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November 20, 2015

The Honorable Dan A. Gattis  
County Judge  
Williamson County, Texas  
710 S. Main Street, Suite 101  
Georgetown, Texas 78626

Mr. John Yearwood  
32800 Ronald Reagan Blvd.  
Georgetown, TX 78633

RE: Waiver of Conflict of Interest

Dear Judge Gattis and Mr. Yearwood:

This letter will confirm and is in follow-up to my recent conversation with you in which you all have collectively requested that Texas Public Policy Foundation concurrently represent each of you or the entity which you represent in connection with federal district court litigation to oppose continued regulation of the Bone Cave Harvestman spider within Williamson County by the United States Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA).

We have discussed the possibility that our concurrent representation of you constitutes a potential conflict of interest. In my opinion, no actual conflict exists at this time. This is because all parties named in the subject action currently share a commonality of interest in the litigation's goal to end the ESA regulation of the Bone Cave Harvestman (BCH). This litigation is limited to the narrow issue of whether ESA regulation of the BCH is constitutional. All parties are in agreement that the regulation of the BCH is unconstitutional.

*In the event that any conflict, dispute or disagreement arises between you as to your respective rights and defenses, we shall decline to represent you in any manner in connection with that dispute or disagreement.*

Again, there are various ways in which a future conflict of interest could arise. For example, if we receive conflicting instructions from you, we will be placed in a position in which we could not follow one set of instructions without violating our professional obligations to the other of you. This situation, if unresolved, could create a conflict of interest which would require us to withdraw from representation and which would require each of you to seek new counsel.

Therefore, we will require as a condition of our representation that you provide us with a common set of instructions as to the FWS litigation matter, in order to prevent such a potential conflict. Additionally, in the event that you develop inconsistent defenses or objectives, such that one of you wishes us to pursue a defense or strategy which would adversely affect the interests of the other, a conflict would arise which would require us to withdraw as counsel for any of you in your respective individual capacities. Thus, we will make every effort during the course of representation to confirm that each of you have a commonality of interest in connection with the positions asserted on your respective behalves. If your interests diverge during the course of representation, further disclosure and waiver of the conflict, or withdrawal from representation, will ensue. Should such divergence of your respective interests occur, each of you in your respective capacities expressly consent to our continuing representation of any of the other co-parties, even if we withdraw from further representation of any of the remaining clients signing below.

You should each also be aware that each of you may have indemnification rights against the other. As stated above, since we are representing your common interests in this matter, we cannot represent or advise any of you with respect to those claims. We suggest that you consult separate counsel with respect to any such indemnity claims which may exist or which may arise in the future.

You should also consider that, as among you, there is no right to assert the attorney/client privilege as to communications we receive from any of you in connection with the joint representation. You confirm by executing this letter, that you are aware of the provisions of Rule 503, Texas Evidence Code, and that you expressly consent to the communication to any of you, of information received by this firm from any other of you. You further acknowledge that, assuming the information learned from any of you is significant, we may have an ethical duty to disclose that information to the remainder of you.

After termination of Texas Public Policy Foundation's services in this matter, we will request that you take possession of the original client file. You and each of you expressly agree that we shall be deemed to comply with our duty to provide the file to our client by making the file available to you electronically. In the event that no one takes possession of the original client file upon the expiration of five years after our representation terminates in this matter, you, and each of you, expressly authorize Texas Public Policy Foundation to destroy the original client file in the normal course of business.

By executing this letter where indicated below, you and each of you confirm that you have been fully informed as to the nature of the potential conflicts which arise as a result of our concurrent representation of all of you; that you have been provided a reasonable opportunity to seek the

advice of independent counsel of your choice regarding these potential conflicts and waiver thereof; and you understand that a conflict may arise in the future which may require an additional disclosure and waiver by you, or, alternatively, withdrawal by this firm of representation of one or all of you.

Additionally, you confirm that you will take the opportunity to retain independent counsel in the event you have any reservations regarding our concurrent representation of your interests, the issues arising from that representation, and/or the waiver of the potential conflict of interest.

Assuming the foregoing accurately reflects your agreements, please execute and return to me the waiver form appended hereto. Of course, if any of you has any questions or comment, please feel free to give me a call. I look forward to working with you in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Henneke". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert Henneke  
Director, Center for the American Future  
Texas Public Policy Foundation

## WAIVER OF CONFLICT

I, Judge Dan A. Gattis, hereby acknowledge that I have carefully read the foregoing letter, informing me that my interests or the entity that I represent may potentially be in conflict with those of the other plaintiffs in connection with Texas Public Policy Foundation's representation of my interests and those of the other plaintiffs in connection with litigation against the United States Fish and Wildlife Service to delist the BCH under the ESA. I expressly acknowledge that the concurrent representation by the Texas Public Policy Foundation of my interests and those of the other plaintiffs constitute the representation of potentially conflicting interests, to the extent that my interests and those of the other plaintiffs are potentially adverse. I nevertheless knowingly and voluntarily consent to such concurrent representation by the Texas Public Policy Foundation.

I further expressly acknowledge that I have been advised that I have the right to seek independent legal counsel in connection with the advisability of waiving said conflict, and that I have had a reasonable opportunity to do so.

Dated: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_

Print Name: Dan A. Gattis, Williamson County Judge

on behalf of: Williamson County, Texas