

GUADALUPE BASIN COALITION

c/o Greater New Braunfels Chamber of Commerce
New Braunfels, Texas 78131
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RESOLUTION NO. 2006-1

A RESOLUTION EXPRESSING THE GUADALUPE BASIN COALITION'S POSITION ON POSSIBLE AMENDMENTS TO THE EDWARDS AQUIFER AUTHORITY ACT

WHEREAS, the Texas Legislature, in enacting the Edwards Aquifer Authority Act (EAA Act) as Senate Bill 1477 in 1993, recognized the fact that the Edwards Aquifer and the Guadalupe River basin comprise a unified hydrologic system, and increasing withdrawals from the Edwards Aquifer have the direct effect of decreasing the flows at the two largest spring systems in Texas, Comal Springs in New Braunfels and San Marcos Springs in San Marcos, with corresponding decreases in flows in the Guadalupe River basin; and

WHEREAS, the EAA Act sets limits on permitted pumping from the aquifer (450,000 acre-feet/year, decreasing to 400,000 as of January 1, 2008), but the Edwards Aquifer Authority (EAA) has issued permits that total approximately 549,000 acre-feet/year; and

WHEREAS, the EAA's Board of Directors has proposed the following four-element plan (EAA Plan) for amending the EAA Act:

1. Increase the limit on authorized annual withdrawals from the Aquifer from the present cap of 450,000 acre-feet to the sum of the initial regular permits (approximately 549,000 acre-feet), and eliminate the reduction to 400,000 acre-feet scheduled to occur in 2008;
2. Define critical period reduction parameters in the EAA Act rather than by rules adopted by the EAA Board. A limit on permitted withdrawals to an annual rate of 340,000 acre-feet per year would apply "when all of the pools of the Aquifer are at the most severe critical period levels";
3. Provide that any reductions in permits would be paid for 50% by downstream water rights holders in the Guadalupe River Basin and 50% by the EAA (with all EAA permit holders contributing proportionally to the cost); and
4. Allow for the EAA to build recharge structures and issue bonds; and

WHEREAS, under Item 1 of the EAA Plan, the total amount of authorized permits would increase by 22%. This could lead to a sustained increased reliance on the Edwards Aquifer. This increased reliance on the Aquifer, combined with the critical period reduction "floor" of 340,000 acre-feet per year in Item 2 of

the EAA Plan, would likely lead to cessation of the flow of the Comal Springs, and perhaps even the San Marcos Springs, in dry periods. This would mean that downstream interests would have little to no river flow while at the same time Edwards pumpers would be guaranteed 75% of their current senior permit amounts; and

WHEREAS, Items 1 and 2 of the EAA Plan represent a significant departure from the original intent of the EAA Act, tipping the balance dramatically towards those who rely on Aquifer pumping at the expense of those who rely on Aquifer springflows; and

WHEREAS, Item 3 of the EAA Plan flies in the face of the entire reason for increasing the permit cap, i.e., to eliminate any need for compensation related to permit reductions. Compared with existing provisions of the EAA Act which make EAA permit holders responsible for any needed compensation for a) the reduction from 549,000 to 450,000 acre-feet and b) one-half of the reduction from 450,000 to 400,000 acre-feet, with Guadalupe basin permit holders responsible for the other half of the reduction from 450,000 to 400,000 acre-feet, the EAA proposal would increase the cost share burden for Guadalupe basin permit holders from 17% to 50%; now therefore

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GUADALUPE BASIN COALITION:

SECTION 1. The Guadalupe Basin Coalition would not oppose legislation to increase the limits on withdrawals from the Edwards Aquifer to the sum of all permits issued by the EAA, under the following conditions:

