



Watch Your Assets

Exposing the misuse and abuse of the public commons

Texans for Public Justice is proud to release the first installment of its new series investigating abuses and misuses of public assets for private gain. Each month “Watch Your Assets” will expose ways in which private interests benefit from resources that should be protected for the public good. The first issue, “‘Til Your Well Runs Dry,” reports that at a time when Texas’ water supply is stretched to the breaking point, the state has converted Central Texas’ Edwards Aquifer into a multi-million dollar commodity that is being auctioned off for private gain. We hope you enjoy the report. Don’t forget to visit the site to “watch your assets” in the months to come. Please send any feedback as we develop this new project.

-Lauren Reinlie, Project Director
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‘Til Your Well Runs Dry:

How the State of Texas Converted the Edwards Aquifer into a Multi-Million Dollar Commodity

Responding to a federal lawsuit, the state of Texas created an agency in 1993 to regulate water withdrawals from the Edwards Aquifer. Running in a 160-mile arc from Austin through San Antonio and west to Kinney County, this underground lake feeds the Guadalupe River and the San Marcos and Comal springs. It sustains the lives of millions of Central Texans – and sundry other life forms. Under the so-called “rule of capture,” landowners previously could take as much water as the aquifer yielded, even if this consumption sucked their neighbor’s well, springs or river dry.

The state empowered the Edwards Aquifer Authority to establish a permitting system that limits aquifer pumping in order to protect spring flows, as ordered by a federal judge. The agency awarded permits based on historical use established under the rule of capture. It awarded most of the rights to wealthy landowners, such as former Governor Dolph Briscoe, and major utility companies led by the San Antonio Water System. The creation of the EAA marks the state’s first formal recognition of the aquifer as a resource to be protected for the public good. At the same time, the state used the EAA as a vehicle to convert Edwards water into what is fast becoming a lucrative water market. As a result, a handful of private interests stand to make a great deal of money off this resource.

A relatively small number of local governmental entities, private entities and individuals now own the permits for all available aquifer water and no new permits will be issued. These owners can lease or sell this commodity – potentially worth hundreds of millions of dollars – on the open market.

Texas' population is expected to double by 2060; Central Texas is one of the state's fastest-growing regions. As the area's urban population mushrooms, big utility companies that control more than half of EAA-permitted water have reached the limits of their permits. To meet additional water needs, cities are looking to the farmers, ranchers and big landowners who control the next-largest chunk of EAA permits but harvest only about a quarter of their allotment. Water brokers are buying up rights from these owners to sell or lease to the most lucrative urban markets.

Under these market pressures the price of aquifer water will almost certainly continue to skyrocket – even if the aquifer supply stays constant. A recent Columbia University analysis of global-warming patterns predicts that Texas will enter a period of permanent drought within the next 15 years. Given the continuing demands of urban growth and the rising potential for water fortunes to be made, Edwards Aquifer politics are fixing to become a pressure cooker.

The 15-member publicly elected Edwards Aquifer Authority board is charged with the potentially conflicting goals of preserving the aquifer for the public good and protecting the interests of those who own the rights to the aquifer's waters. No one can agree on the amount of water that can be pumped while sustaining the aquifer's integrity. According to a recent study published by the Texas Water Development Board, under current pumping conditions a major drought could dry up Comal springs for at least two years. As the market value of Edwards rights escalates, people who control these rights will pressure the EAA to keep the pumps running.

Many of the aquifer's largest permit holders are major players in state politics and also exert influence in the much smaller pond of EAA politics. If growing marketplace pressures continue to convert aquifer water to gold, as expected, the EAA runs a risk of being captured by the high-dollar interests that it is charged with regulating. As currently organized, the EAA does not appear to have the transparency and protections needed to safeguard the public interest in the aquifer against the narrow interests who own the rights to what is fast becoming a commodity worth hundreds of millions of dollars.

The Permit Holders

The Edwards Aquifer's total value vastly exceeds the market value that it represents to private pumpers, says Ken Kramer, director of the Lone Star chapter of the Sierra Club. "The value comes from the discharge in the springs and the value of the downstream flows," says Kramer, whose organization was a plaintiff in the lawsuit that prompted the Legislature to create the EAA. If the aquifer were runs dry, the springs will dry up, rivers will lose their flow and the public would lose access to this crucial water system.

To protect this ecosystem, the law creating the Edwards Aquifer Authority capped total water permits at 450,000 acre-feet of water per year and stipulated that this cap be cut to 400,000 acre-feet by 2008. (An acre-foot, or 325,000 gallons, covers an acre of land with a foot of water.) Yet the same law directed the agency to award permits based on historical usages established under the rule of capture from 1973 to 1992. As a result, the EAA overshot its prescribed cap. It currently has 546,211 acre-feet permitted. Both the agency and many of its top permit holders are backing legislation to raise the cap to 549,000 acre-feet.¹ They are seeking this increase despite the fact that permit holders pumped just 325,043 acre-feet in 2005 (the most recent year for which the agency has provided complete withdrawal data).

