



**TO: SAM DAWSON, CHAIRMAN  
BOARD OF DIRECTORS**

**FROM: EXECUTIVE COMMITTEE**

**SUBJECT: HABITAT CONSERVATION PLAN APPROVAL**

**STATUS: PROPOSED** **DATE: OCTOBER 27, 2011**

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

**STATEMENT:** The Greater Chamber supports the Habitat Conservation Plan (HCP) developed by the Edwards Aquifer Recovery Implementation Program (EARIP) Steering Committee and recommends that the Edwards Aquifer Authority (EAA), San Antonio Water System, and other entities jointly submit the HCP to the U.S. Fish & Wildlife Service (Service) in support of an application for an incidental take permit for species protected under the federal Endangered Species Act.

The Chamber believes the HCP, developed in compliance with federal and state law, will, when implemented, balance the needs of the protected species with the needs of the residents and businesses of the San Antonio region, forestall the possibility of greater federal involvement in the management of the Aquifer, and help provide for the continued availability and reliability of Aquifer water for our region. As a long-standing advocate for reliable and cost-effective water supplies, The Chamber supports, in view of the currently limited funding options, increasing EAA permit fees to the minimum extent necessary for funding an appropriate implementation of the HCP to safeguard Aquifer rights.

Recognizing the critical importance of the HCP to SAWS and the other regional Aquifer pumps, The Chamber supports the HCP, and the related implementing agreement and funding and management agreement, subject to final approval of those documents by the EARIP Steering Committee and the SAWS Board of Trustees. Those approvals are scheduled to occur in November 2011 in order to comply with the state-mandated deadline for submission of the HCP to the Service.

**BACKGROUND:**

The Aquifer is a unique and complex hydrological system, and has a hydrologic interrelationship with the Guadalupe River and San Antonio River basins. It is the primary source of drinking water for over 2 million people in south central Texas and serves the domestic, agricultural, municipal industrial and recreational needs of the area. It is also the "cornerstone" water supply for the City of San Antonio. The Aquifer is the source of two major springs in Texas - the San Marcos and the Comal. These springs are the primary sources of flow into the San Marcos and Comal Rivers which are tributaries of the Guadalupe River and San Antonio bay and estuary system. We refer to those who rely on the Guadalupe River as "downstream users".

The legislature passed the Edwards Aquifer Authority Act (Act) in 1993 and created the EAA to provide for the necessary regulation and management of the Aquifer. The Act requires the Authority to implement and enforce water management practices no later than December 31, 2012 that ensure protection of the endangered and threatened species that are associated with the Aquifer. Eight federally listed threatened or endangered species depend directly on water in, or discharged from, the Aquifer. The primary threat to the Aquifer-dependent species is the intermittent loss of habitat from reduced springflows. Springflow loss is the combined result of naturally fluctuating rainfall patterns, recharge of the Aquifer, natural discharge from springs, regional intermittent pumping, and temporal drawdown of the Aquifer. The Act seeks to balance the reliance on Aquifer water by historic pumpers with the requirements of other users as well as the protected species.

### **SB 3**

The Chamber worked along-side local leaders to help pass Senate Bill (SB) 3 in the closing hours of the 2007 Legislative Session. While the bill did a number of things, SB 3 mandated all Aquifer stakeholders to participate in the EARIP and prepare a federally-approved HCP for managing the Aquifer to protect the endangered species at Comal and San Marcos Springs. The Legislature directed that the HCP must include recommendations regarding withdrawal adjustments during critical periods that ensure that federally-listed species will be protected. In order for the EAA to meet its mandated deadline for species protection, the HCP must be approved by the United States Fish and Wildlife Service (USF&WS) by the fall of 2012.

Most critical to San Antonio, the bill raised the pumping cap on EAA permitted withdrawals from 400,000 acre-feet to 572,000 acre-feet. As a trade-off for raising the cap, downstream users insisted that stronger critical period Aquifer withdrawal reduction levels ("trigger levels") be included in the Act. These numbers were formerly set by EAA rules. The downstream interests insisted these new levels be effective immediately and negotiated the deal for a statutory procedure for setting even further reduction levels in the future if scientific studies showed stricter levels were necessary to protect the species. SB 3 designated the EARIP, a consensus-based, stakeholder driven process as the vehicle to establish the science behind the new "trigger levels".

