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Court grants nonprofit's motion in lawsuit with utility company for overpumping in Hays County



By **Amira Van Leeuwen** | 4:37 PM Sep 30, 2024 CDT
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Officials with the Trinity Edwards Springs Protection Association state that Aqua's actions threaten the future of Jacob's Well. (Amira Van Leeuwen/Community Impact)

A federal court granted a nonprofit organization's motion to intervene in the ongoing case Aqua Texas Inc. vs. Hays Trinity Groundwater Conservation District on **Sept. 23**.

The background

The nonprofit organization Trinity Edwards Springs Protection Association, or **TESPA**, filed a Motion to Intervene in Aqua Texas Inc. v. Hays Trinity Groundwater Conservation District on Aug. 26.

The federal lawsuit claims the Hays Trinity Groundwater District exceeded its authority and unfairly and unlawfully assessed the utility company Aqua Texas with excessive fines.

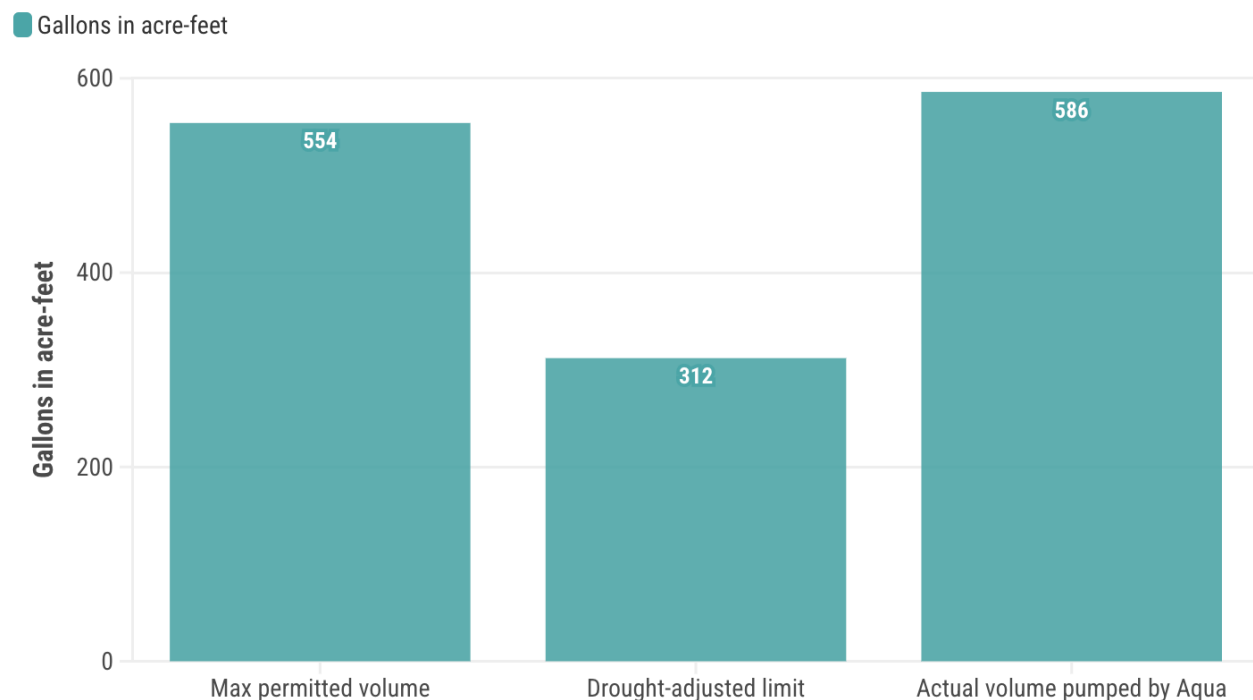
Some context

According to the **Hays Trinity Groundwater Conservation District**, self-reported production volumes for 2022 show that Aqua Texas had overproduced its annual allotment by over 89 million gallons. Aqua Texas overpumped 88%—nearly double the permitted amount. Its leakage reports also show that the utility lost as much as 32% of its water due to “poorly maintained” water pipe infrastructure.

