

By: Puente

H.B. No. 3339

A BILL TO BE ENTITLED

AN ACT

1
2 relating to powers and duties of the Edwards Aquifer Authority to
3 manage the Edwards Aquifer including groundwater withdrawals,
4 permitting, demand management and transfers.

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

6 SECTION 1. Section 1.03, Chapter 626, Acts of the 73rd
7 Legislature, Regular Session, 1993 and Chapter 966, Acts of the
8 77th Legislature, Regular Session, 2001, is amended by adding
9 Subsection (28) to read as follows:

10 (28) "Water supply facility" means a dam, reservoir,
11 treatment facility, transmission facility, or recharge project.

12 SECTION 2. Section 1.11(f), Chapter 626, Acts of the 73rd
13 Legislature, Regular Session, 1993 and Chapter 966, Acts of the
14 77th Legislature, Regular Session, 2001, is amended to read as
15 follows:

16 (f) The authority may contract with a person who uses water
17 from the aquifer for the authority or that person to own, finance,
18 design, construct, operate, or ~~[own, finance, and]~~ maintain water
19 supply facilities. ~~[Management fees or special fees may not be used~~
20 ~~for purchasing or operating these facilities. For the purpose of~~
21 ~~this subsection, "water supply facility" includes a dam, reservoir,~~
22 ~~treatment facility, transmission facility, or recharge project.]~~

23 SECTION 3. Section 1.14(b)-(h), Chapter 626, Acts of the
24 73rd Legislature, Regular Session, 1993, is amended to read as

1 follows:

2 (b) Except as provided by Subsections (c) [~~(d)~~], (e) [~~(f)~~],
3 and (g) [~~(h)~~] of this section and Section 1.26 of this article,
4 beginning January 1, 2005 [~~for the period ending December 31,~~
5 ~~2007~~], the amount of permitted withdrawals from the aquifer may not
6 exceed 550,000 [~~450,000~~] acre-feet of water for each calendar year.

7 [~~(c) Except as provided by Subsections (d), (f), and (h) of~~
8 ~~this section and Section 1.26 of this article, for the period~~
9 ~~beginning January 1, 2008, the amount of permitted withdrawals from~~
10 ~~the aquifer may not exceed 400,000 acre-feet of water for each~~
11 ~~calendar year.~~]

12 (c) [~~(d)~~] If, through studies and implementation of water
13 management strategies, including conservation, springflow
14 augmentation, diversions downstream of the springs, reuse,
15 supplemental recharge, conjunctive management of surface and
16 subsurface water, and drought management plans, programs,
17 practices, procedures, or methods, of any kind, the authority
18 determines that the amount of water available for permitting under
19 Subsection (b) of this section should be changed to more
20 effectively accomplish the purposes of this article [~~additional~~
21 ~~supplies are available from the aquifer], the authority, in
22 consultation with appropriate state and federal agencies, shall
23 [~~may~~] review and, by order, change the amount of water available for
24 permitting under Subsection (b) of this section [~~may increase the~~
25 ~~maximum amount of withdrawals provided by this section and set a~~
26 ~~different maximum amount of withdrawals]. Beginning September 1,
27 2006, and every four years thereafter, the Authority shall~~~~

1 determine whether the amount of water available for permitting
2 under Subsection (b) of this section should be changed pursuant to
3 this subsection. If the requirements of Subsection (a) have not all
4 been met, the authority shall by March 1 of the succeeding year
5 implement new requirements to assure compliance with Subsection
6 (a).

7 (d) [~~(e)~~ Unless made pursuant to the transfer of a regular,
8 term, emergency, monitoring, or recharge recovery permit, the
9 transfer of interim authorization, or an exempt well, the [The]
10 authority may not allow withdrawals from the aquifer through wells
11 drilled after June 1, 1993[~~, except additional water as provided by~~
12 ~~Subsection (d) and then on an interruptible basis].~~

