

By: Farrar

H.B. No. 2854

A BILL TO BE ENTITLED

AN ACT

relating to the transfer or cancellation of a water right.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.085, Water Code, is amended by adding Subsection (r-1) and amending Subsection (s) to read as follows:

(r-1) Any proposed transfer of all or a portion of a water right under this section does not affect the priority of the water right if the water or applicable portion of the water authorized to be appropriated under the water right or portion of the water right being transferred has been appropriated to a beneficial use that consumes the water without return flow to the watercourse from which the water was appropriated.

(s) Any proposed transfer of all or a portion of a water right under this section is junior in priority to water rights granted before the time application for transfer is accepted for filing if the water or applicable portion of the water authorized to be appropriated under the water right or portion of the water right being transferred:

(1) has not been put to an authorized beneficial use during the 10-year period preceding the date the application for the transfer is accepted for filing; or

(2) has been put to a nonconsumptive beneficial use in the basin of origin.

SECTION 2. Section 11.177, Water Code, is amended by

1 amending Subsection (b) and adding Subsections (c) and (d) to read  
2 as follows:

3 (b) In determining what constitutes reasonable diligence or  
4 a justified nonuse as used in Subsection (a)(2), the commission  
5 shall give consideration to:

6 (1) whether sufficient water is available in the  
7 source of supply to meet all or part of the appropriation during the  
8 10-year period of nonuse;

9 (2) whether the nonuse is justified by the holder's  
10 participation in the federal Conservation Reserve Program or a  
11 similar governmental program as provided by Section 11.173(b)(1);

12 (3) whether the existing or proposed authorized  
13 purpose and place of use are consistent with an approved regional  
14 water plan as provided by Section 16.053;

15 (4) whether the permit, certified filing, or  
16 certificate of adjudication has been deposited into the Texas Water  
17 Bank as provided by Sections 15.7031 and 15.704;

18 (5) [~~or~~] whether it can be shown that the water right  
19 or water available under the right is currently being made  
20 available for purchase through private marketing efforts; or

21 (6) [~~(5)~~] whether the permit, certified filing, or  
22 certificate of adjudication has been reserved to provide for  
23 instream flows or bay and estuary inflows.

24 (c) If water or any portion of the water appropriated under  
25 the permit, certified filing, or certificate of adjudication has  
26 not been put to an authorized beneficial use during the 10-year  
27 period and the only evidence of reasonable diligence or a justified

1 nonuse is that the water right or water available under the right is  
2 currently being made available for purchase through private  
3 marketing efforts, the commission shall cancel the permit,  
4 certified filing, or certificate of adjudication to the extent of  
5 50 percent of the amount of water authorized to be appropriated  
6 under the permit, certified filing, or certificate of adjudication  
7 that has not been put to an authorized beneficial use during the  
8 10-year period.

9 (d) If the commission cancels a permit, certified filing, or  
10 certificate of adjudication, in whole or in part, the commission  
11 shall issue a new water right authorizing the appropriation of an  
12 amount of water equal to the amount of water authorized to be  
13 appropriated under the permit, certified filing, or certificate of  
14 adjudication or portion of the permit, certified filing, or  
15 certificate of adjudication. The commission shall dedicate the  
16 water right to environmental needs, including instream flows, water  
17 quality, fish and wildlife habitat, or bay and estuary inflows, and  
18 place the water right in the Texas Water Trust established under  
19 Section 15.7031 to be held in the trust in perpetuity. A water  
20 right placed in the trust under this subsection has the same  
21 priority as the canceled permit, certified filing, or certificate  
22 of adjudication.

23 SECTION 3. (a) The changes in law made by this Act to  
24 Section 11.085, Water Code, apply only to an application for an  
25 interbasin transfer that is filed on or after the effective date of  
26 this Act. An application for an interbasin transfer that is filed  
27 before the effective date of this Act is governed by the law as it

1 existed immediately before the effective date of this Act, and that  
2 law is continued in effect for that purpose.

3 (b) The changes in law made by this Act to Section 11.177,  
4 Water Code, apply only to a proceeding to cancel a permit, certified  
5 filing, or certificate of adjudication that is initiated by the  
6 executive director of the Texas Commission on Environmental Quality  
7 on or after the effective date of this Act. A proceeding to cancel a  
8 permit, certified filing, or certificate of adjudication that is  
9 initiated before the effective date of this Act is governed by the  
10 law as it existed immediately before the effective date of this Act,  
11 and that law is continued in effect for that purpose.

12 SECTION 4. This Act takes effect September 1, 2003.