

SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE

Gary Middleton, Chairman
David Davenport, Secretary
Bob Keith, Edwards Aquifer Authority Board Representative

June 3, 2004

Ms. Kathleen Hartnett White, Chair
Mr. R.B. "Ralph" Marquez and Mr. Larry R. Soward, Commissioners
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: South Central Texas Water Advisory Committee Resolution and Order No. 02-2004-02

Dear Chair White and Commissioners Marquez and Soward:

I am writing on behalf of the South Central Texas Water Advisory Committee to request the Commission to conduct a review of an action of the Edwards Aquifer Authority Board of Directors. Attached is a copy of Resolution No. 02-2004-02 of the Advisory Committee formally making this request.

As you may know, the Edwards Aquifer Authority Act, originally enacted in 1993 as Senate Bill 1477, created the Edwards Aquifer Authority as a regional agency to manage and protect the Balcones Fault Zone segment of the Edwards Aquifer. The Act requires the Authority to enforce an annual limit on withdrawals from the Aquifer through a permitting system. The Act also provides for the appointment of the 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. The purpose of the Advisory Committee is to advise the Authority's Board of Directors on water rights and issues related to surface streams downstream of the Aquifer, and to assess the effect of the Authority Board's management of the Aquifer on downstream water rights.

A brief summary of the factual background for the Advisory Committee's request is in order. On December 16, 2003, the Authority Board approved, in its Resolution and Order No. 12-03-478, revised permit rules creating a "bifurcated" system that divides regular permits for withdrawals from the Edwards into two elements, "senior rights" that are not interruptible unless the aquifer is below certain levels, and "junior rights" that are available when the aquifer is above certain higher levels. Under the revised permit rules, the senior rights are counted against the Act's limits on authorized withdrawals, and the junior rights are not counted against the limits. The junior rights will have the effect of allowing withdrawals from the Edwards that exceed the Act's annual limit on permitted withdrawals by almost 25%.

The Act provides that before seeking review by the Commission of an action of the Authority Board, the Advisory Committee must ask the Authority Board to reconsider its action. This Advisory Committee submitted such a request on February 18, 2004, and the Authority Board on May 11, 2004 voted to deny the Advisory Committee's request for reconsideration. Since this decision did not resolve the matter to the satisfaction of the Advisory Committee, the Advisory Committee is invoking review by the Commission. The Act provides that if the Advisory Committee requests the Commission to review an action of the Authority, the Commission shall review the action and may make a recommendation to the Authority Board as to whether the action is "contrary to an action of the Commission affecting downstream interests".

As explained in the attached resolution, the Commission's issuance, management, monitoring and administration of water rights along the San Marcos and Guadalupe rivers downstream of the Comal Springs and San Marcos Springs, with respect to both quantity and quality, are "action[s] of the Commission affecting downstream interests". The significance of the Commission's actions at stake here is demonstrated by the water rights held by the City of Victoria, where the Guadalupe River serves as the principal source of water supply, and by the various petrochemical plants in the Victoria/Port Lavaca area, which form the backbone for the economy in that area of the state.

The action of the Authority Board approving the revised permit rules is contrary to actions of the Commission affecting downstream interests, since the rules authorize withdrawals from the Aquifer greatly in excess of the 450,000 acre-foot per year cap set forth in the Act. These excessive withdrawals would cause the Aquifer to drop to low levels sooner at the beginning of droughts and to remain at lower levels during droughts. As a result the Comal Springs and San Marcos Springs would flow at lower levels than they would if the Authority had complied with the Act. Among the bases for this conclusion by the Advisory Committee is the report entitled "Final Regulatory Impact Assessment" prepared for the Authority by Hicks & Co. dated December 2003, excerpts of which are quoted in the attached resolution, and a full copy of which is attached to the resolution.

Thank you for your consideration of this request. We would be pleased to meet with you and other representatives of the Commission at your convenience to discuss this request and how the Advisory Committee may best assist the Commission in performing its statutory role in this matter.

Sincerely,

Gary Middleton, Chairman
South Central Texas Water Advisory Committee

Enclosure

cc: Edwards Aquifer Oversight Committee
Doug Miller, Chair, Edwards Aquifer Authority Board of Directors

Delivery Receipt

I acknowledge the delivery of this letter and attached Resolution at the offices of the Texas Commission on Environmental Quality in Austin, Texas on June ____, 2004.

Signature

Printed name