13 (e) [~~(f)~~ If the level of the aquifer is equal to or greater
14 than 650 feet above mean sea level as measured at Well J-17, the
15 authority shall [~~may~~] authorize withdrawals pursuant to initial
16 regular permits [~~withdrawals~~] from the San Antonio pool, on an
17 uninterruptible basis[~~, of permitted amounts~~]. If the level of the
18 aquifer is equal to or greater than 845 feet at Well J-27, the
19 authority shall [~~may~~] authorize withdrawals pursuant to initial
20 regular permits [~~withdrawals~~] from the Uvalde pool, on an
21 uninterruptible basis[~~, of permitted amounts~~]. If the level of the
22 aquifer is less than 650 feet above mean sea level as measured at
23 Well J-17, the authority may, pursuant to Section 1.26 of this
24 article, interrupt withdrawals pursuant to initial regular permits
25 from the San Antonio pool. If the level of the aquifer is less than
26 845 feet at well J-27, the authority may, pursuant to Section 1.26
27 of this article, interrupt withdrawals pursuant to initial regular

1 permits from the Uvalde pool. Pursuant to Section 1.26 of this
 2 article, the [~~The~~] authority shall require interruptions in [~~limit~~
 3 ~~the additional~~] withdrawals, or require implementation of
 4 programs, practices, procedures, or methods, pursuant to
 5 Subsection (g) of this section, to protect [~~to ensure that~~]
 6 springflows at the Comal Springs and San Marcos Springs [~~are not~~
 7 ~~affected~~] during demand management and critical period management
 8 [~~drought~~] conditions.

9 (f) [~~(g)~~] The authority by rule may define other pools
 10 within the aquifer, in accordance with hydrogeologic research, and
 11 may establish index wells for any pool to monitor the level of the
 12 aquifer to aid the regulation of withdrawals from the pools.

13 (g) [~~(h)~~] By [~~To accomplish the purposes of this article,~~
 14 ~~by~~] June 1, 2005 [~~1994~~], the authority[~~, through a program,~~] shall
 15 implement and enforce water management programs, practices,
 16 procedures, or [~~and~~] methods to ensure that, not later than
 17 December 31, 2012, the continuous minimum springflows of the Comal
 18 Springs and the San Marcos Springs are maintained to protect
 19 endangered and threatened species to the extent required by federal
 20 law. The authority from time to time as appropriate may revise the
 21 programs, practices, procedures, or [~~and~~] methods. To meet this
 22 requirement, the authority shall require:

23 (1) pursuant to Section 1.26 of this article, phased
 24 reductions in the amount of water that may be used or withdrawn by
 25 existing users or categories of other users; or

26 (2) implementation of alternative management
 27 programs, practices, procedures or [~~and~~] methods.

1 SECTION 4. Section 1.16(e)-(h), Chapter 626, Acts of the
2 73rd Legislature, Regular Session, 1993, is amended to read as
3 follows:

4 (e) To the extent water is available for permitting, the
5 board shall issue an [~~the~~] existing user a regular permit for
6 withdrawal of an amount of water equal to the user's maximum
7 beneficial use of water without waste during any one calendar year
8 of the historical period. If an existing [~~a water~~] user does not
9 have historical use for a full year, then the authority shall set
10 the user's maximum beneficial use of water without waste as the
11 [~~issue a permit for withdrawal based on an~~] amount of water that
12 would normally be beneficially used without waste for the intended
13 purpose for a calendar year.

14 (f) If the total amount of water determined to have been
15 beneficially used without waste under Subsection (e) of this
16 section [~~this subsection~~] exceeds the amount of water available for
17 permitting under Subsection (b) of Section 1.14 of this article,
18 the authority shall proportionately adjust the amount of water
19 authorized for withdrawal under regular [~~the~~] permits
20 [~~proportionately~~] to meet the amount available for permitting.
21 Except as provided by Subsection (b) of Section 1.21 of this
22 article, no existing user may be proportionately adjusted below the
23 following amounts:

24 (1) for an [~~An~~] existing irrigation user, [~~shall~~
25 ~~receive a permit for not less than~~] two acre-feet a year for each
26 acre of land the user actually irrigated in any one calendar year
27 during the historical period; or [~~+~~]

1 (2) for an [An] existing user who has operated a well
2 for three or more years during the historical period, ~~[shall~~
3 ~~receive a permit for at least]~~ the average amount of water withdrawn
4 annually during the historical period.

5 (g) Except as provided by Subsection (b) of Section 1.21 of
6 this article, in the event a proportional adjustment results in an
7 amount of water authorized for withdrawal under a regular permit
8 that is less than an applicable minimum regular permit amount
9 specified in Subsection (f) of this section, then the Authority
10 shall restore the amount to be equal to the minimum regular permit
11 amount.

