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**ENDANGERED SPECIES SUIT FILED TO  
PROTECT GOLDEN-CHEEKED WARBLER HABITAT  
AGUA Sues in Federal Court**

Aquifer Guardians in Urban Areas (AGUA), a non profit organization whose mission is to protect the Edwards Aquifer, has filed a federal lawsuit against the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service Thursday, December 21, 2006 in federal court in San Antonio. The suit was filed to address the continuing loss of habitat necessary to protect the golden-cheeked warbler, a federally listed endangered species.

The suit alleges that the Corps and the U.S. Fish and Wildlife Service violated the endangered species act in a recent decision to issue a construction permit to San Antonio's City Public Service Energy (CPSE) to construct a portion of the Kendall to Cagnon electric transmission line. In particular, the suit claims that the biological opinion prepared by the Service did not follow federal rules and that the cumulative loss of golden-cheeked warbler habitat has not been fully and fairly considered. The suit asks that the permit decision be set aside and that a plan be developed and implemented to set aside enough acreage to protect the warbler.

The Golden -cheeked warbler was listed as an endangered species under the federal Endangered Species Act on May 4, 1990. The endangered Golden Cheeked Warbler breeds only in the mixed evergreen-deciduous woodlands of central Texas. Much of the local habitat has already been eliminated due to suburban developments, especially in the area from Austin to San Antonio.

A Golden-cheeked warbler Recovery Plan was prepared by the U.S. Fish and Wildlife Service and released in 1992. One point of the plan was that habitat must be protected if viable breeding populations are to be maintained. Although no comprehensive survey has been taken of the habitat and Golden-cheeked warbler populations in the area, data from literature and interviews with land managers indicate that fewer than 300 pairs of birds are currently protected in the region. It is estimated that 1,000 pairs of birds would be needed to provide population viability in recovery Region 6 that includes Bexar County.

This litigation arises from a Corps of Engineers permit action that allowed an electric transmission line to be constructed through areas known to be habitat for the golden-cheeked warbler. The litigation challenges the analysis of impacts prepare by the U.S. Fish and Wildlife Service as being deficient and not following the federal rules, particularly with regard to the cumulative loss of habitat in northwest Bexar County.

The suit also challenges the amount of mitigation that was required as a condition of permit issuance. When the Corps issued the permit, it required that some 55 acres of land be set aside in mitigation for the loss of 10.59 acres of warbler habitat. However, of this 55 acres, only

6.5 were current warbler habitat, with the other 48 acres being previously cleared and not suitable habitat for warblers at this time.

“The project represented a net loss of warbler habitat” said Annalisa Peace, Vice President of AGUA. “This loss is occurring throughout northwestern Bexar County. As a community, we must slow down and preserve warbler habitat before it is all lost.”

“When we save warbler habitat” Ms. Peace added, “we also protect the aquifer.”

The litigation is specific to Region 6 of the Recovery Plan for the golden-cheeked warbler. Region 6 includes all of Bexar, Comal and Kendall Counties and portions of Kerr, Gillespie and Blanco counties. The suit would affect only those portions of those counties that have habitat suitable for warblers.

“This litigation seeks to stop the issuance of federal permits and biological opinions authorizing actions that affect warbler habitat until a plan is prepared and agreed upon to set aside the land necessary to protect the golden-cheeked warbler” said Jim Blackburn, attorney for AGUA. “The requirements of the federal Recovery Plan are being ignored in northwest San Antonio and in the San Geronimo Valley. It is reasonable to ask that the federal court become involved to see to it that this endangered bird is given the protection required by the statute.”

“By filing this litigation, we hope to generate a serious dialogue about moving forward to protect the habitat for this beautiful warbler that nests only in central Texas,” said Ms. Peace. “We hope that this suit will lead to additional protections for the Edwards Recharge and Contributing zones in the long term.”