

By: Lucio, et al.

S.B. No. 1902

Substitute the following for S.B. No. 1902:

By: Puente

C.S.S.B. No. 1902

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation, administration, powers, duties,
3 operation, and financing of the Rio Grande Regional Water Authority
4 and to the powers and duties of the Rio Grande watermaster and the
5 delivery of water down the banks and bed of the Rio Grande;
6 authorizing the issuance of bonds.

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

8 ARTICLE I. GENERAL PROVISIONS

9 SECTION 1.01. DEFINITIONS. In this Act:

10 (1) "Authority" means the Rio Grande Regional Water
11 Authority.

12 (2) "Board" means the board of directors of the
13 authority.

14 (3) "Bond" includes a note.

15 (4) "Commission" means the Texas Commission on
16 Environmental Quality.

17 (5) "Director" means a member of the board.

18 SECTION 1.02. CREATION. (a) A conservation and
19 reclamation district, to be known as the Rio Grande Regional Water
20 Authority is created.

21 (b) The authority is created under and is essential to
22 accomplish the purposes of Section 59, Article XVI, Texas
23 Constitution.

24 (c) The authority is a governmental agency and a political

1 subdivision of this state.

2 SECTION 1.03. PURPOSE OF AUTHORITY. The authority is
3 created to supplement, and not to replace, the services, regulatory
4 powers, and authority of irrigation districts, water development
5 supply corporations, counties, municipalities, and other political
6 subdivisions within their respective boundaries and corporate
7 limits.

8 SECTION 1.04. FINDING OF BENEFIT AND PUBLIC PURPOSE.

9 (a) The authority is created to serve a public use and benefit.

10 (b) All of the land and other property included within the
11 boundaries of the authority will be benefited by the improvement
12 projects and the services that are to be accomplished by the
13 authority under powers conferred by Section 59, Article XVI, Texas
14 Constitution, and other powers granted under this Act.

15 SECTION 1.05. BOUNDARIES. The boundaries of the authority
16 are coextensive with the boundaries of Cameron, Hidalgo, Starr,
17 Webb, Willacy, and Zapata counties, except that the authority does
18 not include the area within the corporate limits of the city of
19 Laredo.

20 SECTION 1.06. WATER RIGHTS NOT AFFECTED. This Act does not
21 affect any existing rights, or existing priorities in the rights,
22 to water from the source of supply. The formation of a contract for
23 the purchase of water with the authority is not an abandonment or
24 waiver of those rights or priorities and is not an abandonment of
25 the original point of diversion from the source of supply.

26 SECTION 1.07. AUTHORITY PROHIBITED FROM CONDEMNING WATER
27 RIGHTS. The authority is prohibited from condemning water rights.

ARTICLE II. BOARD OF DIRECTORS

SECTION 2.01. BOARD OF DIRECTORS. (a) The board consists of 15 directors.

(b) Nine directors are appointed by the governor, with the advice and consent of the senate, as follows:

(1) six directors who represent irrigation districts;

(2) one director who represents independent irrigation water rights holders and holds a certificate of adjudication for at least 500 acre-feet irrigation water rights;

(3) one director who represents water utilities; and

(4) one director who represents municipalities.

(c) One director is appointed from each of the six counties in the authority by majority vote of the commissioners court of that county. In January of a year in which a director's term expires, the commissioners court of the appropriate county shall appoint a director for a two-year term beginning February 1 of that year. A director appointed as provided by this subsection must:

(1) be a registered voter;

(2) reside in the county from which the director is appointed; and

(3) be certified to the board by the county judge of the county from which the director is appointed.

(d) Directors appointed under Subsection (b) of this section shall be appointed to ensure that at all times:

(1) at least one director is a qualified voter of each county in the authority; and

(2) not more than three directors are qualified voters

1 of the same county.

2 (e) Initial directors serve until permanent directors are
3 appointed.

4 (f) Permanent directors appointed under Subsection (b) of
5 this section serve staggered four-year terms. Permanent directors
6 appointed under Subsection (c) of this section serve staggered
7 two-year terms.

8 (g) Except as provided by Subsection (c), each director must
9 be a qualified voter of the state residing within the boundaries of
10 the authority.

11 SECTION 2.02. INITIAL DIRECTORS. (a) In appointing the
12 initial directors of the board, the governor shall appoint four
13 directors to terms expiring February 1, 2005, and five directors to
14 terms expiring February 1, 2007.

15 (b) In appointing the initial directors of the board, the
16 commissioners courts of Webb, Cameron, and Starr counties shall
17 appoint directors to terms expiring February 1, 2004, and the
18 commissioners courts of Hidalgo, Zapata, and Willacy counties shall
19 appoint directors to terms expiring February 1, 2005.

