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August 25, 2003

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RQ-0096-GA

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General
State of Texas
Price Daniel Sr. Building
209 West 14th Street, 6th Floor
Austin, Texas 78701

FILE # ML-43236-03
I.D. # 43236

Re: Request for Opinion on Effect of H.B. 1378 on Water Use Surveys

Dear General Abbott:

The Texas Water Development Board (Board) may require the submission of water use surveys from both public and private water users of the State pursuant to §16.012 of the Texas Water Code. Section 16.012(m), Texas Water Code, provides in relevant part that:

Surveys obtained by the board from non-governmental entities are excepted from the requirements of Section 552.021, Government Code, unless otherwise directed in writing by the person completing the survey.

The above provision was added by the 77th Legislature and became effective September 1, 2001. Prior to that time, the Board collected surveys on a voluntary basis from both governmental and non-governmental entities. On June 2, 2003, the Board received OR2003-3700 in response to the Board's request for a decision as to whether certain water use survey information that pertained to the Region C planning area and obtained pursuant to §16.012 is subject to required public disclosure under Chapter 552 of the Government Code. OR2003-3700 ruled that the information from water use surveys which the requestor sought, if it was in electronic format, could not be withheld from disclosure. The ruling made a distinction between the water use surveys themselves and the information taken from the water use surveys and put into an electronic format. We understand that we can now release the water use survey data from both governmental and non-governmental entities if the information is in an electronic format. Only the surveys themselves from non-governmental entities may be withheld.

On June 11, 2003, the Board received OR2003-4023 in response to a second question on the water use surveys. In OR2003-4023, the ruling stated that "Section 16.012(m) applies not only

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to surveys obtained by the board from non-governmental entities subsequent to the effective date of section 16.012(m), but also to any surveys obtained by the board from non-governmental entities prior to September 1, 2001." (See also OR 2002-3528, a ruling to except from public disclosure the surveys obtained prior to September 1, 2001 from a specific non-governmental entity.)

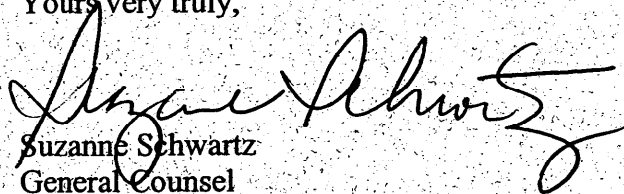
The language quoted above in Section 16.012(m), relating to the exemption of the non-governmental surveys from public disclosure, was deleted by H.B. 1378, 78th Acts of the Texas Legislature, Regular Session, and the bill becomes effective in May, 2003.

QUESTION

Whether the legislative modification of Section 16.012 (m), Texas Water Code, opens to public release only those future surveys obtained from non-governmental entities after June, 2003, or does the legislation have the effect of opening to public release all past surveys obtained from non-governmental entities, including those surveys obtained during the years in which the subsection (m) exception was in effect?

Thank you for your assistance. Please contact me at (512) 463-7981 if you have any questions or need additional information.

Yours very truly,



Suzanne Schwartz
General Counsel

SS/GLA:prg

c: J. Kevin Ward, Executive Administrator