12 (h) [~~(f)~~] The board by rule shall consider the equitable
13 treatment of a person whose historic use has been affected by a
14 requirement of or participation in a federal program.

15 (i) [~~(g)~~] The authority shall issue an initial regular
16 permit without a term, and an initial regular permit remains in
17 effect until the permit is abandoned, cancelled, or retired.

18 (j) [~~(h)~~] The board shall notify each permit holder that the
19 permit is subject to limitations as provided by this article.

20 SECTION 5. Section 1.21, Chapter 626, Acts of the 73rd
21 Legislature, Regular Session, 1993, is amended to read as follows:

22 SECTION 1.21 ~~[PERMIT]~~ RETIREMENT OF PERMITS OR
23 APPLICATIONS. (a) The authority shall prepare and implement a plan
24 for reducing, by January 1, 2005 [~~2008~~], the maximum annual volume
25 of water authorized to be withdrawn from the aquifer under regular
26 permits to 550,000 [~~400,000~~] acre-feet a year or the adjusted
27 amount determined under Subsection (c) [~~(d)~~] of Section 1.14 of

1 this article. The plan must be enforceable and must include
2 measures to retire all or part of regular permits or applications
3 for initial regular permits, or other water management measures
4 designed to achieve the required reductions.

5 ~~[(b) The plan must be enforceable and must include water~~
6 ~~conservation and reuse measures, measures to retire water rights,~~
7 ~~and other water management measures designed to achieve the~~
8 ~~reduction levels or appropriate management of the resource.]~~

9 (b) [e] If, on or after January 1, 2005 [2008], the overall
10 volume of water authorized to be withdrawn from the aquifer under
11 regular permits is greater than 550,000 [400,000] acre-feet a year
12 or greater than the adjusted amount determined under Subsection (c)
13 [~~(d)~~] of Section 1.14 of this article, the Authority shall
14 immediately proportionately adjust the maximum authorized
15 withdrawal amount of each regular permit as determined under
16 Subsection (e) of Section 1.16 of this article [~~shall be~~
17 ~~immediately reduced by an equal percentage]~~ as is necessary to
18 reduce aggregate [~~overall~~] maximum authorized withdrawals under
19 regular permits [~~demand~~] to 550,000 [400,000] acre-feet a year or
20 the adjusted amount, as appropriate. In the event a proportional
21 adjustment results in an amount of water authorized for withdrawal
22 under a regular permit that is less than an applicable minimum
23 regular permit amount specified in Subsection (f) of Section 1.16
24 of this article, then the Authority shall, in accordance with
25 Section 1.29 of this article, compensate the permittee for the
26 amount of the authorized withdrawal below the minimum regular
27 permit amount that was proportionately adjusted in order to meet

1 550,000 acre-feet a year, or as that amount may be adjusted under
2 Subsection (c) of Section 1.14 of this article. The amount reduced
3 may be restored, in whole or in part, as other appropriate measures
4 are implemented that maintain overall demand at or below the
5 appropriate amount.

6 SECTION 6. Section 1.26, Chapter 626, Acts of the 73rd
7 Legislature, Regular Session, 1993, is amended to read as follows:

8 SECTION 1.26 DEMAND MANAGEMENT AND CRITICAL PERIOD
9 MANAGEMENT PLAN. (a) The authority shall prepare and coordinate
10 implementation of a plan for demand management and critical period
11 management [~~on or before September 1, 1995~~]. The mechanisms must:

12 (1) distinguish between discretionary use and
13 nondiscretionary use;

14 (2) require reductions of all discretionary use to the
15 maximum extent feasible;

16 (3) require utility pricing, to the maximum extent
17 feasible, to limit discretionary use by the customers of water
18 utilities; and

19 (4) require reduction of nondiscretionary use by
20 permitted or contractual users, to the extent further reductions
21 are necessary, in the reverse order of the following water use
22 preferences:

- 23 (A) municipal, domestic, and livestock;
24 (B) industrial and crop irrigation;
25 (C) residential landscape irrigation;
26 (D) recreational and pleasure; and
27 (E) other uses that are authorized by law.

1 (b) The board shall adopt measures to ensure that authorized
2 withdrawals from non-exempt wells are reduced to 350,000 acre-feet,
3 annualized, if the following conditions are met:

4 (1) for the San Antonio Pool, the level of the aquifer
5 is less than 627 feet above mean sea level as measured at Well J-17;
6 or

7 (2) for the Uvalde Pool, the level of the aquifer is
8 less than 842 feet above mean sea level as measured at Well J-27.