EAA Water Permits By Interest (in acre-feet)

Interest Category	2007 Permitted	% of All Permits	2005 Permitted	2005 Pumped ¹	% Used in 2005
Local Governments	294,543	53.9%	308,002	243,022	79%
Individuals	175,278	32.1%	180,860	47,066	26%
Concrete/Aggregates	13,707	2.5%	15,935	8,129	51%
Agriculture ²	12,221	2.2%	16,287	3,640	22%
Water Brokers	8,316	1.5%	5,636	99	2%
Development ³	7,593	1.4%	7,834	2,285	29%
Construction	6,426	1.2%	7,382	3,474	47%
Water Companies	4,622	0.8%	4,408	6,197	141%
Nursery/Landscaping	2,573	0.5%	4,556	2,098	46%
Schools	2,552	0.5%	2,924	1,332	46%
Golf	2,117	0.4%	2,282	985	43%
Miscellaneous Business	6,533	1.2%	7,274	3,159	43%
Unknown	9,731	1.8%	10,646	3,545	33%
TOTALS:	546,211	100.0%	574,027*	325,031	57%

¹ 2005 is the most recent year for which the EAA provided complete pumping data.

² Includes farms and ranches that could not be directly tied to an individual or family.

³ Includes special utility districts created for new developments.

* An additional 3,547 acre-feet were permitted in 2005. This table just lists 2005 permit data for those owners who continued to hold rights in 2007.

In 2005, permit holders pumped 56 percent of permitted withdrawals. Some of this may be attributed to the EAA's power to restrict pumping during "critical management periods" that endanger the aquifer's ability to recharge itself.

¹ Three bills to raise the cap were filed in 2007 that would raise the pumping cap: Puente's HB 1292, Wentworth's SB 659, and Hegar's SB 1341.

The EAA tracks permits in the name of the user who is renting a water right rather than the ultimate owner. So the permit numbers reported here can be misleading. Some of the water rights attributed to permit holders could be leased rather than owned. Conversely, these numbers underreport the total water rights of permit holders who have leased out water to others.

Local governmental entities hold permits for 54 percent of the aquifer's total permitted water, which they sell to millions of customers. These governmental bodies, which are scrambling to accommodate rapid growth, pumped out 79 percent of their permitted aquifer water in 2005.

Individual landowners and other predominantly agricultural interests are the next-largest category of permit holders, accounting for 34 percent of all permitted water.² Most of these permits are specially designated "irrigation permits." Generally, half of the water covered by an irrigation permit is tied to the agricultural land in question, while the other half can be sold or leased for other uses.

Many irrigation permit holders either never did much irrigation, abandoned the practice altogether or have curtailed their water use through conservation. As a result, these landowners have a water surplus and pumped only 25 percent of their permitted allotment in 2005. Fast-growth urban areas regard these water-rich landowners as a possible solution to their future water needs. They are rapidly bidding up water prices.

EAA permits now sell for between \$5,500 and \$6,000 an acre-foot, up 34 percent from their \$1,850 selling price just four years ago.³ The same acre-foot of Edwards water leases for \$125 a year, says EAA Vice-Chair Luana Buckner, who heads the agency's Permits Committee. "It was very much the intent of this [EAA enabling] legislation to create this market," Buckner says. "You can't transfer the water outside out of the boundaries of the authority. The whole process is [designed] to facilitate that market."

Responding to this explosive market, water-brokering companies are stockpiling EAA permits to sell or lease to other users. Water brokers only pumped 2 percent of their allotted amount in 2005. While these broker companies now control only about 1.5 percent of all EAA-permitted water, they increased the volume of their water rights a remarkable 48 percent over the last two years.⁴ Current broker permits have a market value of more than \$45 million.

Private water companies, which account for less than 1 percent of EAA-permitted water, were the only interest category that pumped more water than they were entitled to in 2005. Aqua Texas, a subsidiary of Aqua America, the nation's largest publicly traded water company, is responsible for most of the over-pumping. With hundreds of local water systems statewide, Aqua Texas pumped 3,349 acre-feet in 2005 despite holding permits for just 3 percent of this amount. The company tried to cover their pumping by leasing extra rights and reached a settlement with EAA. Private water companies and water brokers (discussed later) were the only interest categories that actually increased the volume of their EAA permits from 2005 to 2007, a period in which the EAA cut the total amount of water permitted by 5 percent.

² The 34 percent figure combines the Individuals and Agriculture sector for the table "EAA Water Permits by Interest."

³ *San Antonio Express-News*. "SAWS gets bids online," Jerry Needham. April 24, 2003.

⁴ Brokers probably control many more permits since the EAA reports permits that brokers or others lease out in the name of the renter rather than the ultimate permit owner.