20 SECTION 2.03. VACANCY. (a) The governor shall fill a
21 vacancy that occurs in the office of a director appointed by the
22 governor.

23 (b) The commissioners court of a county shall fill a vacancy
24 that occurs in the office of a director appointed from that county.

25 (c) A person appointed to a vacant position serves for the
26 unexpired part of the term.

27 SECTION 2.04. OATH AND BOND REQUIREMENT FOR DIRECTOR.

1 (a) Each director, not later than 15 days after the date of
2 appointment, must qualify by taking the constitutional oath of
3 office and by filing a good and sufficient bond with the secretary
4 of state.

5 (b) The bond is subject to approval by the secretary of
6 state and must be:

7 (1) in the amount of \$1,000;

8 (2) payable to the authority; and

9 (3) conditioned on the faithful performance of the
10 duties as a director.

11 SECTION 2.05. DIRECTOR COMPENSATION AND REIMBURSEMENT OF
12 EXPENSES. (a) A director is not entitled to any compensation for
13 service on the board.

14 (b) A director is entitled to receive reimbursement for
15 actual and necessary expenses incurred in connection with service
16 on the board or attendance at board meetings or other board
17 business.

18 SECTION 2.06. OFFICERS. (a) The board shall elect from
19 among its members a president, a vice president, and a
20 secretary-treasurer.

21 (b) The president is the chief executive officer of the
22 authority.

23 (c) The vice president shall act as president if the
24 president is absent or unable to act.

25 (d) The secretary-treasurer shall act as secretary of the
26 board. The board shall select a temporary secretary if the
27 secretary-treasurer is absent or unable to act.

1 SECTION 2.07. MEETINGS. (a) The president shall preside
2 at all meetings of the board.

3 (b) The board shall set, by order entered in the minutes of
4 its proceedings, a specified time for the regular meetings of the
5 board. The board may meet for a specific occasion if called by
6 order of the president, vice president, or a majority of the
7 directors.

8 (c) The board shall hold its meetings at its office unless
9 the board directs otherwise for a specific occasion.

10 SECTION 2.08. EMPLOYEES. The authority may hire employees
11 to obtain any service or material required by the authority.

12 SECTION 2.09. DUTIES OF GENERAL MANAGER. The board may
13 employ a general manager for the authority and may delegate to the
14 general manager full authority to manage and operate the affairs of
15 the authority subject only to the orders of the board.

16 SECTION 2.10. COMPENSATION OF EMPLOYEES. The board shall
17 set the reasonable compensation to be paid to the general manager
18 and other employees of the authority.

19 SECTION 2.11. SURETY BOND. A bond required to be given by a
20 director, officer, or employee of the authority must be executed by
21 a surety company authorized to do business in this state, as surety
22 on the bond.

23 SECTION 2.12. CONFLICT OF INTEREST. The board shall comply
24 with Chapter 171, Local Government Code, relating to conflicts of
25 interest with a business entity in which a board member has a
26 substantial interest.

27 SECTION 2.13. REGULAR OFFICE OF AUTHORITY. The board shall

1 establish and maintain a regular office for conducting authority
2 business within the authority's territory.

3 SECTION 2.14. RECORDS. The secretary-treasurer of the
4 board shall keep a record of all proceedings and orders of the
5 board.

6 ARTICLE III. POWERS AND DUTIES

7 SECTION 3.01. POWER UNDER CONSTITUTION AND OTHER LAW. The
8 authority has all of the rights, powers, privileges, authority,
9 functions, and duties, except as limited by this Act, of a
10 conservation and reclamation district under the constitution and
11 other laws of this state, including those:

12 (1) expressly authorized or implied by Section 59,
13 Article XVI, Texas Constitution, for a conservation and reclamation
14 district; and

15 (2) given by general law, including Chapters 49, 51,
16 and 54, Water Code.

17 SECTION 3.02. AD VALOREM TAX PROHIBITED. Notwithstanding
18 Section 3.01 of this Act, the authority may not impose an ad valorem
19 tax.

20 SECTION 3.03. NONCONTRACTUAL FEES PROHIBITED.
21 Notwithstanding Section 3.01 of this Act, the authority may impose
22 a fee on a public or private entity only if:

23 (1) a contractual relationship exists between the
24 authority and the entity; and

25 (2) the authority expressly authorizes the fee.

26 SECTION 3.04. STATE SUPERVISION AND APPROVAL. The
27 authority is subject to the commission's continuing supervision

1 under Chapters 5 and 12, Water Code.