Aqua Texas filed a federal civil lawsuit against the district and its board of directors in December. The **water company claims** that the district exceeded its authority and “unfairly and unlawfully” assessed them with excessive fines.

Aqua pumped beyond permitted limit in 2022

Officials with the Hays Trinity Groundwater Conservation District say Aqua Texas overpumped in 2022.



What residents should know

The lawsuit does not impact water services to Hays County residents. Aqua Texas customers will continue to be serviced despite the company's [expired groundwater permit](#), according to the [Aqua Texas website](#).

"We are still and will continue serving our customers in the Wimberley Valley. We are legally required to provide service to anyone within our [certificate of convenience and necessity] area," said Jennifer Tuminelli, Aqua Texas regional communications specialist, in an email to *Community Impact*.

Sorting out details

TESPA's motion was filed in the interest of protecting its members' private property—more specifically their groundwater. The filing is also an attempt to protect the state's groundwater protection system, which is directly threatened by Aqua's legal action in federal court, TESPAs states in a news release.

"For at least two years, Aqua [Texas] failed to abide by Texas groundwater law and overpumped its permit by more than 150 million gallons," the news release states.

What the court is saying

Senior United States District Judge David Alan Ezra—the presiding judge on the case—states that TESPAs and its members have a "legally protectable interest" in the litigation, according to [court documents](#).

"Its members include persons with economic interests in businesses that depend on the outflow of Jacob's Well to create flows in Cypress Creek, along which many businesses are located. In light of the significant impact this lawsuit may have upon [TESPA] member companies' operation, the Court concludes that [TESPA] has sufficient interest in the subject matter of this litigation," Ezra states in his decision.

What TESPAs is saying

In an email to *Community Impact*, TESPAs President Jim Blackburn said they intervened because TESPAs felt that Aqua's decision to sue the groundwater district had to be challenged.

"More is involved here than the district being sued. The groundwater of TESPAs members is threatened by Aqua's actions as is the future of Jacob's Well and Cypress Creek," Blackburn said. "This Aqua action, if successful, could be the first step to the loss of the springs of the Texas Hill Country as well as one of our fundamental property rights."

In a Sept. 30 news release, Blackburn said the groundwater districts were set up to protect individuals from "the ravages" of a single user.

"We're in here fighting for the groundwater owners and users of Texas—and we have put together a team that can bring these arguments home in federal court," Blackburn states in the news release.

What Aqua Texas is saying

In a statement from Aqua Texas to *Community Impact*, the utility company states that it completed the replacement of 5,000 feet of aging water mains in the beginning of September—the first of several phases totaling 25,000 feet.

The upgrades will also include construction of a new \$25 million water treatment and reuse plant with the establishment of new groundwater wells that will reduce pumping in the Jacob's Well Groundwater Management Zone.

"Unfortunately, our efforts to pump farther away from Jacob's Well have been purposefully blocked by the same local regulators publicly expressing concern about the natural spring's water levels. Additionally, some of the mechanisms needed to pay for these upgrades face opposition from the same groups blaming our operations for perennial drought conditions seen at Jacob's Well," the email states.

To enforce drought restrictions put in place by the district, Aqua Texas has installed flow restrictors on the water meters of homes that do not comply, resulting in an average of Wimberley Valley customers using less than half as much water per month compared to homes in other parts of Texas, the email states.

"Our customers represent 13% of the population that lives within the Hays Trinity Groundwater Conservation District and water is only pumped in response to their consumption needs," the email states.

One more thing

The case will remain in federal court, pending further action on Aqua Texas' equal protection claims, and the claim that their groundwater property was illegally taken by the district's denial of their permits, the news release states.

By **Amira Van Leeuwen** 
Government Reporter

Amira joined Community Impact in January 2023 after graduating with a degree in journalism from Texas State University in San Marcos. Prior to CI, Amira was a reporter at the Hays Free Press and interned at Dave Campbell's Texas Football Magazine. When she is not writing, she enjoys reading, traveling and photography. Have any news tips or story ideas? Email Amira at avanleeuwen@communityimpact.com.