The concrete industry, which has 2.5 percent of EAA-permitted water, pumped 51 percent of its allotment in 2005. Permit holders Vulcan Construction Materials and Martin Marietta Materials are the nation's top producers of gravel aggregates used in concrete. Mexico-based CEMEX, another permit holder, operates a New Braunfels cement plant that represents the largest investment ever made in Comal County.⁵

**Top 25 Edwards Aquifer Permit Holders
(Representing 61% of All Permitted Acre-feet)**

Permit Holder	2007 Permits	2005 Permits	2005 Pumped	% Used
San Antonio Water System	215,894	226,416	190,392	84%
Bexar Metropolitan Water District	33,026	30,551	24,819	81%
Briscoe Ranch, Inc.	15,130	16,741	5,173	31%
New Braunfels Utilities	6,568	5,970	3,255	55%
City of Uvalde	5,498	5,318	3,752	71%
Martin Marietta Materials Southwest, Ltd.	4,451	5,166	3,004	58%
CEMEX Cement of Texas, L.P.	4,021	5,307	3,646	69%
Roger & Marvin Verstuyft	3,482	3,482	1,438	41%
City of Hondo	3,413	3,488	1,880	54%
Laguna Water II, Ltd.	3,119	2,917	0	0%
Woodley Water, Ltd.	3,100	1,920	0	0%
Petty Ranch Company	3,008	3,050	1,423	47%
Vulcan Construction Materials, LP	3,005	3,260	1,833	56%
City of Universal City	2,867	3,706	2,544	69%
Alamo Concrete Products, Ltd.	2,827	2,932	1,025	35%
City of San Antonio - ZOO	2,750	2,750	2,582	94%
U-Bar Ranch, Inc. (H.B. Zachry)	2,570	2,570	375	15%
Flying W Properties, Ltd. (construction)	2,567	3,411	1,619	47%
R.B. Willoughby, Jr. and Cecil R. Atkission, Jr.	2,524	4,924	771	16%
City of San Antonio – City Public Service Energy	2,399	3,064	520	17%
Lewis R. Cole, Jr. and Kenneth S. Cole	2,388	2,388	963	40%
Box K, Limited	2,307	2,307	214	9%
Blackstone and Frances Dilworth	2,304	2,304	1,472	64%
John R. and Vivian W. Windrow	2,239	2,374	66	3%
City of San Marcos	2,222	5,425	1,684	31%

San Antonio's Demands

The nation's seventh-largest city historically has been utterly dependent on the Edwards Aquifer to satiate its ever-expanding thirst. The San Antonio Water System (SAWS), a municipally controlled utility with one million customers in Bexar County, extracts 93 percent of its water from the aquifer. SAWS has title to 40 percent of the aquifer's pumping rights. The No. 2 EAA

⁵ *San Antonio Express-News*. "Cement plant to double size in New Braunfels," Roger Croteau, June 7, 2005.

permitee, the Bexar Metropolitan Water District, controls another 6 percent of the aquifer's water rights. Created by the legislature, Bexar Metropolitan is run by a popularly elected board.⁶

SAWS pumped 84 percent of its permitted allotment in 2005, stockpiling any aquifer water surpluses in an underground storage system for future use. SAWS spokesman Greg Flores credits the utility's conservation program with cutting per capita water consumption in its jurisdiction by 40 percent since 1980. Yet San Antonio's growth projections are so sobering that it will be virtually impossible for SAWS to meet future water demand without tapping more water from the aquifer or some other source. SAWS prospects for new water include other aquifers, Canyon Lake, a groundwater desalination project and a controversial pipeline from the Lower Colorado River. SAWS estimates that the Colorado River will supply 30 percent of its water by 2025.

Myron Hess, who monitors Texas water systems for the National Wildlife Association, is skeptical of the Colorado River plan. Hess says SAWS is desperately seeking a way for downriver rice farmers to conserve enough water from the heavily stressed river to cover the big gulp that San Antonio desires. Hess suspects that SAWS has been overly optimistic about how much water rice farms will be able to conserve, an assumption that could make or break the economic rationale for this big pipeline project. "The reality is that SAWS would draw out far more than they would save," Hess says. SAWS has already spent \$28 million on the study stages of the Colorado River project.

Annalisa Pease, director of the Greater Edwards Aquifer Alliance, credits SAWS with having one of the best conservation programs in the state, but is concerned that San Antonio is looking to get off the aquifer by sucking up water from other counties. "It's not about just looking for other water, but what can we do in the way of conservation to negate that need for other water or how can we find other water and do no harm," she says.

Compared to the relatively clean Edwards Aquifer, most other water sources would impose considerably higher water-treatment costs on the utility. To supplement its historical use permits, SAWS already leases 26,000 acre-feet a year, according to Flores. At the going market rate (\$125 an acre-foot), these permits would lease for more than \$3.25 million, making SAWS a highly valued customer among those wishing to market their rights.

The Water Suppliers

Fifteen families control at least 11 percent of EAA-permitted water. Yet in 2005 just two of these families pumped more than half of their permitted water supplies. This huge water surplus makes them the go-to people for water-starved municipalities.

Many of these families hold "irrigation permits" that earmark half of their permitted water for agricultural uses only. They can sell or lease the other half of these permits for more lucrative uses. If the 15 families sold half of their permits at market value (between \$5,500 and \$6,000 an acre-foot) they would make at least \$167 million. Leasing the same portion of their permits at the going rate of \$125 per acre-foot would bring in \$3.9 million annually.

