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Press Release

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Pending Water Lawsuit May Affect Texas' Prosperity

by Texas State Representative Bill Callegari

If one south Texas environmental group has its way in court, millions of gallons of Texas water will be under the control of a federal judge. Last week The Aransas Project, an environmental group of individuals, businesses and local governments along the Texas coast, released its notice of intent to sue the State of Texas for causing "harm and harassment" to the endangered whooping crane, a violation of the Endangered Species Act.

According to The Aransas Project, too much water from the Guadalupe and San Antonio rivers has been diverted for household and farm use. Consequently, less fresh water has flowed into the coastal bay complex where the whooping crane winters, degrading the habitat and ecosystem necessary for its survival. The Aransas Project alleges that this degradation harms and harasses the whooping crane.

The remedy sought by the Aransas Project would be to freeze the issuance of new water permits along the Guadalupe and San Antonio rivers until the whooping cranes' habitat is protected, require that Texas develop a habitat conservation plan for the birds, and, most alarmingly, possibly curtail existing users' water rights. The implications of this last demand are dire: communities throughout an already parched south and central Texas would have to survive on limited water supplies.

Recent events in California offer insight into what may happen in Texas if this lawsuit succeeds. In 2007 a federal judge, responding to an environmental group's plea, drastically reduced the amount of water pumped from the expansive Sacramento River delta to the state's central and southern agricultural communities and cities to protect the delta smelt, a small fish on the endangered species list. California's farm economy paid dearly for saving the delta smelt: in the absence of water the only thing found growing in once abundant agricultural valleys are unemployment lines.

Texas cannot afford to have its river waters controlled by a federal judge. The recent drought has cost approximately \$4.1 billion in agricultural losses as hundreds of community water systems struggled to keep their taps from going dry. If this pending lawsuit is successful, less water will be available for cities and farms, especially during times of drought. The economic consequences of this decision would certainly be negative.

The insult to this potential injury lies in the fact that the Texas Legislature recently created a program to ensure that the environmental needs of our bays and estuaries are met. Five years ago I served on a select legislative commission that studied how the environmental needs of our bays and estuaries could be met while ensuring the continuation of water service throughout the state. After receiving lengthy input, including comments from the environmental community, we recommended a process that combines sound science and balanced stakeholder input to ensure that the environmental needs of each Texas river system are met.

In 2007 the Legislature passed a landmark bill implementing these recommendations by creating the environmental flows advisory process.

The Aransas Project's threat of a lawsuit comes at a time when this process has just begun its work. In fact, in September the program initiated its evaluation of the San Antonio and Guadalupe rivers, the tributaries to the whooping cranes' habitat.

Fortunately, at this time, the group has only submitted its federally-required notice of intent to sue the State of Texas for violating the Endangered Species Act. The actual lawsuit has yet to be filed. As an alternative to commencing with this suit, I encourage The Aransas Project to work with our state agencies and, more critically, the environmental flows advisory process to identify an appropriate solution. The advisory process was specifically designed to ensure that the needs of all water constituencies, including endangered species, are met.

Bypassing this process by seeking a federal court order controlling our rivers strands hundreds of community and agricultural stakeholders on the sidelines while costing thousands in legal fees, and potentially millions in economic losses. Further, this lawsuit could establish a precedent for similar actions in the future.

Texas does not need, nor can it afford, the yoke of a federal judge's mandate.

Representative Bill Callegari represents the west Harris County and Katy area in the Texas House of Representatives. He is currently serving his third term as Vice Chairman of the House Natural Resources Committee, and has served on the select Study Commission on Water for Environmental Flows. Before his election to the House of Representatives in 2000, Representative Callegari worked for over 30 years in the water industry.