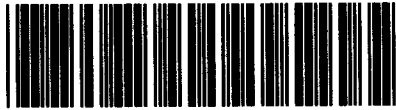




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Item Number: 2905

Addendum StartPage: 0

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

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

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CROSS-REBUTTAL TESTIMONY OF

FRANK A. WEIR, Ph.D.

On Behalf of The McGinley L - Ranch

October 18, 2010

Frank A. Weir, Ph.D.
Cross-Rebuttal Testimony
SOAH Docket No. 473-10-5546
PUC Docket No. 38354
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2905

**S.O.A.H. DOCKET NO. 473-10-5546
P.U.C. DOCKET NO. 38354**

**CROSS-REBUTTAL TESTIMONY OF
FRANK A. WEIR, Ph.D.**

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II. Purpose and Scope of Testimony	4
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**S.O.A.H. DOCKET NO. 473-10-3340
P.U.C. DOCKET NO. 37442**

**REBUTTAL TESTIMONY OF
DR. FRANK WEIR**

I. WITNESS INTRODUCTION AND PROFESSIONAL BACKGROUND

Q. Please state your name, occupation, and address.

A. My name is Frank A. Weir, and I retired from the State Department of Highways and Public Transportation (now Texas Department of Transportation) in 1995. My address is 1301 Hill Street, Bastrop, Texas 78602.

Q. Please briefly describe your education and background.

A. I am originally from McAllen, Texas. I attended the University of Texas at Austin from where I received a Bachelor's degree in Fine Art, and a Masters degree in Anthropology specializing in Archaeology. I have taught Anthropology at the University of North Carolina and Washington State University.

Q. What are some of the excavations in which you have participated?

A. I have participated in, and directed, archaeological excavations in Texas, North Carolina, Utah, New Mexico, and Spain.

Q. Would you please briefly explain your prior role with TXDOT?

A. Yes. I originated the Office of Archaeological Services in the Texas State Highway Department (now Texas Department of Transportation) in Austin in 1970, and was its Director until 1995.

Q. Have you participated in private ventures regarding archeology?

A. Yes, I have. I founded Weir Enterprises which was an archeology and art contracting firm active until 1998. I have also authored several documentaries regarding archeology in the Hill Country.¹

¹ *Archeological and Historical Survey of Proposed Spicewood Springs City Park Hike-and-Bike Trail, Travis County, Texas*, by Frank A. Weir, Principal Investigator, and Alton K. Briggs. TAP No. 1752. Austin: Lone Star Archeological Services and Weir Enterprises, 1997. *City of San Marcos Spring Lake Water Line*

1 **Q. On whose behalf are you testifying?**

2 **A.** I am testifying on behalf of the McGinley L- Ranch.

3 **Q. Have you ever testified before the Public Utility Commission ("PUC" or**
4 **"Commission") before?**

5 **A.** No, I have not.

6 **II. PURPOSE AND SCOPE OF TESTIMONY**

7 **Q. What is the purpose and scope of your testimony?**

8 **A.** My testimony rebuts at least the direct testimonies of Messrs. Keith Sharpe, Francis
9 Hirmas, Harold Hughes, Marvin Pipkin, Dan Kelly, John Lohse, and GT Bohmfalk as
10 they relate to historic and archeological sites.

11 **Q. Are you familiar LCRA Transmission Services Corporation's ("LCRA**
12 **TSC's") Application for a Certificate of Convenience and Necessity for a**
13 **345 kV transmission line from McCamey to Kendall to Gillespie?**

14 **A.** Generally.

15 **III. REBUTTAL OF DIRECT TESTIMONIES**

16 **Q. What area do you rebut the above-named witnesses?**

17 **A.** As illustrated by the direct testimonies I reference above, this area of the Hill
18 Country is rich with historical and archeological sites. For instance, beginning
19 on page 5 of Mr. Sharpe's direct testimony he says his "property was a common
20 campground for Native Americans prior to 1850. The close proximity to the
21 Pedernales River and wooded section of the property near the river, in these

