

# AUSTIN MONITOR

## Two environmental groups plan to sue TxDOT



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by Jo Clifton

The Center for Biological Diversity and the Save Our Springs Alliance have notified the Texas Department of Transportation and the Federal Highway Administration that they intend to file suit against the agencies for approving the so-called MoPac Intersections project without consulting with the U.S. Fish and Wildlife Service, which oversees protection of endangered species.

According to the two environmental groups, TxDOT and the FHA failed to ensure that the project, which crosses the environmentally sensitive Barton Springs/Edwards

Aquifer Conservation District's recharge zone in Southwest Austin, will not harm three endangered species: the Barton Springs salamander, the Austin blind salamander and the golden-cheeked warbler.

In a notice filed Wednesday, those groups said, "The Texas Department of Transportation conducted an inadequate, cursory environmental review of the project and did not consult with the U.S. Fish and Wildlife Service to ensure the project would not jeopardize the survival of these endangered species, a violation of the Endangered Species Act."

In their letter concerning the lawsuit, the groups noted that TxDOT finalized an environmental assessment in December 2015, at which time they determined that there would be “no significant impact” under standards set forth in the federal National Environmental Policy Act.

Kelly Davis, attorney for SOS, said Thursday that environmentalists are particularly concerned about the impact on the salamanders because TxDOT intends to construct approximately 2 miles of new lanes by digging down 23 feet below the current grade directly into Edwards Aquifer limestone, the material that forms caves.

According to the letter, a major threat to both salamander species is reduced habitat quality due to impervious cover and increased urbanization. While TxDOT promises “best management practices, (those) are only intended to remove 80 percent of the increased total suspended solids,” the letter says, ignoring the massive amount of sedimentation likely to fall directly into salamander habitat.

That means more pollution and sedimentation at the Blowing Sink Cave near the intersection of Brodie Lane and Davis Lane, as well as at the salamander habitat around Barton Springs pool, Davis said.

According to a written statement from Jenny Loda, a biologist and attorney with the Center for Biological Diversity, which is dedicated to protecting rare amphibians and reptiles, “Unchecked sprawl and transportation projects have already played a critical role in pushing these endangered salamanders and birds toward extinction.”

She added, “The highway expansion called for in the MoPac Intersections Project, along with adjacent highway expansion projects, is only going to accelerate the threats that are quickly wiping out these amazingly unique species.”

A coalition of citizens backed by SOS and other groups has already filed suit against TxDOT and the Central Texas Regional Mobility Authority over the agencies’ decision to break up the MoPac construction projects in order to avoid increased federal scrutiny. Those citizens include Shudde Fath and former mayors Carole Keeton and Frank Cooksey.

Renea Hicks, the attorney for those plaintiffs, explained, “By chopping up the project into three smaller pieces, TxDOT and CTRMA have failed to examine the cumulative impacts of their project on the environment. This means there is no meaningful analysis of likely impacts on the Barton Springs/Edwards Aquifer, on endangered species, or on flooding and erosion downstream in the Onion Creek watershed.

“The harm from this piecemeal approach is compounded when you consider the likely impact of other projects TxDOT is actively pursuing in the Barton Springs watershed, including the massive Oak Hill ‘Y’ toll road project,” Hicks said.

TxDOT spokeswoman Veronica Beyer responded to the Monitor’s request for a response via email, saying, “On Tuesday, April 26, TxDOT filed its answer to the plaintiffs’ lawsuit in federal district court which attempts to stop construction of three essential transportation projects (MoPac Express Lanes, MoPac Intersections and SH 45 SW). TxDOT denied the plaintiffs’ allegations.

TxDOT also filed a motion to dismiss the lawsuit, based on the fact that this is a new attempt to re-litigate a prior similar case that the plaintiffs lost.”

This statement clearly refers to the earlier lawsuit, not the notice of intent filed on Wednesday.