has the right under its easements to impound water behind the structures constructed that will then be released in accordance with the hydraulic capacity of the designed structure to release that water because the design of the dams is a passive one that has certain capacities for water release from the structure. The purpose of the dams in the Project is to regulate flow in streams to the flows that will be released in accordance with the dam's design. That protects the areas downstream from the dam and allows some certainty about the water that will be covering lands downstream from the dams so flooding in areas of the dams can be more predictable.

Once a metes and bounds description is produced and filed in real property records in a County property owners may attempt an assertion that no water from flooding should be a problem outside the area described by metes and bounds. The District intends to use the area of the original easement for the original purposes and if that means that water will be impounded outside a metes and bounds area the District assert that it has the legal authority to place the water on that land even if the area is beyond that described in the metes and bounds description.

There is another problem related to describing an easement by metes and bounds where the intent is to impound water flowing in a stream by a dam that has the purpose of regulating flow. The NRCS

Requirements are for a description of an area that is calculated to be covered as a result of a 24-hour 100-year rainfall event. In fact, Texas Dam Safety Regulations have a different design criterion for dams on streams such as those maintained by the District. That requirement is that the dam be designed to stay in place while allowing 75% of the Probable Maximum Flood event to flow into the area of impounded water upstream from the dam. That area may greatly exceed the Metes and Bounds description area required by NRCS.

For these reasons, the District encourages any property owner to make an independent analysis of the potential impacts of water impounded from rainfall events that may occur over a particular piece of land as a result of the presence of the Small Watershed Protection Project dam or even a nearby stream and if there is any possibility that a structure built on land adjacent to a stream that is regulated by one of the Works of Improvement of an area could be reached by water from a flood event the landowner either assumes the risk of water damage to that structure or purchase appropriate flood insurance covering potential damage to the structure.