



Control Number: 38354



Item Number: 2601

Addendum StartPage: 0

**SOAH DOCKET NO. 473-10-5546  
PUC DOCKET NO. 38354**

**APPLICATION OF LCRA § BEFORE THE STATE OFFICE  
TRANSMISSION SERVICES §  
CORPORATION TO AMEND A §  
CERTIFICATE OF CONVENIENCE AND §  
NECESSITY FOR THE MCCAMEY D TO § OF  
KENDALL TO GILLESPIE 345-KV CREZ §  
TRANSMISSION LINE IN SCHLEICHER, §  
SUTTON, MENARD, KIMBLE, MASON, §  
GILLESPIE, KERR, AND KENDALL § ADMINISTRATIVE HEARINGS  
COUNTIES, TEXAS**

**DIRECT TESTIMONY**

**OF**

**LEWIS BERNIARD**

**September 28, 2010**

**SOAH DOCKET NO. 473-10-5546**  
**PUC DOCKET NO. 38354**

**DIRECT TESTIMONY AND EXHIBITS OF LEWIS BERNIARD**

1       **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2       **A.** My name is Lewis Berniard, and my address is 2139 Lightstone, Fredericksburg, Texas,  
3       78624.

4       **Q. PLEASE IDENTIFY AND DESCRIBE THE PROPERTY THAT YOU OWN IN**  
5       **KIMBLE COUNTY, TEXAS.**

6       **A.** We own Tract Nos. B21B-036 and B21B-038, although LCRA TSC's records have not  
7       reflected our ownership of B21B-038. At the bottom of Page 2-1 of the Environmental  
8       Assessment, the Texas Hill Country is described as "deeply dissected Balcones  
9       Canyonlands," consisting of "steep canyons [and] narrow divides." This description is  
10      personified by our property, as is clearly reflected on the topographic maps the LCRA  
11      TSC included as part of its Application (e.g., Figure3-1f). In fact, there are five major  
12      canyons on our ranch.

13      **Q. PLEASE DESCRIBE YOUR EXPERIENCE WITH YOUR PROPERTY IN**  
14      **KIMBLE COUNTY, TEXAS.**

15      **A.** The majority of this ranch was purchased in 1985, while the remaining smaller portions  
16      were purchased in 1986 and 1988. At the time of purchase, the ranch had been almost  
17      totally neglected for over 40 years, resulting in a dense cover of brush, mainly cedar.  
18      The perimeter fences would not hold livestock; there were no functioning internal  
19      fences; the only well was equipped with a barely functioning windmill, which had only  
20      one water trough and a very small storage reservoir; and the only structure was a falling  
21      down pole shed. We immediately initiated conversations with Texas Parks and  
22      Wildlife Department biologists to get recommendations on brush thinning, fencing and  
23      water source improvement, including the drilling of a new well. All internal and  
24      external fences were either replaced or significantly upgraded. Brush was thinned in  
25      areas that would not be detrimental to endangered species and in other areas that would  
26      improve endangered species habitat. We built a house for our ranch headquarters, two  
27      barns for equipment and supply storage, and a set of pipe working pens to work  
28      livestock. The ranch was also fenced into three pastures for livestock rotation. Cattle

**DIRECT TESTIMONY AND EXHIBITS OF LEWIS BERNIARD**

1 have been run in every year that rainfall permitted. The ranch has always had an  
2 agricultural exemption for tax purposes. The improvements were further enhanced in  
3 2003-2004 when we high fenced 300 acres, while at the same time conducting  
4 additional brush thinning, building three large, concrete water storage reservoirs, and  
5 drilling a new well. We also added pipelines and now have seven watering locations.  
6 At that time, we joined the Texas Parks and Wildlife's Managed Lands Program and  
7 began a commercial deer hunting operation by installing nine new hunting blinds.  
8 Total ranch improvements have been over \$150,000. In 2010 we partnered with the  
9 United States Fish and Wildlife Service by contracting to improve habitat on the ranch  
10 for the endangered Black-Capped Vireo.

11 **Q. PLEASE DESCRIBE THE OPERATIONS CONDUCTED ON YOUR RANCH.**

12 **A.** The primary uses of our property are: i) we participate in Texas Parks and Wildlife's  
13 Managed Lands Program and use our property for commercial hunting and wildlife  
14 habitat enhancement ii) we manage our property for wildlife conservation, including  
15 managing endangered species habitat under a contract with the United States Fish and  
16 Wildlife Service (USFWS), as evidenced by the USFWS letter and agreement attached  
17 hereto as Attachment LB-1; iii) we conduct a commercial hunting operation; and iv) we  
18 have limited agricultural use, primarily cattle.

19 **Q. ARE YOU FAMILIAR WITH THE ROUTES THAT LCRA TSC HAS**  
20 **PROPOSED FOR CONSIDERATION IN THIS PROCEEDING?**

21 **A.** Yes.

22 **Q. ARE YOU OPPOSED TO ANY SPECIFIC ROUTES OR SEGMENTS?**

23 **A.** Yes, we are opposed to Segment b-21d and Segment Z-4.