The EAA oversees many more permit leases than sales. Would-be buyers say that permit prices have become so expensive that they usually secure water through leases, which have enjoyed

⁶The Texas House passed a pending bill (HB 1565) directing the Bexar County Commissioners to replace this board in April 2007. The legislation follows years of controversy and alleged abuses by the board. Critics of the bill fear it is a first step to a SAWS takeover. SAWS has denied any such designs.

relative price stability. For the most part, the first families of Edwards Aquifer water have been holding on to their permits. They appear to buy into the widespread view that the price of water can only go up in Central Texas.

**The First Families of EAA-Permitted Water
(Representing 11% of all Permitted Acre-Feet)**

Family	2007 Permits In Acre-feet	Estimated Value of Transferable Permits*	Share of 2005 Permits Pumped
Briscoe	15,130	\$41,608,364	31%
Verstuyft	7,085	\$19,482,738	41%
Willoughby	5,395	\$14,837,540	20%
Saathoff	3,687	\$10,140,075	10%
Boehme	3,358	\$9,234,500	18%
Woodley	3,326	\$9,147,600	7%
Capt	3,234	\$8,892,752	7%
Petty	3,025	\$8,317,980	46%
Zachry	2,570	\$7,067,500	15%
Windrow	2,414	\$6,637,675	3%
Cole	2,388	\$6,565,900	40%
Persyn	2,361	\$6,492,197	20%
Gilleland	2,325	\$6,394,253	32%
Clary	2,310	\$6,351,345	66%
Dilworth	2,304	\$6,336,000	64%
TOTALS:	62,919	\$167,506,419	27%

*Based on selling estimated number of transferable irrigation permits at \$5,500 per acre-foot.

Former Texas Governor Dolph Briscoe is the largest individual owner of Edwards Aquifer water rights. Alone and with his partner, Archie McFadin, Briscoe controls the rights to 3 percent of all EAA-permitted water. In 2005 Briscoe pumped just 31 percent of his allotment. The estimated transferable portions of Briscoe's permits have a market value of more than \$41.6 million.

For years Briscoe has pushed to repeal a state law that prohibits diversions of aquifer waters via pipelines. He and other water-rich landowners, including the No. 2 ranked Verstuyft family, have advocated constructing an expensive pipeline to transfer water from Uvalde to San Antonio's lucrative market. Since 1995, Briscoe has spent between \$185,000 and \$235,000 on lobby contracts. The University of Texas at San Antonio published a study in May 2006 that concluded that such a pipeline would draw down water levels across the aquifer, triggering more frequent critical-management periods. EAA Board member Mario Cruz of Uvalde has led pipeline opposition, which he characterizes as the leading threat to the aquifer.

The family of Bruce Gilleland, who represents Uvalde County on the EAA Board, holds title to 2,000 acre-feet of water with a potential market value of more than \$6 million. Gilleland's wife, Linda, has advocated a pipeline to suck aquifer water out of Uvalde County. Another EAA board member Hunter Schuehle and his Frontier Ranches hold permits for 997 acre-feet. This is more than three times the amount of water rights that Schuehle boasted in 2005. At that time he did not pump any of his aquifer water.

The No. 3 individual permit holder is R.B. Willoughby of Uvalde. He is president of edwardswater.com, a water brokerage that markets surplus irrigation rights to municipalities or other water-strained customers.

Water Broker Companies

Water Broker	2007 Permits in Acre-ft	2005 Permits in Acre-ft	% Increase	Est. Value of Selling 2007 Permits	Est. Value of Leasing 07 Permits per Year
Laguna Water II, Ltd.	3,119	2,917	94%	\$17,154,500	\$389,875
Woodley Water, Ltd.	3,100	1,920	62%	\$17,050,000	\$387,500
Aqua Capital Management, LP	1,061	0		\$5,835,500	\$132,625
Eckard Natural Resources Group, LLC	862	571	66%	\$4,741,000	\$107,750
Edwardswater.com, L.L.C.	175	229		\$962,500	\$21,875
TOTALS	8,317	5,636	68%	\$45,743,500	\$1,039,625

Estimated Values - selling at \$5,500/acre-ft; leasing \$125/acre-ft per year.

Laguna Water, Ltd. opened business in 2001 to sell and lease Edwards water rights to needy cities or industries. The company buys permits from those who are not using all their rights and leases them to entities with high demand. The renters then pay the fees to the Edwards Aquifer Authority and hold the permits in their name, while the water broker rakes in a cut. The companies listed above probably hold ownership of more permits than are listed, but they are leasing these out for other purposes. In 2004, Bexar Metropolitan Water District signed a 10-year lease with Laguna Water for 2,500 acre-feet of rights at \$317,000 a year to cover a deficit in the utility's water supply.⁷ Mike Albach, the sole employee of Laguna Water, is the former deputy general of Bexar Metropolitan.