- A. The legislation must include a five-stage critical period management plan. Critical period stages would be triggered by the level of flows at Comal Springs or San Marcos Springs or the J-17 Index Well level. To determine whether a reduction to the level I, II, or III maximum amount is required, the EAA would track the average daily Comal Springs and San Marcos Springs discharge rates and J-17 Index Well level measured over each period of five consecutive days. To determine whether a reduction in pumping to the level IV or V maximum amount is required, the EAA would track the average daily Comal Springs and San Marcos Springs discharge rates and J-17 Index Well level measured for any five days in a period of 10 consecutive days. Required reductions would be in accordance with the following:

Critical Period Withdrawal Reduction Stages

Comal Springs Flow cfs	San Marcos Springs Flow cfs	Index Well J-17 Level MSL	Critical Period Stage	Withdrawal Reduction - San Antonio Pool	Withdrawal Reduction - Uvalde Pool
<300	110	675	I	10%	5%
<250	96	665	II	15%	10%
<200	80	650	III	25%	15%
<150	60	640	IV	35%	20%
<100	50	630	V	40%	30%

- B. The legislation must create an Emergency Task Force, to remain in place until the Cooperative Agreement in Section 1 C. below is executed by all parties. The Task Force would be convened by the EAA board chair or chief executive officer during periods when Stage IV or Stage V of the critical period management plan is in effect. The Task Force would be composed of the presiding officer or chief executive officer of the EAA, GBRA, Texas Parks and Wildlife Department, the San Antonio Water System, the Texas Water Development Board, and the Texas Commission on Environmental Quality. The Task Force would be empowered to decrease the maximum levels of aquifer withdrawals for periods of not more than 30 days. The EAA would publish a public notice of each decrease, together with a statement of justification provided by the Task Force. The Task Force would be required to conclude its activities upon return of the flows at Comal Springs to a level above the Stage I trigger level for at least 30 consecutive days.

- C. The legislation must require the State (through the Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas Department of Agriculture and Texas Water Development Board) to develop a draft Cooperative Agreement under Section 6 of the Endangered Species Act for conservation of the endangered and threatened species in the Comal Springs and San Marcos Springs ecosystems, and submit the Cooperative Agreement to the U.S. Fish and Wildlife Service no later than January 1, 2008. The primary purposes of the agreement will be to 1) achieve a consensus agreement among stakeholders on a management plan to conserve the spring ecosystems and the listed species, and 2) preclude litigation related to the spring ecosystems and the listed species. The legislation must require the State to secure approval of the Cooperative Agreement from the U.S. Fish and Wildlife Service no later than January 1, 2012, and it must require the State to execute the agreement no later than January 1, 2012. Other signatories to the Cooperative Agreement could include the EAA, SAWS, GBRA, SCTWAC, the Guadalupe Basin Coalition, the Texas Farm Bureau, and environmental groups.

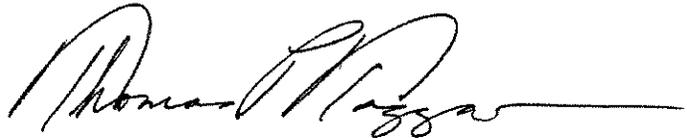
- D. The Cooperative Agreement in C. above would include agreements by the

parties to pursue grant funding to the greatest extent possible from all available state, federal and other sources for eligible elements of the programs included in the Cooperative Agreement.

- E. The legislation must not provide for permit holders in the Guadalupe basin to contribute to any needed compensation for reductions in EAA permits because the increase in the permit cap would eliminate any need for compensation related to permit reductions, and the Cooperative Agreement described in C. above would minimize the risks of litigation over management of the Aquifer.

SECTION 2. This Resolution takes effect immediately upon adoption.

ADOPTED on November 9, 2006.



CHAIRMAN

Attest:



SECRETARY

Cooperative Endangered Species Conservation Fund Grants

(Section 6 of the Endangered Species Act)

Because more than half of all species currently listed as endangered or threatened spend at least part of their life cycle on privately owned lands, the U.S. Fish and Wildlife Service (FWS) recognizes that success in conserving species will ultimately depend on working cooperatively with landowners, communities, and Tribes to foster voluntary stewardship efforts on private lands. States play a key role in catalyzing these efforts.