24 **Q. WHAT CONCERNS YOU ABOUT SEGMENT b-21d AND SEGMENT Z-4?**

**DIRECT TESTIMONY AND EXHIBITS OF LEWIS BERNIARD**

1     **A.** First, we have three habitable structures on our property (i.e., a house and two barns)  
2     that are within 500 feet of Segment b-21d. But, to date, LCRA TSC's routing analysis  
3     has taken none of them into account.  
4     Second, Segment b-21d appropriates the prime middle portion of our ranch, dividing it  
5     almost in half on a diagonal, without following any identifiable features, such as  
6     property lines, pipelines, power lines, or roads. The appropriation of this diagonal  
7     swath through the middle of our ranch will limit our wildlife habitat enhancement  
8     program, possibly prohibit our commercial hunting operation, and render the entire  
9     property less effective because the remaining uncleared portions would be left as  
10    awkward, angular tracts of land. While Segment Z-4 follows the southern boundary of  
11    our property, it transects the southwestern corner of our property, without following  
12    any property lines, pipelines, power lines, or roads, in an apparent attempt to avoid  
13    some of the dramatic topography that dominates parts of our ranch.  
14    Third, Gilbert Guzman, Texas Parks and Wildlife Department's Wildlife Biologist for  
15    Kimble County, has observed the presence of Black-Capped Vireo on our property, as  
16    indicated in his letter to us, dated September 11, 2009, which is attached hereto as  
17    Attachment LB-2, and as reflected on Figure 3-1f of the Environmental Assessment.  
18    Fourth, also reflected in Figure 3-1f of the Environmental Assessment is the inclusion  
19    of almost our entire ranch in the mapping of potential Golden-Cheeked Warbler habitat  
20    that Loomis Partners, Inc. performed for LCRA TSC.  
21    Fifth, Figure 3-1f of the Environmental Assessment also indicates that our property, as  
22    well as a significant amount of Segment b-21d and Segment Z-4, are listed in the Texas  
23    Parks and Wildlife Department's Natural Diversity Database (NDD) as being areas of  
24    potential occurrence for the endangered Tobusch fishhook cactus.  
25    Sixth, as indicated in the letter from Wade Harrell at the United States Fish and  
26    Wildlife Service (USFWS), which is attached hereto as Attachment LB-1, we preserve  
27    and enhance endangered species habitat under a contract with USFWS. The  
28    construction of Segment b-21d or Z-4 and the attendant activity, roads and cleared  
29    right-of-way will significantly impair these efforts.

**DIRECT TESTIMONY AND EXHIBITS OF LEWIS BERNIARD**

1 Seventh, Segment b-21d and Segment Z-4 cut through pristine country comprised of  
2 rough elevation changes of up to 300 feet and steep, tight, rough canyons that contain  
3 seep springs and wetlands.

4 **Q. HOW WOULD THE PROPOSED ALTERNATIVE SEGMENTS NEGATIVELY**  
5 **AFFECT AND POSSIBLY ELIMINATE THE INCOME PRODUCING**  
6 **ACTIVITIES OF YOUR RANCH?**

7 **A.** Segment b-21d will negatively affect the business of our ranch by appropriating  
8 the prime middle section of our ranch, dividing it almost in half on a diagonal and  
9 leaving awkward, angular tracts that will be much less valuable and more difficult  
10 to manage. Segment b-21d would be visible from virtually every location on our  
11 ranch, decimating the natural aesthetic beauty of the property upon which much of  
12 our hunting business is based.  
13 Segment Z-4 would be visible from the entire southern half of our ranch and  
14 from our headquarters in the north. In addition, the transmission towers could disrupt  
15 our cattle operation by interfering with watering locations and making some land  
16 unsuitable for grazing, especially on steep slopes cleared for easements.

17 **Q. DO YOU SUPPORT ANY SPECIFIC ROUTES OR SEGMENTS?**

18 **A.** To the extent the transmission line must be built, we support the preferred route  
19 selected by LCRA TSC in its Application. In the alternative, we would support a route  
20 that would extend as much as possible down IH-10 east of Junction, provided the  
21 concerns of my neighbors can be addressed and the IH-10 corridor is entered  
22 somewhere in proximity to the point that LCRA TSC's existing T-374 line intersects  
23 IH-10.

24 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

25 **A.** Yes.

**SOAH DOCKET NO. 473-10-5546**  
**PUC DOCKET NO. 38354**

**DIRECT TESTIMONY AND EXHIBITS OF LEWIS BERNIARD**

**ATTACHMENT LB-1**



Phone 512-490-0057

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
Compass Bank Building  
10711 Burnet Rd, Suite 200  
Austin, Texas 78758



Fax 512-490-0974

April 19, 2010

SEPT — FEB. 2011  
↑

Mr. Lewis Berniard  
2139 Lightstone  
Fredericksburg, TX 78624

Dear Mr. Berniard:

Thank you for your interest in our Partners for Fish and Wildlife program. Enclosed is a fully executed Private Lands Agreement (PLA No. 1448-20181-A-J509) in the amount of \$3,140 for your property in Kimble County, Texas. Also enclosed is a blank Invoice Form that you will need to fill-out and submit to us, along with associated receipts, when you have completed the project and are requesting reimbursement.

EXT. 244

Please contact your Project Biologist, Wade Harrell (512-490-0057), for any last minute instructions. He will be your main point of contact for all questions and correspondence for the project. We look forward to continuing to work with you and appreciate your interest in conserving our Nation's fish and wildlife resources.

512-203-6043

If you have any questions, please call me at 512-490-0057.

Sincerely,

Wade Harrell  
Austin ES Coordinator, PFW Program

Enclosures



# United States Department of the Interior



512-490-0057

## FISH AND WILDLIFE SERVICE

Ecological Services  
Compass Bank Building  
10711 Burnet Rd, Suite 200  
Austin, Texas 78758



FAX: 512-490-0974

### PRIVATE LANDS AGREEMENT INVOICE

<b>COOPERATOR'S NAME AND MAILING ADDRESS:</b>  Mr. Lewis Bernard 2139 Lightstone Fredericksburg, TX 78624         <b>Telephone No:</b>	<b>PRIVATE LANDS AGREEMENT NUMBER:</b>  1448 - 20181 - A - J509
	<b>Fund Code:</b> (21450-1009-10-1121-0000-W3-411C)
	<b>INVOICE NUMBER:</b> 10-J509-1  <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL  (CHECK ONE)

Disbursement of an advance of funds related to work to be completed as specified in the above referenced Private Lands Agreement is hereby requested.