Aqua Capital Management, which began buying up rights in 2006, stands to benefit off Edwards water, even though the company is headquartered in Omaha, Nebraska. In 2006, this company also leased rights to Bexar Metropolitan to help the district meet the needs of its customers during an extensive drought.⁸

Edwardswater.com, owned by large rights-holder R.B. Willoughby, reminds visitors to its website that today "big brother is watching... and closely" to regulate how much water is being pumped. The company encourages farmers and irrigators to trade in some of their agrarian efforts in favor more lucrative water-leasing ventures.

Mario Cruz, an Edwards Aquifer Authority Board member representing Uvalde county, is "dead set" against transferring water out of his community because Uvalde's economy is largely based on agriculture. "When you take water, which is the most precious thing, and then you transfer it out of our district ... that will be the death of those communities because that's the water you're going to use to grow crops." If water brokers sell off to San Antonio the water that has sustained local agricultural communities for generation, then some Uvalde resident wonder what, if anything, will drive their economy in the future.

⁷ *San Antonio Express-News*. "Bexar Met moves to shore up water supply," Jerry Needham. June 8, 2004.

⁸ *San Antonio Express-News*. "Forget gold, double your pleasure (and money) by buying H2O rights," Roddy Stinson. February 20, 2007.

Money Flows Like Water

Edwards Aquifer water stakeholders collectively invested \$1,281,750 into Texas' 2006 election cycle. Presumably the \$349,600 contributed by insurance giant United Services Auto Association (USAA) has more to do with insurance policy than its permit for 317 acre-feet of aquifer water.

The fortune of the next largest contributors has a bigger water nexus. The family of HB Zachry, Jr. poured \$243,242 into Texas' 2006 elections. This family's Zachry Construction is a lead contractor in the \$184 billion Trans Texas Corridor Project. Its Capitol Aggregates, Inc., which holds title to 355 acre-feet of aquifer water, uses water to mix concrete. The Zachry family controls another 2,570 acre-feet through its U-Bar Ranch.

Another Texas Department of Transportation contractor, John Weisman of Hunter Industries, controls 2,567 acre-feet of water in the name of Flying W Properties. He gave state politicians almost \$80,000 in the 2006 cycle. Edwards water-rights king Dolph Briscoe dropped \$96,000 on Texas' last elections. (See **Appendix, "Top Statewide Donors with EAA Interests."**)

Sen. Jeff Wentworth (R-San Antonio) received the most aquifer-connected contributions, receiving \$26,500 from donors controlling 21,100 acre-feet of Edwards Water. Wentworth is the author of 2007 legislation (SB 659) that would raise the EAA's pumping cap from 450,000 acre-feet to 549,000, at a time when the EAA's cap is supposed to drop to 400,000 by next year. This is not the first time that Wentworth carried water for Edwards permittees. In 2003, he spearheaded a failed bid to repeal a state law prohibiting aquifer water from being piped out of Uvalde County.

Donations to key legislators in Edwards Aquifer issues

Permit Donations ('06 Cycle)	Recipient	Party	Office	Home	Key Committees In 2005	Key Committees In 2007
\$26,500	Jeff Wentworth ¹	R	S-25	San Antonio		
\$15,500	Patrick Rose ²	D	H-45	Dripping Springs		
\$14,477	Frank Madla ³	D	S-19	San Antonio	NR	
\$11,000	Kip Averitt	R	S-22	Waco		NR(C)
\$8,000	Glenn Hegar	R	S-18	Katy		NR
\$6,500	Carlos Uresti	D	S-19	San Antonio		NR
\$4,500	Robert Puente	D	H-119	San Antonio	NR(C)	NR(C)

Note: NR=Natural Resources Committee.

¹ Authored bill to up cap

² Represents San Marcos Springs

³ Lost in 2006.

House Natural Resources Committee Chair Robert Puente (D-San Antonio) also has filed 2007 legislation to increase the EAA's cap to 549,000 acre-feet (HB 1292). Puente received \$2,500 from the Zachry family and \$2,000 from USAA.

Sen. Glenn Hegar (R-Katy) has a bill (SB 1341) that would raise the cap even higher to 579,000 acre-feet. Yet Hegar's bill would compel state agencies to participate in the federally sponsored Recovery Implementation Program. This process seeks to convene all interested parties to reach a consensus about how to manage the aquifer to meet the requirements of the Endangered Species

Act. O Hegar says this framework would force the EAA to consider the interests of his downstream constituents who have lacked a voice at the agency. Hegar received \$8,000 from aquifer-related donors, led by John and Anne Weisman and followed by Houston-based permit holder Donald Faust.

Dolph Briscoe’s largest contribution of \$10,000 went to Rep. Patrick Rose (D-Dripping Springs). Many of Rose’s constituents live around the San Marcos Springs and have an interest in limiting aquifer pumping to protect that resource. Earlier this year, Rose requested that the Texas Water Development Board conduct a study on the effects of Edwards pumping on the flows of the Comal and San Marcos springs. The study found that a drought such as the one that occurred in the 1950’s would dry up Comal Springs for more than two years.⁹

Apart from bankrolling political campaigns, Edwards Aquifer interests are a force in the lobby. The top seven permit holders have spent up to \$12 million on 203 lobby contracts since 1995. (See Appendix: “Permit Related Contributions to Statewide Candidates.”)

