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## Bunton orders pumping limits

### City leaders react angrily, plan to file appeal Monday

By **KEN DILANIAN**  
EXPRESS-NEWS STAFF WRITER

Flanked by local leaders at a dramatic City Hall news conference, Mayor Bill Thornton vowed Friday to appeal a federal judge's order that he decried as favoring animals over people.

"Today I think it's time we draw a line in the sand to fight for consideration of humans and human rights," Thornton said. "Quite frankly, the court is jacking us around."

Thornton's sentiments were echoed by a variety of city officials who protested an order by Senior U.S. District Judge Lucius D. Bun-

ton III that may require San Antonians to stop watering their lawns in an effort to save five federally protected species at Comal and San Marcos springs.

After years of warnings, threats and voluntary plans, Bunton finally imposed a legally binding court order in response to allegations from the non-profit Sierra Club that San Antonio's Edwards Aquifer water use is violating the Endangered Species Act.

Governments at all levels have failed to properly preserve the Edwards, Bunton wrote, and that failure is killing species in violation

■ See **THORNTON/8A**



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— Mayor Bill Thornton

“The Edwards Aquifer region has finally reached the point where the aquifer is unable to provide for the needs of all those who depend upon it during dry years.”

— Senior U.S. District Judge Lucius D. Bunton III



### SAWS chief foresees ban on lawn watering by Oct. 1

By **JERRY NEEDHAM**  
EXPRESS-NEWS STAFF WRITER

A federal judge ordered restrictions on pumping from the Edwards Aquifer by the city of San Antonio and other defendants Friday, in an endangered species lawsuit filed by the Sierra Club.

Mayor Bill Thornton and City Council members vowed an appeal.

The order by Senior U.S. District Judge Lucius D. Bunton III does not take effect until Oct. 1. Depending on how much rain falls by then, the San Antonio Water System and other large users of aquifer water could be limited to no



The water debate is about a lot more than blind critters.  
**Carlos Guerra/1B**

more than 1.2 times their winter average pumpage.

Joe Aceves, SAWS president, said that to meet that limit, the city probably would have to ban any outdoor water use by residen-

■ See **FEDERAL/8A**

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## WATER CRISIS

# Federal judge slaps limits on use of aquifer

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tial customers.

"The court is soundly convinced that an emergency presently exists and takes (deaths) of endangered species are occurring," Bunton wrote in explaining why he is ordering the limits.

He said the Endangered Species Act requires him to take action to protect aquifer-fed springs that are critical habitat for five federally protected species.

Bunton said that if the limits are not met, he will order unspecified sanctions for violation of the act and will impose additional restrictions that could affect industrial, commercial and military pumps.

The defendants in the Sierra Club suit mainly are municipal pumps and a handful of businesses that consume large amounts of water, including USAA, Redland Stone Products and the Southwest Research Institute.

"We're pleased," said Stuart Henry, attorney for the Lone Star Chapter of the Sierra Club. "We think a limit to pumping is going to be necessary to protect the springs. We're worried that not only is Comal Springs going to go dry, but San Marcos Springs may as well. If we don't get substantial rain, we're in serious trouble, even with these reductions."

"I'm sure we'll be in New Orleans," Henry said of the expected appeal by San Antonio to the 5th Circuit Court of Appeals there. "I'll meet him (Thornton) at the Cafe Du Monde. The good old mayor better be careful. Some of that Cajun food is a little bit tough for an old man like him."

Bunton expressed his "genuine hope" that the Edwards Aquifer Authority will be able to develop, implement and enforce a drought plan that will meet the goals of the Endangered Species Act.

"Until that time, it is the duty of this court to follow Congress' directive that the endangered species and their critical habitat be protected," Bunton wrote.

"Some think the delay in implementing the order may be an attempt to pressure the Edwards Aquifer Authority, a new state regulatory agency, into adopting a regionwide plan.

"I think he may be trying to get the authority spurred into action, and if he is, and if he's done that for that reason, I think it's a bad move and I don't think it's going to sell well to anybody," Aceves said.

Mike Beldon, a Bexar County representative who chairs the authority's board, said the group, which has been trying to craft its own drought plan, may not be easily pushed.

"I wanted to do something before we were ordered to do something," said Beldon, who joined another Bexar County board member and four from the two counties where the springs are located in a failed bid to declare an aquifer emergency on July 31.

"When people are told they have to do something, they rebel and it may be harder to get a vote for an emergency today than it was before," he said. "I just don't know how everybody on the board is going to react to it."

Mack Martinez, vice chairman of the authority and a representative from Hays County, home of San Marcos Springs, applauded the judge's move.

"I see this pretty much as a self-inflicted wound," he said. "I think that's what's needed. I think it's unfortunate that the authority didn't take the necessary steps to prevent the federal judge from intervening."

The board last weekend approved for publication in the Texas Register a proposed plan that could not be put into place before late October unless an emergency is declared. But it allows pumpers to use up to 1.4 times average win-

For Internet sites that amplify this story see <http://www.express-news.net>

ter usage and does not count water that is lost through breaks in water mains.

"It's incumbent on the authority now to look at what we're doing and decide if we want continued federal intervention or are we going to get serious about managing the aquifer and do something meaningful and not pass the kind of window-dressing that we passed last Saturday," Martinez said.

San Antonio's current drought plan has a target of using no more than 1.2 times the winter average, but the city has been pumping almost 1.5 times the winter average, Aceves said.

"If we're going to meet this by Oct. 1, the City Council would have to pass an ordinance saying you can't water outdoors anymore," Aceves said.