( ) Cost estimates from contractors/suppliers along with a letter of request from the Cooperator, detailing the disbursement of the funds advanced are attached.

( ) Cost estimates from contractors/suppliers along with a letter of request from the Cooperator, detailing the disbursement of the funds advanced are not attached.

Explanation:

Reimbursement of expenditures related to work completed as specified in the above referenced Private Lands Agreement is hereby requested.

\_\_\_\_\_ Percent of work is completed to date.

( ) Copy(ies) of supporting receipts are attached.

( ) Copy(ies) of supporting receipts are not attached.

Explanation:

Payment is requested in the amount of: \$ \_\_\_\_\_

This invoice billing reflects work completed as of: \_\_\_\_\_ Date \_\_\_\_\_

-----

**INVOICE RECEIVED BY FWS:** \_\_\_\_\_ **RECEIVED BY:** \_\_\_\_\_  
Date Project Biologist's Name

I certify that this claim is for monies expended in accordance with the above-designated Private Lands Agreement and no other expenditures are included.

<b>SIGNATURE OF COOPERATOR:</b>	<b>DATE:</b>

<b>AWARD/CONTRACT</b>		1 THIS CONTRACT IS A RATED ORDER UNDER DPAS (*5 CFR 350)		Rating	Page 1 of 3
CONTRACT (Proc inst ident) NO 20181AJ509		3 EFFECTIVE DATE 04/05/2010		4 REQUISITION/PURCHASE REQUEST PROJECT NO 2145010038	
ISSUED BY Contracting and General Services U S Fish & Wildlife 500 Gold Avenue SW, Room 5108  Albuquerque, NM 87102-		CODE 00002	6 ADMINISTERED BY (If other than Item 5) CODE 21450 Austin Ecological Services U S Fish and Wildlife Service 10711 Burnet Road, Suite 200  Austin, TX 78758		

NAME AND ADDRESS OF CONTRACTOR (No. street, city, county, State and ZIP Code)  LEWIS BERNIARD 2139 LIGHTSTONE FREDERICKSBURG, TX 78624		8 DELIVERY FOB Origin <input checked="" type="checkbox"/> Other (See below)	
This award has been <b>OBLIGATED in FFS</b> electronically via IDEAS-FFS interface 4/12/10		9 DISCOUNT FOR PROMPT PAYMENT 10 days % 20 days % 30 days % days %	
		10 SUBMIT INVOICES (4 Copies unless other - - wise specified) To THE ADDRESS SHOWN IN	

CODE	FACILITY CODE	ITEM
11 SHIP TO/MARK FOR Wade C Harrell Austin Ecological Services U S Fish and Wildlife Service 10711 Burnet Road, Suite 200  Austin, TX 78758	CGS initials CODE 21450	12 PAYMENT WILL BE MADE BY Austin Ecological Services U S Fish and Wildlife Service 10711 Burnet Road, Suite 200  Austin, TX 78758

13 AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C 2304(c) ( ) <input type="checkbox"/> 41 U.S.C. 253(c) ( )		14 ACCOUNTING AND APPROPRIATION DATA 2010 - - - 21450 - - 411C - - - - 11210000 - - W3 - - - -	
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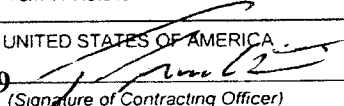
5A ITEM NO	15B SUPPLIES/SERVICES	15C QUANTITY	15D UNIT	15E UNIT PRICE	15F AMOUNT
	SEE LINE ITEM DETAIL				

15G. TOTAL AMOUNT OF CONTRACT		3,140.00
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16 TABLE OF CONTENTS							
( )	SEC	DESCRIPTION	PAGE(S)	( )	SEC	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH			
	C	DESCRIPTION/SPECS/WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES AND PERFORMANCE			L	INSTRS. CONDS. AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE	
---	--

17 CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as attached or incorporated by reference herein  (Attachments are listed herein)		18 AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.	
---	--	---	--

9A NAME AND TITLE OF SIGNER (Type or print)  19B NAME OF CONTRACTOR By _____ (Signature of person authorized to sign)		19C DATE SIGNED		20A NAME OF CONTRACTING OFFICER Tom W Ketcham		20B UNITED STATES OF AMERICA By  (Signature of Contracting Officer)		20C DATE SIGNED 4/12/2010	
---	--	-----------------	--	--	--	---	--	------------------------------	--

<b>Contract Level Funding Summary</b>	<b>Document Number</b> 20181AJ509	<b>Title</b> PLA with Lewis Bernard	<b>Page</b> 3 of 3
---	--------------------------------------	--	-----------------------

0 - - - 21450 - - 411C - - - - 11210000 - - W3 - - - -

140 00

Reference Requisition: 2145010038

**Total Funding: \$3,140.00**

<b>Line Item Summary</b>	<b>Document Number</b>	<b>Title</b>	<b>Page</b>
	20181AJ509	PLA with Lewis Bernard	2 of 3

Total Funding: \$3,140.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
010		21450		411C					11210000		W3
Division	Closed FYs	Cancelled Fund									

Line Item Number	Description	CLIN Ref	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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Lewis Bernard  
139 Lightstone  
Fredericksburg, TX 78624  
DUNS # 961889099  
30-990-5060

001	Private Land Agreement with Lewis Bernard	0001		1.00	job	\$3,140.000	\$ 3,140.00
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(04/01/2010 to 03/31/2020)

In signing this agreement, the Cooperator named above joins as a participant with the Service in a wildlife management program and grants to the Service the authority to complete wildlife habitat development activities, or agrees to personally carry out wildlife management activities with financial or material support as described in the attached Project Plan, Exhibit A. The furnishing of supplies or equipment, or direct payments from the Service to the Cooperator for carrying out the wildlife habitat developments, are specifically included in the attached Project Plan, Exhibit A, hereby incorporated and made a part of this agreement.