Lobby Spending By Top EAA Permit Holders, 1995 - 2007

Top EAA-Related Lobby Clients	Min. Value of Contracts	Max. Value of Contracts	No. of Contracts
San Antonio Water System	\$3,420,000	\$6,750,000	87
Bexar Metro. Water District	\$2,080,000	\$3,495,000	39
Martin Marietta Materials	\$505,000	\$1,085,000	33
New Braunfels Utilities	\$160,000	\$460,000	22
CEMEX	\$100,000	\$240,000	10
Briscoe Ranch, Inc	\$130,000	\$285,000	8
City of Uvalde	\$30,000	\$85,000	4
TOTALS	\$6,425,000	\$12,400,000	203

San Antonio Water System currently is spending from \$200,000 to \$400,000 on four lobby contracts. A current SAWS lobbyist—former Sen. Buster Brown—promoted the failed 2003 Uvalde County pipeline scheme. SAWS says it does not have an official position on the pipeline.

During the 2003 and 2005 sessions at least eight EAA interests that collectively control permits for more than 22,000 acre-feet paid lobbyist Charles Bailey between \$325,000 and \$660,000. As a lobbyist, Bailey helped craft the 1993 legislation creating the EAA—including the provision that prohibits building a water pipeline from Uvalde to San Antonio. “I was told that things have changed, that some of the rural folks have saved water and so they want to be able to sell that extra water,” Bailey told *Livestock Weekly* in 2007. “But they couldn’t get it anywhere because there was this prohibition on a pipeline.” Bailey said legislators who are no longer in office foiled previous efforts to repeal the pipeline prohibition.¹⁰

⁹ Austin American-Statesman. “Drought may stop Comal Springs,” Laylan Copelin. March 15, 2007.

¹⁰ *Livestock Weekly*. “Legislators Provide Overview Of Likely Issues This Session,” Colleen Schreiber. January 25, 2007.

Charles Bailey's Aquifer-Linked Contracts, 2003-2005

Client	No. of Contracts	Min. Value of Contracts	Max. Value of Contracts	'05 EAA Permits (acre ft)	% Pumped In 2005
Beth/Margaret/Ruth Bowman ¹	7	\$125,000	\$260,000	385	20%
Bexar Metropolitan	2	\$150,000	\$250,000	30,551	84%
Reagan & Mary J. Houston	2	\$25,000	\$50,000	*0	NA
Bob Willoughby	1	\$25,000	\$50,000	1,419	20%
E.D. & Alex Kincaid ²	2	\$0	\$20,000	957	47%
Albert Townsend	1	\$0	\$10,000	570	39%
†John Weisman ³	1	\$0	\$10,000	2,567	47%
Briscoe Ranches	1	\$0	\$10,000	16,741	31%
TOTAL:	17	\$325,000.00	\$660,000.00	22,254	

*Had 20 acre-feet permitted in 2007 but none in 2005.

¹ Permits in the name "Callaghan Road, Ltd."

² Permits in the name "E.B. Kincaid Estate."

³ Permits in the name "Flying W Properties."

With these obstacles out of the way, Briscoe Ranch interests are paying Bailey between \$30,000 and \$75,000 in 2007.¹¹ Bailey also reports new contracts worth a total of up to \$50,000 with apparent EAA-permitees "McLean Bowman" and "John Weismon." Finally, Bailey has a contract for up to \$25,000 with John McCall, the shampoo magnate who contributed \$1.2 million to Kinky Friedman's failed 2006 gubernatorial bid. Although McCall lives on an Uvalde ranch, no EAA permits were found in his name.

Edwards Aquifer Authority

When the Texas Legislature created the Edwards Aquifer Authority in 1993, the new agency's chief marching orders were to: 1. Introduce a permit-based system to regulate aquifer harvests; and 2. Create a market that would convert aquifer water into a multi-million-dollar commodity. While these goals were not completely contradictory, successfully creating a lucrative, private water market could spawn a class of private permit holders that will lobby to loosen regulatory protections of the aquifer. Given that such a lobby already exists—and almost certainly will build as water prices increase—the aquifer needs an independent, transparent regulatory body strong enough to resist these pressures.

Focal points for these lobby pressures include the legislature, which already is being lobbied by Edwards Aquifer permit interests, and the EAA itself. It is impossible to fully gauge the influence that permit holders exercise over the agency's popularly elected 15-member board. Although candidates seeking staggered, four-year terms on the EAA's board file campaign-finance reports with the agency, the EAA says it typically destroys these records after just two years—halfway into a new board member's term.¹²

Yet the EAA lacked campaign-finance records even for most of its board members who were elected in November 2006. In all, the EAA provided complete campaign records for just three

¹¹ These clients are Dolph Briscoe and Jim and Janey Marmion (the latter sits on the Briscoe Ranches board).