### **EARIP**

The EARIP is governed by a 26-member Steering Committee with representatives from various state and local entities and interests including the the EAA, the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, the Texas Department of Agriculture, the Texas Water Development Board, the Guadalupe-Blanco River Authority, the San Antonio River Authority, the San Antonio Water System, industry representatives, irrigators and environmental groups. Other stakeholders including the USF&WS and other federal agencies were encouraged to participate in the EARIP process, with some stakeholders also signing onto a Memorandum of Agreement (MOA). In February 2008, The Chamber Board of Directors agreed to sign onto the MOA and designated Mary Q. Kelly of the Gardner Law Firm to represent The Chamber as a stakeholder in the EARIP process. Mary has represented The Chamber in this process for almost four years.

## **Phase I Package**

The EARIP Steering Committee suggested a two phase plan, Phase I, referred to as the “Bottom-Up” Package, includes a number of remediation and conservation measures would be funded and undertaken over a seven-year period to stabilize springflows at San Marcos Springs and Comal Springs and accommodate further study through the implementation of an “adaptive management process.”. These measures include, among other things, use of the SAWS Twin Oaks Aquifer Storage and Recovery (ASR) Facility, a voluntary irrigation suspension program and additional Aquifer management programs during periods of critical drought. The success of the Phase I measures will determine if, and to what extent, additional measures are required during a second phase of action beginning in year eight and continuing for another seven years. Action in the second phase, if required, could range from a continuation of phase-one initiatives to adding an engineered solution in the nature of a new aquifer storage and recovery facility.

## **Funding**

In amending the Act to institute the EARIP, no funding mechanism was identified for the implementation of Phase I of the HCP which was originally estimated to cost almost \$30M annually and is now estimated at \$20M annually, or Phase II of the HCP. The plan area is the counties within the boundaries of the EAA (including Bexar County). The EAA is comprised of all or part of an 8-county region. Within these 8 counties, SAWS is the largest user of the Aquifer followed by irrigation users.

In early 2011, the EARIP Steering Committee recommended legislation for a voter approved broad-based regional funding mechanism dedicated to the implementation of the HCP in the form of a ¼-of-a-cent sales tax which would be separate from the two-cent local sales tax cap currently required by the Tax Code. The taxing area would have coincided with the plan area and the counties inside the San Antonio and Guadalupe River Basins. Two bills were introduced during the 2011 Legislative Session, HB 2760 and SB 1595, neither of which survived. The Chamber supported the regional sales tax because SAWS’ customers would bear the brunt of the only known alternative funding mechanism – a significant increase in Aquifer Management Fees imposed by the EAA. A regional tax would be more equitable because it would capture downstream users (non-Aquifer pumpers), irrigation farmers in the Edwards regions who’s Aquifer Management Fees cannot be increased, and owners of exempt wells.

Since the regional sales tax measures failed, the Steering Committee’s alternative funding option requires the EAA to increase Aquifer Management Fees. This increase applies only to municipal and industrial Edwards pumpers since fees charged to irrigation pumpers are capped by state law. SAWS would share this cost by passing on the increased fee to ratepayers, possibly raising the rates for the average residential customer from \$1.38 per month to as much as \$4.14 per month. Industrial users, however, will be forced to pay more than double their current cost for Aquifer Management Fees. There are approximately 45 Chamber members who would be impacted by the increase in Aquifer Management Fees.

**REASONS FOR SUPPORT OF THIS STATEMENT:**

1. Funding the HCP is necessary to meet requirements for compliance with the federal Endangered Species Act of 1973 and is vital to the general economy and welfare of this state, and particularly to the Edwards Aquifer region in South Central Texas and the Guadalupe River and San Antonio River basins.
2. Without adequate funding, the HCP cannot be implemented and lawsuits may result with the chance of Federal Court intervention

**REASONS FOR OPPOSING THIS STATEMENT:**

1. San Antonio residents will fund the bulk of the implementation costs of the HCP.
2. The EARIP Steering Committee has yet to adopt the EARIP proposal and forward it to the EAA Board for action.
3. The EAA has yet to adopt the EARIP proposal or a funding mechanism to implement the HCP.

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