

Aquifer Group builds on current water law to create new sustainable resource industry

Aquifer Group is part of Texas' first comprehensive public-private water infrastructure partnership

February 2007 - Austin, Texas –Aquifer Group, LLC locates, designs, finances, develops, constructs, operates and maintains prolific aquifer recharge, surface water restoration projects throughout rural areas of Texas. As a sustainable groundwater reserve is developed, recovery wellfields, treatment and supporting delivery canals and other infrastructure will be added to enhance environmental flows, improve drought preparedness and provide dependable sustainable water resources for the State's growing water demand.

Aquifer Group was founded in response to the growing global gap between additional sustainable water resources and the government's ability to fund them by being the first to finance major statewide water projects and infrastructure through private equity, consortiums and arranged debt. It is anticipated that AG will share substantial revenues with the State of Texas.

In addition to Aquifer Group's expertise in water sciences, ranching and related construction, **CEO John Brocksch** has invested significantly in assessing and understanding important water rights and legal issues that influence our projects. Beginning in 2003, AG secured the services of **Texas' leading groundwater attorney, Russell Johnson**, to research and advise our management team on future projects.

Aquifer Group has expanded our legal team to include **Terry McDonald** and **Manuel Escobar** of McGinnis, Lochridge and Kilgore-Austin; **Ken Ramirez** of Brown and Associates-Austin; and, **Frank Ruttenberg** of Bracewell-Giuliani in San Antonio, Texas. More recently, management has engaged **McGinnis, Lochridge and Kilgore as our lobbyist** to prepare for Texas' 2009 Legislative Session.

This report provides an independent overview of **Legal Methodology** as pertaining to Aquifer Group's business model; a **Legal Conclusion** supporting our ability to operate within the existing framework of Texas Water Law; and, an assessment of possible **Legislation and Clarifications** we may seek during the 2009 Legislative Session.

At the request of our founders, our water attorney, Russ Johnson, on March 15, 2004 issued a review of the legal framework Aquifer Group must satisfy to develop our projects within the State of Texas. Below is his expert **Legal Conclusion** found in that document:

"As noted, the projects contemplated are unknown to Texas and the existing regulatory framework was not designed nor was it intended to be considered with these

types of projects in mind. However, as indicated in this review, the projects as described can be constructed and operated within the existing regulatory framework with reasonable assurance of project authorization. While every project must be individually evaluated in the context of geology, hydrology and jurisdictional frameworks, no fatal or insurmountable obstacles exist to project completion and operation given the current regulatory framework."

Later on November 01, 2004, Russ Johnson, Esq. prepared the following **Legal Methodology for Developing and Storing Additional Water for Texas' Future** to succinctly describe Aquifer Group's and its predecessor, Aquifer Recharge (ARC) Company's compatibility with current water law:

"Aquifer Recharge (ARC) Company is in the business of identifying, marketing, funding and developing two types of water related projects: a) increased aquifer recharge which can be pumped later by obtaining marketable "recharge Recovery Credits" (RRC) and, b) development, ownership and control of increased and therefore new surface water for aquifer recharge: increased environmental flow for wildlife, fish and vegetation restoration; and, increased surface flow and near-surface infiltration to recharge springs, creeks, rivers, lakes and estuaries. Under Texas law, this increased surface flow should be available for permitting, creating a marketable right. In short, ARC creates, owns, stores and recovers new developed water not currently available or appropriated by surface or groundwater users.*

Water in Texas is divided into three legal classifications: diffuse surface water, surface water and groundwater. Diffuse surface water is owned by the landowner until it becomes surface water upon entering a defined channel, stream, creek or river. Surface water is owned by the State of Texas and is subject to appropriation by permit. Groundwater is subject to production by the landowner under the "Rule-of-Capture" limited, if within a groundwater district, by district rules.

Aquifer Recharge Company's projects reduce trans- evaporation to "develop additional diffuse surface water quantities", thereby substantially increasing normal or base surface water flows that can be quantified and appropriated by ARC, dedicated to in stream use or diverted for storage in groundwater aquifers.

The Company's proprietary techniques also allow ARC to locate natural recharge features, which, have not fully evolved, or, because of erosion or siltation have ceased functioning as a conduit for recharge to the aquifer. Once located, the features can be improved as natural recharge conduits through which developed water can be stored in our State's groundwater aquifers.

Aquifer Recharge Company, through proven brush and watershed improvement techniques, develops additional diffuse surface water on land it owns or leases within selected watersheds. Developed water would then be diverted via "bed and banks" permits, or credited, to natural recharge conduits that are also owned or controlled by the Company. ARC will bank, trade, transfer or sell its right to recover stored groundwater via traditional well fields.

Being the first to build on Texas' little used "diffuse water" law, Aquifer Recharge Company will have substantially improved surface watershed management, increased surface water flows, both above and below groundwater recharge projects and developed new water

that can be owned (appropriated) stored and reclaimed from secure, permanent storage facilities consisting of natural aquifers throughout the State of Texas. Appropriation and use of additional developed water should eliminate adverse impact to the hydrologic systems, other users or the environment.”

**Increased recharge, under Chapter 36 of the Texas Water Code, should be recognized by groundwater districts as additional water available for use.*

Prior the 2007 Texas Legislative Session, our management team and legal experts identified a number of “**grey areas**” where our program would benefit from simple **clarifications in current water law** to accommodate previously not-considered aquifer recharge, diffuse water and other factors associated with sustainable recharge. During the Session we briefed legislators on these issues.

Also, Aquifer Group’s proposed Pilot Project and ongoing education program are positioning our legal and lobby team for **drafting legislation for the 2009 Legislative Session**. Some legislation for consideration will include at least: 1) creation of a uniform “Recharge Recovery Credit” rule for groundwater districts statewide; 2) establishing financial incentives and water rights for restoration of diffuse, surface and environmental flow waters; 3) clarification of current “Injection Permit” when applied to restoration of natural aquifer recharge.

“Aquifer Group and its partners are excited about working with Texas Legislators to help Texas get much needed solutions to Texas’ water deficit quicker without using taxpayers’ dollars to fund construction or maintenance.” said **Aquifer Group Chief Executive Officer John Brocksch**.