

By: Averitt

S.B. No. 1040

A BILL TO BE ENTITLED

AN ACT

relating to the repeal of the junior priority of a water right authorizing a transfer of water from one river basin in this state to another river basin in this state.

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

SECTION 1. LEGISLATIVE FINDINGS AND DECLARATION OF POLICY.

(a) The legislature finds that by virtue of its passage of Senate Bill No. 1 by the 75th Legislature, Regular Session, 1997, the legislature created a regional and state water planning, development, and management process designed to ensure that entities throughout the state timely plan for and develop water supplies necessary to meet existing and future water supply demands. In part, Senate Bill No. 1 addressed permitting requirements related to the transfer of state water from one river basin to another.

(b) The legislature finds that in Senate Bill No. 1, Section 11.085, Water Code, was amended to specify a number of new regulatory requirements associated with the permitting of interbasin transfers of state water, including:

(1) requirements that an application for a permit for an interbasin transfer include:

(A) information specifying the contract price of water to be transferred;

(B) the cost of diverting, conveying, and

1 distributing the water proposed to be transferred; and

2 (C) the projected effect on user rates and fees
3 for each class of ratepayers to be served with the water;

4 (2) additional public notice and public meeting
5 requirements;

6 (3) additional criteria to be used by the state in
7 determining whether an application for an interbasin transfer of
8 state water should be granted, including:

9 (A) a requirement that the state balance the
10 needs of the basin of origin against the needs of the receiving
11 basin in regard to the water proposed to be transferred; and

12 (B) a requirement that the state consider:

13 (i) the needs of the basin of origin for the
14 next 50 years;

15 (ii) the availability of feasible and
16 practicable alternatives to the diversion;

17 (iii) the efforts of the receiving basin to
18 avoid waste and achieve water conservation;

19 (iv) the projected economic impact of the
20 transfer to the basin of origin and the receiving basin; and

21 (v) the projected impact of the proposed
22 transfer on existing water rights and the environment;

23 (4) the proposed mitigation or compensation, if any,
24 to the basin of origin by the applicant; and

25 (5) the continued need to use water authorized under
26 an existing water right that is proposed to be transferred.

27 (c) The legislature finds that interbasin transfer is a

1 critical tool for managing the current and future water resources
2 of the state and that the 2002 State Water Plan includes
3 approximately 216 interbasin transfers from 55 different unique
4 sources of water that were identified by local and regional
5 entities as the water supply strategy solutions to approximately
6 451 different local and regional water demands.

7 (d) The legislature finds that in addition, with respect to
8 the proposed interbasin transfer of water authorized under an
9 existing water right, Senate Bill No. 1 amended Section 11.085,
10 Water Code, to include the "junior rights provision," which
11 provides that any proposed transfer of all or part of an existing
12 water right would be junior in time priority to water rights granted
13 before the time the application for the interbasin transfer was
14 accepted for filing.

15 (e) The legislature finds that the junior rights provision
16 has effectively thwarted the ability of the state and local and
17 regional entities to allow existing water rights to be transferred
18 out of the basin of origin and put to a beneficial use and has
19 therefore harmed the ability of those entities to adequately plan
20 for, develop, and manage water resources in a manner that addresses
21 the state's future water needs.

22 (f) The legislature finds that the junior rights provision
23 has so effectively thwarted the ability of the state to authorize
24 interbasin transfers that no interbasin transfer has been
25 authorized for a water right that existed before September 1, 1997,
26 that does not fall within one of the limited exceptions under
27 Section 11.085(v) since before the enactment of that provision in

1 1997 and that, if retained in law, the junior rights provision will
2 continue to hinder state, regional, and local water planning and
3 management efforts.

4 (g) The legislature finds that the interbasin transfer
5 requirements of Section 11.085, Water Code, other than the junior
6 rights provision, are sufficient to protect the interests of the
7 basin of origin, and that the junior rights provision of that
8 section should be repealed.

9 SECTION 2. REPEALER. Sections 11.085(s) and (t), Water
10 Code, are repealed.

11 SECTION 3. APPLICABILITY. (a) This Act applies only to an
12 application for a water right or an amendment to a permit, certified
13 filing, or certificate of adjudication authorizing an interbasin
14 transfer of water that is accepted for filing on or after the
15 effective date of this Act.

16 (b) An application for a water right or an amendment to a
17 permit, certified filing, or certificate of adjudication
18 authorizing an interbasin transfer of water that is accepted for
19 filing before the effective date of this Act is governed by the law
20 in effect at the time the application is accepted for filing, and
21 the former law is continued in effect for that purpose.

22 SECTION 4. EFFECTIVE DATE. This Act takes effect
23 immediately if it receives a vote of two-thirds of all the members
24 elected to each house, as provided by Section 39, Article III, Texas
25 Constitution. If this Act does not receive the vote necessary for
26 immediate effect, this Act takes effect September 1, 2003.