The Life of this agreement shall be in effect for 10 years beginning on the date of the last signature below, unless terminated earlier in accordance with Section VII, Termination Provisions, as set forth.

Work performance must be completed in 18 months or August 15, 2011

Ref Req No: 2145010038

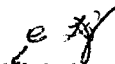
**Total Cost:** \$3,140 00

USFWS Austin Ecological Service POC: Wade Harrell  
10711 Burnet Road, Ste 200  
Austin, TX 78758  
512-490-0057 ext 244

PR 2145010038  
FWS Agreement No: 1448-20181-A-J509  
CFDA: 15.631  
Charge Code: 21450-1000-10-11210000-W3-411C  
DUNS Number: 961889099  
Amount: \$3,140

## PRIVATE LANDS AGREEMENT

### I. AUTHORITY:

- A. This agreement, effective and binding on the date of last signature below, between Lewis Berniard, private lands cooperator (Cooperator), and the U.S. Fish and Wildlife Service (Service), is entered into pursuant to authority contained in the Partners for Fish and Wildlife Act [Public Law: 109-294].
- B. Mr. Lewis Berniard, 2139 Lightstone,  Fredricksburg, Texas 78624 - Telephone: 830-990-5060 hereby agrees to or participates with the Service to conduct certain wildlife management practices (Exhibit A) on private lands owned by the Cooperator in Kimble County, State of Texas as shown on the attached Big Draw, Texas 7.5-minute topographic map (Exhibit B): North Latitude 30.51040° and West Longitude -099.64375°. These coordinates represent the approximate center of the project area.

### II. PURPOSE:

In signing this agreement, the Cooperator named above joins as a participant with the Service in a wildlife management program and grants to the Service the authority to complete wildlife habitat development activities, or agrees to personally carry out wildlife management activities with financial or material support as described in the attached Project Plan, Exhibit A. The furnishing of supplies or equipment, or direct payments from the Service to the Cooperator for carrying out the wildlife habitat developments, are specifically included in the attached Project Plan, Exhibit A, hereby incorporated and made a part of this agreement.

### III. RESPECTIVE RESPONSIBILITIES OF THE PARTIES:

In addition to the specific tasks and contributions to this effort as identified in Exhibit A hereof, the parties further agree as follows:

#### A. The Service:

1. Does not assume jurisdiction over the premises by this agreement. The Service assumes no liability for damage except that resulting from its own negligence on this property.

2. Will not be held liable in any way to restore the property to its prior condition upon termination or expiration of this agreement.
3. Agrees to provide technical advice and assistance in obtaining permits that may be required for the Cooperator to fulfill the terms of this agreement.

B. The Cooperator:

1. Retains all rights to control trespass and retains all responsibility for taxes, assessments, and damage claims.
2. Guarantees ownership of the above-described land and warrant that there are no outstanding rights, including the current enrollment of the land in a federal conservation program, that interfere with this wildlife management agreement. A change of ownership shall not change the terms of this agreement, which shall remain in effect on the described property for the duration of the period specified in Section IV, below. The Cooperator agrees to notify the Service of planned or pending changes of ownership at least 30 days in advance.
3. Agrees to allow the Service [its members, agents, or assignees] access to the project site, upon prior notification by the Service, for wildlife habitat development and management purposes and to inspect work completed. All Service members, agents, and assignees will be in uniform or will have proper identification as government employees or agents.
4. Agrees to provide a Taxpayer Identification Number to the Service. Taxpayer Identification Number (TIN) means the number required by the IRS to be used in reporting income tax and other returns. For most individuals, this is the Social Security Number. The Service is required to obtain this information to process any payment(s) to the Cooperator as a result of this agreement. This information will be furnished to the IRS as required by the Tax Reform Act of 1986 and may be shared with the Department of Justice. Furnishing a Social Security Number is voluntary, but failure to do so may result in disqualification from this program.
5. Assumes responsibility for securing any permits needed to carry out the project described in Exhibit A.

IV. TERM OF THIS AGREEMENT:


- A. This agreement shall be in effect for 10 years beginning on the date of last signature below, unless terminated earlier in accordance with Section VII, Termination Provisions, as set forth below.
- B. The work identified in Exhibit A will be commenced within six (6) months and all Service funded practices must be completed within eighteen (18) months of the date of the last signature on this agreement, unless otherwise scheduled. The Service Project Officer should be informed, in writing, if either deadline cannot be achieved and an extension in time shall be requested. Work must be completed and inspected prior to submission of a request for

reimbursement. A request for partial reimbursement, based on completion of a listed, reimbursable practice from Exhibit A is acceptable.

- C. At the end of the agreement's term, the wildlife habitat development becomes the property of the Cooperator.
- D. No obligation to any of the parties of this agreement shall be in effect after the term of this agreement has expired.

