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State environmental agency to face whooping crane lawsuit

If successful, case by alliance of Gulf Coast groups could have consequences for upstream Guadalupe River water use.

By [Asher Price](#)

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In an effort it says will protect the endangered whooping crane, an alliance of Gulf Coast environmental and business groups, led by a prominent South Texas family, announced Tuesday that it will sue Texas' environmental agency over its water management.

If successful, the planned suit could have consequences for water use in the Guadalupe River Basin — which includes Kerrville, New Braunfels, San Marcos and Victoria — and pumping from the Edwards Aquifer.

The alliance, known as the Aransas Project, claims that the Texas Commission on Environmental Quality, which authorizes the use of river water around the state, has allowed too much fresh water to be diverted from the Guadalupe River before it reaches the bays where the whooping cranes winter. As a result, according to the alliance, saltwater levels in the bays have increased, driving away or diminishing the number of blue crabs and wolfberries available for the whooping cranes to eat.

But the environmental agency said Tuesday that other factors, like drought, can affect the fate of the whooping cranes.

"The management of environmental flows is complex and often dependent upon rainfall," said Andrea Morrow, a spokeswoman at the agency. "In periods of extremely serious drought conditions, such as occurred over the past two years, everyone in the affected area suffers. The lack of rainfall has allowed very little recharge to the Guadalupe River."

In its formal notice to sue, the Aransas Project says it wants to bar the commission from approving new water rights permits in the San Antonio and Guadalupe River basins until agency officials can assure state-authorized activities will not harm or harass whooping cranes. And it will ask agency officials to develop a plan that could include the reallocation of existing water use rights.

The Guadalupe-Blanco River Authority, which oversees the distribution of water from the Guadalupe, said it is already making sure water is available for downstream needs.

But Jim Blackburn, the Houston-based lawyer for the alliance, said last winter was the worst in recent history for the whooping crane with a death toll of 23 birds, or 8.5 percent of the flock.

The whooping crane, the tallest bird in North America, known for its whooping call, is a federally listed endangered species.

Blackburn said the efforts of the alliance, with about 200 members, are largely paid for by the O'Connor family, which has extensive oil, gas and ranch holdings in Goliad, Victoria and Refugio counties, including lands that border the Guadalupe and San Antonio rivers.

The O'Connors have tried to thwart water projects in the past, including a recent effort to build a nuclear plant near Victoria that would have used Guadalupe River water.

"We feel environmental and agricultural needs of the lower Guadalupe River Basin have been subjugated to industrial and municipal demands," said Bill Jones, a spokesman for the O'Connor family.

The lawsuit will face a few challenges.

For one, the whooping crane population has generally increased over the past decade.

The alliance will also have to prove that water permitting decisions specifically — as opposed to development along the coast or drought conditions broadly — are responsible for last winter's decline in whooping cranes, said Melinda Taylor, who teaches environmental law at the University of Texas.

Meanwhile, the Legislature has already directed river basins to calculate and set aside fresh water.

And a host of landowners, businesses and cities have been discussing ideas to protect endangered species associated with the Edwards Aquifer, whose springs contribute indirectly to downriver flow in the Guadalupe.

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