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Appropriations, Chair
Energy Resources

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OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, TX 78701

FILE # ML-45815-08
I.D. # 45815

RQ-0737-GA

Dear Attorney General Abbott,

I am writing to request an Attorney General opinion on the Edwards Aquifer Authority Act ("EAA Act").

As you are no doubt aware, the Medina Lake Dam, which is owned and operated by the Bexar-Medina-Atascosa Counties Water Control & Improvement District No. 1 ("BMA"), requires repairs of approximately \$10 million. The Medina Lake Dam was built in 1912, and has annually recharged the Edwards Aquifer an average of 63,400 acre-feet since 1934, accounting for almost 9% of the aquifer's average annual recharge of 732,400 acre-feet.¹ Based on the \$37/acre-foot that the Edwards Aquifer Authority ("EAA") charges non-agricultural users for water², this average recharge is worth \$2,319,100 in 2008. Despite providing this significant benefit, BMA has never received compensation for this recharge. But given the dam's needed repairs, BMA believes that the EAA should assist in providing the funding to ensure that the Medina Lake Dam is able to fully continue recharging the Edwards Aquifer.

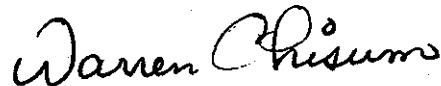
¹ Estimated annual recharge to the Edwards aquifer in the San Antonio area, Texas, 1934-2007, Table 1, (USGS) available at http://tx.usgs.gov/projects/aquifer_springs/table1.pdf (last visited July 10, 2008); see also Estimated annual recharge to the Edwards aquifer in the San Antonio area, Texas, 1934-2007 (USGS), available at http://tx.usgs.gov/projects/aquifer_springs/estimatedrecharge.htm (last visited July 10, 2008).
² See EAA 2008 Operating Budget, General Fund section, p. 7, available at www.edwardsaquifer.org/pdfs/Budget/2008%20Adopted%20Budget%20Final.pdf (last visited July 10, 2008).

Although the text of the EAA Act authorizes the EAA to permit or contract with BMA for this recharge, the EAA Rules appear to prohibit such actions. If older facilities like the Medina Lake Dam are unable to fund necessary repairs, aquifer recharge will inevitably decline.

I therefore request that you answer the following three questions about the EAA's authority under the EAA Act:

- (1) Does the EAA have the authority to prohibit the granting of permits to recharge facilities constructed prior to September 1, 1993?
- (2) Does the EAA have the authority to prohibit itself from contracting with recharge facilities constructed prior to September 1, 1993?
- (3) Does the EAA have the authority to narrowly define (or define at all) "unreasonably deny" in § 1.44(b)³ of the EAA Act, as it has done in EAA Rule § 711.269(d)⁴?

Sincerely,



Warren Chisum, State Representative

³ Section 1.44(b) states: "The [EAA] may not unreasonably deny a request to enter into a cooperative contract under this section if the political subdivision agrees to: (1) file with the [EAA] records of the injection or artificial recharge of the aquifer; and (2) provide for protection of the quality of the aquifer water and of the rights of aquifer users in designating the location of injection wells or recharge dams, the methods of injection or recharge, and the location and type of retrieval wells."

⁴ Rule § 711.269(d) states: "A denial by the [EAA] is unreasonable if an interlocal contract that meets the requirements of the Act, this subchapter, and any other applicable rules of the [EAA], is negotiated, reduced to final form, and the board fails to authorize the execution of the interlocal contract by appropriate resolution and order."