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Hill Country Militia

Grassroots homesteaders tighten ranks to fight urban encroachment

By Greg Harman, June 27, 2008, News

At what point does dissatisfaction become dissent, and dissent a full-fledged movement? In the hills outside San Antonio, we may be about to find out.

A series of long-simmering insults, coupled with rapacious growth on the fringes of Bexar County, is driving many rural residents to radicalize in ways they could not have predicted. The mood has swept up teams of frustrated ranchers and farmers, town leaders, conservation-minded nonprofits, and a sprinkling of key political allies. The mobilization of what might best be called the "Hill Country Militia" is an event with water at its heart – the protection of local creeks, streams, and wells, to be sure, but also the extremely vulnerable Edwards Aquifer. The aquifer is best known on its northern end, in Austin, as the fount of Barton Springs, but at its southern extent, it provides the primary water source for San Antonio's 1.3 million residents.

There are also prized historic roads and farmhouses and ranches threatened by development-driven eminent-domain seizures and an increasing awareness of the value of the region's ecosystem, cedars and all. Dissenters have sprung up across the so-called "urban" counties linking San Antonio to Austin.

Perhaps most importantly, they're talking to one another.

Death and Highway 211

There are several cowbird traps on the Fenstermaker Ranch, intended to protect the many endangered golden-cheeked warblers and black-capped vireos that nest here each spring. Bebe Fenstermaker quips that the cages aren't doing much for her karma. But if the cowbirds are getting shafted prematurely, the old cows here need not worry. When they lay themselves down at last, it will be on this very land, as food for buzzards and coyotes, bees, ants, and worms.

"I'm not about to put them through that last bit of hell," Bebe says of the slaughterhouse, as we sit on the porch outside a stone outbuilding chiseled at the top with the date 1876. Call her sentimental, but this bovine empathy has been thoroughly earned, by decades of struggle in her fight to maintain the integrity of this nearly 1,000-acre ranch. She counts five eminent-domain fights that have pitted her family against the likes of the highway department and CPS Energy.

For Bebe and her two sisters, the battles began two weeks after a season of death. The senior tier of Fenstermakers was swept away in the span of a year. Together, Bebe and her sister Mary recount the string of losses. The aunt went in 1987. Momma and Poppa's first cousins succumbed the next year. Then the parents passed away within a few weeks of each other. Uncle Arthur left, too. Closing the chapter was their great-aunt Augusta, just shy of 104 on April 1, 1988.

Two weeks later, the phone rang. "Did you know they're gonna put a highway the size of 1604 through here?" a neighbor asked.

The sisters haven't stopped fighting since.

"We had lost our entire elder generation. They all went. Then we were looking at losing our home," Bebe said. "That's when we just said, 'No.' I mean, 'No way.'" They located a lawyer who had just convinced Union Pacific to relocate a planned switchyard in Laredo; it seemed good credentials at the time. Dallas-based attorney Eddie Vassallo is with the family still. So is Highway 211. Temporarily derailed after the unexpected death of the rancher who was prepared to seal the deal, plans for the infamous "third loop" around San Antonio are slowly being revived inside the Texas Department of Transportation.

But there would be plenty of other threats to the Fenstermakers' historic holdings north of Grey Forest, known as the Maverick Ranch-Fromme Farm. First there was CPS Energy's planned new power line, the Cagnon line, complete with a subpower station sidling up to the chimpanzee enclosure at her neighbor's wildlife sanctuary. That debate went on for years, fracturing relationships after CPS Energy proposed several alternative routes that in some cases turned communities against one another.

Then the power company threatened to replace, with high metal towers, the wooden utility poles that have run through the Maverick since electricity first arrived in 1940. And, now, a county flood-control project may place a dam in the heart of the ranch – potentially drowning Lost Dog Springs, numerous Native American sites, a family cemetery – bringing floodwaters to the German farmhouse dating back to the 1860s.