V. ADMINISTRATIVE MATTERS:

- A. For purposes of coordination and acceptance of work, the Service designates the following named individual as the Service's Project Officer/Point of Contact:

Wade Harrell  
Fish and Wildlife Biologist, Partners for Fish and Wildlife Program  
U. S. Fish and Wildlife Service  
10711 Burnet Dr., Suite 200 — ROAD   
Austin, TX 78758  
Or  
His successors

- B. The Cooperator shall submit an invoice with copies of supporting receipts to claim payment hereunder. Upon execution of this agreement, the Project Officer will supply the Cooperator a sample invoice for optional use in requesting payment. The Cooperator will prepare an invoice to include all information required on the invoice format with the original signature of the Cooperator, and will submit it to the Service's Project Officer specified in Section V (A), above. Upon verification of the accuracy of the data provided and the completion of the work as invoiced, the Service's Project Officer will recommend payment through the U.S. Treasury by electronic fund transfer. In accordance with U.S. Treasury regulations, payments will be made within 30 calendar days after receipt and approval of a proper invoice. The Service is not obligated to reimburse the Cooperator for any amount in excess of this agreement, unless the agreement is formally amended to increase that amount.
- C. The Service is prohibited by law from making obligations that exceed available funds and therefore, the Service can do only that work for which there are funds. In the event funds are not available to do the wildlife habitat development work within the period of time or in the manner prescribed in Exhibit A, the Service will advise the Cooperator of that fact.
- D. Pursuant to Section 22, Title 41, United States Code, it is further mutually agreed that no member of or delegate to Congress or resident commissioner, after his/her election or appointment, and either before or after he/she has qualified and during his continuance in

office, shall be admitted to any share or part of this agreement, or to any benefit to arise thereupon; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

- E. This agreement may be modified at any time by mutual consent of all parties and reduced to writing.
- F. This agreement, as defined herein, constitutes a financial business arrangement between the Service and the Cooperator and does not create a partnership or joint venture between the parties.

VI. PROJECT DESCRIPTION:

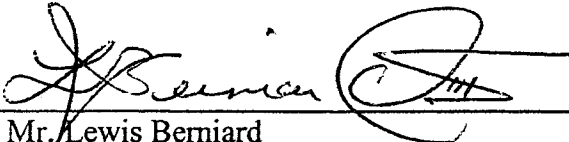
The effort to be accomplished is set forth in the Project Plan, Exhibit A, incorporated herein as attached.

VII. TERMINATION PROVISIONS:

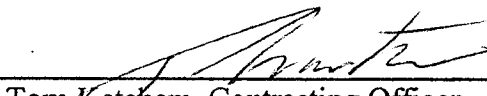
This agreement may be terminated by either party upon 30 days advance written notice to the other party(ies). If the Cooperator terminates the agreement prior to expiration of its term, the Cooperator will reimburse the Service for the cost of the wildlife habitat developments. If the Service terminates this agreement, the Service may at its option remove any wildlife developments placed on the property.



IN WITNESS WHEREOF, the parties hereto have caused this Private Lands Agreement to be executed as of the date of last signature below.

  
\_\_\_\_\_  
Mr. Lewis Berniard

3/17/2010  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tom Ketcham, Contracting Officer  
U.S. Fish and Wildlife Service, Region 2

4/12/2010  
\_\_\_\_\_  
Date

**EXHIBIT A**  
**Lewis Berniard Project Plan and Costs Estimated**

I. Planned Work:

Work proposed for the property covered under this agreement will be for the purpose of restoring and enhancing endangered and other migratory songbirds and resident wildlife habitat on approximately 316 acres. The acreage addressed in this agreement (heretofore referred to as the Project Area) is outlined in Exhibit B.

In the southern portion of the Project Area (indicated as the "GCWA/BCVI habitat enhancement area" in Exhibit C), the endangered golden-cheeked warbler (GCWA) and black-capped vireo (BCVI) habitat will have selective management applied to enhance existing, or protect regenerating vegetation. If deemed necessary by the Cooperator and the Service, such activities as thinning large clumps of Ashe juniper and/or protecting saplings will be implemented. Retention and hand placement of small diameter (< 4") slash (woody debris) in openings will be completed within open areas in order to create small, loosely stacked brush piles for the purpose of protecting and enhancing recruitment of hardwood trees. All activities relating to habitat enhancement within the "GCWA/BCVI habitat enhancement area" will take place outside of the breeding season (mid-March through mid-July) to minimize disturbance of breeding songbirds. Additionally, the cooperator will work with Texas Parks and Wildlife to ensure that a wildlife management plan is in place that minimizes excessive browsing within the "GCWA/BCVI habitat enhancement area" by native browsers, namely white-tailed deer. Cooperator and Service will work together to identify partners to assist in conducting regular surveys for GCWA and BCVI.

The northern portion of the Project Area outlined on exhibit B as "tree shearing" (south of KC 320, north of power line easement on property, east of the property boundary and west of the main ranch road) contains 29 acres of upland scrub/grassland habitat. Within this 29 acre upland scrub/grassland, juniper and other encroaching, invasive shrubs and trees greater than 5 ft. tall will be removed via a skid steer mounted tree shear. Stumps of all redberry juniper sheared will be immediately treated with an appropriate herbicide (i.e. Tordon 22K 4% in water) to discourage resprouting. The intent of the tree shearing is to create a low scrub/grassland structure preferred as habitat by the endangered black-capped vireo (BCVI). Other areas of invasive shrubs and trees mutually identified by the Cooperator and the Service may be treated to enhance BCVI habitat as necessary.

Seasonal deferment from livestock grazing will take place annually, allowing for periods of vegetation recovery. Upon Cooperator's request, the Cooperator and the Service will decide upon a mutually agreeable livestock-grazing plan [which would be based on plant production and established grazing/stocking principles and recommendations] for the site to be followed for the duration of the agreement term. All work will be performed in accordance with specifications provided by the Service and/or in accordance to Natural Resources Conservation Service's

(NRCS) standards and specifications. The agreement term is 10 years.

