

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



A RESOLUTION regarding the Request by the South Central Texas Water Advisory Committee concerning the Edwards Aquifer Authority Board of Director's action; TCEQ Docket No. 2004-1705-MIS.

WHEREAS, on December 1, 2003, the Edwards Aquifer Authority ("EAA") passed Resolution and Order No. 12-03-478, which adopted the Junior/Senior permit rules.

WHEREAS, on February 12, 2004, the South Central Texas Water Advisory Committee ("SCTWAC") adopted Resolution No. 02-2004-01 requesting the EAA to reconsider its adoption of the Junior/Senior permit rules. The EAA considered SCTWAC's request at its May 11, 2004 Board meeting and adopted an order denying the request.

WHEREAS, on June 3, 2004, SCTWAC filed a request with the Commissioners, requesting that the Commission conduct a review of the EAA's approval of the Junior/Senior permit rules under the authority of Section 1.10 of the EAA Act.

WHEREAS, on February 23, 2005, the Commission during its public meeting evaluated the request by SCTWAC and determined to issue an interim order granting the request and establishing the procedure and scope of review for evaluating the request.

WHEREAS, On March 1, 2005, the Commission referred the matter to the Executive Director to conduct his suggested analysis using the computer groundwater simulation model of the Texas Water Development Board (TWDB), GWSIM-IV, and determined that the Executive Director must consider the following issues and make proposed recommendations regarding:

- (1) the impact of the EAA's Junior/Senior permit rules on downstream water interests, particularly surface water rights holders; and
- (2) whether the EAA's Junior/Senior permit rules are contrary to a Commission action affecting downstream interests, particularly the issuance, administration and enforcement of existing and future surface water rights.

The Commission also determined that the parties may file responsive briefs or additional technical analysis to the Executive Director's proposed recommendations within sixty (60) days following the filing of the recommendations.

WHEREAS, On September 1, 2005, the Executive Director filed its recommendations with the Commission.

WHEREAS, the Commission received timely response filings from SCTWAC and the EAA.

WHEREAS, on January 11, 2006, the Commission during its public meeting evaluated the request by SCTWAC, the Executive Director's recommendations regarding the two specific issues, the timely filed responses, the oral presentations and the answers to questions during its meeting under the requirements in the applicable statutes, including Section 1.10 of the EAA Act.

WHEREAS, as the grantor of surface water rights under Chapter 11 of the Texas Water Code, the Commission has an obligation to enforce and uphold the rights conveyed to private and public parties in surface water rights.

WHEREAS, the Commission determined that the EAA's Junior/Senior permit rules will have a measurable effect on downstream water interests and surface water rights holders and that the EAA's Junior/Senior permit rules are contrary to the Commission's issuance, administration and enforcement of existing surface water rights.

WHEREAS, by the EAA's own admission, the Junior/Senior permit rules provide for a bifurcated permitting process for pumping up to approximately 560,000 acre feet of water per year.

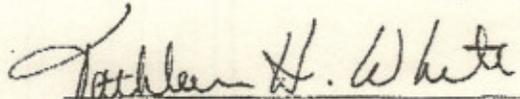
NOW THEREFORE, BE IT RESOLVED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that, after consideration SCTWAC's request for review of the EAA's Junior/Senior permit rules:

- 1) the EAA's Junior/Senior permit rules will have a measurable effect on downstream water interests, particularly surface water rights holders; and
- 2) the EAA's Junior/Senior permit rules are contrary to the Commission's actions affecting downstream interests because they could measurably deprive downstream water rights holders of a portion of river flows that would otherwise be available to them under permits and certificates of adjudication issued and/or administered by the Commission and also could otherwise measurably deprive flows for instream uses.

BE IT FURTHER RESOLVED, that because of the measurable impact on downstream interests, particularly surface water rights, under the maximum pumping of water from the Edwards Aquifer allowed under the bifurcated rules of up to approximately 560,000 acre feet per year; and because the EAA's Junior/Senior permit rules are contrary to basic Commission actions in administering surface water rights, the Commission recommends that the EAA reconsider the bifurcated permitting rules to limit permits to within the statutory cap of 450,000 acre feet per year and to minimize the measurable impact on downstream surface water rights holders and other downstream interests.

ISSUED this 11th day of January, 2006.

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For The Commission