9 (c) The demand management and critical period plan required
10 to be prepared and implemented by this section shall be adopted by
11 the board no later than September 1, 2004. In the event this
12 deadline is not met, irrespective of whether a demand management or
13 critical period is in effect, the board shall issue an order
14 temporarily interrupting 20 percent of the amount of water
15 authorized for withdrawal under each regular permit until the board
16 has adopted the plan.

17 SECTION 7. Section 1.29(a) and (c)-(i), Chapter 626, Acts
18 of the 73rd Legislature, Regular Session, 1993 and Chapter 966,
19 Acts of the 77th Legislature, Regular Session, 2001, is amended to
20 read as follows:

21 (a) The cost of [~~reducing withdrawals or~~] permit or
22 application retirements under Section 1.21 of this article or the
23 adjusted amount under Subsection (c) of Section 1.14 of this
24 article for the period ending December 31, 2004, must be borne
25 solely by users of the aquifer and shall be paid for by aquifer
26 management fees assessed under Subsections (b) and (c) of this
27 section.[+]

1 ~~[(1) solely by users of the aquifer for reducing~~
2 ~~withdrawals from the level on the effective date of this article to~~
3 ~~450,000 acre-feet a year, or the adjusted amount determined under~~
4 ~~Subsection (d) of Section 1.14 of this article for the period ending~~
5 ~~December 31, 2007; and~~

6 ~~(2) equally by aquifer users and downstream water~~
7 ~~rights holders for permit retirements from 450,000 acre-feet a~~
8 ~~year, or the adjusted amount determined under Subsection (d) of~~
9 ~~Section 1.14 of this article for the period ending December 31,~~
10 ~~2007, to 400,000 acre-feet a year, or the adjusted amount~~
11 ~~determined under Subsection (d) of Section 1.14 of this article,~~
12 ~~for the period beginning January 1, 2008.]~~

13 (b) The authority shall assess equitable aquifer management
14 fees based on aquifer use under the water management plan to finance
15 its administrative expenses and programs authorized under this
16 article. Aquifer management fees may additionally be used for the
17 repayment of revenue bonds issued by the authority pursuant to
18 Section 1.28 of this article. Each water district governed by
19 Chapter 52, Water Code, that is within the authority's boundaries
20 may contract with the authority to pay expenses of the authority
21 through taxes in lieu of user fees to be paid by water users in the
22 district. The contract must provide that the district will pay an
23 amount equal to the amount that the water users in the district
24 would have paid through user fees. The authority may not collect a
25 total amount of fees and taxes that is more than is reasonably
26 necessary for the administration of the authority.

27 ~~[(c) The authority shall also assess an equitable special~~

1 ~~fee based on permitted aquifer water rights to be used only to~~
2 ~~finance the retirement of rights necessary to meet the goals~~
3 ~~provided by Section 1.21 of this article. The authority shall set~~
4 ~~the equitable special fees on permitted aquifer users at a level~~
5 ~~sufficient to match the funds raised from the assessment of~~
6 ~~equitable special fees on downstream water rights holders.~~

7 ~~(d) The commission shall assess equitable special fees on~~
8 ~~all downstream water rights holders in the Guadalupe River Basin to~~
9 ~~be used solely to finance the retirement of aquifer rights~~
10 ~~necessary to meet the goals provided by Section 1.21 of this~~
11 ~~article. Fees assessed under this subsection may not exceed~~
12 ~~one-half of the cost of permit retirements from 450,000 acre-feet a~~
13 ~~year, or the adjusted amount determined under Subsection (c) of~~
14 ~~Section 1.14 of this article, for the period ending December 31,~~
15 ~~2007, to 400,000 acre-feet a year for the period beginning January~~
16 ~~1, 2008. The authority shall report to the commission the estimated~~
17 ~~costs of the retirements. The amount of fees assessed under this~~
18 ~~subsection shall be determined in accordance with rules adopted by~~
19 ~~the commission for fees under the South Texas watermaster program~~
20 ~~with adjustments as necessary to ensure that fees are equitable~~
21 ~~between users, including priority and nonpriority hydroelectric~~
22 ~~users. A downstream water rights holder shall pay fees assessed~~
23 ~~under this subsection to the authority. A fee may not be assessed~~
24 ~~by the commission under this subsection on contractual deliveries~~
25 ~~of water stored in Canyon Lake that may be diverted downstream of~~
26 ~~the San Marcos Springs or Canyon Dam. A person or entity making a~~
27 ~~contractual sale of water stored upstream of Canyon Dam may not~~

