



THE SECRETARY OF THE INTERIOR

WASHINGTON

April 16, 1993

The Honorable Ann W. Richards  
Governor of Texas  
State Capitol  
Austin, Texas 78711

The Honorable Bob Bullock  
Lt. Governor of Texas

The Honorable Pete Laney  
Speaker of the House of Representatives

Re: Edwards Aquifer

Dear Governor Richards, Lt. Governor Bullock and Speaker Laney:

On my recent visit to Austin and San Antonio, I was impressed with the importance Texans attach to the Edwards Aquifer, a unique natural resource of incalculable value, which provides a municipal water supply, agricultural irrigation, downstream freshwater flows into bays and estuaries, and critical habitat for several endangered and threatened species residing at beautiful Comal and San Marcos Springs. As Governor of Texas, you are charged with protecting such valuable resources. Among my responsibilities as Secretary of the Interior is the preservation of the endangered and threatened species pursuant to the Endangered Species Act. Since these responsibilities are, in a sense, joined, I am writing to offer my assistance at this critical juncture to take whatever steps are necessary to protect the resources of Edwards Aquifer.

As a former governor, I believe that management of groundwater resources is first and foremost a State responsibility. I know first hand the difficult choices involved when a State Legislature has to come to grips with an ever-declining groundwater resource. This was a central issue of public policy for the City of Tucson and the people of Arizona in 1977, but competing interests ultimately came together to enact a state law protecting central and southern Arizona's valuable groundwater supply. I know you agree that, as the current regular session of the Texas Legislature nears adjournment, it is vitally important that the State of Texas pass legislation like H.B. 1792 or S.B. 1320 to provide for conservation and management of the Edwards Aquifer.

The U.S. Fish and Wildlife Service of the Department of the

Interior has worked closely with the Texas Water Commission as the Commission developed a water management plan designed to balance human resource needs and protection for endangered species. Based upon the hydrologic data available to us today, I support the Commission's plan, and believe it provides a fair and reasonable framework for managing the Edwards. Importantly, such a plan could provide a basis for the Service's issuance of a permit pursuant to Section 10(a) of the Endangered Species Act which would authorize the incidental "take" of some endangered species during periods of drought. In that regard, this Department filed in Federal court today the springflow and aquifer level "take" numbers pursuant to the District Court's Judgment of February 1, 1993. A Section 10(a) permit would provide relief from the potential consequences of those numbers and could give the State greater flexibility in the management of the Edwards Aquifer System, so long as the level of take will not appreciably reduce the likelihood of the survival and recovery of the species.

There has been a great deal of public focus in recent weeks on procedural maneuvering in the federal court litigation concerning the endangered species dependent upon the water of the Edwards. This focus has been a distraction from the important task at hand to develop a consensus for a legislative scheme to protect the Aquifer. Let me assure you that the Department of the Interior will determine and file by June 16 the remaining springflow and aquifer level numbers not included in those filed with the District Court today.

Absent State legislative resolution of the problem of overdrafting of the Edwards, the Endangered Species Act and the courts require that certain steps be taken to protect the federally listed species. Specifically, Section 7 of the Act requires that all Federal agencies

shall, in consultation with and with the assistance of the Secretary [of the Interior], utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 [and]

shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species . . .

Approximately 39 Federal agencies have programs linked to the pumping of groundwater from the Edwards and who are thus potentially affecting the listed species in the Edwards drainage. Their effect on the Edwards would have to be measured against the largely unregulated pumping by non-Federal sources. A possible

result of the Section 7 consultation process for these agencies could be a significant reduction of Federal program spending and permitting in the Edwards region.

Another part of the Act, Section 9, provides for civil and criminal enforcement actions whenever there is an unauthorized "take" of a listed species. When the water level of the Aquifer drops to the point where the species is harmed or habitat is modified, we would look at remedies available to us under that section, which could include civil injunction actions to stop pumping.

I want to assure you that it is not my desire to place the Department in a central role in what is more appropriately a matter requiring state action. The management of the Edwards Aquifer is as much a human resource issue as one involving endangered species. In the words of U.S. District Judge Bunton, from his Findings of Fact and Conclusions of Law,

Even if the needs of endangered species were disregarded entirely, there is a water-quality floor below which the level of water in the Edwards should not be allowed to drop, solely for water supply purposes. (§ 200) The Texas Department of Water Resources, the Texas Water Commission, the Edwards Underground Water District, and the City of San Antonio agree: if the Edwards were pumped down too far ... movement of bad water could permanently and irreversibly ruin the Edwards. (§ 54) Unquestionably, the Edwards is a natural resource vital to the economies of the aquifer region. Therefore, the Edwards should be protected. (§ 18)

I know you appreciate the urgency and seriousness of the need for joint efforts in this matter. Anything you and other Texas leaders can do to implement a fair and reasonable framework for preservation of the Edwards Aquifer will be applauded by generations to come.

Sincerely,



Bruce Babbitt