



October 22, 2003

Mr. Tom Beard
Chair
Far West Texas Regional Water Planning Group
C/o:
Barbara Kaufman
Rio Grande Council of Governments
1100 N. Stanton, Suite 610
El Paso, Texas 79902

Re: Río Nuevo proposal

Dear Mr. Beard:

I write today on behalf of the Texas Living Waters Project, a partnership among Environmental Defense, the National Wildlife Federation and the Lone Star Chapter of the Sierra Club. We are deeply concerned about the proposal of a private entity, Rio Nuevo, to pump groundwater from far West Texas aquifers, by leasing groundwater rights from state lands.

Like many members of the Far West Texas RWPG, we were surprised to learn of the scope of this proposal, and the degree to which it seems to have advanced within the School Land Board and the General Land Office, in absence of any public discussion. We also are disappointed in the failure of GLO to bring this issue to the Far West Texas RWPG in advance of discussions and/or negotiations with Rio Nuevo.

The Rio Nuevo proposal differs significantly from traditional state land transactions: selling groundwater pumping rights to state land means selling rights not only to the water immediately under that land, but also, essentially to any water that can be pumped from under adjacent lands. In effect, GLO is proposing to sell off groundwater to which an adjacent overlying landowner would otherwise have the right. GLO is not providing adjacent landowners or other entities that depend on water from the same aquifer with any substantial information or process that would allow them to protect their rights.

Furthermore, it is our understanding that GLO has questioned the ability of local groundwater districts to control pumping from state lands, putting adjacent landowners, springs and the

aquifers themselves at significant risk. The fact that the School Land Board has temporarily adopted a non-binding resolution stating that it will comply with local groundwater district rules does not assuage our concerns.

In fact, the Far West Texas groundwater districts are generally so new and so under-funded that they have not had adequate time or resources to study the local aquifers and determine sustainable pumping rates. Without such an investigation and the adoption and implementation of sustainable pumping caps, proposals such as the Rio Nuevo deal could be very detrimental to local residents and business and the environment of the area.

Based on these and other factors, we will be asking state leaders to put a moratorium on this and any similar proposed GLO/State Land Board transactions until the legislature can adopt a framework that provides for, at a very minimum:

- (1) full advance public disclosure of any proposal to lease or sell groundwater from state lands, including advance notice to regional water planning groups and adjacent landowners;
- (2) major water sales proposals should be consistent with approved regional and state water plans;
- (3) clear statutory language requiring that pumping from state lands be subject to the rules, including pumping limits, of local groundwater districts;
- (4) if the local groundwater district has not had sufficient funding to determine the sustainable pumping limits for its aquifer, that, prior to approving any leases, GLO fund such a study, by an independent consultant, and that the local groundwater district enact a district wide cap based on the results of the study;
- (5) no major sales/leases in areas without groundwater districts;
- (6) the end customers receiving the water must have implemented the greatest practicable degree of conservation; and
- (7) the pumping must not result in harm to the environment.

We would be pleased to discuss these issues further with you or the full RWPG at its next public meeting. In the meantime, should you have any questions, please feel free to call me at (512) 478-5161.

Sincerely,

Mary E. Kelly

On behalf of the Texas Living Waters Project (www.texaswatermatters.org)

Cc: Senator Frank Madla
Representative Pete Gallego
Kevin Ward, Executive Administrator, Texas Water Development Board
Kathleen Hartnett White, Chair, Texas Commission on Environmental Quality