Archeological Investigations - Hays County, Texas, by Molly F. Godwin, Frank Weir, John W. Clark, William J. Weaver, S. Chris Caran, Chris Ringstaff, Tiffany Terneny, Kirk D. French and Tracie Stone. TAP No. 2229. Archeological Investigations Report No. 3. Kyle, TX: Antiquities Planning & Consulting, 2000. *An Intensive Archeological Survey of the Proposed West Transmission Potable Water Pipeline, Williamson County, Texas*, by Steven Kotter, Principal Investigator. TAP No. 2218. Austin: Paul Price Associates, Inc., 1999. *Cultural Resources Evaluation of the Beach Street Weir Site - Fort Worth, Texas*, by S. Alan Skinner and Lance K. Trask. TAP No. 2149. Cultural Resources Report 99-19. Dallas: AR Consultants, 1999. *Excavations at the Rainey Site (41BN33), A Late Prehistoric Sinkhole Site in Bandera County, Texas*, by Jerry Henderson. Principal Investigator: Frank A. Weir. TAP No. 245. Report 5, 2001. Austin: Texas Department of Transportation, Environmental Affairs Division, Archeological Studies Program, 2001.

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1 findings of artifacts from a time period and we have confirmed that previous
2 owners also found these artifacts”.

3 **Q. What is your evaluation regarding Mr. Sharpe’s testimony?**

4 **A.** Mr. Sharpe and the other witnesses that speak to historic and archeological sites
5 are probably close to estimating the era regarding past activities on the land,
6 including the McGinley L- Ranch. Like a few of the other parcels of land, The
7 McGinley L- Ranch contains the remnants of very ancient settlements and the
8 prehistoric natives’ activities dating back to between 4000 to 5000 years ago.

9 **Q. Are you familiar with artifacts found on the McGinley Ranch?**

10 **A.** Yes, I am. The McGinley Ranch is rich with ancient history. As explained in
11 some of the McGinley Ranch’s direct testimony, the McGinley Ranch was the site
12 of prehistoric natives’ villages. Due to the year-round water source, the
13 headwaters of the Threadgill provided the natives with food and water.

14 **Q. Can you identify particular areas of living on the McGinley Ranch?**

15 **A.** Yes, there is a plethora of evidence of the villages. For instance, scattered
16 across the ranch are middens. A midden, also called a kitchen midden, is the
17 place where the natives prepared and cooked their meals thousands of years
18 ago. Some of these sites have been marked, recorded, and registered. For
19 cooking, it is thought, large flat rocks were used to make something similar as an
20 oven. After much use and due to the extreme heat of burning wood and other
21 fuel sources, the flat rocks have broken into very square smaller pieces. Below,
22 Exhibit FW-1 is one of the broken pieces from a midden on The McGinley Ranch.