1 ~~establish a systemwide rate that requires purchasers of~~
2 ~~upstream-stored water to pay the special fee assessed under this~~
3 ~~subsection.]~~

4 (c) [~~(e)~~] In developing an equitable fee structure under
5 this section, the authority may establish different fee rates on a
6 per acre-foot basis for different types of use. The fees must be
7 equitable between types of uses. The fee rate for agricultural use
8 shall be based on the volume of water withdrawn and may not be more
9 than \$2 per acre-foot. The authority shall assess the fees on the
10 amount of water a permit holder is authorized to withdraw under the
11 permit.

12 (d) [~~(f)~~] The authority shall impose a permit application
13 fee not to exceed \$25.

14 (e) [~~(g)~~] The authority may impose a registration
15 application fee not to exceed \$10.

16 [~~(h) Special fees collected under Subsection (c) or (d) of~~
17 ~~this section may not be used to finance a surface water supply~~
18 ~~reservoir project.]~~

19 (f) [~~(i)~~] The authority shall provide money as necessary,
20 but not to exceed five percent of the money collected under
21 Subsection (b) [~~(d)~~] of this section, to finance the South Central
22 Texas Water Advisory Committee's administrative expenses and
23 programs authorized under this article.

24 SECTION 8. Sections 1.34(a), (b) and (c), Chapter 626, Acts
25 of the 73rd Legislature, Regular Session, 1993, are amended to read
26 as follows:

27 (a) Water withdrawn from the aquifer may only [~~must~~] be used

1 within the boundaries of:

2 (1) the authority; or

3 (2) the geographic area subject to a Certificate of
4 Convenience and Necessity ("CCN") that extends within and beyond
5 the boundaries of the authority, provided that the majority of the
6 CCN lies within the boundaries of the authority and the CCN is held
7 by an original regular permit holder or a wholesale customer
8 thereof.

9 (b) The authority by rule shall ~~may~~ establish a procedure
10 by which a person who has achieved ~~installs~~ water conservation
11 ~~equipment~~ may transfer ~~sell~~ the ~~water~~ conserved water.

12 (c) A permit holder may transfer a regular ~~lease~~ permit,
13 ~~permitted water rights, but a holder of a permit for irrigation use~~
14 ~~may not lease more than 50 percent of the irrigation rights~~
15 ~~initially permitted. The user's remaining irrigation water rights~~
16 ~~must be used in accordance with the original permit and must pass~~
17 ~~with transfer of the irrigated land.]~~ however, with respect to a
18 regular permit originally issued for irrigation use, up to 50
19 percent of such a permit may be transferred without restrictions as
20 to the place or purpose of use, while the remaining 50 percent may
21 only be transferred:

22 (1) to another place of use within the county in which
23 the place of use under the original permit is located, for
24 irrigation use;

25 (2) to another place of use within the county in which
26 the place of use under the original permit is located, for any
27 purpose of use, but only in the event that all or a portion of the

1 place of use under the original permit is developed such that it is
2 no longer capable of being used for irrigation, and only for that
3 portion of the permit attributable to the non-irrigable land; or
4 (3) in a manner consistent with rules adopted by the
5 authority for the transfer of conserved water pursuant to
6 Subsection (b) of this section.

7 SECTION 9. Section 1.45, Chapter 626, Acts of the 73rd
8 Legislature, Regular Session, 1993, is amended to read as follows:

9 (a) The authority may own, finance, design, construct,
10 [~~build or~~ operate, and maintain recharge dams, and associated
11 facilities, structures, or works, in the contributing or recharge
12 area of the aquifer if the recharge is made to increase the yield of
13 the aquifer and the recharge project does not impair senior water
14 rights or vested riparian rights.

15 SECTION 10. EFFECTIVE DATE. This Act takes effect
16 immediately if it receives a vote of two-thirds of all the members
17 elected to each house, as provided by Section 39, Article III, Texas
18 Constitution. If this Act does not receive the vote necessary for
19 immediate effect, this Act takes effect September 1, 2003.