A variety of tools are available under the Endangered Species Act (ESA) to help States and landowners plan and implement projects to conserve species. One of the tools, the *Cooperative Endangered Species Conservation Fund* (section 6 of the ESA) provides grants to States and Territories to participate in a wide array of voluntary conservation projects for candidate, proposed, and listed species. The program provides funding to States and Territories for species and habitat conservation actions on non-Federal lands. States and Territories must contribute a minimum non-Federal match of 25% of the estimated program costs of approved projects, or 10% when two or more States or Territories implement a joint project. A State or Territory must currently have, or enter into, a cooperative agreement with the FWS to receive grants. Most States and Territories have entered into these agreements for both plant and animal species.

The FWS will award approximately \$77 million in Federal funding in FY 2006 under four grant programs that are available through the Cooperative Endangered Species Conservation Fund:



Section 6 funding has helped States protect aquatic systems that contain many rare organisms, such as the endangered fanshell clam. The purchased habitat will help meet the recovery goals for this species by providing secure, long-term protection. USFWS Photo

Conservation Grants (\$9.8 M) provide financial assistance to States and Territories to implement conservation projects for listed species and at-risk species. Funded activities include habitat restoration, species status surveys, public education and outreach, captive propagation and reintroduction, nesting surveys, genetic studies, and development of management plans.

Habitat Conservation Planning Assistance Grants (\$7.5 M) provide funds to States and Territories to support the development of Habitat Conservation Plans (HCPs) through support of baseline surveys and inventories, document preparation, outreach, and similar planning activities.

HCP Land Acquisition Grants (\$46.1 M) provide funding to States and Territories to acquire land associated with approved HCPs. Grants do not fund the mitigation required of an HCP permittee; instead, they support conservation actions by the State or local governments that complement mitigation.

Recovery Land Acquisition Grants (\$13.9 M) provide funds to States and Territories for acquisition of habitat for endangered and threatened species in support of approved recovery plans. Acquisition of habitat to secure



long-term protection is often an essential element of a comprehensive recovery effort for a listed species.

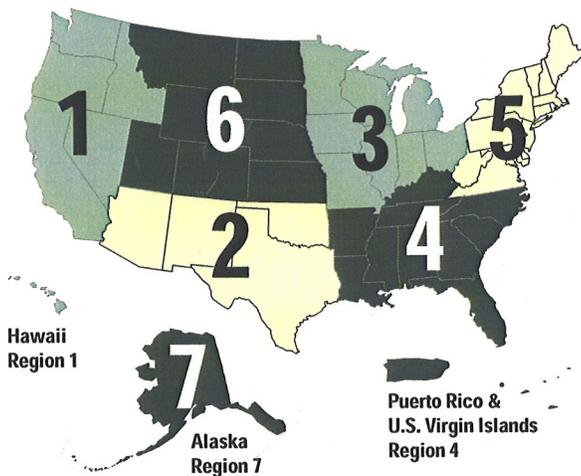
Contact Us

For more information on how to apply for Federal grants to assist States, Territories, and landowners in conserving species on non-Federal lands, please contact the FWS Regional office from the list below with responsibility for the State or Territory in which the proposed project would occur.

Additional information is also available at <http://www.fws.gov/angered/grants/section6/index.html> You may also access www.grants.gov and search the site using the program title Cooperative Endangered Species Conservation Fund or by the Catalog of Federal Domestic Assistance (CFDA) number 15.615.



