

By: Staples

S.B. No. 1843

A BILL TO BE ENTITLED

AN ACT

relating to the purposes for which state water may be appropriated.

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

SECTION 1. (a) The legislature finds that it has been the specific public policy of the state for many years for the Texas Commission on Environmental Quality and its predecessors to address the needs of the state's bays and estuaries by the inclusion in water appropriation permits, to the extent practicable when considering all public interests, of those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system. It also has been the public policy of the state for many years for the commission and its predecessors to specifically consider the effect, if any, of the issuance of water appropriation permits on instream uses, water quality, and fish and wildlife habitats, and to include in those permits the conditions considered appropriate to address those interests. As an essential part of the state's policy, all permit conditions relating to beneficial inflows to affected bays and estuaries and instream needs are subject to suspension during water shortages and other emergencies.

(b) The legislature finds that recent attempts by private interests to make specific appropriations of the remaining available unappropriated state water in certain river basins for environmental purposes that are not associated with diversion or storage of the water are not authorized, are contrary to the public

1 welfare, and are contrary to the state's existing system of water
2 rights administration that has been in existence since 1913. The
3 legislature further finds that appropriations for environmental
4 purposes that are not associated with the diversion or storage of
5 water are contrary to and jeopardize the state's investment in the
6 regional planning process and the state water plan.

7 (c) The legislature intends that this Act reaffirm that the
8 imposition in water appropriation permits of conditions that are
9 subject to suspension during emergencies is the sole mechanism to
10 be used by the commission in the permitting process to address the
11 needs of the state's bays and estuaries and instream needs.

12 SECTION 2. Section 11.023, Water Code, is amended by
13 amending Subsections (a) and (b) and adding Subsection (g) to read
14 as follows:

15 (a) State water may be appropriated for storage [~~, stored,~~]
16 or diversion [~~diverted~~] for:

17 (1) domestic and municipal uses, including water for
18 sustaining human life and the life of domestic animals;

19 (2) agricultural uses and industrial uses, meaning
20 processes designed to convert materials of a lower order of value
21 into forms having greater usability and commercial value, including
22 the development of power by means other than hydroelectric;

23 (3) mining and recovery of minerals;

24 (4) hydroelectric power;

25 (5) navigation;

26 (6) recreation and pleasure;

27 (7) public parks; and

1 (8) game preserves.

2 (b) State water also may be appropriated for storage [~~7~~
3 ~~stored,~~] or diversion [~~diverted~~] for any other beneficial use.

4 (g) State water may not be appropriated for diversion to
5 sustain flows at or below the diversion point in a manner that could
6 be achieved by the imposition of permit conditions.

7 SECTION 3. Section 11.131, Water Code, is amended by
8 amending Subsection (b) and adding Subsection (c) to read as
9 follows:

10 (b) If the commission denies an [~~the~~] application under
11 Subsection (a) [~~this section~~] and the applicant elects not to
12 proceed further, the commission may order any part of the fee
13 submitted with the application returned to the applicant.

14 (c) The commission shall deny an application and return all
15 fees if the application does not propose to beneficially use state
16 water by the storage, taking, or diversion of the water.

17 SECTION 4. (a) This Act takes effect immediately if it
18 receives a vote of two-thirds of all the members elected to each
19 house, as provided by Section 39, Article III, Texas Constitution.
20 If this Act does not receive the vote necessary for immediate
21 effect, this Act takes effect September 1, 2003.

22 (b) The change in law made by this Act applies to an
23 application for a permit to use state water that is filed with the
24 Texas Commission on Environmental Quality on or after the effective
25 date of this Act or that is pending with the commission on the
26 effective date of this Act.