2 SECTION 3.05. ADDITIONAL POWERS RELATING TO ACQUISITION OR
3 OPERATION OF PROPERTY. (a) In this section, "property" includes a
4 right, including a water right, land, tenement, easement,
5 improvement, reservoir, dam, canal, lateral, plant, work, and
6 facility.

7 (b) The authority may investigate, plan, acquire,
8 construct, maintain, or operate any property the authority
9 considers necessary or proper for the accomplishment of the
10 purposes of the authority, including water treatment, wastewater
11 treatment, water conveyance, and desalination of water.

12 (c) The power described by Subsection (b) of this section
13 includes the power to acquire property inside or outside the
14 authority that is incidental or helpful to carrying out the
15 authority's purposes under this Act.

16 SECTION 3.06. ADDITIONAL POWERS RELATING TO CONTRACT,
17 LEASE, AGREEMENT, OR CONVEYANCE. (a) The authority may enter into
18 a contract, lease, or other agreement necessary or convenient to
19 carry out a power given to the authority by this Act.

20 (b) The authority may enter into a contract, lease, or
21 agreement with any person, including:

22 (1) an individual or artificial entity;

23 (2) a corporation, including a municipal corporation
24 and a public or private corporation; and

25 (3) a government or governmental agency, including the
26 United States and this state, or a political subdivision of this
27 state.

1 (c) The authority may enter into an international
2 cooperation agreement to accomplish the purposes of this Act or any
3 other law as provided by Chapter 792, Government Code.

4 (d) The authority may:

5 (1) convey or cause to be conveyed any of its property
6 to the United States;

7 (2) enter into a lease, regardless of whether it
8 includes a privilege of purchase, with the United States relating
9 to any property and obligating the authority to pay rent under the
10 lease from the income or other revenue of the property;

11 (3) apply for, accept, receive, and administer gifts,
12 grants, loans, and other funds available from any source; and

13 (4) participate with the commission in an action
14 authorized under Section 5.127, Water Code, as added by Chapter
15 728, Acts of the 77th Legislature, Regular Session, 2001.

16 (e) A contract, lease, or agreement under this section must
17 be approved by resolution of the board.

18 (f) This section does not authorize the assumption by the
19 authority of any obligation requiring a payment from taxes.

20 (g) The property to which Subsection (d) of this section
21 applies includes a right, land, tenement, easement, improvement,
22 reservoir, dam, canal, plant, lateral, work, and facility.

23 SECTION 3.07. COURT-APPOINTED RECEIVER. The authority may
24 serve as the court-appointed receiver in a matter determined by a
25 court concerning the disposition of assets of any district
26 authorized by Section 59, Article XVI, Texas Constitution.

27 ARTICLE IV. GENERAL FINANCIAL MATTERS

1 SECTION 4.01. PROCEDURE FOR PAYMENT. A warrant for the
2 payment of money by the authority may be drawn and signed by the
3 president and the secretary-treasurer if the account under which
4 the payment is to be made results from a contract made by the board
5 and is ordered paid by the board.

6 SECTION 4.02. RECORDS RELATING TO MONEY. The
7 secretary-treasurer shall:

8 (1) receive and give a receipt for all money received
9 by the authority; and

10 (2) keep records of all money received and spent by the
11 authority.

12 SECTION 4.03. FILING OF AUDIT. In addition to copies of the
13 annual audit of the authority that are filed as required by Section
14 49.194, Water Code, a copy shall be filed with the depository of the
15 authority and the office of the auditor.

16 ARTICLE V. BONDS

17 SECTION 5.01. BOND PROVISIONS. (a) For the purpose of
18 providing funds for purchasing or otherwise providing works,
19 plants, facilities, or appliances necessary to the accomplishment
20 of the purposes authorized by this Act, and for the purpose of
21 carrying out any other power conferred by this Act, the authority
22 may borrow money and issue negotiable bonds.

23 (b) A bond issued under this section may be:

24 (1) sold for cash, at a public or private sale, at a
25 price determined by the board;

26 (2) issued on terms determined by the board in
27 exchange for property of any kind or any interest in property that

1 the board determines necessary or convenient for any corporate
2 purpose; or

3 (3) issued to refund bonds issued at any time under
4 this Act.

5 (c) The issuance of bonds must be authorized by resolution
6 of the board, and the bonds must mature, serially or otherwise, in
7 not more than 50 years from their date of issuance.