¹² This shredding schedule is authorized by Title 15, §252.014 of the Election Code.

members: Carol Patterson (elected in 2006), Enrique Valdivia (2006) and Hunter Schuehle (2004). It provided partial records for five members. Finally it provided no records for seven members, including five elected in 2006.¹³ Those board members who responded to calls about incomplete records said EAA staff had told them they did not need to file campaign records because they had run unopposed and did not raise or spend any money. Jennifer Wong Esparza, administrative assistant for the EAA, said EAA employees do not advise candidates on what campaign records to file.¹⁴

During her 2004 campaign, board member Bonnie Conner reported receiving a \$750 contribution from a non-profit corporation: the San Antonio Parks Foundation. A Texas Ethics Commission attorney said that any such corporate contribution is a third-degree felony under Texas law. Asked about the contribution, Conner initially said that she thought the foundation (where she also serves as a board member) had reimbursed her for a personal expenditure that she mistakenly reported as a campaign donation. Conner subsequently said that her campaign may have given \$750 to the parks foundation and then erroneously reported the transaction as if the money flowed in the opposite direction.

The EAA campaign records that do exist for 2004 and 2006 reveal that EAA board members obtain 11 percent of their campaign funds from EAA permit holders. Board member Carol Patterson, who represents Bexar County, took the most money from permit holders (\$2,550), whereas Byron Miller, who also represents Bexar County, received the greatest share of his campaign funds from permit holders (39 percent).

¹³ No records were provided for the following board members elected in 2006: George Rice, Rafael Zendejas, Doug Miller, Bailey Barton and Bruce Gilleland. Partial records for 2006 candidates were provided for Byron Miller and Luana Buckner.

¹⁴ Board candidates must file a campaign report naming a treasurer. Candidates who expect to raise and spend less than \$500 then can file a final report closing their account. Otherwise candidates must file bi-annual reports in January and July and opposed candidates must file two additional reports in the month preceding an election (see §251.001, §252.001, §254.063 and §254.064 in Title 15 of the Election Code.) Candidates failing to file proper campaign disclosures are subject to civil penalties. Scofflaws who raise or spend more than \$500 can face criminal charges.

EAA Contributions from Permit Holders

Board Member	Money From Permit Holders	Total Money Raised	% from Permit Holders
Carol Patterson	\$2,550	\$37,765	7%
Susan K. Hughes	\$2,062	\$12,362	17%
Byron Miller	\$1,500	\$3,800	39%
Luana Buckner	\$1,125	\$3,375	33%
Mario Cruz	\$460	\$2,170	21%
Bonnie J. Conner	\$0	\$6,662	0%
Enrique Valdivia	\$0	\$4,511	0%
Hunter Schuehle	\$0	\$0	0%
TOTALS:	\$7,697	\$70,645	11%

EAA Permit-Holders Contributing To EAA Board Members

Amount Donated	Contributor Name	City	Permit Held	Acre-ft Permitted in 2007
\$3,000	USAA Employee PAC	San Antonio	United Services Automobile Assoc.	317
\$1,000	Curtis C. Gunn, Jr.	San Antonio	Gee-Gee Ltd.	415
\$1,000	Eugene Dawson	San Antonio	Self	6
\$700	R.B. Willoughby	Uvalde	Self; Edwardswater.com	5,570
\$562	H.B. Zachry, Jr.	San Antonio	Capitol Aggregates; U-Bar Ranch	2,925
\$300	Pete Neutze	Uvalde	Self	498
\$250	Wesley K. Winn	Uvalde	Self	2
\$225	Craig D. Bush	Omaha, NE	Aqua Capital Management, LP	1,061
\$160	Louis Capt	Uvalde	Capt Family; Self	3,234
\$100	Scott Petty, Jr.	San Antonio	Petty Ranch; Self	3,025
\$100	Joe M. Fohn	Hondo	Fohn's Farms	751
\$100	Fohn Bendele	Hondo	Bendele Family; Self	149
\$100	Linda Gilleland*	Uvalde	Gilleland Family; Bruce Gilleland	2,325
\$50	Thomas Boehme	Castroville	Boehme Family; Self	3,358
\$50	Joe. R. Straus, Jr.	San Antonio	Retama Partners (racetrack)	186
\$7,697			TOTALS	23,822

R.B. Willoughby, the president of Edwardswater.com, controls the most water rights of any board contributor. He gave \$300 to board member Carol Patterson, and \$400 to EAA Vice-Chair Luana Buckner, who chairs the permitting committee.

H.B. Zachry, whose family and construction companies control considerable water rights, contributed \$562 to Bexar county board member Susan Hughes. Nebraska-based Craig Bush, of water broker Aqua Capital Management, backed Buckner's campaign.

The EAA and its board members have not done a good job of ensuring that board's campaign finances are disclosed and transparent. The records that do exist reveal that permit holders supply 11 percent of the campaign funds raised by board members. The EAA does not yet appear to be an agency that has been completely captured by the industry it regulates. But the risk of such a takeover exists.

