

HOUSE COMMITTEE ON CULTURE, RECREATION, AND TOURISM



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OPINION COMMITTEE

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EDMUND KUEMPEL  
VICE-CHAIR

March 16, 2006

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

Dear General Abbott:

The Edwards Aquifer Authority Act (the "Act") requires the Edwards Aquifer Authority ("EAA") to issue permits to withdraw groundwater to any person who withdrew and beneficially used Edwards Aquifer groundwater between June 1, 1972 and May 31, 1993. The Act further requires that the total amount of these permits not exceed 450,000 acre feet of groundwater by December 31, 2007, and that the total amount of these permits not exceed 400,000 acre feet by January 1, 2008.

The Act also requires that certain historical and irrigation users be guaranteed certain amounts and "minimums." Specifically, Section 1.16(e) states in relevant part:

"(e) To the extent water is available for permitting, the board shall issue the existing user a permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period...If the total amount of water determined to have been beneficially used without waste under this subsection exceeds the amount of water available for permitting, the authority shall adjust the amount of water authorized for withdrawal under the permits proportionately to meet the amount available for permitting. An existing irrigation user shall receive a permit for not less than two acre-feet a year for each acre of land the user actually irrigated in any one calendar year during the historical period. An existing user who has operated a well for three or more years during the historical period shall receive a permit for at least the average of water withdrawn annually during the historical period."

In order to accomplish these objectives, the Act authorized the EAA to issue regular permits, term permits, emergency permits, and initial regular permits. The EAA began taking applications for initial regular permits in 1996 and continued approving permit applications through November 2005.

During this period, initial regular permits were issued, and permit holders were encouraged to buy, sell, and transfer initial regular permits within the jurisdictional boundaries of the EAA.

After all the initial regular permits were issued during this period, it was determined that the sum of all these permits exceeded the 450,000 acre feet "pumping cap." Therefore, in order to bring all permits below the pumping cap, the EAA implemented a final proportional adjustment plan and amended certain initial regular permit amounts.

When the EAA implemented this final proportional adjustment plan in November of last year, the amounts of certain initial regular permits fell below the statutory minimum provided in Section 1.16(e) of the Act. In order to address this, the EAA bifurcated these permits and issued uninterruptible ("senior") and interruptible ("junior") groundwater withdrawal rights, with such junior withdrawal amounts not being counted in the pumping cap.

According to the facts presented to me, interruptible junior withdrawal amounts were granted to permit holders whose groundwater withdrawal rights fell below statutory minimum amounts in order to restore the total amount of permitted water allocated to these permit holders to their statutory minimums.

**QUESTIONS:**

- 1) Is the EAA statutorily authorized to reduce the uninterruptible groundwater withdrawal rights of permit holders to an amount that is below their statutory minimum as provided in Section 1.16(e) of the Act?
- 2) Does the EAA have the statutory authority to issue a type of permit that contains interruptible "junior" withdrawal rights which are not specifically authorized or included in the types of permits authorized by the EAA's enabling legislation?
- 3) If the EAA can reduce permit holders to amounts below their statutory minimums, should these permit holders receive compensation?

Thank you for your time and attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Harvey Hilderbran  
Chairman, House Committee on Culture, Recreation and Tourism  
Co-Chair, Edwards Aquifer Legislative Oversight Committee