8 (d) A resolution authorizing the issuance of bonds may
9 contain provisions that become part of the contract between the
10 authority and the purchasers and subsequent holders of the bonds:

11 (1) reserving the right to redeem the bonds at the time
12 or times, in the amounts, and at the prices provided;

13 (2) providing for the setting aside of sinking funds
14 or reserve funds and the regulation and disposition of those funds;

15 (3) pledging, to secure the payment of the principal
16 of and interest on the bonds and the sinking fund or reserve fund
17 payments agreed to be made with respect to the bonds, all or any
18 part of the gross or net revenues subsequently received by the
19 authority with respect to the property to be acquired or
20 constructed with the bonds or with proceeds of the bonds, or all or
21 any part of the gross or net revenues subsequently received by the
22 authority from any source;

23 (4) prescribing the purposes to which the bonds or any
24 bonds later issued, or the proceeds of the bonds, may be applied;

25 (5) agreeing to set and collect rates and charges
26 sufficient to produce revenues that are adequate to pay the items
27 specified in any resolution or resolutions authorizing any bonds,

1 and prescribing the use and disposition of all revenues;

2 (6) prescribing limitations on the issuance of
3 additional bonds and on all agreements that may be made with the
4 purchasers and successive holders of the bonds;

5 (7) relating to the construction, extension,
6 improvement, operation, maintenance, depreciation, replacement,
7 and repair of the properties of the authority and the carrying of
8 insurance on all or any part of the property covering loss or damage
9 or loss of use and occupancy resulting from specified risks;

10 (8) fixing the procedure, if any, by which, if the
11 authority desires, the terms of any contract with the holders of
12 bonds may be amended or abrogated and setting the amount of bonds
13 the holders of which must consent to amendment or abrogation, and
14 the manner in which the consent shall be evidenced;

15 (9) providing for the execution and delivery by the
16 authority to a bank or trust company authorized by law to accept
17 trusts, or to the United States or any office or agency of the
18 United States, of indentures or agreements authorized to be made
19 with or for the benefit of the holders of the bonds and other
20 provisions that may be contained in the indentures or agreements;
21 or

22 (10) making any other provisions, not inconsistent
23 with provisions of this Act, that the board may approve.

24 SECTION 5.02. DEED OF TRUST OR MORTGAGE LIEN. Bonds, within
25 the discretion of the board, may be additionally secured by a deed
26 of trust or mortgage lien on physical properties of the authority,
27 and all franchises, easements, water rights and appropriation

1 permits, leases, contracts, and all rights appurtenant to the
2 properties, vesting in the trustee power to sell the properties for
3 the payment of the indebtedness, power to operate the properties,
4 and all other powers and authority for the further security of the
5 bonds.

6 SECTION 5.03. ELECTION FOR REVENUE BONDS NOT REQUIRED. The
7 authority may issue bonds payable solely from revenues without an
8 election.

9 SECTION 5.04. LIMITATIONS ON AUTHORITY TO ISSUE BONDS. The
10 authority may not issue bonds or create indebtedness that would in
11 any way be payable from ad valorem taxes levied by the authority on
12 property within the authority.

13 SECTION 5.05. BONDS EXEMPT FROM TAXATION. Bonds and the
14 interest on bonds issued under this Act are exempt from taxation,
15 except inheritance taxes, by this state or by any municipal
16 corporation, county, or other political subdivision or taxing
17 district of this state.

18 SECTION 5.06. FULL AUTHORITY. The authority set out in this
19 Act for the authorization and issuance of bonds is in addition to,
20 and not in lieu of, the authority otherwise established under
21 general law and may not be construed as a limitation on, or a
22 modification of, general law providing for authorization and
23 issuance of bonds, notes, and other forms of obligations. Nothing
24 in this Act may be construed as affecting any existing contract,
25 bond, note, or other obligation of the authority or any indenture,
26 covenant, mortgage, or other agreement relating to them.

27 ARTICLE VI. RIO GRANDE WATERMASTER

1 SECTION 6.01. Subchapter G, Chapter 11, Water Code, is
2 amended by adding Section 11.3271 to read as follows:

3 Sec. 11.3271. POWERS AND DUTIES OF RIO GRANDE WATERMASTER;
4 DELIVERY OF WATER DOWN BANKS AND BED OF RIO GRANDE. (a) This
5 section applies only to the watermaster with jurisdiction over the
6 Rio Grande and the water division for which that watermaster is
7 appointed.

8 (b) The watermaster shall divide the water of the streams or
9 other sources of supply of the division in accordance with the
10 adjudicated water rights.

