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U.S. DISTRICT CLERK
WESTERN TEXAS

DEPUTY

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

SIERRA CLUB

v.

SAN ANTONIO, ET AL.

MO-96-CA-97

ORDER

BEFORE THE COURT in the above captioned cause of action is Plaintiff Sierra Club's Motion for Preliminary Injunction. After considering the arguments of the parties, the evidence supplied by the parties, the testimony received at the two hearings on temporary and preliminary injunctions, and reviewing all of the parties' comments on the *Proposed 1996 Emergency Withdrawal Reduction Plan*, the Court believes that Plaintiff's Motion should be granted.

An Emergency Exists

The Edwards Aquifer region has finally reached the point where the Aquifer is unable to provide for the needs of all those who depend upon it during dry years, from persons directly over the Aquifer, to those persons and endangered species at Comal and San Marcos Springs. Without a fundamental change in the value the region places on fresh water, a major effort to conserve and reuse Aquifer water, and implemented plans to import supplemental supplies of water, the region's quality of life and economic future is imperiled. The Court is soundly convinced that an emergency presently exists and takes of endangered species are occurring.

It is not the intention of this Court to frustrate or impede the present attempts by the Edwards Aquifer Authority ("EAA") to develop, implement and enforce a critical management plan that will protect the endangered species and their habitat. The Court is mindful that the EAA has had only a limited amount of time in which to digest and prepare a plan to protect the Edwards dependant species since it was given the nod by the Texas Supreme Court. But, this Court cannot ignore a federal statute designed to protect the endangered species at San Marcos and Comal Springs merely because the EAA has a great learning curve to overcome before it is ready to manage the Aquifer.¹ It is the Court's genuine hope that the EAA will be able to develop, implement and enforce a critical management plan which will meet the goals of the Endangered Species Act as well as protect the other users of the Edwards. Until that time, it is the duty of this Court to follow Congress' directive that the endangered species and their critical habitat be protected.

THEREFORE the Court finds that:

1. According to data available from the U.S. Geological Survey, total discharge (withdrawals plus springflows) from the Edwards Aquifer has exceeded total recharge in

¹ Tex. S.B. 1477 § 1.01, 73rd Leg. (1995 as amended) ("a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life."); Tex. S.B. 1477 § 1.14, 73rd Leg. (1995 as amended) ("rights to make a withdrawal under this Act shall be limited in accordance with this section to . . . protect species that are designated as threatened or endangered under applicable federal or state law")("shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law.").

1993, 1994, 1995, and unless substantial rainfall occurs over the recharge zone this fall, is likely to include 1996;

2. Springflow at Comal Springs in New Braunfels, Texas has been below the jeopardy level for endangered species established by the U.S. Fish and Wildlife Service since May 23, 1996;
3. Springflow at San Marcos Springs in San Marcos, Texas has been below the jeopardy level for endangered species established by the U.S. Fish and Wildlife Service since May 22, 1996;
4. Tourism and scientific research at Comal and San Marcos Springs are critical to the economies of New Braunfels and San Marcos and substantially contribute to interstate commerce;
5. If the drought continues the potential exists for movement of the "bad-water line" which could allow the intrusion of bad-quality water into the fresh water zone, contaminating the fresh water in the Edwards Aquifer, the sole water supply for San Antonio and most water users in the region;

6. Some local governments and underground water districts have either ignored the current emergency or vacillated in their attempts to adopt and enforce essential reductions in Edwards Aquifer water use;
7. The Edwards Aquifer Authority has failed to recognize the current emergency in votes on July 31, 1996, and August 17, 1996, and has also failed thus far to activate an effective critical period (drought) management plan containing significant measures to conserve Edwards Aquifer water as required by Senate Bill 1477; and
8. Present springflow levels at Comal and San Marcos Springs are below the established jeopardy levels; and the U.S. Fish and Wildlife Service which is responsible for enforcing the Endangered Species Act has failed to initiate any legal action to protect endangered species at the Springs other than removal of specimens to refuges.²

The Court hereby incorporates by reference, the *1996 Emergency Withdrawal Reduction Plan* ("Plan"). This is the Plan that the Court would adopt if it were to adopt a comprehensive reduction plan. The parties may consider the reduction measures contained therein as they devise measures to meet the prescribed limitations. Rather than impose this plan on the parties, the Court will limit the monthly Edwards Aquifer pumpage by permitting the parties to determine how they will reach that reduction level. The Court is convinced that the suggestions

² It would appear from the failure to act by federal, state, and local agencies, that the question posed in Genesis 4:9 has been "No" when it should be "Yes."

made in the Plan would be useful to the parties in reaching their target pumping goals. However, as long as the maximum allowable peak-to-base pumping ratio is met, the Court is not concerned as to the manner in which such ration is accomplished.

Because of the emergency that presently exists with respect to the endangered species and their habitat, the Court now adopts the following municipal reductions developed in June 1995, by representatives of the Edwards Underground Water District, the City of San Antonio, the Green Valley Special Utility District and Atascosa Rural Water Supply Corporation, the City of New Braunfels and New Braunfels Utilities, and Danny McFadin, et al. These staged reductions and pumping requirements are found in the compromise emergency withdrawal reduction plan otherwise known as the *Lawyers Panel Plan*. The Court finds that these reduction levels are adequate during the current emergency.