<b>Project Summary</b>	<b>Restoration</b>	<b>Enhancement</b>	<b>Establishment</b>	<b>Total</b>
Upland Acres:	<u>                    </u>	<u>287</u>	<u>                    </u>	<u>287</u>
Wetland Acres:	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Riparian Miles:	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Stream Miles:	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Number of Other Structures:	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Invasive Acres:	<u>29</u>	<u>                    </u>	<u>                    </u>	<u>29</u>

II. Contributions of Parties:

A. The Service:

1. Agrees to cost-share in practices specified in this agreement, thus enhancing the value of the area for resident and migratory wildlife species.
2. Agrees to inspect the work periodically during construction, if necessary, and provide technical assistance regarding management and maintenance of the works of improvement.
3. Agrees to annually evaluate the management techniques and provide guidance regarding their success and modify the management guidelines as necessary to ensure maximum benefits to wildlife.

B. The Cooperator:

1. Agrees to cost-share in the works of improvement for the property. Agrees to obtain the services of a competent contractor to ensure the practices are completed in a timely manner and meet the specifications of this agreement.
2. Agrees to maintain the site to the maximum benefit of wildlife for the term of this agreement.
3. Agrees to not begin the project until the Service Project Officer provides notice that an archaeological evaluation is complete, if such an evaluation is required by the State Historical Preservation Officer.
4. Assures that the most appropriate pesticide will be applied in accordance with all stipulations as defined by the label and in compliance with all pertinent federal and state regulations. When applicable the services of a licensed applicator will be obtained by the cooperator to perform this action. Additionally, the cooperator agrees to not begin the project until a pesticide use proposal is completed by Service personnel, if warranted.
5. Agrees to provide annual maintenance of works completed to ensure that they are in good condition and function as agreed upon for the life of this agreement.

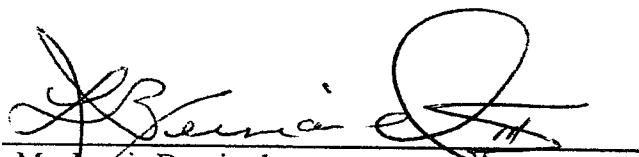
## III. Estimated Costs:

Practice Description	Practice Cost	Cooperator Cost-share	Service Cost-share
Tree shearing @ \$160/ac. (29 acres)	\$4,640	\$1,500	\$3,140
Selective thinning, slash retention for hardwood recruitment	\$1,000	\$1,000	\$0
<b>Totals</b>	<b>\$5,640</b>	<b>\$2,500</b>	<b>\$3,140</b>

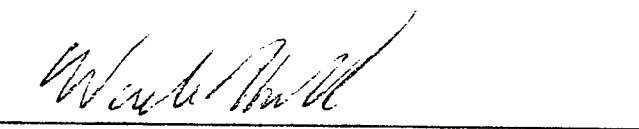
*Note:* The total Service's and Cooperator's cost-share must remain the same; however, funding may be redistributed between practices upon prior approval by the Service Project Officer.

IV. Work Schedule: Work will be commenced within six (6) months and all Service funded practices must be completed within eighteen (18) months of the date of the last signature on this agreement, unless otherwise scheduled. The Service Project Officer should be informed, in writing, if either deadline cannot be achieved and an extension in time shall be requested. Work must be completed and inspected prior to submission of a request for reimbursement. A request for partial reimbursement, based on completion of a listed, reimbursable practice from Exhibit A is acceptable.