Section 6 funding has helped protect fragile ecosystems and the creatures that live there, such as the threatened bog turtle. Photo by Bern W. Tryon



Region Two — Southwest
 U.S. Fish and Wildlife Service
 500 Gold Avenue SW.,
 Room 4012
 Albuquerque, NM 87102
 Program Contact: Luella Roberts, 505/248-6654

Region Three — Great Lakes - Big Rivers
 U.S. Fish and Wildlife Service
 Bishop Henry Whipple Federal Building
 One Federal Drive
 Fort Snelling, MN 55111-4056
 Program Contact: Peter Fasbender, 612/713-5343

Region Four — Southeast
 U.S. Fish and Wildlife Service
 1875 Century Boulevard, Suite 200
 Atlanta, GA 30345
 Program Contact: Erin Clark, 404/679-7379
 OR
 Ms. Mike Gantt, 919/8564627
Region Five — Northeast
 U.S. Fish and Wildlife Service
 300 Westgate Center Drive
 Hadley, MA 01035-9589
 Program Contact: Diane Lynch, 413/253-8628

Region Six — Mountain-Prairie
 U.S. Fish and Wildlife Service
 134 Union Blvd., Suite 645
 Lakewood, CO 80228
 Program Contact: Pat Mehlhop, 303/236-4215

Region Seven — Alaska
 U.S. Fish and Wildlife Service
 1011 East Tudor Road
 Anchorage, AK 99503-6199
 Program Contact: Michael Roy, 907/786-3925

**U. S. Fish and Wildlife Service
 Endangered Species Program
 Branch of State Grants, Don Morgan
 4401 N. Fairfax Drive, Room 420
 Arlington, VA 22203
 703/358 2390
<http://www.fws.gov/angered/>**

Regional Office Boundaries

Region One — Pacific
 U.S. Fish and Wildlife Service
 Eastside Federal Complex
 911 N.E. 11th Avenue
 Portland, OR 97232-4181
 Program Contact: Heather Hollis, 503/231-6241

Region One — Pacific (California and Nevada)
 U.S. Fish and Wildlife Service
 Federal Building
 2800 Cottage Way, Room W-2606
 Sacramento, CA 95825-1846
 Program Contact: Vicki Campbell, 916/414-6464



November 2005





U.S. Fish & Wildlife Service

The Endangered Species Act of 1973

The Endangered Species Act of 1973*

*As amended by P.L. 94-325, June 30, 1976; P.L. 94-359, July 12, 1976; P.L. 95-212, December 19, 1977; P.L. 95-632, November 10, 1978; P.L. 96-159, December 28, 1979; 97-304, October 13, 1982; P.L. 98-327, June 25, 1984; and P.L. 100-478, October 7, 1988; P.L. 100-653, November 14, 1988; and P.L. 100-707, November 23, 1988; and P.L. 108-136, November 24, 2003.

Cooperation with the States

SEC. 6.

(a) GENERAL.-In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) MANAGEMENT AGREEMENTS.-The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c)(1) COOPERATIVE AGREEMENTS.-In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program-

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has

furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threat- ened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened, or that under the State program-

(i) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause and this subparagraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program-

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program-

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be

endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(d) ALLOCATION OF FUNDS.-

(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 4(b)(3) and recovered species pursuant to section 4(g). The Secretary shall allocate each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of-

- (A) the international commitments of the United States to protect endangered species or threatened species;
- (B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;
- (C) the number of endangered species and threatened species within a State;
- (D) the potential for restoring endangered species and threatened species within a State;
- (E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species;
- (F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species; and
- (G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary.

So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for-

- (A) the actions to be taken by the Secretary and the States;
- (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species;
- (C) the estimated cost of these actions; and
- (D) the share of such costs to be borne by the Federal Government and by the States; except that-

- (i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and
- (ii) the Federal share may be increased to 90 percent whenever two or more States having

a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS.-Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.-Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively

- (1) permit what is prohibited by this Act or by any regulation which implements this Act, or
- (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION.-

- (1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs:
 - (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or
 - (B) the date of the close of the 15 month period following such date of enactment.
- (2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State-
 - (A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or
 - (B) except for any time within the establishment period when-
 - (i) the Secretary applies such prohibition to such species at the request of the State, or
 - (ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the

prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.-The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.-

(1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to five percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.