Considering the constant state of siege the last 20 years have represented for Bebe and Mary, the grassroots movement roiling rural Bexar County and the surrounding hills might well have started with these plainspoken sisters. But it didn't. Across the foothills of the Hill Country, it seemed to be happening everywhere at once, as development pressures increased and locals resisted, gathering in bands of like-minded property owners. Increasingly, these small bands have interstitched themselves and cross-pollinated issues

into an increasingly coherent dogma. Consider it bare-fisted private-property rights extended to the ecosystem level and a call for nothing short of a moratorium on all development in the Hill Country until a comprehensive environmental assessment can be made.

Saving Texas

Last February, the same day a historic protest swept Austin over a slew of proposed coal-fired power plants fast-tracked by Gov. Rick Perry, veterans of at least 18 rural land and water fights answered a tense-sounding e-mail alert. Reports that the San Antonio Water System was seeking to expand its authority across the city's entire 5-mile extraterritorial jurisdiction, and that a new high-density development straddling Medina and Bandera counties was seeking SAWS sewer and water service, had rattled a broader geography of turf warriors. Many of them were already members of the nonprofit Greater Edwards Aquifer Alliance, whose mission is specifically focused on protecting the Edwards Aquifer.

In a galleon of a ranch house outside Helotes modeled on Yellowstone National Park's guest quarters, they debated just what they could do to stop the quickening pace of sprawling development. Though SAWS officials argued that extending their pipes would better protect area water supplies by limiting the creation of smaller, less-professional water-company operations – or worse, the explosion of septic-tank communities – the consensus in the meeting was that the lines would only ensure the continued rush of concrete, Sheetrock, and tar paper.

The mix of political persuasions was bridged by a collective, dawning environmental consciousness, perhaps best illustrated by a retired neurosurgeon from Quihi, Texas, busy battling plans for a quarry in his hamlet.

"I never considered myself an environmentalist. I really didn't," said Robert Fitzgerald. "But once you start looking at what people are doing down there, if you have any feeling at all, you become an environmentalist."

A member of the Edwards Aquifer Authority publicly confessed that the agency hadn't been willing to act on many issues out of fear. "It's fear of what the Legislature will do. Really, it's fear of what the developers will get the Lege to do to us," he said. "Some think it's time we called their bluff."

Then Bebe shot off from the front of the room. "We're losing Texas. I don't know if you know that," she said. "I can't stand to drive anywhere anymore. ... We look like New Jersey." A woman at the opposite end of the stone and timber expanse shook her jaw. "New Jersey looks better."

Some attendees compared the motivation behind the night's meeting to the survival ethic of the early Texians. "We're kind of like the pioneers 200 years ago," said one. "When there was a fight, they all left their homes and came together."

No surprise that in such a charged environment when prospective names for the group were floated, the combativeness of the moment seeped out. "How about militia?" offered one. "Hill Country Militia?" It took time, but eventually the more mundane Hill County Planning Association was adopted.

Early versions of the group's master plan struck one prominent participant as a rewrite of the Communist Manifesto, though it read more like an early American Revolutionary screed. A trace of those rhetorical flourishes remains, particularly the opening, "We the People." After lengthy defining of place and purpose, the group's master plan comes to a solitary demand: "An immediate moratorium is called on all development in the Hill Country to assure compliance with all local, State, and Federal laws and until a comprehensive cumulative environmental impact study is completed."

Dodging the Lege

Group members were still working out the final language of the master plan when developers at Sonoma Verde were blasting and excavating their way to the perfect limestone tabula rasa, a blank slate devoid of any living thing, atop that cherished Edwards recharge zone. At a February gathering, state Rep. Mike Villarreal pledged to file a bill to close the grandfathering loopholes that have allowed such developers to skirt their way around San Antonio's controls, including the tree ordinance. Under current law, there's surprisingly little recourse for the smattering of counties that want a hand on the wheel of growth. A decade's worth of bills seeking to guide urban overflow have gone virtually nowhere. Not only are Texas counties notoriously pauperized, but the committees of the Texas Legislature handling such proposals have been proudly pro-growth: Dumb, smart, fast, or dangerous, they ain't picky.

