



**Edwards Aquifer Authority response to South Central Texas
Water Advisory Committee Resolution No. 02-2004-01 requesting
the Edwards Aquifer Authority Board of Directors to reconsider its
approval of Resolution and Order No. 12-03-478 Adopting permit rules
within Chapter 711 of the Edwards Aquifer Authority rules**

The Board chose to adopt the “junior/senior” rules, after careful and extensive deliberation, because it believed this approach to be a reasonable and rational way to reconcile and harmonize the competing provisions of the Act and honor the legislative intent of the Act to issue permits at the minimums specified in Act section 1.16(e), while protecting the Aquifer and honoring the 450,000 acre-foot cap.

The SCTWAC Resolution and Order both contend that the Board’s adoption of the junior/senior rules prejudices downstream water interests in several respects. The Authority will herein attempt to identify and then respond to each of the concerns raised.¹

(1) SCTWAC asserts that the Act does not authorize the creation of a bifurcated system of junior and senior water rights to withdraw groundwater from the Aquifer and that the junior/senior rules violate of § 1.14(b) of the Act by essentially raising the cap on permitted groundwater withdrawals without complying with § 1.14(d) of the Act.

Authority Response: The Authority disagrees with the assertion that the rules are contrary to the requirements of the Act. The Authority believes that the rules are consistent with the Act and within its statutory authority. The Authority believes the rules constitute a reasonable and rational way to reconcile and harmonize the competing provisions of the Act and honor the legislative intent of the Act to issue permits at the minimum levels specified in § 1.16(e), while protecting the Aquifer and honoring the 450,000 acre-foot cap. Under the rules, permittees are authorized to withdraw groundwater in accordance with the minimum amounts authorized by § 1.16(e) on an interruptible basis depending on the actual hydrologic condition of the Aquifer. Additionally, the “junior” portions do not apply against the cap because they may be only withdrawn when the Aquifer water levels are high. The aquifer conditions set for that portion of the permit are no different than the conditions set for Term Permits in Sec. 1.19 of the Act. SCTWAC suggested issuing Term Permits

1) ¹ It is worth noting that all of the criticisms of the junior/senior rules now being raised by SCTWAC were also raised by a number of commenters, including those with downstream interests, such as the Guadalupe-Blanco River Authority and the Guadalupe River Basin Coalition, during the public comment period prior to the adoption of the junior/senior rules. At that time, each of these comments was carefully considered and responded to.

instead of bifurcating the Regular Permit. However, while the two approaches have the exact same effect on aquifer conditions and downstream water rights, the Authority's approach honors both the cap in § 1.14(b) and the minimums set forth in § 1.16(e) of the Act. The SCTWAC approach does not honor the statutory minimums in § 1.16(e) of the Act.

(2) SCTWAC asserts that the junior/senior rules will lead to increased withdrawals from the Aquifer when Aquifer levels are high and that this, in turn, will cause the Aquifer to drop to low levels sooner at the beginning of severe droughts and to remain at lower levels throughout a drought.

Response: The Authority disagrees with the assertion that the rules will increase the frequency and severity of low aquifer levels during drought. The Regulatory Impact Assessment, which analyzed the impacts of these rules, discussed the potential effect of the rules on aquifer levels, springflows, species, downstream flows, and bays and estuaries. (See Chapter 4 of Regulatory Impact Assessment.) The Assessment concluded that the rules will likely have "negligible impacts to the Aquifer and its biological resources" and that the rules might have "positive effects on springflows by reducing demand for Aquifer pumping during dryer periods because stored surplus water [through the use of aquifer storage and recovery projects] could be utilized." (See Executive Summary of Regulatory Impact Assessment.)

(3) SCTWAC asserts that the rules set an "extremely unhealthy precedent" because they "circumvent the statutorily mandated caps on withdrawal" and that the rules render the cap on permitting withdrawals in § 1.14(b) "meaningless."

Response: The Authority disagrees. Rather than circumventing or rendering meaningless the withdrawal caps, the Authority believes that the rules honor the 450,000 acre-foot cap in a manner that is consistent with the remainder of the Act. Because the rules expire at the end of 2007, the future caps will also be met.

(4) SCTWAC asserts that the ability of downstream water rights holders to rely on base flows provided by the Comal and San Marcos Springs during droughts will be "substantially reduced if not eliminated" by the junior/senior rules.

Response: The Authority disagrees. We are unaware of any specific scientific analysis that supports the SCTWAC allegation. At the same time, we are aware of data that specifically *refutes* the allegation. The Regulatory Impact Assessment, which analyzed the impacts of the rules, discussed the potential effect of the rules on, among other things, aquifer levels and springflows, and concluded that the rules will likely have "negligible impacts to the Aquifer and its biological resources" and that

the rules might have “positive effects on springflows by reducing demand for Aquifer pumping during dryer periods because stored surplus water [through the use of aquifer storage and recovery projects] could be utilized.” (See Executive Summary of Regulatory Impact Assessment.)

(5) Finally, SCTWAC requests that the Board direct staff to begin the process of drafting, reviewing and adopting rules that would replace the junior/senior approach by requiring simple proportionate reductions of all regular permits as necessary to meet the 450,000 acre-feet cap, apparently with no provision for compensation for those permit holders who are proportionately reduced below their “minimums.” SCTWAC further notes that the adoption of such new rules could be accompanied by Board action to consider the issuance of term permits to meet “real interim needs,” but which would expire no later than December 31, 2007.

Response: The Authority considers this request to be not so much a critique of the junior/senior rules as it is a request for the Authority to consider a different policy approach for its permitting program. The Authority has previously considered and elected not to adopt the approach now suggested by SCTWAC. Instead, it selected the junior/senior approach because it believed that approach to be a reasonable and rational way to reconcile and harmonize the competing provisions of the Act. It should be noted, however, that there would be no different impact on Aquifer levels or springflows by using the SCTWAC approach. The Term Permits would expire in 2007; the Junior/Senior Rules expire in 2007. The Term Permits would allow (if the demand is there) pumping above the 450,000 acre-foot cap; the Junior/Senior Rules allow (if the demand is there) pumping above the 450,000 acre-foot cap. The Term Permits would cease production under certain aquifer conditions; the Junior portion of the Regular permits must cease production under the identical conditions. SCTWAC’s suggestion does not result in any different impact on the springflows or downstream water rights.

Further discussion of the impact of these rules can be found in the Final Order Adopting Rules and the Regulatory Impact Assessment.