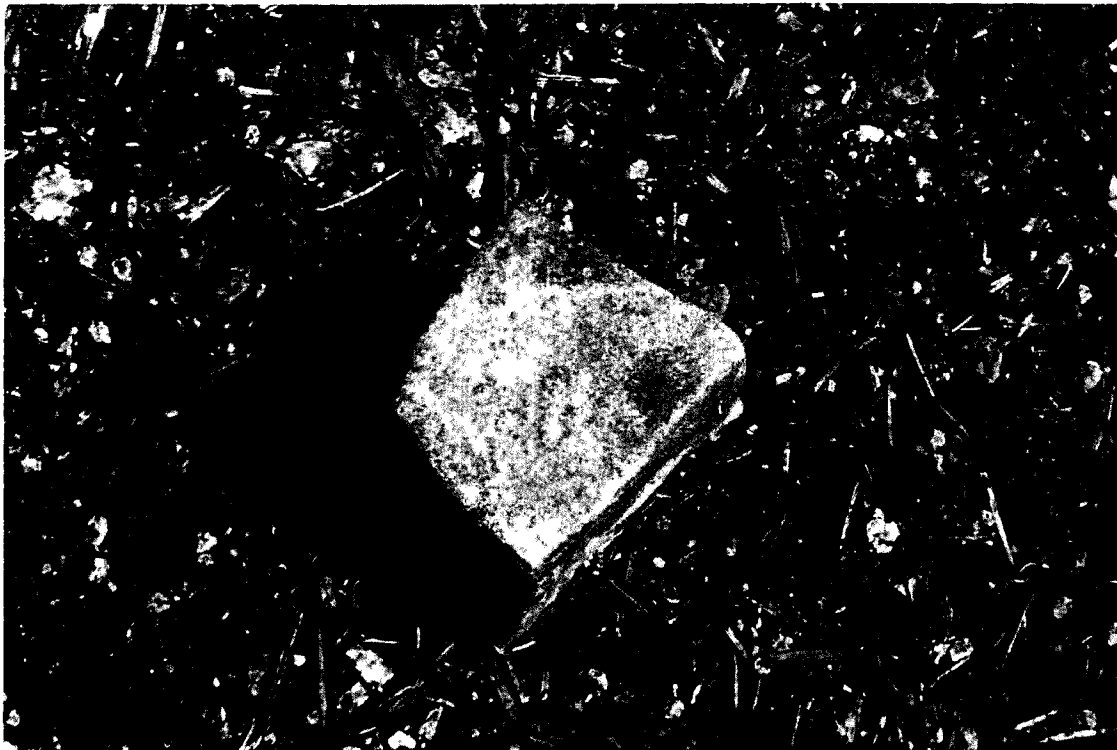


Exhibit FW-1

1 **Q. Are you aware that the Texas Historical Commission has been working**
2 **with Ms. McGinley?**

3 **A.** Yes, I am. The McGinley L- Ranch has been the subject of initial survey and site
4 inventory by the THC. As of mid-March of this year, thirty-one (31) archeological
5 sites have been recorded on the property, issued unique trinomial numbers, and
6 entered into the statewide archeological database.

7 **Q. Are any of these sites in the process of being designated as State**
8 **Archeological Landmarks?**

9 **A.** Yes, there are. Such sites so designated on the property will be protected under the
10 Antiquities Code of Texas. It is important to note that any activities impacting
11 these sites will require antiquities permits as required by the statute found at
12 <http://www.thc.sate.tx.us/rulesregs/RulesRegsPDF/AntiqCode.pdf>.

1 **Q. What is your general professional opinion regarding The McGinley Ranch?**

2 **A.** The McGinley Ranch appears to possess a high density of well-preserved, very
3 significant archeological sites, ranging chronologically from Late Paleo-Indian times
4 (a point of the Scottsbluff type was observed on at least one site) through the Last
5 Prehistoric II times.

6 **Q. Would you please share some of the findings?**

7 **A.** Yes. To appreciate the magnitude of the historic and archeological significance on
8 the McGinley Ranch, I share some examples of the finds on the Ranch. Note,
9 however, there are countless, literally countless at this time, of such artifacts.