Through interviews with permit holders, researchers for this project learned that the first permit database that the agency provided under the Texas Public Information Act contained erroneous pumping data. Agency officials also repeatedly expressed reluctance to provide basic information for this report, citing their general manager's concerns about the risk of jeopardizing the agency's legislative agenda. This is an agency that is not accustomed to much public scrutiny and does not welcome it. As water supplies fall and water prices rise, the EAA's importance will increase dramatically. The price of an EAA board seat will escalate and permit holders will have the greatest incentive to cultivate EAA influence. The Edwards Aquifer Authority—which was created as an antidote to the rule of capture—needs to strengthen its democratic institutions to escape being captured itself.

Some will rob you with a fountain pen. – Woodie Guthrie

“Watch Your Assets” is a Texans for Public Justice project.
Lauren Reinlie, Project Director

APPENDIX:

Top Statewide Donors With EAA Permit Interests

State	Donor's	Withdrawal		
Donations	Primary	Right in '07		
'06 Cycle	Interest	(Acre Feet)		
Contributor	Donor-Related	Permit Holder		
\$349,600	United Services Auto Assoc.	Insurance	United Services Auto. Assoc.	317
\$175,448	HB 'Bartell' Zachry Jr.	Construction	U-Bar Ranch, Inc.	2,570
\$95,813	Dolph Briscoe	Agriculture	Briscoe Ranch, Inc.	11,415
\$79,120	John & Anne Weisman	Construction	Flying W Properties, Ltd.	2,567
\$63,991	Texas Industries TXI PAC	Construction	TXI Hunter Cement Plant	263
\$57,860	Glen W. Morgan	Lawyers	Glen W. Morgan	800
\$41,250	Christopher 'Kit' Goldsbury	Finance	Rio Perla Properties, LP	991
\$39,200	Donald F. Faust	Misc. Business	Donald Frank & Sidney Lynn Faust	600
\$37,094	David S. Zachry	Construction	Capitol Aggregates, Inc.	355
\$30,700	John B. Zachry	Construction	Capitol Aggregates, Inc.	355
\$29,045	CEMEX Employees PAC	Construction	CEMEX Cement of TX, LP	4,021
\$24,500	Houston H. Harte	Communication	Houston H. Harte	333
\$22,890	Kent M. Adams	Lawyers	Southwest Texas State University	1,782
\$19,500	Brian McCoy	Agriculture	Blanco River Investments	250
\$17,833	Murray L. Johnston	Construction	U-Bar Ranch, Inc.	2,570
\$17,100	Curtis C. Gunn	Transportation	Gee-Gee Ltd.	415
\$15,840	Ruth McLean Bowers	Energy	Callaghan Road, Ltd.	385
\$12,360	Scott M. Kleberg	Agriculture	SFD/Medio Creek Land Partnership	1,500
\$12,250	John & Diane Scovell	Real Estate	San Antonio Resort Limited Partners	492
\$10,000	Melvin Brekhus	Construction	TXI Hunter Cement Plant	263
\$10,000	Bill J. Tidwell	Construction	Bill J. Tidwell	80
\$8,970	Richard M. Kleberg	Agriculture	SFD/Medio Creek Land Partnership	1,500
\$8,700	Scott & Eleanor Petty	Agriculture	Petty Ranch Co.	3,008
\$7,500	Bruce H.C. Hill	Lawyers	Laguna Water II, Ltd.	3,119
\$7,345	Stephen L. Golden	Lawyers	Rio Perla Properties, LP	991
\$7,300	Vulcan Materials Co. PAC	Construction	Vulcan Construction Materials, LP	3,005
\$6,000	Dilworth Blackstone	Agriculture	Blackstone & Frances Dilworth	2,304
\$5,950	David J. Straus	Transportation	Retama Partners, Ltd.	186
\$5,850	Tim & Suzanne Word	Construction	Dean Word Co.	693
\$4,750	Cecil Atkission	Transportation	R.B. Willoughby & Cecil R. Atkission	2,524
\$1,223,759				43,975

Note: Withdrawal total above double counts the permitted acre-feet for Capital Aggregates because more than one donor is associated with these permits.

Permit-Related Contributions To Statewide Candidates

Amount In	2006 Cycle Recipient	Party	Office
\$192,200	Rick Perry	R	Governor
\$78,350	David Dewhurst	R	Lieutenant Governor
\$60,100	*Carole K. Strayhorn	I	Governor
\$54,900	Susan Combs	R	Comptroller
\$44,150	Elizabeth A. Jones	R	Railroad Commissioner
\$29,500	Don Willett	R	Supreme Court
\$20,500	Wallace Jefferson	R	Supreme Court
\$16,404	Todd Staples	R	Agriculture Commissioner
\$15,500	Phil Johnson	R	Supreme Court
\$13,490	Greg Abbott	R	Attorney General
\$7,000	Jerry Patterson	R	Land Commissioner
\$6,100	Scott Brister	R	Supreme Court
\$5,000	David M. Medina	R	Supreme Court

*Lost 2006 race

Note: Staples sat on Sen. Natural Resources during the 2005 session.