While the Lege has allowed that the Edwards Aquifer is a unique aquifer – as in how easy it is to fuck up – session after session, bills tailored to allow Bexar Co. officials some say-so in how the county develops have been rejected, quashed, and ignored. Last month, a small crowd gathered to hear from Bexar Co. Commissioner Lyle Larson about plans to repair and expand Scenic Loop Road. Leon Springs Baptist, with wall-to-wall red carpet climbing the prayer rail and flooding the stage, had opened its worship hall for us.

After recounting the basic problems with area traffic, Larson complained that while the city has raked in $1 million in property taxes, not including sales tax, from an annexed finger along Interstate 10, the surrounding roads are getting shortchanged. To appreciative applause, he pledged, "We're going to take back this area from the city of San Antonio."

The biggest problem in urban counties, he said, is the rural roads that developers tie into. "It's not just an inconvenience, but it's a public-safety issue," he said. "We're building it out just as fast as we can." But not the entire crowd was here to support road improvements. Some want the road building to stop entirely.

"Has it occurred to anyone that the more concrete you have, the more runoff you'll have?" a voice from a far corner emerged. "If developers are controlling our Legislature, who do we vote out? Give me some names. I assume you're not one of them." Larson, now seeking a House seat in D.C., didn't take the opportunity to out builder stooges at the Lege or try to distance himself from the property-rights contingent in the Statehouse. For what was not to be the last time that evening, Renee Green, county engineer, stepped up to screen out the politically sensitive query. She recalled her first trip to visit the Land and Resource Committee in the Texas House. In what would become a frustrating pattern, Green was in Austin to lobby for land-use controls in Bexar County. The members greeted her saying: "Hi. We haven't met you. We're known as the private-property-rights committee," she said. Green has returned four times since, working to get controls to help guide growth in Bexar. "Every legislative session, the county has an agenda, and every year we go up, and in one form or fashion, we ask for bills that give us impact fees, the ability to charge impact fees. And every year I'm bloodied."

Impact fees would allow the county to require developers to contribute to the costs of tying into existing roadways and extending sewer lines and other required infrastructure. It would help ease the weight of the $35 million currently budgeted for road improvements in Bexar County's Precinct 3.

"The Legislature is dominated by rural counties, and essentially they don't want that authority," Green said.

The Committee for Real Estate

Of the nine Land Committee members serving during the 80th Legislature, four listed backgrounds in real estate and construction. Another is from the water-utilities sector. So no surprise that even bills bracketed specifically for Bexar County were stuffed. "Once a bill like that is on the books, it's very easy to change the bracket. It becomes, 'Well, you gave Bexar County the authority; now we want that authority,'" Green said. In this adamant refusal to allow counties the rights of participation in planned growth, Texas is out on its own. "You don't have a First World urban area in the world that is growing and urbanizing without some significant standards and enforcement," says Donald Lee of the Texas Conference of Urban Counties. "Texas is one of the only places that does it without land use. It's an experiment that has been tried before and, of course, has not succeeded."

While there has been progress – new subdivisions must now guarantee good infrastructure plans, for instance, even if they have no responsibility to help provide for feeder roads or ensure adequate drainage – there is much still to accomplish. "Texas wants to do what has failed elsewhere everywhere," Lee said. "Talk to people who have had to redrill wells three or four times because the aquifer has been lowered around them." One political insider told me

that the developer lobby in Austin is matched only by AT&T. "The construction industry and developers have a big checkbook," he said. "So it's always been more defense than actually trying to pass bills." However, two bills that would have allowed area counties some level of controls were brought last session. One crafted by the Greater Edwards Aquifer Alliance and carried by San Antonio Rep. David Leibowitz was swallowed up by the Land & Resource Management Committee, never to surface for air. A similar bill filed by Rep. Patrick Rose was fortunate enough to get assigned to County Affairs instead. There the proposed legislation actually got a hearing – although it never made it out of committee. It may have helped that Rose represents Dripping Springs in Hays County, where several subdivisions lost their water supply in 2006. With donated water from the Lower Colorado River Authority delivered by HEB water trucks, the community weathered the dry period but was forced later to pay individually to be tied into LCRA lines.