Exhibit FW-2



Exhibit FW-3

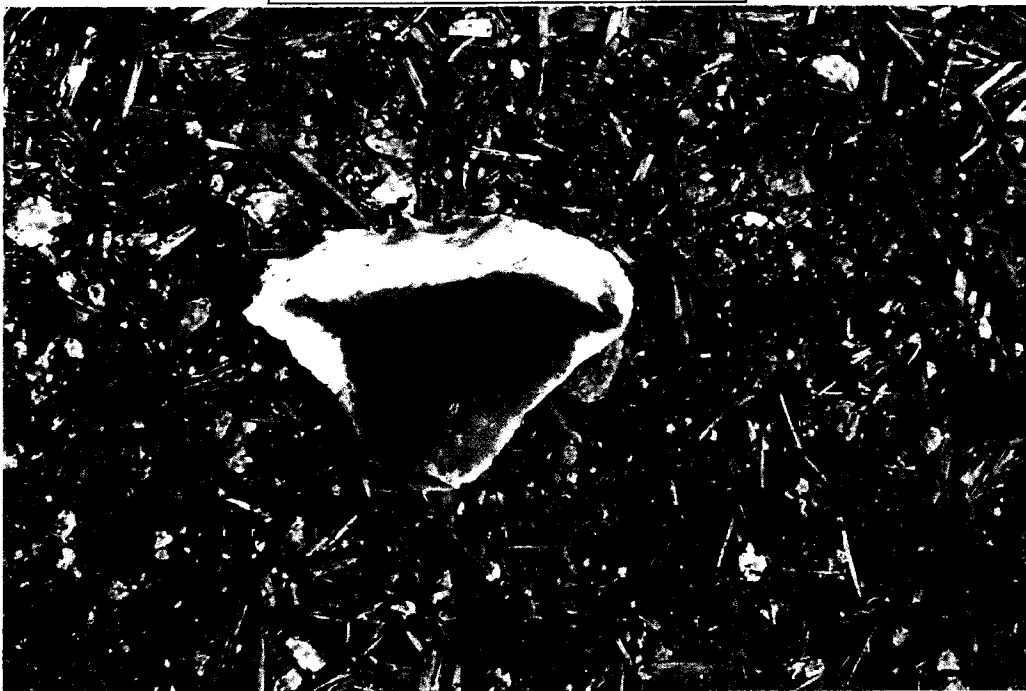


Exhibit FW-4



Exhibit FW-5

1 **Q. Is it fair to say you are quite familiar with the property?**

2 **A.** Indeed it is. Using both my knowledge regarding historical and archeological
3 information with my art skills, Ms. McGinley commissioned me to paint a part of her
4 ranch where natives would have lived and cooked. Below is a picture of me holding
5 up my painting of what the area would have looked like thousands of years ago.



Exhibit FW-6

1 **IV. IMPACTS ON THE PROPERTY**

2 **Q. What routes would adversely affect The McGinley Ranch?**

3 **A.** Specifically, links b36, b50a and b51 negatively affect The McGinley Ranch. From a
4 general perspective and from more detailed perspectives, it is obvious how these
5 two links interfere with the preservation of archaeological features of The McGinley
6 Ranch.

7 **Q. Why has the Texas Historical Commission shown interest in The McGinley**
8 **Ranch?**

9 **A.** For several reasons. To say again in other forums, Ms. McGinley is to be
10 commended for her efforts to preserve the important history on her large ranch,
11 and the Texas Historical Commission continues to work with her to achieve that
12 goal. Ms. McGinley has reached out to others regarding the treasure of her

1 property as noted in her direct testimony. See, the attached letters from THC and
2 the Texas Parks and Wildlife which also forms the basis of my testimony.

3 There is little doubt that building and maintaining a large electric transmission
4 line along the McGinley Ranch will severely cause harm to the historical,
5 archeological, and ecological importance of this ranch, not only for today, but for
6 the generations to come.

7 **V. CONCLUSION**

8 **Q. What is your conclusion with respect to LCRA TSC's proposed routes for**
9 **its McCamey_D to Kendall to Gillespie transmission line?**

10 **A.** LCRA TSC's subject transmission line should not traverse links b36, b50a and b51,
11 and should be avoided. Some of the most well-preserved historical and
12 archeological areas of significance are on this ranch.

13 **Q. Does this conclude your testimony?**

A. Yes, it does.

TEXAS HISTORICAL COMMISSION

15 March, 2010

To Whom it May Concern,

The McGinley Ranch, located near Harper Texas, has been the subject of initial survey and site inventory by the Texas Historical Commission. To date, 31 (thirty one) archeological sites have been recorded on the property, issued unique trinomial numbers, and entered into the statewide archeological database.

In addition, a selection of these sites are in the process of being designated State Archeological Landmarks. Those sites so designated on the property will be protected under the Antiquities Code of Texas (accessible here:

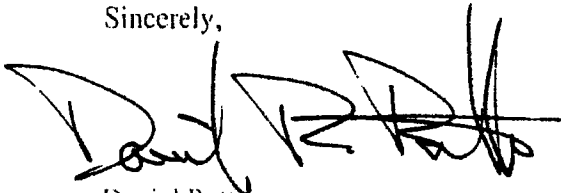
<http://www.thc.state.tx.us/rulesregs/RulesRegsPDF/AntiqCode.pdf>) Any activities impacting these sites will require antiquities permit as required by this statute.

Generally speaking, the McGinley Ranch appears to possess a high density of well-preserved, very significant archeological sites, ranging chronologically from late Paleoindian times (a point of the Scottsbluff type was observed at one site) through to Late Prehistoric II times (based on artifacts viewed in the McGinley Family collection).

Ms. McGinley is to be commended for her efforts to preserve the important history on her ranch, and the Historical Commission will be working with her to achieve that goal.