11 (c) The watermaster shall regulate or cause to be regulated
12 the controlling works of reservoirs and diversion works in time of
13 water shortage, as is necessary because of the rights existing in
14 the streams of the division, or as is necessary to prevent the waste
15 of water or its diversion, taking, storage, or use in excess of the
16 quantities to which the holders of water rights are lawfully
17 entitled.

18 (d) The watermaster may regulate the distribution of water
19 from any system of works that serves users whose rights have been
20 separately determined.

21 (e) The watermaster's duties do not include activities that
22 relate to other programs of the commission, except as provided by
23 this section. The watermaster's duties shall include activities
24 that relate to situations of imminent threat to public health and
25 safety or the environment. The commission shall adopt rules:

26 (1) defining situations of imminent threat under this
27 section; and

1 (2) addressing the watermaster's duties in response to
2 terrorism.

3 (f) The watermaster may store in a reservoir for release at
4 a later time water in transit that is being conveyed down the banks
5 and bed of the Rio Grande under a permit issued by the commission
6 and in accordance with rules prescribed by the commission. In this
7 section, "water in transit" means privately owned water, not
8 including state water, that a person has pumped from an underground
9 reservoir and that is in transit between the point of discharge into
10 the river and the place of use or the point of diversion by a person
11 who has contracted with the owner of the water to purchase the
12 water. The contract must specify that the contract is for the
13 purchase and delivery of a specified amount of water less the
14 carriage losses incurred in transit, as described and measured
15 according to commission rules.

16 (g) The watermaster may store water under Subsection (f)
17 only if the storage does not hinder the ability of any other holders
18 of Rio Grande surface water rights to store the maximum authorized
19 capacity in a reservoir as specified by commission rules and
20 relevant permits, certified filings, or certificates of
21 adjudication.

22 (h) Before granting a permit to convey water down the banks
23 and bed of the Rio Grande, the commission shall adopt rules that
24 provide for the methods and procedures by which the watermaster
25 shall account for any discharge, delivery, conveyance, storage,
26 diversion, or associated loss of water conveyed down the banks and
27 bed of the Rio Grande. A permit to convey water down the banks and

1 bed of the Rio Grande may not allow the permit holder to share in any
2 beneficial state water inflows into the Rio Grande. The permit
3 holder is entitled to convey only the amount of water specified in
4 the permit, less the carriage losses incurred in transit, as
5 described and measured according to commission rules. A rule
6 adopted by the commission under this subsection must be consistent
7 with the Treaty Relating to the Utilization of the Waters of the
8 Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from
9 Fort Quitman, Texas, to the Gulf of Mexico, concluded by the United
10 States and the United Mexican States on February 3, 1944, and with
11 any minute order adopted by the International Boundary and Water
12 Commission.

13 (i) In considering an application for a permit to convey
14 water down the banks and bed of the Rio Grande, the commission shall
15 consider the quality of the water to be conveyed. The commission
16 may not issue a permit if it determines that the water to be
17 conveyed would degrade the water quality of the Rio Grande.

18 (j) Notwithstanding any other law, the watermaster is the
19 official recorder for all instruments, including deeds, deeds of
20 trust, financing statements, security agreements, and liens, that
21 the commission authorizes or requires to be filed in connection
22 with water rights relating to water in the lower, middle, or upper
23 basin of the Rio Grande that are subject to a permit, certified
24 filing, or certificate of adjudication. An instrument shall be
25 filed with the watermaster under this subsection in the same manner
26 as required by other law for the same type of instrument. The
27 filing of an instrument under this subsection results in the same

1 legal and administrative status and consequences as a filing under
2 other law for the same type of instrument. An instrument filed
3 under this subsection shall be construed by a court, financial
4 institution, or other affected person in the same manner as an
5 instrument of the same type that is filed under other law. The
6 watermaster may charge and collect a fee for the recordation of
7 instruments under this subsection in the same amount as the fee
8 collected by the county clerk of Cameron County for the recordation
9 of similar instruments. The commission by rule shall prescribe the
10 procedures necessary for the proper implementation of this
11 subsection, including reasonable transition provisions, if
12 appropriate.

13 (k) This section does not apply to the Rio Grande above the
14 Fort Quitman Dam.

15 ARTICLE VII. EFFECTIVE DATE; TRANSITION

16 SECTION 7.01. EFFECTIVE DATE. This Act takes effect
17 September 1, 2003.

18 SECTION 7.02. As soon as practicable after September 1,
19 2003, the Texas Commission on Environmental Quality shall adopt
20 rules necessary for the implementation of Section 11.3271, Water
21 Code, as added by this Act, and shall expedite any application for a
22 permit for the delivery of water down the banks and bed of the Rio
23 Grande under Section 11.042, Water Code.