Between main breaks and the inevitable cheaters, Aceves said the only way to guarantee compliance would be "to pass an ordinance that says no watering outside, period."

Although Bunton's order left it

up to the defendants to decide how to achieve the goals, he included a recommended plan drafted by two water experts at the judge's request. That plan recommends a ban on lawn sprinkling except for playing fields and golf courses.

Although no one with the city greeted Bunton's order as good news, SAWS attorney Russell Johnson saw something of a silver lining.

After years of threats from Bunton to impose pumping limits in a previous Sierra Club lawsuit, the city now has something it can appeal to a higher court.

"Our problem has been that the (Endangered Species) act has not been applied directly to the city of San Antonio," Johnson said. "With regard to the 5th Circuit, I believe that we can make a credible case that Congress did not intend for human beings to suffer by the application of this act. If we are unsuccessful in the legal arena, I think we can go to Congress."

Bill West, general manager of the Guadalupe-Blanco River Authority, which manages water that comes from the springs, said he was pleased with the judge's order.

"I think it's another indication

by the judge to the Edwards Aquifer Authority to come up with a better plan," West said. "We're very pleased with the order, but also hopeful that the EAA and all the parties will be able to come together in a compromise."

Luana Buckner, general manager of the Medina County Underground Water Conservation District, said the restrictions outlined in the plan would adversely affect the county.

"I am sure most public supply systems are over (1.2 times the winter average) right now," she said, pointing out that current pumping does not include farm irrigation that stopped about July 15.

Meanwhile in Austin, Gov. George W. Bush had not seen a copy of Bunton's order and could not comment on its specifics, said his spokesman Ray Sullivan.

"The governor is concerned about federal control of the aquifer. Governor Bush believes that the aquifer authority should be given an opportunity to do its job," Sullivan said.

Staff Writers Joe Fohn, Scott Huddleston, Stefanie Scott and Ralph Wingham contributed to this report.



STEWART F. HOUSE / Staff

Mayor Bill Thornton denounces a judge's aquifer order. Flanking Thornton at the Friday news conference are (left to right) councilmen Robert Herrera, Howard Peak and Jeff Webster.

## Thornton plans trip to file appeal of order

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of federal law. Therefore, the judge concluded, he must order pumping restrictions.

Local officials long have loathed that reasoning. Now, they have an order they believe they can appeal.

Barring a change in plans, Thornton said he personally would fly Monday to New Orleans and help file the paperwork with the 5th U.S. Circuit Court of Appeals.

Calling Bunton "a regulator in robes" who has overstepped the reasonable bounds of a jurist, Thornton said the aquifer-pumping restrictions required in Bunton's order would pose an unacceptable economic hardship on a city that has worked hard to reduce its water usage.

"Just imagine if absolutely no outdoor use of water were allowed," the mayor said. "Think of the jobs that would be affected by that."

... To put human beings over this one little lizard is a perversion of what we should be trying to do in time of drought."

City lawyers have argued that the golf course, landscaping and swimming pool industries could be damaged greatly by the kind of restrictions the order would impose.

Homeowners fear the loss of their lawns and damage to their foundations that a watering ban could bring.

Bunton's order didn't address those concerns, but instead focused on what he called the failure of local governments to sufficiently restrict water usage in the face of an emergency.

City water officials took issue with that conclusion Friday, saying the city had made significant strides in reducing its water usage over the past several years and had reacted properly to the latest dry spell.

"This is not something you can click your heels three times and it's going to happen," said Danielle Milam, vice chairman of the San Antonio Water System, the city water agency.

Thornton urged San Antonians to call their congressional representatives to complain about the Endangered Species Act, which the mayor said needs to be changed.

But in introducing his order, Bunton reached beyond the species law.

"Without a fundamental change in the value the region places on fresh water, a major effort to conserve and re-use aquifer water, and ... supplemental supplies of water, the region's quality of life and economic future is imperiled," the judge wrote.

Many San Antonio leaders don't disagree with that. But all came together Friday in denouncing Bunton's blueprint for getting there.

Coming Wednesday

in the

SUN

If the soil around your house expands, will your wallet have to expand as well? Foundation repair costs can be expensive—but some areas of San Antonio have been harder hit than others. Find out how your part of town stacks up in "Firm Foundations?"

Thornton even came up with a biblical verse to counter a passage from Genesis that Bunton cited in a footnote to his order.

Citing the famous Genesis passage in which Cain asks God, "Am I my brother's keeper?" Bunton wrote: "It would appear from the failure to act by federal, state and local agencies, that the question posed ... has been 'No,' when it should have been, 'Yes.'"

Thornton countered with a passage from Luke, where Jesus tells his disciples: "You are worth more than many sparrows."

Other local leaders also denounced the order.

Water activist and former mayoral hopeful Kay Turner, who is said to be exploring another mayoral bid, struck a defiant pose.

"What's (the judge) going to do about it?" she said, saying the city can't and shouldn't comply with the pumping restrictions. "There aren't enough (federal) marshals."

Turner, who doesn't believe there is a need for any aquifer pumping restrictions, also tossed a political barb at city leaders, charging they are not doing enough to fight the endangered species lawsuit and other efforts to reduce San Antonio's aquifer use.

"Their actions don't match their rhetoric," she said. "We've had a very shabby job by the water board attorneys defending this."

Such charges infuriate city officials, who say they are using everything at their disposal to fight the lawsuit while trying to implement reasonable conservation efforts.

From the other end of the political spectrum, City Councilman Howard Peak said he was disappointed with the judge.

"One of the things I had appreciated about Judge Bunton's past comments is that he said he favored humans over endangered species," Peak said. "(The order) sounds to me like it would cost jobs."