



TO: BOARD OF DIRECTORS
FROM: EXECUTIVE COMMITTEE
SUBJECT: EAA's PROPOSED 2011 LEGISLATIVE INITIATIVE

STATUS: ADOPTED **DATE: February 24, 2011**

RECOMMENDATION: That the Board of Directors of The Greater San Antonio Chamber of Commerce adopt the following statement as policy:

STATEMENT: The Chamber believes that the economy of the region has benefitted by the conservation and management of the Edwards Aquifer through the implementation of the Edwards Aquifer Authority Act (Act) and supports the integrity of the Act. The Chamber believes that certain amendments of the Act proposed by the EAA, including removing general application to the EAA of Texas Water Code Chapter 36, will provide additional statutory safeguards for continued reliability of Aquifer water, the critical cornerstone of the region's water resources.

BACKGROUND:

The Edwards Aquifer Authority Act (Act) was adopted by the Texas Legislature in 1993 to create an authority, the EAA, to conserve and manage the Edwards Aquifer in South Central Texas, including the greater San Antonio area. The Act recognizes the unique features of the karst Edwards Aquifer and seeks to balance the reliance on Aquifer water by historic pumpers with the requirements of other users as well as the protected species.

The adoption of the Act avoided a potential takeover of the Aquifer by the federal court as a result of an Endangered Species Act (ESA) suit, *Sierra Club v. Lujan*. The Act mandated the EAA to implement an Aquifer-specific conservation and management system that limits withdrawals from the Aquifer in order to protect certain aquatic species, covered by the ESA, which have as their habitat Aquifer-dependent springs. The EAA was required to limit withdrawals by issuing permits for annual withdrawals to qualified Aquifer pumpers in order to, among other reasons, help assure adequate flow at the springs. The total amount of annual pumping is subject to a permit cap and to the requirement for pumping reductions by permit holders during dry periods. The Act also gave the EAA all the powers and duties of Texas Water Code Chapter 36 (the general statutory provisions applicable to groundwater conservation districts in Texas).

In the period during which the management system of the Act has been implemented, the EAA has determined that important inconsistencies between the specific management system contained in the Act and the general groundwater district management structures provided for in Chapter 36 should be addressed. Further, there is at least one bill filed in the 82nd Legislature which would amend certain sections of Chapter 36 by adding provisions that could be used as the basis for challenges to the EAA permit system. Consequently, the EAA believes, and the Chamber agrees, that it is critical that the 82nd Texas Legislature amend applicable law to remove the general application of Chapter 36 to the EAA and therefore ensure the continuation of Aquifer management based on the Act.

The amendments proposed by the EAA would:

1. Expressly provide in the EAA Act that Chapter 36 of the Texas Water Code does not apply to the Authority (Chapter 36 of the Texas Water Code would also be amended to the same effect);
2. Incorporate into the EAA Act the provisions in certain sections of Chapter 36 of the Texas Water Code that are not otherwise covered in Chapter 49 of the Texas Water Code that are useful to the administration of the Authority, such as those addressing powers, duties, finances, and bonding and note authority, and that provide for judicial review;
3. Create a new category of exempt wells (de minimis use wells) applicable only to the owners of very small existing wells, and authorize Aquifer withdrawals from such wells for any beneficial use without the requirement to obtain an Authority withdrawal permit;
4. Simplify the purpose of use and well location requirements for exempt domestic or livestock use wells;
5. Provide that upon the filing of certain program documents with the Authority, the Edwards Aquifer Recovery Implementation Program (EARIP) steering committee may transfer the administration of the EARIP to any suitable entity;
6. Update references to other general laws cited in the Act that have, since passage of the Act, been repealed, amended, or re-codified; and
7. Update dates in the Act that have changed or been validated by court decisions.

REASONS FOR SUPPORT OF THIS STATEMENT:

1. The proposed amendments will help secure the EAA permit system and the historic availability of Aquifer water for the San Antonio region
2. The proposed amendments will safeguard the EAA and its unique conservation and management system from legal challenges that may be brought under other proposed Legislative enactments that further amend Chapter 36
3. The proposed amendments will provide for reasonable and necessary next steps in the Edwards Aquifer Recovery Implementation Program

REASONS FOR OPPOSING THIS STATEMENT:

1. Opening up the EAA Act will allow for legislators to tack on additional amendments, some of which may be undesirable for the San Antonio region
2. The Authority should be subject to the same general laws as other groundwater districts
3. No amendments should be adopted until the Texas Supreme Court rules on the Day case (a case challenging the EAA permit system currently before the Texas Supreme court)

IMPLEMENTATION: The Chamber will communicate this position to the EAA Board of Directors, Bexar County delegation, the media and The Chamber membership through public testimony, letters, media releases and publication in *The Chamber Today*.