

RESOLUTION NO. 02-2004-01

A RESOLUTION OF THE SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE REQUESTING THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS TO RECONSIDER ITS APPROVAL OF RESOLUTION AND ORDER NO. 12-03-478 ADOPTING PERMIT RULES WITHIN CHAPTER 711 OF THE EDWARDS AQUIFER AUTHORITY RULES

WHEREAS, diverse economic and social interests are dependent on the Edwards Aquifer (“Aquifer”) for water supply;

WHEREAS, the Aquifer has been declared by the Texas Legislature to be “a distinctive natural resource in this state” and “a unique aquifer;”

WHEREAS, the Edwards Aquifer Authority (“Authority”) was created in 1993 by the Texas Legislature, Edwards Aquifer Authority Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended by Act of May 29, 1995, 74th Leg., R.S., ch. 261, 1995 Tex. Gen. Laws 2505; Act of May 16, 1995, 74th Leg., R.S., ch. 524, 1995 Tex. Gen. Laws 3280; Act of May 6, 1999, 76th Leg., R.S., ch. 163, 1999 Tex. Gen. Laws 634; Act of May 28, 2001, 77th Leg., R.S., ch. 966, §§ 2.60 - 2.62 and 6.01 - 6.05, 2001 Tex. Gen. Laws 1880, 1910 and 1961 - 62; Act of May 23, 2001, 77th Leg., R.S., ch. 1192, 2001 Tex. Gen. Laws 2552; and Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193 (“Act”);

WHEREAS, the Act requires the Authority to limit “[a]uthorizations to withdraw water from the aquifer ... to ... (1) protect the water quality of the aquifer; (2) protect the water quality of the surface streams to which the aquifer provides springflow; (3) achieve water conservation; (4) maximize the beneficial use of water available for withdrawal from the aquifer; (5) protect aquatic and wildlife habitat; (6) protect species that are designated as threatened or endangered under applicable federal or state law; and (7) provide for instream uses, bays, and estuaries.” Act § 1.14(a);

WHEREAS, the Act mandates that “for the period ending December 31, 2007, the amount of permitted withdrawals from the aquifer may not exceed 450,000 acre-feet of water for each calendar year.” and “for the period beginning January 1, 2008, the amount of permitted withdrawals from the aquifer may not exceed 400,000 acre-feet of water for each calendar year. Act § 1.14(b) and (c);

WHEREAS, the Act authorizes the Authority to “review and ... increase the maximum amount of withdrawals provided by this section and set a different maximum amount of withdrawals,” *but only if* “through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, the authority determines

that additional supplies are available from the aquifer. ... in consultation with appropriate state and federal agencies....” Act § 1.14(d);

WHEREAS, the Act provides for the appointment of the South Central Texas Water Advisory Committee (“Advisory Committee”) by the governing bodies of the counties of Atascosa, Caldwell, Calhoun, Comal, DeWitt, Goliad, Gonzales, Guadalupe, Hays, Karnes, Medina, Nueces, Refugio, San Patricio, Uvalde, Victoria and Wilson, and the governing bodies of the cities of San Antonio, Victoria, and Corpus Christi, to “advise the board on downstream water rights and issues” and to “assess the effect on downstream water rights of the management of the aquifer” by the Authority. Act § 1.10;

WHEREAS, the Act provides that the Advisory Committee “by resolution may request the board to reconsider any board action that is considered prejudicial to downstream water interests.” Act § 1.10(f);

WHEREAS, on December 16, 2003, the Authority Board of Directors approved Resolution and Order No. 12-03-478 adopting revised permit rules (“Revised Permit Rules”) within Chapter 711 of the Edwards Aquifer Authority Rules, effective December 26, 2003;

WHEREAS, the Revised Permit Rules create a “bifurcated” system that divides regular permits into two elements, one of which (“Senior Rights”) is not interruptible unless the Aquifer is at or below certain levels (650 amsl for the J-17 well, and 845 amsl for the J-27 well), and the other of which (“Junior Rights”) are available for use when the Aquifer is at or above certain higher levels (665 amsl for the J-17 well, and 865 amsl for the J-27 well);

WHEREAS, under the Revised Permit Rules, only the Senior Rights are counted against the Act’s limitations on authorized withdrawals, and the Junior Rights (which according to current Authority staff estimates will likely amount to approximately 110,000 acre-feet per year upon completion of permit processing) will not be counted against the limitations on authorized withdrawals;

WHEREAS, the Revised Permit Rules will have the effect of increasing authorized withdrawals to a level that exceeds the Act’s 450,000 acre-foot annual limitation on authorized withdrawals by almost 25%;

WHEREAS, the Authority in formulating the Revised Permit Rules did not conform to the requirements of the Act to determine “that additional supplies are available from the aquifer, ... in consultation with appropriate state and federal agencies” prior to increasing the maximum amount of authorized withdrawals from the level provided by Section 1.14(b) of the Act, and setting a different maximum amount of authorized withdrawals;

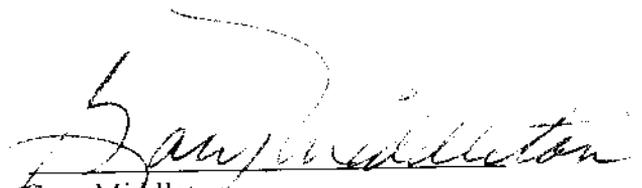
WHEREAS, the Advisory Committee considers the action of the Board of Directors in approving Resolution and Order No. 12-03-478 to be prejudicial to downstream water interests in the following respects:

1. The Act does not authorize the creation of the bifurcated system of Senior Rights and Junior Rights. This bifurcated permit system appears to have been created solely to achieve through artifice what has not been achieved through scientific research or legislative action – an increase in the cap on permitted withdrawals from the Edwards Aquifer.
2. The Advisory Committee believes that increased withdrawals from the Aquifer when the Aquifer level is high will only cause the Aquifer to drop to low levels at earlier dates at the beginning of severe droughts, and to remain at lower levels at all times thereafter throughout the droughts. The impact of the Revised Permit Rules cannot be determined with any certainty since they do not address, in any depth, practical aspects of how and when the Senior Rights and Junior Rights can be used by permit holders.
3. The Revised Permit Rules set an extremely unhealthy precedent for future action by the Authority Board. If Board action without scientific support is all that is necessary to circumvent the statutorily mandated caps on withdrawal authorizations, the caps are rendered meaningless, and the ability of downstream water rights holders to rely on the base flows provided by the Comal and San Marcos springs during droughts will be substantially reduced if not eliminated.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE THAT:

- Section 1.** The recitals stated above are incorporated into this Resolution for all purposes.
- Section 2.** The Advisory Committee respectfully requests that the Authority Board of Directors, no later than April 15, 2004, reconsider Resolution and Order No. 12-03-478 adopting the Revised Permit Rules.
- Section 3.** The Advisory Committee respectfully requests that the Authority Board, no later than April 15, 2004, direct the Authority staff to proceed with the process of drafting, review and adoption of rules to require proportionate reductions of all regular permits to meet the initial 450,000 acre-foot per year limitation on authorized withdrawals from the Aquifer.
- Section 4.** The adoption of these rules could be accompanied by Authority Board action to consider the issuance of term permits to meet real interim needs, which would expire no later than December 31, 2007.

PASSED AND APPROVED BY THE SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE THIS 12th DAY OF FEBRUARY, 2004.



Gary Middleton
Chairman

ATTEST:



David Davenport
Secretary