Initially, Rose's bill had a "very favorable response," said alliance Director Annalisa Peace. But then recently unseated Rep. Nathan Macias, R-Bulverde, "torpedoed it." "It was not ambitious to begin with, but he got the developers involved," Peace said. "They watered it down to the point that the county commissioners were saying, 'We wouldn't cross the street to support this thing.'"

Water Flowing Underground

Of course, underlying the Bexar Co. development skirmishes is the area's unique aquifer system. Overlain by karst limestone pocked through like Swiss cheese and peppered with caves, the water that drains down from creeks, across dirty parking lots, or out of wastewater discharge pipes receives very little natural filtering before it enters the Edwards. From there, it can move through San Antonio's drinking reservoir at a rate of thousands of feet per day. Increasingly, however, San Antonio's sprawling growth has blanketed the Edwards' recharge zone, threatening the historic purity of the aquifer water that has allowed the San Antonio Water System and BexarMet to pump, chlorinate, and deliver water to area homes and businesses without the costly central water-treatment plants found in most other cities. Groups such as the Greater Edwards Aquifer Alliance have long warned that tighter controls are needed to prevent the contamination of the Edwards.

Peace references New York City's decision in 2007 to spend $300 million on land acquisition to protect its watershed – a move expected to negate the need for a treatment plant costing up to $10 billion (and eventually passed along to customers in rate hikes). Like San Antonio, New York City is one of only a handful of cities that has not had to filter its water because of the pristine job that natural systems perform. But New York City planners had to remove land from potential development to do it – not a popular proposition among the political leadership in San Antonio.

Folks with the Hill Country Planning Association say, at the end of the day, they are just trying to protect San Antonio's water. While their range of objections is more complex than that, it is understood that limiting development over the aquifer's recharge and contributing zones, which cross about a dozen counties, would both protect the public health and save a huge chunk of change. By contrast, Bexar County and Commissioner Larson, who failed to respond to an interview request, have battled to keep up with development by pouring more asphalt – a practice with a lopsided economic logic, Edwards or no.

Several years ago, the American Farmland Trust partnered with a University of Texas graduate student to evaluate the costs of providing services to new developments and determined that for every tax dollar Bexar Co. gets from new residential subdivisions, it spends $1.15 to service those properties. For commercial properties, the ratio was much lower, with a 20-cent demand per dollar gained. Agricultural lands, however, are the lowest of all, requiring only 18 cents for each dollar reaped.

Edwards Aquifer Authority board member Enrique Valdivia says that while the Edwards' quality is still "terrific," there are warning signs. The Leon Valley Superfund site is one of the most obvious. Five wells near the center of town are contaminated with high levels of tetrachloroethene, a dry-cleaning chemical and industrial solvent, and trichloroethene, another degreaser also used in paint removers. Both are classified as probable human cancer-causers. And as the U.S. Environmental Protection Agency and the Texas Commission on Environmental Quality debate how to proceed in Leon Valley, located along Bandera Highway outside Loop 410, another of our most pristine watersheds is coming under attack.

