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From the Rule of Capture To Marketing Groundwater Rights: The Story of the Edwards Aquifer Authority

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Gregory M. Ellis has over nine years experience in groundwater regulation. Formerly the General Counsel for the Harris-Galveston Coastal Subsidence District (from 1992-1997), Ellis also served the Texas Water Commission (now the Texas Natural Resource Conservation Commission) as Legislative Liaison. His previous legislative experience includes one session as General Counsel and Legislative Assistant to Senator Bill Ratliff, now serving as Texas Lieutenant Governor and two sessions with Representative Terral Smith as legislative aide and committee clerk. His legal experience includes clerkships with Booth and Newsom, PC and Lloyd, Gosselink, Ryan and Fowler, PC.

ABSTRACT

In 1993, the Texas Legislature created the Edwards Aquifer Authority (the Authority) to manage the Edwards Aquifer in south central Texas and bring closure to nearly one-half century of conflict over the use of this special natural resource. The Edwards Aquifer is one of the most unique aquifer systems in the United States. To achieve regional harmony over water resource management, the Authority must accomplish an ambitious list of water management programs. At the top of the list of requirements for the Authority is development of a permit system of water use. In the five years since the Authority was established, it has promulgated a comprehensive set of rules to address groundwater withdrawals. Limitations on aggregate withdrawals established in the Authority's enabling Act, along with the permit system, created a water rights market, a new phenomena for groundwater in a State where the basic groundwater law is the Rule of Capture. Since the Edwards Aquifer is a limestone system with numerous faults, voids and solution cavities, the water within the aquifer responds quickly to rainfall or the lack thereof. Consequently, development of a drought management program is a fundamental tool in the over all management of the aquifer. However, developing a program that is both equitable and effective requires good science, patience and diplomacy.

The primary indicator of the effectiveness of the Authority, from a federal perspective, is its ability to successfully provide for the continued existence of endangered species whose habitat is fed by two springs discharging from the aquifer; springs that dried up for six months during the drought of 1956. However, the Authority is developing a Habitat Conservation Plan that should be completed in 2002. The goal is to produce an agreement that, when fully and properly implemented, will sustain the protected species for the 50-year

term of the plan. The Authority is endeavoring to concurrently implement several water management initiatives that, when completed, will provide for integrated management of one of the most unique aquifers in Texas.