

LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL

ATTORNEYS AT LAW
707 Rio Grande, Suite 200
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
Mail@LF-LawFirm.com

CHIEF CLERKS OFFICE

2010 APR 16 PM 4: 48

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

239-3311 (facsimile)
April 16, 2010

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Building F, Room 4301
12015 Park 35 Circle
Austin, Texas 78753
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

Regarding: Motion to Overturn: TCEQ Docket No. 2010-0317-EAQ – *In the Matter of the Application of H. L. Zumwalt Construction, Inc., for Approval of an Edwards Aquifer Water Pollution Abatement Plan*; ID No. 2897.00.

Dear Ms. Castañuela:

Mr. Trobman's letter of April 9th allowed parties until today to offer any comments they might have regarding the position of the Executive Director that his WPAP approval in this matter, in fact, be reversed.

The TCEQ's practice, I understand from the ED's response in this docket, has been to notify an affected municipality of a WPAP application, if the regulated activity lies within the corporate boundary or the extraterritorial jurisdiction of the municipality. This is a particularly sound practice, as to San Antonio, because San Antonio, alone among Texas cities, has sweeping powers regarding groundwater protection in its ETJ.

Sec. 551.002, Loc. Gov't Code, provides that a home-rule municipality may prohibit the degradation of, among other things, a recharge feature or recharge area that may recharge the source of water supply of any municipality, and the city may do this, regardless of where the source of the degradation may lie. The section, then, goes on to limit the discretion of most home-rule cities to do this, anywhere. However, there is a proviso that only applies to San Antonio and safeguards San Antonio's authority to act in its ETJ:

The authority granted by this section for the protection of recharge, recharge areas, or recharge features of groundwater aquifers may be

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 APR 16 PM 4: 48

exercised outside the municipality's boundaries and within the
extraterritorial jurisdiction provided the municipality exercising such
authority has a population greater than 750,000 and the groundwater
constitutes more than 75 percent of the municipality's source of water
supply."

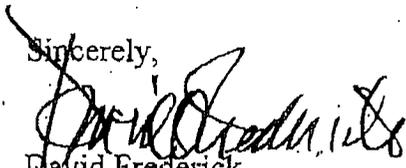
CHIEF CLERKS OFFICE

§ 551.002(c). This provision was added by Rep. Puentes, now the President of the San Antonio Water System, in the conference committee on "SB 1," the big water district bill from 1997.

So, at least for San Antonio, there is no distinction that makes a difference between control of potential threats to recharge within or without the corporate boundary.

I have had an opportunity to review the response of the Applicant to Mr. Trobman's letter. To suggest that the Commission lacks authority to overrule its ED on a point raised by the ED's staff, rather than by a member of the public, is of dubious tact and has no legal basis.

Sincerely,



David Frederick

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 APR 16 PM 4: 49

CERTIFICATE OF SERVICE

CHIEF CLERKS OFFICE

By my signature below, I certify that on this 16th day of April, 2010, true and correct copies of the foregoing document were served on the following party representatives by electronic transmission, facsimile transmission and/or U.S. Mail.



David O. Frederick

Ms. LaDonna Castañuela
Office of Chief Clerk MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-3300
Fax: (512) 239-3311

Mr. Blas Coy
Mr. James B. Murphy
Office of Public Interest Counsel MC-103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-6363
Fax: (512) 239-6377

Mr. Les Trobman
Office of General Counsel MC-101
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-5525
Fax: (512) 239-5533

Ms. Bridget Bohac
Office of Public Assistance MC-108
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-4000
Fax: (512) 239-4007

Mr. Henry Zumwalt
H. L. Zumwalt Construction, Inc.
12354 FM 1560 N
Helotes, Texas 78023
Telephone: (210) 695-3541
Fax: (210) 695-5651

Ms. Charly Fritz
Edwards Aquifer Protection Program
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Rd.
San Antonio, Texas 78233-4480
Telephone: (210) 403-4065
Fax: (210) 545-4329

Mr. Matt Bellos
Environmental Specialist
Westward Environmental, Inc.
P.O. Box 2205
Boerne, Texas 78006
Telephone: (830) 249-8284
Fax: (830) 249-0221

Ms. Kathy J. Humphreys
Environmental Law Division MC-173
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-3417
Fax: (512) 239-0606

**LOWERRE, FREDERICK, PERALES,
ALLMON, & ROCKWELL**

707 Rio Grand, Suite 200
Austin, TX 78701
(512) 469-6000 Phone
(512) 482-9346 FAX

FAX COVER SHEET

To:	La Donna Castañuela	239-3311
	Les Trobman	239-5525
	Henry Zumwalt	210-695-5651
	Matt Bellos	830-249-0221
	Kathy Humphreys	239-0606
	James B. Murphy	239-6377
	Bridget Bohac	239-4007
	Charly Fritz	545-4329

2010 APR 16 PM 4:48
 CHIEF CLERKS OFFICE
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RE: THE MATTER OF THE APPLICATION OF H. L. ZUMWALT CONSTRUCTION, INC. FOR APPROVAL OF AN EDWARDS AQUIFER WATER POLLUTION ABATEMENT PLAN

Date: 4/16/2010

DOCUMENT(S)	NUMBER OF PAGES (not including cover pg.)
Reply to the ED's Response to Motion to Overturn	3

CONFIDENTIALITY NOTICE: This message is intended for the use of the individual or entity to which it is addressed. This message consists of information from LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL and may be privileged, confidential and exempt from disclosure by law. Unauthorized distribution or copying of this information is prohibited. If you have received this communication in error, please notify us immediately at our telephone number listed above. We will promptly arrange for the return of the message to us.

PLEASE CALL 512.469.6000 AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.