The San Geronimo Valley Alliance, which has also joined the Hill Country Planning Association, is tightly focused on opposing the Hills of Castle Rock. The newly proposed 3,500-home subdivision straddling Medina and Bandera counties was a stunner for rural area residents. SGVA president and Castle Rock neighbor Randy Johnson worries about the impact of storm-water runoff entering his ranch, but the developer's plans to dump 225,000 gallons of treated effluent into the San Geronimo concern him even more. "Seven percent of the total recharge of the Edwards Aquifer comes from the San Geronimo Valley," Johnson said. "The capture rate is 100 percent. Nothing ever flows out. It flows down the San Geronimo Valley; it goes into the Edwards." The San Geronimo's importance to aquifer recharge was raised when the Cagnon power line was being fought. It's doubly relevant with Castle Rock. SAWS stepped away from the project, with San Antonio Mayor Phil Hardberger saying that past failings in other area watersheds should motivate the city to do better. Quoted in a transcript of that SAWS board meeting, the mayor said: "Drive out 16, drive out 281, and you will see that ultimately we have not always been as sensitive ourselves to the problems of development over our aquifer as we should have been. Those are now irreversible mistakes, by the way. ... Sensitive areas of the aquifer are sensitive areas of the aquifer, and people can talk and put lines on paper, but essential facts remain the same, and I

would like to keep this last watershed as pure as we can." Board member Salvadore Hernández concurred. But transcripts can be funny things. "I guess it's [that] I have a bias because I was born and raised here in San Antonio and have seen it groan," Hernández is quoted as saying, "and sometimes, as the mayor said, not exactly the way we would have liked to have seen it groan."

Groan it does, Salvadore.

Developer BP Real Estate's wastewater permit is headed for a state-level contested case hearing on July 22, but SAWS has sliced portions of northwest Bexar and north Medina County from plans to adopt the entire extraterritorial jurisdiction, until a deeper review of policies and procedures is carried out. Denied by the city, BP is currently looking for other water options.

Johnson says he doesn't oppose the landowner's right to develop; he is merely standing in the way of a potential ecological train wreck. "When [property] rights endanger the water supply of almost 2 million people, then those rights need to be tempered to save everybody else." It's all well and good, he says, to stand on property rights, until someone or something crosses the line. Then it may well be too late. "Once the storm water crosses my fence line, it becomes my problem," he says. While he's waiting to see what TCEQ commissioners think, he's distrustful of how Texas law is often applied. "I don't know if they have the right to destroy my land or not," he says bluntly.

"This is a very important moment," says Valdivia at the Edwards Aquifer Authority. "We have an opportunity to stem the tide and have a serious discussion about what we need to do to keep this resource."

The Road Ahead

So what will that conversation sound like, and how effective will it be?

In recent weeks, the dialogue has expanded as "Militia" members have met with like-minded representatives from Comal, Kendall, and Wilson counties. They're making connections with similar groups in Travis County, too (see "**Centex Brigade**").

This weekend, several Hill Country-area legislators are expected to gather for a strategy-planning session to brainstorm ways to circumvent Austin's builder lobby, which through key appointments manages to ensure that lands continue to be smothered faster than the environmental ramifications are understood. "The Edwards is why we have a city of San Antonio," says Valdivia. "Without it, there wouldn't be a city of this size here. The mindset that it's always going to be there is not correct, in my opinion."

That sort of assumption has no place in the Fenstermaker sisters' vocabulary, either. They've learned the hardest way not to take their boundaries – or their water – for granted. "This is where we'd known everybody. They'd all had projects and done things out here, and we were

kind of charged, somewhere back of our minds, with some responsibility," Bebe says.
Extended family still gathers here. The descendents of an even earlier owner return from time to time to visit the family cemetery. Today, the sisters watch as Post Oak Development blasts a hill flat on the backside of Crownridge Canyon Natural Area off Kyle Seale Parkway. It's like nothing they've ever seen before. "This is like West Virginia coal mining," Mary Fenstermaker says. "We've seen land-raped, but we've never seen that," Bebe says. "I've never seen Texas treated like that."
As the midday sun steals our shade, a painted bunting stops at the feeder, oblivious of its own spectacular plumes. "That must be the first one of spring," I'm told.
"This is the collecting place. Always has been," Bebe says. "This is not a wealthy family at all. This family has just inherited some very interesting land."

A slightly different version of this story was first published in the San Antonio Current*.*
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