Water Level Well J-17	Springflow	Reduction Stage	Peak Reduction Percentage Target	Maximum Allowable Peak-to-base Pumping Ratio
> 655 ft msl	> 260 cfs	none	none	full
655 and less	260 cfs	I	10%	1.8 x base
648 and less	200 cfs	II	20 %	1.6 x base
642 and less	175 cfs	III	40 %	1.2 x base

Reduction stage level shall be governed by the Comal Springs flows, and not J-17 Well Levels.

Exemptions

New Braunfels Utilities

New Braunfels Utilities has converted almost entirely to surface water. NBU's winter average water use from the Edwards Aquifer is essentially zero. The Court believes that the NBU should not be subject to the additional water use restrictions, but is of the opinion they should adopt and enforce conservation measures as recommended for other water purveyors in the Guadalupe River Basin. Therefore, New Braunfels should restrict its pumping from the Aquifer at or below its July 1996 total.

Water Use Less than 120 gpcd

Where a water purveyor distributing only Edwards Aquifer water to its customers can demonstrate to the Court through the Special Master that an identifiable, discreet portion of its service area, based on reports to the Texas Water Development Board, has a gallon per capita per day water usage from the Edwards Aquifer of less than a 120 gpcd, that discreet portion shall be exempt from reductions in discretionary water use in this *Plan*, except for car washing and Stage III reductions for watering of golf courses, lawns, parks, parkways, and other landscaped areas.

Industrial, Commercial, and Military Pumpers

Defendant industrial, commercial, and military pumpers should freeze their withdrawals at or below their July 1996 totals. Industrial, commercial, and military pumpers shall provide the Court with monthly reports of their total withdrawals from the Edwards Aquifer.

In the event that defendant industrial, commercial, or military water use increases, or that municipal pumpers are unable to reach their maximum allowable peak-to-base pumping ratio requirements of this Plan under the current reduction stage, additional reductions in Edwards Aquifer pumping can be made only by eliminating all discretionary uses and imposing further restrictions on industrial, commercial, and military water use.

Non-discretionary water uses from the Edwards Aquifer essential to the mission of any military installation are not intended to be restricted by any required reductions in this Plan. As federal defendants, the military bases are expected to appoint a representative to report to the Court through the Special Master monthly on the progress of negotiations for contracting for potable or reuse water as a substitute for the Edwards Aquifer groundwater. The Court urges the military to pursue these projects with all deliberate speed and to execute contracts for substitute sources of water on or before December 31, 1996, so as to further reduce pumping from the Edwards Aquifer. The failure of military bases to execute contracts for substitute sources of water on or before December 31, 1996, will require the Court to initiate additional measures on January 1, 1997 depending on springflows at Comal Springs. Accordingly,

IT IS ORDERED that all defendant municipal pumpers limit their monthly pumpage from the Edwards Aquifer to the appropriate stage reflected by springflow at Comal Springs (currently Stage III). In the event that a municipal pumper's monthly average exceeds its, maximum

allowable peak-to-base pumping ration, the Court reserves any and all remedies both in law and in equity as sanctions for violating this Preliminary Injunction.³

IT IS FURTHER ORDERED that Defendant industrial, commercial, and military pumpers shall comply with the discretionary water restrictions. In the event that industrial, commercial, or military water use increases, or that municipal pumpers are unable to reach their maximum allowable peak-to-base pumping ratio requirements, the Court will consider imposing further restrictions on industrial, commercial, and military pumpers.

IT IS FURTHER ORDERED with respect to the municipalities, this Preliminary Injunction shall remain in effect until the Defendants can demonstrate to the Court that the Edwards Aquifer Authority, the state agency created to protect the Aquifer, springflows and the endangered species, has activated, and is enforcing, a critical management plan designed to ensure the preservation of the endangered species dependant upon springflows from Comal and San Marcos Springs in their natural habitat.⁴

IT IS FURTHER ORDERED that the military pumpers pursue with dispatch to execute contracts for substitute sources of water on or before December 31, 1996.

³ For example, if a municipality exceeds its allotted pumpage during a particular month, the Court will consider the penalties provided for in the Endangered Species Act. See 16 U.S.C. § 1540(1). The Court will consider any other remedies which it believes will encourage or coerce compliance with this Preliminary Injunction.


⁴ Should any party question the adequateness of the EAA's plan, they are of course free to challenge the EAA and its plan in separate litigation.

IT IS FURTHER ORDERED that the parties shall immediately supply the Court and the Special Master with its base monthly winter usage (i.e., average of the months of November and December, 1995, and January and February, 1996). The parties shall also supply monthly reports to the Court and the Special Master as to its monthly Edwards Aquifer pumpage not later than five days after the calendar month ends.

IT IS FURTHER ORDERED that all Defendants are directed to furnish to the Court through the Special Master all information, data, and reports necessary to keep the Court informed as to compliance with this Order. The Special Master shall also accumulate and tabulate data concerning springflows, recharge, and pumping by all classes of users from the Edwards Aquifer. The Special Master shall report periodically to the Court concerning efforts by municipalities, water purveyors, military installations and other local and regional water districts and authorities to achieve reductions in Aquifer water use adequate to preserve the endangered species. He shall also report to the Court concerning the survival of species in refuges maintained by the U.S. Fish and Wildlife Service. Finally, the Special Master shall prepare for the Court a plan to restrict agricultural irrigation withdrawals in 1997 in the event that conditions warrant the adoption of such a plan.

IT IS FINALLY ORDERED that this Order shall become effective October 1, 1996, so that the parties are able to take whatever measures necessary to comply with its terms.

SIGNED this 23rd day of August, 1996.


HONORABLE LUCIUS D. BUNTON III
SENIOR U.S. DISTRICT JUDGE