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OPINION COMMITTEE

FILE # ML-44268-05

I.D. # 044268

**Harvey Hilderbran**

MEMBER

**The Texas House of Representatives**

State Representative • District 53

District Office:  
125 Lehmann Drive  
Kerrville, Texas 78028  
830-257-2333

P.O. Box 2910  
Austin, Texas 78768-2910  
512-463-0536

*RQ-0363-GA*

July 6, 2005

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

Dear General Abbott:

I am requesting an opinion regarding a liability issue concerning the McCulloch Soil and Water Conservation District Board of Directors. I have attached a letter from the chairman of the conservation board. The board is seeking assistance in managing the cost of the operation and maintenance of the sites in McCulloch County.

Please feel free to contact me or Isaac Albarado with any questions you may have regarding this issue.

As always, thank you for your hard work and courtesy. I truly appreciate the opportunity to work with you on behalf of the people of our great state.

Sincerely,

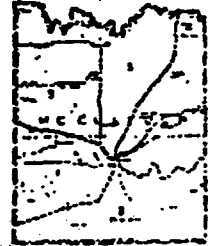
*Harvey Hilderbran*  
HARVEY HILDERBRAN  
State Representative



**McCulloch Soil and Water Conservation District**  
200-A East 11th St. - Brady, Texas 76825 - Phone (915) 597-1860

June 7, 2005

Representative Harvey Hilderbran  
PO Box 2910  
Austin, TX 78768



Dear Representative Hilderbran:

Through the years, the McCulloch Soil and Water Conservation Board of Directors have voiced concerns about the flood prevention structures located in McCulloch County. Currently, we have approached the State Soil and Water Conservation Board for assistance with appropriate steps to take concerning the operation and maintenance of the sites as well as the liability issues connected with these sites. We are requesting assistance from you in getting an opinion from the Attorney General concerning the liability of the McCulloch Soil and Water Conservation Board of Directors as a whole and each director individually.

To give you background information in a concise way follows:

1. The flood prevention structures were built beginning in 1951 by the U.S. Department of Agriculture - Soil Conservation Service under Public Law 78-534 authority.
2. The structures were designed with a life expectancy of 50 to 100 years.
3. It is the belief of the McCulloch SWCD that because the structures were designed and built with corrugated metal outlet pipe having a life expectancy of 25 years, problems exist today. Current robotic inspection shows deterioration of these metal pipes.
4. The McCulloch SWCD is the only Board in the State of Texas that has no co-sponsor that has taxing authority. Maintenance of the FP sites is normally covered by county / city governments. The McCulloch SWCD was the first in the State to put in flood prevention structures and the agreements did not recognize the need to have maintenance provided for by a taxing authority at that time.
5. The McCulloch SWCD is facing repair and maintenance costs as high as \$20,000 to \$100,000 per site as the corrugated metal tailpipes need replaced, fences need repair or replaced and brush control continues to be a problem to be addressed.

The McCulloch SWCD is currently looking for help managing the cost of the operation and maintenance of these sites. However, we would appreciate an opinion from the Attorney General as to the liability issues dealing with this situation.

Thank you for your guidance and help in this matter.

Sincerely,

Gene Edmiston, Chairman