If I may provide any information regarding the historical resources at McGinley Ranch, please feel free to contact me at the Texas Historical Commission

Sincerely,



Daniel Potter

Regional Archeologist

Frank A. Weir, Ph.D.
Cross-Rebuttal Testimony
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August 27, 2010

Life's better outside.®

Lou Ellen McGinley
McGinley L- Ranch
100 Ellen McGinley Lane
Harper, Tx. 78631

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Fort Worth

Carter P. Smith
Executive Director

Ms. McGinley:

McGinley L- Ranch is composed of 5,800 acres of limestone oak woodland located in far western Gillespie County. The ranch is located approximately 3 miles due north of Harper, Texas and is bisected by FM 783 for a distance of 5 miles. McGinley L- Ranch is dominated by significant hydrological features including Threadgill Creek and numerous subordinate creeks. These drainages meander throughout the property in a northeasterly direction—forming the entrance to the topographical feature locally known as the *Doss Valley*. Drainages are fed by numerous perennial springs which provide a dependable year-round water supply and a significant riparian wildlife habitat. Threadgill Creek and a subordinate drainage known as Cherry Hollow Creek lie directly within the proposed route of the McCamey D—Kendall-Gillespie Transmission Line project. Specifically, L- Ranch is located within the footpath of the B-50A line segment which would traverse the property from northwest to southeast for approximately 2.5 miles.


As requested, I conducted a site visit to the property on August 16, 2010. The purpose of this visit was to identify any sensitive habitats, and/or potential habitat for rare or declining species (plant or animal) which may be adversely affected by the proposed construction project. Due to the timing of the site visit (post-breeding for most songbirds), no rare avian sightings were confirmed; however, potential Black-capped vireo (*Vireo atricapillus*) habitat *was* identified in one pasture. The notable area of concern focuses on the Cherry Hollow, Threadgill, and Brushy Creek drainages, along with adjacent shin-oak uplands deemed suitable vireo habitat. Although the projected power line easement would spare a direct assault on several major springs, negative habitat and hydrological impacts would certainly be felt at Kroll Springs—located within 400 yards of the projected line, and at Flint Ledge Spring—located within 200 yards. The proposed route would directly impact both the Cherry Hollow and Threadgill drainages—areas which hold significant stands of old-growth elm, live oak, Texas walnut, and pecan. These areas are both utilized as premier roosting sites by native Rio Grande Turkey, and a major travel corridor for wildlife.

Adjacent to these riparian bottomlands, a mixture of live oak and low-growth shin oak dominates L- Ranch uplands—an area deemed suitable habitat for use by the federally endangered Black-capped Vireo (*Vireo atricapillus*). The proposed transmission line project would bisect this habitat—potentially disrupting nesting activities during the May-August time period. Vegetation in this area is characterized by low-growing, clump-forming shin oak, elbowbush, greenbrier, persimmon, and agarita, with isolated

stands of Texas oak, net-leaf hackberry, gum bumelia, Texas redbud, and blackhaw viburnum scattered throughout. Live oak and Texas Oak provide isolated overstory species, while diverse, low-growing shin oak clumps ranging from ground level to 10 feet provide potential nesting habitat for the species. Canopy coverage is estimated at 50-60%. Additionally, potential habitat for the endangered Golden-cheeked Warbler (*Dendroica chrysoparia*) has also been identified on the neighboring Circle Ranch—approximately 100 yards to the southeast of the McGinley L- fenceline. A long-term brush management program targeting ashe juniper has minimized the potential for GCW breeding habitat on McGinley Ranch itself.

While not considered federally threatened or endangered, all riparian bottomlands at McGinley L- Ranch should be considered highly sensitive areas, by providing year-round food and shelter for a variety of wildlife species. Old-growth live oak, pecan, and elm growing within the easement would be significantly impacted from any power line project. In the interest of protecting these old-growth riparian habitats, historical turkey roosts, and reducing the potential for surface damages during the construction phase, it is my opinion that any proposed transmission line project could negatively impact at least one rare species and several common species. In addition, the destruction of numerous archeological sites is also a major concern. Particular attention should be given to this portion of the proposed B-50A line segment during the environmental assessment phase. Specifically, abundance surveys for the Black Capped Vireo should be conducted by individuals authorized by the USFWS to document use during peak nesting season (May-August). Additionally, water quality impacts to Cherry Hollow and Threadgill Creek drainages should also be addressed. Please feel free to contact me if I can be of further assistance.

Sincerely,



Joyce M. Moore
Technical Guidance Biologist—Western Edwards Plateau
P.O. Box 558
Harper, Tx. 78631
830/864-5147 office
830/285-0872 mobile
jmoore@hctc.net

Cc: Mike Krueger—TPWD District Leader
Kathy Boydston—TPWD Environmental Assessments Branch

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