V. This Project Plan was agreed upon between the Cooperator and the Service Project Officer on March 8, 2010.

  
Mr. Lewis Berniard

3/14/2010  
Date

  
Wade Harrell  
Service Project Officer  
Partners for Fish and Wildlife Program

8 March 2010  
Date

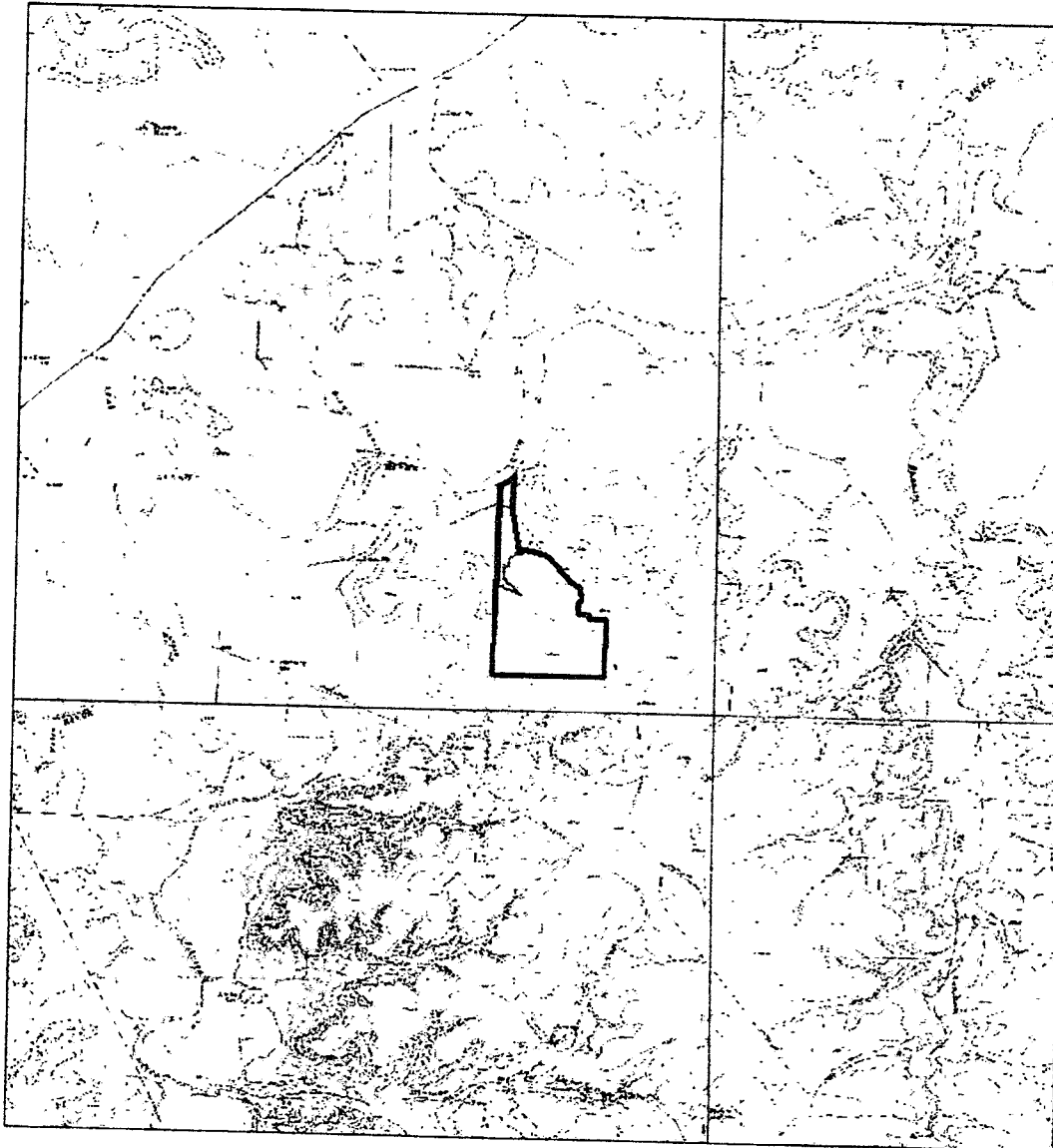
EXHIBIT B



U.S. Fish & Wildlife Service  
Partners for Fish and Wildlife  
Segovia, Texas

*Lewis Bernald Project Proposal*




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↑  
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0 0.5 1 2  
Miles

0 4,000 8,000 16,000  
Feet

Legend

-  Bernald Ranch
-  GCWA/BCVI habitat enhancement
-  Tree shearing

PRODUCED BY USFWS BIOLOGICAL SERVICES  
AUSTIN, TEXAS  
MAP DATE: 3/5/10  
BASEMAP: 81g Data 2004



EXHIBIT C



U.S. Fish & Wildlife Service  
Partners for Fish and Wildlife  
Segovia, Texas

*Lewis Bemard Project Proposal*




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1



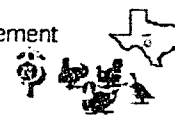
0 0.1 0.2 0.4  
Miles

0 700 1,400 2,800  
Feet

Legend

-  Berniard Ranch
-  GCWA/BCVI habitat enhancement
-  Tree shearing

PRODUCED BY UFGW BROWN ALDER, INC.  
AUSTIN, TEXAS  
MAP DATE: 3/5/10  
SACEDAP: 61g Draw 0001



**SOAH DOCKET NO. 473-10-5546  
PUC DOCKET NO. 38354**

**DIRECT TESTIMONY AND EXHIBITS OF LEWIS BERNIARD**

**ATTACHMENT LB-2**



September 11, 2009



Mr. Lewis Berniard  
Lewis & Dorothy Berniard  
2139 Lightstone  
Fredericksburg, TX 78624

Berniard Ranch  
911 Location: 4895 KC 320

Commissioners

Peter M. Holt  
Chairman  
San Antonio

T. Dan Friedkin  
Vice-Chairman  
Houston

Mark E. Bivins  
Amarillo

J. Robert Brown  
El Paso

Ralph H. Duggins  
Fort Worth

Antonio Falcon, M.D.  
Rio Grande City

Karen J. Hixon  
San Antonio

Margaret Martin  
Boerne

John D. Parker  
Lufkin

Lee M. Bass  
Chairman-Emeritus  
Fort Worth

Carter P. Smith  
Executive Director

On Friday, September 4, 2009, I met with Mr. Lewis Berniard, owner of the Berniard Ranch in Kimble County. The Berniard Ranch location is within the proposed route of the McCamey D Substation to Westwind Substation Project Transmission Line and more specifically within the footpath of the LCRA B-21 segment.

The ranch site visit was to verify the presence or absence of the Black-capped Vireo (*Vireo atricapillus*) and associated critical nesting habitat. At approximately 9:45 am, I confirmed a Black-capped Vireo (*Vireo atricapillus*) singing along the edge of a draw within habitat consistent with its requirements. This habitat can be described as having the following plant species in various stages of growth to include a mid-story of net leaf hackberry, live oak, shin oak, greenbriar, agarito, Texas persimmon and re-growth ashe-juniper.

Both, Mr. Lewis Berniard and myself were able to observe the adult male singing Black-capped Vireo within 15 feet. The GPS location of this male bird is N 30.51075 W 99.64381.

