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## GROUPS CALL FOR MORATORIUM ON STATE WATER SALES

Three conservation organizations today called on state officials to put a moratorium on sales of groundwater from under state lands to private entities. The groups said that such a moratorium should remain in place until the legislature has an opportunity to examine the risks and benefits of such transactions and to enact statutory changes to make sure such sales don't damage rural communities or the environment.

"We need to slow this pony down," said Mary Kelly, an attorney with Environmental Defense. "This idea came out of the blue. Let's get a handle on how, if at all, this should be done. Otherwise, the state could be selling water out from under the Texas communities and farmers and ranchers that depend on it for their livelihoods."

The groups—Environmental Defense, National Wildlife Federation and the Lone Star Chapter of the Sierra Club—called on state leaders to put a moratorium on the Rio Nuevo deal and similar pending negotiations until the legislature can act to establish clear guidelines for where, how much and for what purposes groundwater under state lands can be sold to private entities.

(See attached letter)



October 23, 2003

Honorable Rick Perry  
Governor of Texas  
P.O. Box 12428  
Austin, Texas 78711

Honorable David Dewhurst  
Lt. Governor of Texas  
P.O. Box 12068  
Austin, Texas 78711

Honorable Tom Craddick  
Speaker of the House  
P.O. Box 2910  
Austin, Texas 78768

Dear Sirs:

We write today to draw your attention to a serious water policy issue involving state lands. As you may know, the Texas General Land Office, through the School Land Board, is beginning to negotiate leases with private entities for the rights to pump and commercially sell groundwater from state lands. These efforts appear to be particularly advanced in far West Texas, but we believe there is consideration of this approach throughout the state.

Our organizations believe such negotiations are extremely premature and that they should be put on hold until the legislature has an opportunity to establish a clear framework for water leases for state lands. Such water transactions pose serious public policy issues because pumping water from a state-owned parcel can drain water from adjacent non-state lands and/or affect the entire aquifer upon which other users depend.

The proposed water sales/leases are not similar to oil leases on state lands, since oil and gas extraction is a highly regulated activity, with clear limitations to prevent prejudice to adjacent owners' rights. That is not the case for groundwater, where, outside of groundwater districts the "rule of capture" (i.e. the biggest pump wins) applies.

Even if the state lands under consideration fall within a groundwater district and even if the School Land Board agrees to abide by district rules, many districts, particularly new ones in rural areas, have yet to define how much can be pumped from the aquifer without undermining its ability to sustain other current and future activities in the region. While making such determinations is a major function of groundwater districts, they often lack of sufficient resources and/or scientific data to do so. Thus, "safe" pumping limits, by which the aquifer would be preserved for other current and future uses, have not been uniformly developed.

Finally, the School Land Board's approach to these proposed leases has primarily taken place behind closed doors, with little public input or disclosure and no consultation with the regional water planning groups.

For all these reasons and more, we ask that you prevail upon the General Land Office and the School Land Board to put a moratorium on leasing or selling groundwater rights to private entities for commercial sales until the next regular session of the legislature can adopt a framework that includes, 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) a requirement that major state water sales be consistent with approved regional and state water plans;
- (3) clear statutory language requiring that pumping from state lands be subject to the rules of local groundwater districts, including any pumping limits imposed by the district;
- (4) if the local groundwater district has not had sufficient funding to determine the sustainable pumping limits for its aquifer, a requirement 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 allowed in areas without groundwater districts;
- (6) a requirement that the end customers receiving the water must have implemented the greatest practicable degree of conservation; and
- (7) a requirement that the pumping not result in harm to the environment.

The public interest clearly requires that the legislature closely examine the risks and benefits of leasing or selling groundwater rights from state lands to private entities. It should not be done behind closed doors on a case-by-case basis, as is occurring now, and it is not a policy decision that should rest in the hands of one agency.

We would be happy to discuss these and other groundwater issues with you further, at your convenience.

Sincerely,

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Cc: Texas Land Commissioner Jerry Patterson  
Texas Commissioner of Agriculture Susan Combs  
Texas Senators  
Texas Representatives