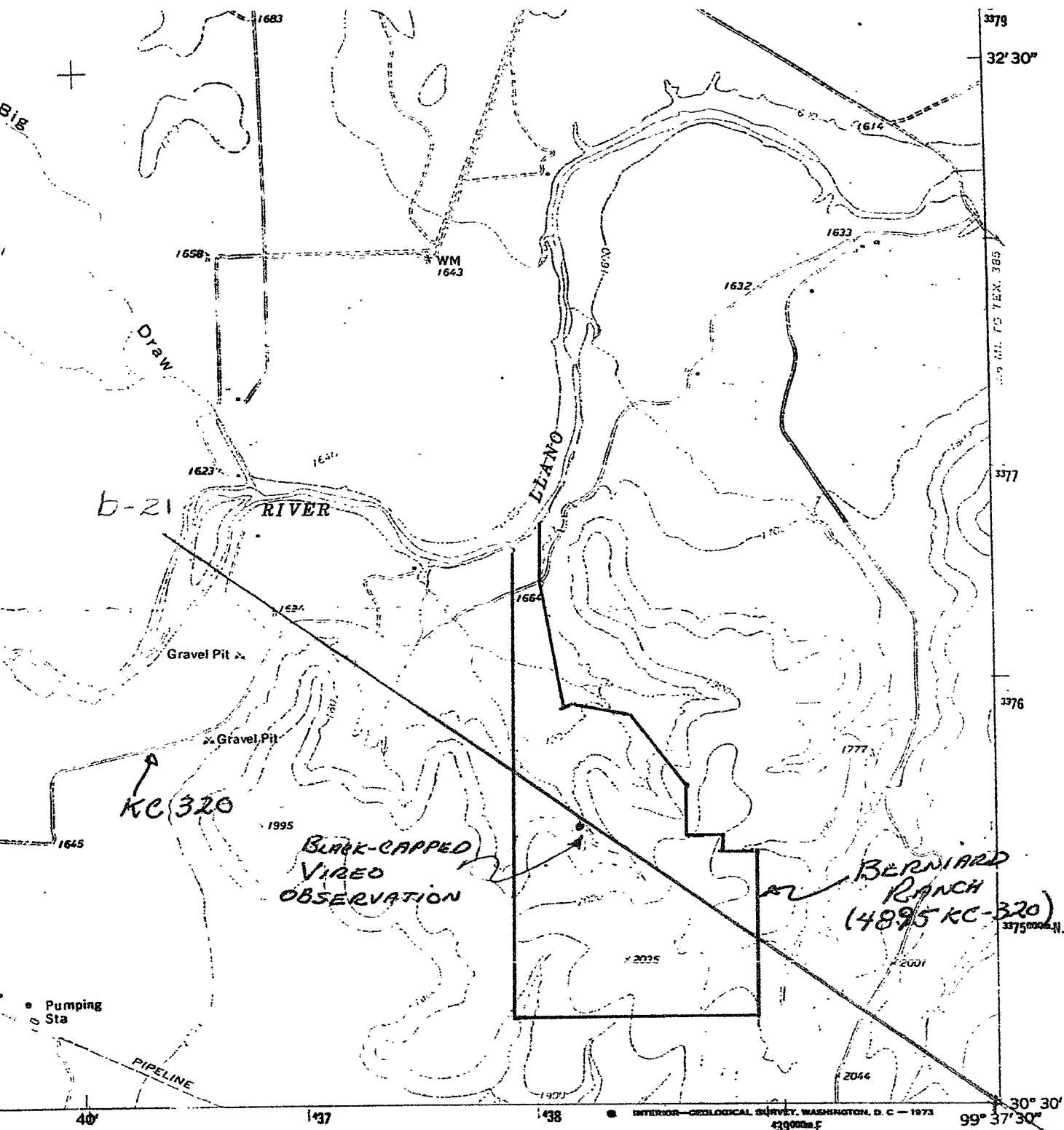
It is my opinion that the proposed transmission line would negatively impact nesting habitat preferred by the above documented Black-capped Vireo. In the interest of conserving critical habitat within the Berniard Ranch, particular attention should be given to this segment of the line during your environmental assessment by conducting future Black-capped vireo surveys in order to document any additional birds. Please feel free to contact me if I can be of further assistance.

Sincerely,

Gilbert Guzman

TPWD – Edwards Plateau Region  
Wildlife Biologist  
Kimble & Menard Counties  
1205 College  
Junction, TX 76849  
Office 325-446-3617  
[gguzman154@hctc.net](mailto:gguzman154@hctc.net)

cc. Mike Krueger – TPWD  
Kathy Boydsten - TPWD



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QUADRANGLE LOCATION

#### ROAD CLASSIFICATION

Primary highway, hard surface _____	Light-duty road, hard or improved surface _____
Secondary highway, hard surface _____	Unimproved road _____
Interstate Route	U. S. Route      State Route

BERNIARD RANCH  
 4895 KC-320  
 KIMBGE CO, TX  
 25

BIG DRAW, TEX.  
 N3030-W9937.5/7.5  
 1970

SOAH DOCKET NO. 473-10-5546  
PUC DOCKET NO. 38354

DIRECT TESTIMONY AND EXHIBITS OF  
LEWIS BERNIARD

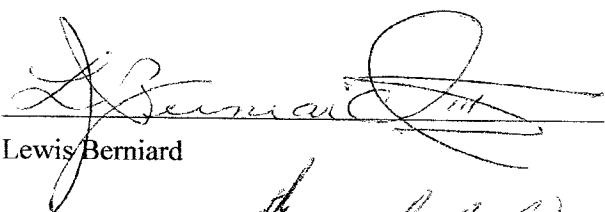
STATE OF TEXAS

COUNTY OF Dallas

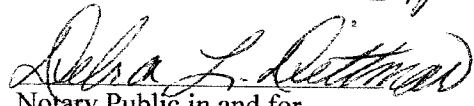
AFFIDAVIT OF LEWIS BERNIARD

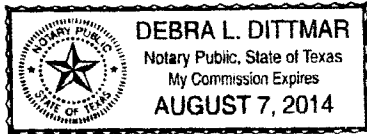
BEFORE ME, the undersigned notary, on this day personally appeared Lewis Bernard, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Lewis Bernard. I am over 18 years of age, of sound mind, and capable of making this affidavit. The foregoing testimony offered by me is within my personal knowledge and, the opinions stated therein, are true and correct to the best of my knowledge and belief."

  
Lewis Bernard

SWORN TO AND SUBSCRIBED BEFORE ME this 10<sup>th</sup> day of September, 2010.

  
Notary Public in and for  
the State of Texas



My commission expires: