

By: Fraser S.B. No. 1935
(In the Senate - Filed April 29, 2003; April 30, 2003, read first time and referred to Committee on Natural Resources; May 9, 2003, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; May 9, 2003, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1935 By: Fraser

A BILL TO BE ENTITLED
AN ACT

relating to the law governing the Brazos River Authority and the law governing the Lower Colorado River Authority.

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

SECTION 1. The Water Code is amended by adding Title 6 to read as follows:

TITLE 6. SURFACE WATER AUTHORITIES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 201. GENERAL PROVISIONS

Sec. 201.001. DEFINITION. In this title, "commission" means the Texas Commission on Environmental Quality.

[Chapters 202 to 220 reserved for expansion]

SUBTITLE B. LOCAL LAW SURFACE WATER AUTHORITIES

CHAPTER 221. BRAZOS RIVER AUTHORITY

Sec. 221.001. CREATION. (a) A conservation and reclamation district to be known as the "Brazos River Authority" is created. The authority is a river authority, a governmental agency, a municipality, and a body politic and corporate.

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

(c) The authority may exercise the powers expressly granted by Section 59, Article XVI, Texas Constitution, to districts created to conserve, control, and utilize to beneficial service the storm waters and floodwaters of the rivers and streams of the state, as well as those powers that may be contemplated and implied by the purposes of that provision of the constitution and that are conferred by general law and the provisions of this chapter. In addition, the authority may discover, develop, and produce groundwater in the Brazos River basin for the use of its customers.

(d) The authority may exercise all the rights and powers of an independent governmental agency, a municipality, and a body politic and corporate to formulate plans deemed essential to its operation and for its administration in the control, storing, preservation, and distribution for all useful purposes of the storm waters and floodwaters of the Brazos River and its tributary streams.

(e) The authority may exercise the same authority and power of control and regulation over the storm waters and floodwaters of the Brazos River and its tributaries as may be exercised by the state, subject to the provisions of the constitution and the acts of the legislature.

Sec. 221.002. DEFINITIONS. In this chapter:

(1) "Authority" means the Brazos River Authority.

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

(3) "Director" means a member of the board.

Sec. 221.003. TERRITORY. The territory of the authority comprises the watershed of the Brazos River, as determined by rule of the Texas Water Development Board, except the portions lying within Freestone, Leon, and Madison counties.

Sec. 221.004. POWERS. (a) The authority may exercise, in addition to all the general powers vested by the constitution and statutes in a governmental agency and body politic and corporate for the greatest practicable measure of conservation and beneficial

utilization of storm waters, floodwaters, and unappropriated flow waters, the powers of control and employment of the floodwaters, storm waters, unappropriated flow waters, and groundwater of the authority in the manner and for the purposes provided by this section.

(b) The authority may provide, through all practical and legal means, for the control and the coordination of the regulation of the waters of the watershed of the Brazos River and its tributary streams as a unit.

(c) The authority may provide, by adequate organization and administration, for the preservation of the equitable rights of the people of the different sections of the watershed area in the beneficial use of storm waters, floodwaters, and unappropriated flow waters of the Brazos River and its tributary streams.

(d) The authority may provide for storing, controlling, and conserving storm waters, floodwaters, and unappropriated flow waters of the Brazos River and its tributaries, preventing the escape of those waters without the maximum of public service, preventing the devastation of lands by recurrent overflows, and protecting life and property in the watershed area from uncontrolled floodwaters.

(e) The authority may provide for the conservation of waters essential for the domestic uses of the people of the watershed of the Brazos River and its tributaries, including all necessary water supplies for municipalities.

(f) The authority may provide for the irrigation of lands in the watershed of the Brazos River and its tributary streams where irrigation is required for agricultural purposes, or may be considered helpful to more profitable agricultural production, and provide for the equitable distribution of storm waters, floodwaters, and unappropriated flow waters to the regional potential requirements for all uses. Plans and works provided by the authority, and works provided under the authorization of the authority, should give primary consideration to the necessary and potential needs for water by or within the areas constituting the watershed of the Brazos River and its tributary streams.

(g) The authority may provide for the better encouragement and development of drainage systems and provisions for drainage of lands in the valleys of the Brazos River and its tributary streams needing drainage for profitable agricultural production and drainage for other lands in the watershed area of the authority requiring drainage for the most advantageous use.

(h) The authority may provide for the conservation of all soils against destructive erosion and for the prevention of increased flood danger caused by destructive soil erosion.

(i) The authority may provide for controlling and making available for employment floodwaters, storm waters, and unappropriated flow waters in the development of commercial and industrial enterprises in all sections of the watershed area of the authority.

(j) The authority may provide for the control, storage, and employment of floodwaters, storm waters, and unappropriated flow waters in the development and distribution of hydroelectric power, where this use may be economically coordinated with other and superior uses and subordinated to the uses declared by law to be superior.

(k) The authority may provide for each purpose for which floodwaters, storm waters, and unappropriated flow waters, when controlled and conserved, may be used in the performance of a useful service as contemplated and authorized by the provisions of the constitution and the public policy it declares.

(l) The authority may provide for the development of groundwater and may make groundwater available for use for domestic, municipal, irrigation, commercial, and industrial purposes.

(m) This chapter does not confer on the authority any power under Chapter 36 to regulate the groundwater of other landowners.

(n) When producing groundwater, the authority is subject to all laws, regulations, and rules relating to groundwater, including

the rules of a groundwater conservation district and the Central Carrizo-Wilcox Coordinating Council.

(o) The authority may not transport or assist in the transport of groundwater pumped in the basin outside the Brazos River basin.

Sec. 221.005. LIMITATION OF AUTHORITY; STATE SUPERVISION. The powers and duties granted to the authority by this chapter are subject to all legislative declarations of public policy in the maximum utilization of the storm waters, floodwaters, and unappropriated flow waters of the Brazos River watershed and developed groundwater of the Brazos River basin for the purposes for which the authority is created, as expressed and indicated in this chapter, and subject to the continuing rights of supervision by the state.

Sec. 221.006. DAMS AND RESERVOIRS; WATER SUPPLY CONTRACTS. (a) The authority may construct, acquire, equip, acquire storage rights at, and operate dams and reservoirs that, in the opinion of the board, are useful in carrying out the powers conferred on the authority by this chapter, regardless of whether a dam is designed to serve a single purpose or multiple purposes.

(b) The authority may provide water supply lines and water purification and pumping facilities.

(c) The authority may execute contracts with municipalities in the state substantially in the manner prescribed by Section 402.020, Local Government Code, for districts organized or created under Section 59, Article XVI, Texas Constitution, and may execute water supply contracts with other users of water.

Sec. 221.007. PRIORITY OF RIGHTS. This chapter does not change any existing priority of right under the laws of this state to the use of waters of this state, including any rights of municipalities that maintain and use storage structures in the bed of the Brazos River or its tributaries.

Sec. 221.008. BOND PROVISIONS. (a) Bonds may be: (1) sold for cash, at public or private sale, and at the price the board determines;

(2) issued on the terms the board determines in exchange for property of any kind, real, personal, or mixed, or any interest in property, that the board determines necessary or convenient for any corporate purpose; or

(3) issued to refund bonds issued at any time under authority of this chapter.

(b) Bonds must be authorized by resolution of the board.

(c) A resolution authorizing bonds may contain provisions that are part of the contract between the authority and the purchasers and subsequent holders of the bonds:

(1) reserving the right to redeem the bonds at the time, in the amount, and at the price provided;

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

(3) pledging, to secure the payment of the principal of and interest on the bonds and the sinking fund or reserve fund payments agreed to be made with respect to the bonds, all or any part of the gross or net revenues subsequently received by the authority with respect to the property, real, personal, or mixed, to be acquired or constructed with the bonds or with proceeds of the bonds, or all or any part of the gross or net revenues subsequently received by the authority from any source;

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

(5) agreeing to set and collect rates and charges sufficient to produce revenues that are adequate to pay the items specified in any resolution or resolutions authorizing any bonds, and prescribing the use and disposition of all revenues;

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

(7) relating to the construction, extension, improvement, operation, maintenance, depreciation, replacement, and repair of the properties of the authority and the carrying of

insurance on all or any part of the property covering loss or damage or loss of use and occupancy resulting from specified risks;

(8) establishing the procedure, if any, by which, if the authority so desires, the terms of any contract with the bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to such amendment or abrogation, and the manner in which the consent is evidenced;

(9) providing for the execution and delivery by the authority to a bank or trust company authorized by law to accept trusts, or to the United States or any office or agency of the United States, of indentures or agreements authorized to be made with or for the benefit of the bondholders and any other provisions contained in the indentures or agreements; and

(10) making other provisions, not inconsistent with this chapter, that the board approves.

Sec. 221.009. BOARD OF DIRECTORS; BONDS; QUORUM; OFFICERS.

(a) The board consists of 21 members. Members of the board and their successors serve staggered terms of six years and until their successors are designated and have qualified. The terms of seven members of the board expire on February 1 of each odd-numbered year.

(b) The governor shall appoint the directors at large with the advice and consent of the senate. Within 60 days after appointment, each director shall take and subscribe an oath of office similar to the oaths administered to county commissioners and shall execute bond in the amount of \$5,000, payable to the authority. The premium on the bond shall be paid by the authority. The bond, after being recorded in the official bond records of the county in which the authority maintains its office, shall be deposited with a depository selected and approved for the deposit of the funds of the authority.

(c) A vacancy occurring on the board shall be filled by appointment of the governor with the advice and consent of the senate.

(d) Eleven members of the board constitute a quorum to transact business.

(e) The governor shall designate a director as the presiding officer of the board to serve in that capacity at the pleasure of the governor. The board shall elect from among its members an assistant presiding officer and a secretary. The board shall appoint a treasurer. The treasurer shall furnish a bond in an amount equal to 75 percent of the amount of money estimated to be on hand during the year, not to exceed \$100,000.

Sec. 221.010. CREATION OF MASTER DISTRICT; WATER CONTROL AND IMPROVEMENT DISTRICT. A master district is created having all the powers, duties, and functions, and subject to applicable and practicable procedures for those districts, to accomplish the purposes of this chapter, as provided by Chapter 49 and the provisions of this code applicable to water control and improvement districts.

Sec. 221.011. BOND ELECTION REQUIRED. The authority may not issue bonds or incur any form of continuing obligation or indebtedness payable from ad valorem taxes for purposes of effecting improvements comprehended in the plan of organization and administration of the authority, or incur any indebtedness in the form of a continuing charge on lands or other physical properties within the authority, unless the proposition has been submitted to the qualified voters of the authority, or in appropriate cases the qualified voters of a defined area within the authority, and is approved by a majority of the electors voting on the proposition.

Sec. 221.012. ADDITIONAL POWERS AND DUTIES. (a) The authority is a district and a river authority as defined by Chapter 30. All the provisions of Chapter 30 are applicable to the authority.

(b) As used in this section:

(1) "Person" means any individual, partnership, corporation, public utility, or other private entity or any public agency.

(2) "Public agency" means an authority, district, municipality or other political subdivision, joint board, or other

public agency created and operating under the laws of this state and any entity created to operate or act on behalf of a public agency.

(c) The authority and all persons may enter into contracts with each other, in any manner and on terms to which the parties agree, with respect to any power, function, facility, or service that the authority is authorized by law to provide or finance. Public agencies may use and pledge any available revenues for and in the payment of amounts due under a contract as an additional source of payment of the contract and may covenant with respect to available revenues to assure the availability of the revenues when required. In this subsection, "revenues" does not mean or include revenues from ad valorem taxes levied and collected by a public agency or the proceeds from the sale or refunding of bonds of a public agency that are to be wholly or partially paid from ad valorem taxes levied and collected by the public agency unless the use or pledge of the tax revenues or bond proceeds is approved by the qualified voters of the public agency at an election called for the purpose of levying taxes or issuing or refunding bonds, or both, for the purpose of using or pledging their revenues or proceeds under contracts entered into under this subsection.

(d) A public agency may set, charge, and collect fees, rates, charges, rentals, and other amounts for a service or facility provided by a utility operated by the public agency, or provided under or in connection with a contract with the authority, from the inhabitants of the authority or from any users or beneficiaries of the utility, service, or facility, including:

- (1) water charges;
- (2) sewage charges;
- (3) solid waste disposal system fees and charges, including garbage collection or handling fees; and
- (4) other fees or charges.

(e) A public agency may use and pledge the fees, rates, charges, rentals, and other amounts authorized by Subsection (c) to make payments to the authority required under a contract with the authority and may covenant to do so in amounts sufficient to make all or any part of the payments to the authority when due. If the parties agree in the contract, the payments shall constitute an expense of operation of any facility or utility operated by the public agency.

(f) The authority, acting through the board, may carry out any activities and acquire, purchase, construct, own, operate, maintain, repair, improve, or extend and may lease or sell, on terms and conditions, including rentals or sale prices, on which the parties agree, all works, improvements, facilities, plants, buildings, structures, equipment, and appliances, and all real and personal property, or any interest in real or personal property, related to the works, improvements, facilities, plants, buildings, structures, equipment, and appliances, that are incident to or necessary in carrying out or performing any power or function of the authority under this section.

(g) The authority may issue bonds with respect to the acquisition, purchase, construction, maintenance, repair, improvement, and extension of works, improvements, facilities, plants, buildings, structures, appliances, and property for the purpose of exercising any of its powers and functions under this section in the manner provided by this chapter or any other applicable law.

(h) The authority may issue revenue bonds to pay for the costs of feasibility studies for proposed projects of the authority, including engineering, planning and design, and environmental studies. The authority may include in any revenue bond issue the funds to operate and maintain, for a period not to exceed two years after completion, the facilities acquired or constructed through the revenue bond issue.

(i) If bonds issued by the authority recite that they are secured by a pledge of payments under a contract, a copy of the contract and the proceedings relating to the contract may be submitted to the attorney general along with the bonds. If the attorney general finds that the bonds have been authorized and the

contract has been made and entered into in accordance with law, the attorney general shall approve the bonds and the contract, and after the approval, the bonds and the contract are incontestable in any court or other forum for any reason and are valid and binding in accordance with their terms and provisions for all purposes.

(j) The provisions of Chapters 618, 1201, 1204, 1207, and 1371, Government Code, are applicable to bonds issued by the authority.

(k) This section is wholly sufficient authority for the issuance of bonds, the execution of contracts, and the performance of other acts and procedures authorized by this section by the authority and all persons, including public agencies, without reference to any other provision of law or any restriction or limitation contained in those provisions, except as specifically provided by this section. To the extent of any conflict or inconsistency between this section and any other law, including any charter of a home-rule municipality, this section shall prevail and control. The authority and all persons, including public agencies, may use any law not in conflict with this section to the extent convenient or necessary to carry out any power or authority, expressed or implied, granted by this section.

Sec. 221.013. DISPOSITION OF PROPERTY. (a) Nothing in this chapter shall be construed as authorizing the authority, and it is not authorized, to mortgage or otherwise encumber any of its property of any kind, real, personal, or mixed, or any interest in property, or to acquire any property or interest subject to a mortgage or conditional sale; provided, however, that this section shall not be construed as preventing the pledging of the revenues of the authority as provided by this chapter.

(b) Nothing in this chapter shall be construed as authorizing the sale, release, or other disposition of property of any kind, real, personal, or mixed, or any interest in property, by the authority or through any court proceedings or otherwise; provided, however, that the authority may sell for cash any property or interest if the board by affirmative vote of 11 of its members determines that the property or interest is not necessary to the business of the authority and approves the terms of the sale. Except by sale as expressly authorized by this section, authority property or interest may not come into the ownership or control, directly or indirectly, of any person, firm, or corporation other than a public authority created under the laws of the state.

(c) All authority property is exempt from forced sale, and nothing in this chapter authorizes the sale of any of the property of the authority under a judgment rendered in a suit, and a sale of that kind is prohibited.

(d) Notwithstanding any restrictions or provisions in this section or in this chapter, the authority, acting by a majority vote of the board, may construct or purchase, from any person, firm, or corporation (referred to in this subsection as "customer") with which the authority has contracted to sell hydroelectric power, transmission lines and other property used or to be used by the customer for the transmission of or in connection with power purchased or to be purchased from the authority. The authority may lease all or any portion of that property to the customer for all or a portion of the time during the term of the hydroelectric power purchase contract. The lease may contain provisions that are valid and enforceable giving the lessee the right to purchase from the authority all or any portion of the property at or within the time specified in the lease and for a price and on terms and conditions specified in the lease; provided, however, that the price may not be less than the depreciated value, determined in the manner prescribed in the lease, plus one percent of the original cost of the property.

Sec. 221.014. ACQUISITION OF PROPERTY; EMINENT DOMAIN. (a) The authority may acquire by purchase, lease, or gift or in any other manner and may maintain, use, and operate property of any kind, real, personal, or mixed, or any interest in property, within or outside the boundaries of the authority, necessary or convenient to the exercise of the powers, rights, privileges, and functions

7-1 conferred on the authority by this chapter.

7-2 (b) The authority may acquire, by purchase, condemnation,
 7-3 or otherwise, any property the board determines necessary to make
 7-4 effectual and practicable the construction and operation of all
 7-5 works, improvements, and services that are planned ultimately to be
 7-6 provided by the authority to accomplish any of the purposes for
 7-7 which the authority was created. The acquisition or condemnation
 7-8 may be either of the fee simple title or of a lesser title or an
 7-9 easement only, within the discretion of the board; provided,
 7-10 however, that a person may not be deprived of any defense available
 7-11 under the general law of eminent domain; and provided, further,
 7-12 that the authority may not acquire or operate a steam generating
 7-13 plant for the production and sale of electric energy and, except for
 7-14 the purpose of acquiring the necessary area below or above the
 7-15 anticipated high-water line of a reservoir, may not condemn any
 7-16 property of a rural electrification cooperative or other
 7-17 corporations engaged in the generation or sale of electric energy
 7-18 to the public.

7-19 (c) The authority may exercise the power of eminent domain
 7-20 for the purpose of acquiring by condemnation property of any kind,
 7-21 real, personal, or mixed, or any interest in property, within or
 7-22 outside the boundaries of the authority, other than property or an
 7-23 interest in property outside the boundaries of the authority owned
 7-24 by any body politic, that is necessary or convenient to the exercise
 7-25 of the powers, rights, privileges, and functions conferred on the
 7-26 authority by this chapter, in the manner provided by general law
 7-27 with respect to condemnation or, at the option of the authority, in
 7-28 the manner provided by statutes relative to condemnation by
 7-29 districts organized under general law under Section 59, Article
 7-30 XVI, Texas Constitution.

7-31 (d) In condemnation proceedings being prosecuted by the
 7-32 authority, the authority is not required to give bond for appeal or
 7-33 bond for cost.

7-34 (e) The authority may overflow and inundate any public lands
 7-35 and public property and may require the relocation of roads and
 7-36 highways in the manner and to the extent permitted to districts
 7-37 organized under general law under Section 59, Article XVI, Texas
 7-38 Constitution.

7-39 (f) If the authority, in the exercise of the power of
 7-40 eminent domain or power of relocation or any other power granted
 7-41 under this chapter, makes necessary the relocation, raising,
 7-42 rerouting, changing the grade, or altering the construction of any
 7-43 highway, railroad, electric transmission line, or pipeline, all
 7-44 necessary relocation, raising, rerouting, changing of grade, or
 7-45 alteration of construction shall be accomplished at the sole
 7-46 expense of the authority.

7-47 Sec. 221.015. CONTRACTS, GRANTS, AND LOANS. (a) The board
 7-48 may negotiate and contract with the federal government or with any
 7-49 of its agencies for grants, loans, and advancements from the United
 7-50 States for the furtherance of any purpose set forth in this chapter.

7-51 (b) The authority may receive and accept grants, loans, or
 7-52 allotments from the United States and others for furtherance of any
 7-53 of the purposes set forth in this chapter.

7-54 (c) An opinion from the attorney general as to whether a
 7-55 grant, loan, or allotment has been received by the authority from
 7-56 the United States or others shall be authority for the action of any
 7-57 person charged with any duty contingent on such grant, loan, or
 7-58 allotment.

7-59 Sec. 221.016. RULES. The board may make all necessary rules
 7-60 for the government and control of the authority not inconsistent
 7-61 with the constitution and laws of the state.

7-62 Sec. 221.017. USE OF BRAZOS RIVER AND TRIBUTARIES. In the
 7-63 prosecution of the plans for which the authority has been created
 7-64 for the storing, controlling, conserving, and distributing for
 7-65 useful purposes of the storm waters, floodwaters, and
 7-66 unappropriated flow waters of the Brazos River watershed and
 7-67 developed groundwater from the Brazos River basin for the use of its
 7-68 customers, the authority may use the bed and banks of the Brazos
 7-69 River and its tributary streams for any and all purposes necessary

to the accomplishment of the plans of the authority.

Sec. 221.018. DEFAULT PROCEDURES. (a) A resolution authorizing the issuance of bonds and any indenture or agreement entered into under the resolution may include provisions regarding a default on the:

(1) payment of the interest on any bonds as the interest becomes due and payable;

(2) payment of the principal of any bonds as they become due and payable, whether at maturity, by call for redemption, or otherwise; or

(3) performance of an agreement made with the purchasers or successive holders of any bonds.

(b) If a default described by Subsection (a) has occurred and has continued for a period, if any, prescribed by the resolution authorizing the issuance of the bonds, the trustee under an indenture entered into with respect to the bonds authorized by the resolution, or, if there is no indenture, a trustee appointed in the manner provided in the resolution by the holders of 25 percent in aggregate principal amount of the bonds authorized by the resolution and then outstanding may, and on the written request of the holders of 25 percent in aggregate principal amount of the bonds authorized by the resolution and then outstanding shall, in the trustee's own name but for the equal and proportionate benefit of the holders of all the bonds, and with or without having possession of the bonds:

(1) by mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders;

(2) bring suit on the bonds or the appurtenant coupons;

(3) by action or suit in equity, require the board to act as if it were the trustee of an express trust for the bondholders;

(4) by action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders; or

(5) after such notice to the board as the resolution may provide, declare the principal of all of the bonds due and payable, and if all defaults have been made good, then with the written consent of the holders of 25 percent in aggregate principal amount of the bonds then outstanding, annul the declaration and its consequences; provided, however, that the holders of more than a majority in principal amount of the bonds authorized by the resolution and then outstanding shall, by written instrument delivered to the trustee, have the right to direct and control any and all actions taken or to be taken by the trustee under this section.

(c) A resolution, indenture, or agreement relating to bonds may provide that in a suit, action, or proceeding under this section, the trustee, whether or not all of the bonds have been declared due and payable and with or without possession of any of the bonds, is entitled as of right to the appointment of a receiver who may enter and take possession of all or part of the properties of the authority, operate and maintain the properties, and set, collect, and receive rates and charges sufficient to provide revenues adequate to pay the items specified in the resolution authorizing bonds and the costs and disbursements of the suit, action, or proceeding and apply that revenue in conformity with this chapter and the resolution authorizing the bonds.

(d) In a suit, action, or proceeding by a trustee or receiver, if any, under this section, counsel fees and expenses of the trustee and of the receiver, if any, constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge on any revenue pledged to secure the payment of the bonds.

(e) Subject to the provisions of the constitution, the courts of McLennan County have jurisdiction of a suit, action, or proceeding under this section by a trustee on behalf of the bondholders and of all proceedings involved in the suit, action, or proceeding.

(f) In addition to the powers specifically provided by this section, the trustee has all powers necessary or appropriate for the exercise of the powers specifically provided or incident to the general representation of the bondholders in the enforcement of their rights.

Sec. 221.019. LIMITED LIABILITY FOR AQUATIC HERBICIDE APPLICATION. (a) In this section, "commercially licensed aquatic herbicide applicator" means a person who holds a commercial applicator license issued by the Department of Agriculture under Chapter 76, Agriculture Code, that authorizes the application of aquatic herbicides.

(b) Except as provided by Chapter 12, Parks and Wildlife Code, an authority employee holding a noncommercial aquatic herbicide applicator license or a commercially licensed aquatic herbicide applicator working under contract with the authority is not liable for damages in excess of \$2 million for personal injury, property damage, or death resulting from the application by the applicator of aquatic herbicide in compliance with applicable law and the terms of the license or permit.

CHAPTER 222. LOWER COLORADO RIVER AUTHORITY

Sec. 222.001. CREATION. (a) A conservation and reclamation district to be known as the "Lower Colorado River Authority" is created. The authority is a governmental agency and a body politic and corporate.

(b) The authority is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, including the control, storing, preservation, and distribution of the waters of the Colorado River and its tributaries within the boundaries of the authority for irrigation, generation of electric energy and power, and other useful purposes; the reclamation and irrigation of arid, semiarid, and other lands needing irrigation; the development of parks on lands owned or acquired by the authority; and the conservation and development of the forests, water, and electric power in this state.

(c) Nothing in this chapter or in any other law shall be construed as authorizing the authority to levy or collect taxes or to create any indebtedness payable out of taxes or in any way to pledge the credit of this state.

Sec. 222.002. DEFINITIONS. In this chapter:

(1) "Authority" means the Lower Colorado River Authority.

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

(3) "Director" means a member of the board.

Sec. 222.003. TERRITORY. The authority consists of the territory included within the boundaries of the counties of Blanco, Burnet, Llano, Travis, Bastrop, Fayette, Colorado, Wharton, San Saba, and Matagorda.

Sec. 222.004. POWERS AND DUTIES. (a) Except as expressly limited by this chapter, the authority has all the powers, rights, privileges, and functions conferred by general law on any district or districts created under Section 59, Article XVI, Texas Constitution.

(b) The authority may control, store, and preserve, within the boundaries of the authority, the waters of the Colorado River and its tributaries and the lands of the authority for any useful purpose and may use, distribute, and sell those waters, within the boundaries of the authority or within the boundaries of the watershed that contributes inflow to the Colorado River below the intersection of Coleman, Brown, and McCulloch counties, for any such purpose.

(c) The authority may develop and generate water power and electric energy within the boundaries of the authority and may distribute and sell water power and electric energy, within or outside the boundaries of the authority.

(d) Within the boundaries of the authority, the authority may prevent or aid in the prevention of damage to person or property from the waters of the Colorado River and its tributaries.

(e) Within the boundaries of the authority, the authority

may forest and reforest and aid in the foresting and reforesting of the watershed area of the Colorado River and its tributaries, and the authority may prevent and aid in the prevention of soil erosion and floods within the watershed area.

(f) The authority may acquire by purchase, lease, or gift or in any other manner provided by law and may maintain, use, and operate property of any kind, real, personal, or mixed, or any interest in property, within or outside the boundaries of the authority that is necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on the authority by this chapter.

(g) The authority may acquire by condemnation property of any kind, real, personal, or mixed, or any interest in property, within or outside the boundaries of the authority, other than property or an interest in property outside the boundaries of the authority owned by a body politic, that is necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on the authority by this chapter. The authority shall exercise the condemnation power in the manner provided by general law with respect to condemnation or, at the option of the authority, in the manner provided by state law relating to condemnation by districts organized under general law under Section 59, Article XVI, Texas Constitution.

(h) Subject to the provisions of this chapter, the authority may sell or otherwise dispose of property of any kind, real, personal, or mixed, or any interest in the property, that is not necessary to the conduct of the business of the authority.

(i) The authority may overflow and inundate within the boundaries of the authority any public lands and public property and may require the relocation of roads, pipelines, transmission lines, railroads, cemeteries, and highways in the manner and to the extent permitted to districts organized under general law under Section 59, Article XVI, Texas Constitution.

(j) The authority may construct, extend, improve, maintain, and reconstruct, cause to be constructed, extended, improved, maintained, and reconstructed, and use and operate facilities of any kind necessary or convenient to the exercise of its powers, rights, privileges, and functions.

(k) The authority may sue and be sued in its corporate name.

(l) The authority may adopt and use a corporate seal.

(m) The authority may make bylaws for the management and regulation of its affairs.

(n) The authority may appoint officers, agents, and employees, prescribe their duties, and set their compensation.

(o) The authority may make contracts and execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on the authority by this chapter or permitted by general law.

(p) The authority may borrow money for its corporate purposes on notes or other written evidence of indebtedness for a period not to exceed five years as may be authorized from time to time by an affirmative vote of 12 members of the board and repay the loans or indebtedness from the proceeds of bonds of the authority at the next bond offering. The authority may borrow money and accept grants from the United States, this state, or any corporation or agency created or designated by the United States or this state and, in connection with the loan or grant, may enter into an agreement that the United States, this state, or the corporation or agency requires. The authority may make and issue negotiable bonds for money borrowed in the manner provided by Sections 222.013 and 222.014 or other general law. This chapter does not authorize the issuance of any bonds, notes, or other evidences of indebtedness of the authority except as specifically provided by this chapter or other general law.

(q) The authority may provide for the study, correcting, and control of both artificial and natural pollution, including organic, inorganic, and thermal, of all groundwater or surface water of the Colorado River and its tributaries within the boundaries of the authority. The authority may adopt by ordinance

rules with regard to the pollution, both artificial and natural, and possesses police power to enforce its rules. The authority may provide a reasonable penalty for the violation of any rule. The penalty is cumulative of any penalties fixed by the general law of this state. A penalty under this subsection may not exceed the limit for penalties provided by Section 49.004. An ordinance enacted under this section may not be adopted in any county or counties outside the existing boundaries of the authority.

(r) As a necessary aid to the conservation, control, preservation, purification, and distribution of surface waters and groundwater of the Colorado River and its tributaries within the boundaries of the authority, the authority may construct, own, operate, maintain, or otherwise provide sewage gathering, treatment, and disposal services, including waste disposal services, and may make contracts regarding those services with the United States, this state, counties, municipalities, and others. The authority shall charge the actual cost of those services.

(s) The authority may develop and manage parks, recreational facilities, and natural science laboratories and may promote the preservation of fish and wildlife within the boundaries of the authority. The authority may negotiate contracts with any county, municipality, municipal corporation, person, firm, corporation, nonprofit organization, or state or federal agency for the operation and maintenance of any such park, recreational facility, or natural science laboratory. The preservation of fish and wildlife shall be in accordance with the rules of the Parks and Wildlife Commission. Notwithstanding any other provisions of this chapter, the board may charge and collect reasonable entrance, gate, or use fees for the development, management, and use of parks and recreational facilities developed in whole or in part by the authority.

(t) The authority may enter into agreements authorized by Chapter 163, Utilities Code, to acquire, install, construct, operate, enlarge and make additions to, and own and operate electric power and energy generating facilities as provided by that chapter, in joint ownership with others, either as cotenants or under any other arrangements that are approved by a three-fourths vote of the statutory membership of the board. In accordance with and subject to the terms of the agreements, if any, the authority may sell or otherwise dispose of any or all of its interest in the jointly owned electric power and generating facilities. This subsection does not apply to generating facilities or other property wholly owned by the authority.

(u) The authority may do any and all other acts or things necessary or convenient, including controlling the use of the surface of a lake or island located in the lake developed by the authority and levying a charge for the commercial use of the lake or island, to the exercise of all powers, rights, privileges, authority, or functions conferred on the authority by the constitution, this chapter, or any law.

(v) The authority may enter into contracts with this state through the Texas Building and Procurement Commission providing for direct sale by the authority of electrical power to this state for use in buildings or other facilities owned, leased, or rented by this state in Travis County.

Sec. 222.005. LIMITATIONS OF AUTHORITY. (a) The authority may not use for irrigation purposes any water under any permit or permits acquired from any other company or person unless the use is expressly authorized and granted to the authority by the commission or its predecessor agency under authority of law. In considering subsequent applications by the authority, the commission shall at all times consider the needs of the people living within and on lands lying within the watershed of the Colorado River and its tributaries above the authority.

(b) Notwithstanding any rights or permits issued by the commission or its predecessor agency that are held or acquired by the authority, the impounding and use of the floodwaters of the Colorado River or its tributaries for the generation of hydroelectric power by the authority or anyone who may succeed to

the rights and privileges conferred on the authority by this chapter are subject to the rights of a person, municipal corporation, or body politic that, under legal grant of authority, is impounding and putting to beneficial use the waters if the person, municipal corporation, or body politic:

(1) has received a permit for the use from the commission, or its predecessor agency; or

(2) is permitted by law to impound water for the purposes described by this subsection.

(c) Nothing in this chapter shall be construed to require a municipal corporation or body politic to surrender to the authority any rights described by this section to which it may be legally entitled.

(d) This chapter may not be construed to subject to condemnation by the authority or any successor, or by anyone who may succeed to the rights and privileges conferred on the authority by this chapter, any waters:

(1) impounded or to be impounded within or outside the authority under any law authorizing water to be impounded or under any permits granted to a municipal corporation or body politic; or

(2) impounded or permitted to be impounded or used outside the authority under permits legally granted to any person.

(e) Nothing in this chapter shall be construed as depriving any person or municipality of the right, legally granted, to impound the waters of the Colorado River or its tributaries for authorized beneficial uses or as repealing any law granting those rights to persons and municipalities.

(f) The rights of the authority to impound or use or sell the waters of the Colorado River and its tributaries for the generation of hydroelectric power are subordinate and inferior to the rights of:

(1) municipalities situated within the boundaries of the authority to build dams and impound floodwaters solely for municipal purposes;

(2) municipalities and bodies politic within the watershed of the Colorado River outside the authority to build dams or impound floodwaters for municipal purposes; and

(3) bodies politic within the watershed of the Colorado River to build dams and impound the floodwaters within the watershed of the Colorado River and its tributaries for domestic purposes inside and outside the boundaries of the authority.

(g) The title to any rights, properties, licenses, franchises, or permits acquired by the authority shall be subject to the limitations imposed by Subsection (f).

Sec. 222.006. BOARD OF DIRECTORS. (a) The powers, rights, privileges, and functions of the authority shall be exercised by the board. The board shall consist of 15 directors and shall include at least one director from each of the counties named in Section 222.003 except Travis County, which shall have two directors. Three directors shall be appointed at large from the counties served with electric power, other than the counties included in Section 222.003.

(b) A director appointed at large may not serve for a period of more than six consecutive years. A county other than a county included in Section 222.003 may not be represented on the board for more than six consecutive years. A county other than Travis County may not have two directors for a period greater than six consecutive years.

(c) All directors shall be appointed by the governor with the advice and consent of the senate for staggered terms of six years, with five members' terms expiring on February 1 of each odd-numbered year.

(d) Each director must be a resident and freehold property taxpayer of the county from which the director is appointed and must have been a resident and taxpayer of that county for not less than the two years preceding the director's appointment. Not more than two directors may be residents of the same county.

(e) A person is not eligible for appointment as a director if the person has, during the three years preceding the person's

13-1 appointment, been employed by an electric power and light company,
 13-2 a telephone company, or any other utility company.

13-3 (f) At the expiration of the term of a director, a successor
 13-4 shall be appointed by the governor with the advice and consent of
 13-5 the senate. Each director shall hold office until the expiration of
 13-6 the term for which the director was appointed and until a successor
 13-7 has been appointed and has qualified, unless removed sooner as
 13-8 provided by this section.

13-9 (g) A director may be removed by the governor for
 13-10 inefficiency, neglect of duty, or misconduct in office after at
 13-11 least 30 days' written notice of the charges against the director
 13-12 and an opportunity to be heard in person or by counsel at a public
 13-13 hearing.

13-14 (h) The governor shall appoint a person to fill a vacancy on
 13-15 the board for the unexpired term.

13-16 (i) Each director shall qualify by taking the official oath
 13-17 of office prescribed by the constitution or general laws of the
 13-18 state.

13-19 (j) Each director is entitled to receive fees of office of
 13-20 not more than \$150 per day and reimbursement of actual expenses
 13-21 incurred in accordance with Chapter 49. However, no director may be
 13-22 paid per diem in excess of 150 days in any one calendar year.

13-23 (k) Eight directors constitute a quorum at any meeting and,
 13-24 except as otherwise provided by this chapter or in the bylaws, all
 13-25 action may be taken by the affirmative vote of a majority of the
 13-26 directors present at any meeting, except that bonds, notes, or
 13-27 other evidence of indebtedness are subject to the requirements of
 13-28 Sections 222.004(p) and 222.013(f), and no amendment of the bylaws
 13-29 shall be valid unless authorized or ratified by the affirmative
 13-30 vote of at least eight directors, unless otherwise specifically
 13-31 provided by this chapter.

13-32 (l) The board is a state board as contemplated by Section
 13-33 30a, Article XVI, Texas Constitution.

13-34 Sec. 222.007. OFFICERS; GENERAL MANAGER; EMPLOYEES.
 13-35 (a) The governor shall designate a director as the presiding
 13-36 officer of the board to serve in that capacity at the pleasure of
 13-37 the governor. The board shall elect one of their number as an
 13-38 assistant presiding officer.

13-39 (b) The board shall select a secretary, who shall keep true
 13-40 and complete records of all proceedings of the board. Until the
 13-41 appointment of a secretary or in the event of the secretary's
 13-42 absence or inability to act, the board shall select a secretary pro
 13-43 tempore.

13-44 (c) The board shall select a general manager. The general
 13-45 manager is the chief executive officer of the authority.

13-46 (d) The board shall select a treasurer, who may also hold
 13-47 the office of secretary.

13-48 (e) The officers described in Subsections (b)-(d) have the
 13-49 powers and duties, hold office for the term, and are subject to
 13-50 removal in the manner as may be provided in the bylaws.

13-51 (f) The board shall set the compensation of the officers.
 13-52 The board may appoint the officers described in Subsections
 13-53 (b)-(d), agents, and employees, may set their compensation and term
 13-54 of office and the method by which they may be removed, and may
 13-55 delegate to them the power and duties it determines proper.

13-56 Sec. 222.008. DISBURSEMENT OF FUNDS; SURETY BONDS.

13-57 (a) The money of the authority may be disbursed only by checks,
 13-58 drafts, orders, or other instruments signed by the persons
 13-59 authorized by the bylaws or a resolution concurred in by no fewer
 13-60 than a majority of all the directors.

13-61 (b) The general manager, the treasurer, and all other
 13-62 officers, agents, and employees of the authority charged with the
 13-63 collection, custody, or payment of any funds of the authority must
 13-64 give bond conditioned on the faithful performance of their duties
 13-65 and an accounting for all funds and property of the authority coming
 13-66 into their hands.

13-67 (c) The bonds must be in a form and amount, and with a surety
 13-68 company authorized to do business in this state, approved by the
 13-69 board.

(d) The premiums on the bonds shall be paid by the authority and charged as an operating expense.

Sec. 222.009. OFFICE; RECORDS. (a) The domicile of the authority is in the city of Austin, Travis County, where the authority shall maintain its principal office in the charge of the general manager.

(b) The authority shall keep complete and accurate accounts conforming to approved methods of bookkeeping.

(c) The accounts and all contracts, documents, and records of the authority shall be kept at the principal office. The accounts and contracts shall be open to public inspection at all reasonable times.

(d) The board shall cause to be made and completed, within 90 days after the end of each fiscal year, an audit of the books of account and financial records of the authority for that fiscal year. The audit shall be made by an independent certified public accountant or firm of certified public accountants.

(e) Copies of a written report of the audit certified by the accountant or accountants must be placed and kept on file with the commission, with the comptroller, and at the principal office of the authority, and be open to public inspection at all reasonable times.

Sec. 222.010. CONFLICT OF INTEREST. The provisions of Chapter 171, Local Government Code, apply to conflicts of interest in the award of authority contracts.

Sec. 222.011. RATES AND CHARGES. (a) The board shall establish and collect rates and other charges for the sale or use of water, water connections, power, electric energy, or other services sold, furnished, or supplied by the authority. The fees and charges must be reasonable and nondiscriminatory and sufficient to produce revenues adequate to:

(1) pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) pay the interest on and principal of all bonds issued under this chapter as the interest and principal become due and payable;

(3) pay the principal and interest on any legal debt created by the authority;

(4) pay all sinking fund and reserve fund payments agreed to be made with respect to bonds and payable out of those revenues, as the payments become due and payable; and

(5) fulfill the terms of any agreements made with the bondholders or with any person on their behalf.

(b) Out of the revenues that may be received in excess of those required for the purposes specified in Subsection (a), the board may:

(1) establish a reasonable depreciation and emergency fund;

(2) retire, by purchase and cancellation or redemption, bonds issued under this chapter; or

(3) apply the excess revenues to any corporate purpose.

(c) The rates and charges of the authority may not be in excess of what is necessary to fulfill the obligations imposed on the authority by this chapter or other law. Nothing in this chapter shall be construed as depriving this state of its power to regulate and control fees or charges to be collected for the use of water, water connections, power, electric energy, or other service; provided, however, that this state pledges to and agrees with the purchasers and successive holders of the bonds and other written evidence of indebtedness issued under this chapter that this state will not limit or alter the power vested in the authority to establish and collect fees and charges that will produce revenues sufficient to pay the items specified in Subsection (a), or in any way impair the rights or remedies of creditors or bondholders, or of any person on their behalf, until the bonds and other written evidence of indebtedness, together with the interest on the bonds or indebtedness and the interest on unpaid installments of interest and all costs and expenses in connection with any action or

proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with the bonds are fully met and discharged.

Sec. 222.012. PAYMENT OF DEBTS. Any indebtedness, liability, or obligation of the authority for the payment of money, however entered into or incurred and whether arising from contract, implied contract, or otherwise, is payable solely:

(1) out of revenues received by the authority with respect to its properties, subject to any prior lien on the revenues conferred by any resolution or resolutions adopted as provided by this chapter authorizing the issuance of bonds; or

(2) if the board so determines, out of the proceeds of sale by the authority of bonds payable solely from those revenues.

Sec. 222.013. ISSUANCE OF BONDS. (a) The authority may issue bonds from time to time and for any purpose authorized by this chapter or other general law. If bonds of the authority are issued, except as otherwise provided under general law, the bonds:

(1) when sold, shall be sold for cash at public sale to the highest and best bidder, as determined by the board, and the interest cost of the money received for the bonds shall be computed to maturity in accordance with the method prescribed by the board in connection with the sale of the bonds;

(2) may be issued, on terms determined by the board in exchange for property of any kind, real, personal, or mixed, or any interest in property that the board determines necessary or convenient for any corporate purposes, provided that any property acquired through the exchange of bonds is certified in writing before the exchange as being of a value equal to or in excess of the par value of the bonds by an independent appraisal that is to be kept on file by the authority as a public record, with a copy filed with the state auditor;

(3) may be issued in exchange for like principal amounts of other obligations of the authority, matured or unmatured; or

(4) may be sold to this state or any agency of this state, the United States, or any agency or corporation created or designated by this state or the United States in exchange for cash equal in amount to the principal amount of the bonds sold and the interest cost of the money received for the bonds, computed to maturity in accordance with standard bond tables in general use by banks and insurance companies, as determined by the board.

(b) The proceeds from the sale of the bonds shall be deposited in one or more banks or trust companies and shall be paid out under terms and conditions not in conflict with the provisions of this chapter or other general law that are agreed on between the authority and the purchasers of the bonds.

(c) The proceeds of the bonds and any net operating revenues derived from the sale of electric power or water that may be available after paying the interest on outstanding bonds and the principal amount of the bonds and after setting aside sufficient funds for working capital, including a reasonable amount for contingencies, and setting aside funds for reserves to secure payment of principal of and interest on outstanding bonds, shall be used:

(1) to build and construct dams or other structures within the authority, on the Colorado River and its tributaries, for the impounding and storage of floodwater and surface water;

(2) to purchase and install in the dams on the Colorado River hydroelectric generators and other related facilities for the generation of hydroelectric power;

(3) for the construction of additional lines and the purchase and installation of additional equipment the board considers necessary or expedient to enable the authority to continue to meet the demand for electric power in the areas within the authority directly served by its transmission lines and distribution systems on January 1, 1975, and other areas within the service area served by the authority on January 1, 1975, that cannot receive comparable service from any other power source and to provide electric power to this state as provided by Section

222.004; provided, however, that no steam generating capacity shall be installed by the authority, except that the authority may acquire, install, construct, enlarge and make additions to, and operate one or more steam generating plants, the sum of whose aggregate capacity may not be more than 5,000 megawatts, to be located within the boundaries of either one or more of Colorado, Fayette, Bastrop, Travis, Blanco, Burnet, Llano, or San Saba counties and to be utilized for the purpose of serving the area directly served by the authority's transmission lines and distribution systems on January 1, 1975, and to provide electric power to this state as provided by Section 222.004;

(4) to own or acquire an interest in one or more steam generating plants at any location within or outside the authority, if the plant or plants are owned in conjunction with one or more other utilities, public, private, or municipal, provided that an interest owned or acquired by the authority shall be utilized for the sole purpose of providing electric power and energy only in the areas within the authority directly served by its transmission lines and distribution systems as they existed on January 1, 1975;

(5) for the purpose of building dams, levees, or other flood control structures between the city of Austin and the mouth of the Colorado River that are considered necessary and desirable by the board and for acquiring or installing facilities necessary to supply water for irrigation and other useful purposes within the counties composing the authority; and

(6) in aid of any soil conservation or soil reclamation projects within the authority that the board determines to be in the public interest.

(d) Nothing in this section shall be construed as establishing priorities as to uses of water that are contrary to the general laws of this state with reference to the water uses.

(e) Except as otherwise provided by general law, proceeds of bonds sold by the authority, and any net operating revenues that the board determines are not needed to carry out the projects set out in Subsections (c)(1), (2), and (3), to the extent not required by an outstanding trust indenture to be used to redeem outstanding bonds, shall be placed in a general revenue fund of the authority. Dams built on the Colorado River or on its tributaries shall be used for the purpose of impounding and storing floodwaters and surface waters.

(f) Bonds shall be authorized by resolution of the board concurred in by at least 12 of the members.

(g) Bonds shall bear the date or dates, mature at the time or times, bear interest at the rates, payable annually or semiannually, be in the denominations, be in the form, either coupon or registered, carry the registration privileges as to principal only or as to both principal and interest and as to exchange of coupon bonds for registered bonds or vice versa and exchange of bonds of one denomination for bonds of other denominations, be executed in the manner, and be payable at the place or places within or outside this state that the resolution may provide.

(h) A resolution authorizing bonds may contain provisions that are part of the contract between the authority and the holder of the bonds from time to time:

(1) reserving the right to redeem the bonds at the time or times, in the amounts, and at the prices, not exceeding 105 percent of the principal amount of the bonds, plus accrued interest, as may be provided;

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

(3) pledging, to secure the payment of the principal of and interest on the bonds and of the sinking fund or reserve fund payments agreed to be made with respect to the bonds, all or any part of the gross or net revenues received by the authority with respect to the property, real, personal, or mixed, acquired or constructed or to be acquired or constructed with the bonds or the proceeds of the bonds, or all or any part of the gross or net

revenues previously or thereafter received by the authority from any source;

(4) prescribing the purposes to which the bonds or any bonds issued later are to be applied;

(5) agreeing to set and collect rates and charges sufficient to produce revenues adequate to pay the items specified in Section 222.011(a) and prescribing the use and disposition of all revenues;

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

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

(8) setting the procedure, if any, by which, if the authority so desires, the terms of a contract with the bondholders may be amended or abrogated, the amount of bonds whose holders must consent to that amendment or abrogation, and the manner in which the consent may be given;

(9) providing for the execution and delivery by the authority, to a bank or trust company authorized by law to accept trusts, of indentures and agreements for the benefit of the bondholders setting forth all of the agreements authorized by this chapter to be made with or for the benefit of the bondholders and other provisions that are customary in those kinds of indentures or agreements; and

(10) making other provisions, not inconsistent with this chapter or other general law, that the board approves, provided that an agreement, contract, or commitment may not be made that, under any contingency, could or would result in the United States government or any of its agencies or bureaus claiming the right or privilege of controlling or managing the properties and facilities of the authority or the control or disposition of the water of the Colorado River or its tributaries; provided, however, that nothing in this chapter shall be construed as limiting or restricting the rights or powers as set out in Section 222.014 in the event of a default on the part of the authority; and provided further that nothing in this chapter is intended to prohibit compliance with existing federal regulations, if compliance with those regulations is done on the advice and approval of the attorney general.

Sec. 222.014. DEFAULT PROCEDURES. (a) A resolution authorizing the issuance of bonds and any indenture or agreement entered into under the resolution may include provisions regarding a default on:

(1) the payment of the interest on the bonds as the interest becomes due and payable;

(2) the payment of the principal of the bonds as they become due and payable, whether at maturity, by call for redemption, or otherwise; or

(3) the performance of an agreement made with the purchasers or successive holders of any bonds.

(b) If a default described by Subsection (a) has occurred and has continued for a period, if any, prescribed by the resolution authorizing the issuance of the bonds, the trustee under an indenture entered into with respect to the bonds authorized by the resolution, or, if there is no indenture, a trustee appointed in the manner provided in the resolution by the holders of 25 percent in aggregate principal amount of the bonds authorized by the resolution and then outstanding, shall, in the trustee's own name but for the equal and proportionate benefit of all of the bondholders, and with or without having possession of the bonds:

(1) by mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders, including the requirements of Section 222.011;

(2) bring suit on the bonds or the appurtenant coupons;

(3) by action or suit in equity, require the authority to act as if it were the trustee of an express trust for the bondholders;

(4) by action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders; or

(5) after such notice to the authority as the resolution may provide, declare the principal of all of the bonds due and payable, and if all defaults have been made good, then with the written consent of the holders of 25 percent in aggregate principal amount of the bonds then outstanding, annul the declaration and its consequences; provided, however, that the holders of more than a majority in principal amount of the bonds authorized by the resolution and then outstanding shall, by written instrument delivered to the trustee, have the right to direct and control any and all action taken or to be taken by the trustee under this section.

(c) A resolution, indenture, or agreement relating to bonds may provide that in a suit, action, or proceeding under this section, the trustee, whether or not all of the bonds have been declared due and payable and with or without possession of any of the bonds, is entitled as of right to the appointment of a receiver who may enter and take possession of all or any part of the properties of the authority, operate and maintain the properties, and set, collect, and receive rates and charges sufficient to provide revenues adequate to pay the items set forth in Section 222.011(a) and the costs and disbursements of the suit, action, or proceeding and apply the revenues in conformity with this chapter and the resolution authorizing the bonds.

(d) In a suit, action, or proceeding by a trustee under this section, the reasonable fees, counsel fees, and expenses of the trustee or the receiver, if any, constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge on any revenues pledged to secure the payment of the bonds.

(e) Subject to the provisions of the constitution, the courts of Travis County have jurisdiction of a suit, action, or proceeding under this section by a trustee on behalf of the bondholders and of all property involved in the suit, action, or proceeding.

(f) In addition to the powers specifically provided by this section, the trustee has all powers necessary or appropriate for the exercise of the powers specifically provided or incident to the general representation of the bondholders in the enforcement of their rights.

Sec. 222.015. AUDIT. The authority is subject to the audit provisions of Subchapter G, Chapter 49.

Sec. 222.016. AUTHORITY AS CONSERVATION AND RECLAMATION DISTRICT. (a) The authority shall manage and use its facilities, the water impounded by its dams on the Colorado River or its tributaries, and any available net operating revenues to accomplish, to the extent possible, the purposes included in Section 59(a), Article XVI, Texas Constitution, that are enumerated in the provisions of this chapter or other general law, and the authority shall market electric power that, in the opinion of the board, will not be immediately needed by the authority, under contracts and on conditions that will best enable the authority to pay its operating expenses, meet its outstanding financial obligations as they mature, supply the increasing demand for electric power in the area dependent on its systems for electric service on April 28, 1975, and assure, to the extent possible, an adequate supply of water for irrigation and other useful purposes, as it is needed in the various counties comprising the authority.

(b) When bonds are to be issued to finance in whole or in part water-impounding facilities, before approving the bonds the attorney general shall be furnished a resolution from the commission or its successor agency certifying that the authority possesses the necessary water right authorizing it to impound or otherwise appropriate the waters to be utilized by the project.

19-1 Sec. 222.017. BONDS AS NEGOTIABLE INSTRUMENTS. Bonds
 19-2 issued by the authority under this chapter or other general law are
 19-3 negotiable instruments under the laws of this state.

19-4 Sec. 222.018. ADDITIONAL POWERS RELATING TO CONTRACTS,
 19-5 RULES, AND REGULATIONS. The authority may, but without intending
 19-6 by this provision to limit any powers of the authority as granted to
 19-7 it by this chapter or other general law, enter into and carry out
 19-8 contracts or establish or comply with rules and regulations
 19-9 concerning labor and materials and other related matters in
 19-10 connection with any project or projects as the authority considers
 19-11 desirable or as requested by the United States, this state, or any
 19-12 corporation or agency created, designated, or established by the
 19-13 United States or this state that may assist in the financing of the
 19-14 project or projects.

19-15 Sec. 222.019. PURCHASE OF BONDS. The authority may, out of
 19-16 any funds available for the purpose, purchase bonds issued by it at
 19-17 a price not exceeding the redemption price applicable at the time of
 19-18 the purchase, or if the bonds are not redeemable, at a price not
 19-19 exceeding the principal amount of the bonds plus accrued interest.
 19-20 All bonds purchased in this manner shall be canceled.

19-21 Sec. 222.020. DISPOSITION OF PROPERTY. (a) Nothing in
 19-22 this chapter shall be construed as authorizing the authority, and
 19-23 the authority is not authorized, to mortgage or otherwise encumber
 19-24 any of its property of any kind, real, personal, or mixed, or any
 19-25 interest in such property, or to acquire any property or interest
 19-26 subject to a mortgage or conditional sale, provided that this
 19-27 section may not be construed as preventing the pledging of the
 19-28 revenues of the authority as authorized by this chapter.

19-29 (b) Nothing in this chapter shall be construed as
 19-30 authorizing the sale of any property or interest by the authority or
 19-31 by any receiver of any of its properties or through any court
 19-32 proceeding or otherwise, unless, by the affirmative vote of
 19-33 three-fourths of its statutory membership, the board has determined
 19-34 that the property or interest is not necessary or convenient or of
 19-35 beneficial use to the business of the authority and has approved the
 19-36 terms of the sale. Except by sale as expressly authorized in this
 19-37 section, authority property or interest may not come into the
 19-38 ownership or control, directly or indirectly, of any person, firm,
 19-39 or corporation other than a public authority created under the laws
 19-40 of this state or a nonprofit corporation created by the authority
 19-41 under Chapter 152.

19-42 (c) The limitations on the sale of property of the authority
 19-43 in this section do not and are not intended to preclude the
 19-44 authority from selling any interest owned or held by the authority
 19-45 in any jointly owned electric power and generating facilities
 19-46 constructed, or to be constructed, under Section 222.004(t),
 19-47 provided that the sale of an ownership interest in a joint project
 19-48 is provided for and in conformance with any contract with other
 19-49 owners regarding the electric power and energy generating
 19-50 facilities.

19-51 (d) All authority property is exempt from forced sale, and
 19-52 nothing in this chapter shall be construed to authorize the sale of
 19-53 any of the property of the authority under a judgment rendered in a
 19-54 suit, and a sale of that kind is prohibited.

19-55 Sec. 222.021. PROPERTY AGREEMENTS WITH CITY OF AUSTIN.
 19-56 Nothing in this chapter prohibits the authority from owning
 19-57 property in conjunction with, acquiring property from, or selling
 19-58 property to the City of Austin, on terms and conditions to which the
 19-59 authority and the city agree. The authority may acquire property
 19-60 from the City of Austin subject to repurchase agreements, or other
 19-61 terms and conditions as are agreed on between the authority and the
 19-62 city, and may enter into any contractual relations with the city
 19-63 respecting property that the parties agree on.

19-64 Sec. 222.022. PROPERTY USEFUL IN THE PRODUCTION OR
 19-65 UTILIZATION OF ELECTRIC ENERGY. This chapter does not prohibit or
 19-66 restrict the sale, lease, or other disposition, to an electric
 19-67 cooperative, municipality, nonprofit corporation created by the
 19-68 authority under Chapter 152, or other governmental agency or body
 19-69 politic and corporate of this state, of any property acquired or

constructed by the authority and incidental to or used or useful in the generation, production, transmission, distribution, or sale of electric energy. The authority may pledge the proceeds of a sale under this section to the same extent and in the same manner in which it is authorized to pledge its revenues.

Sec. 222.023. PUBLIC ACCESS. (a) The authority may not prevent the public use of its lands for recreational purposes and fishing except at such points where, in the opinion of the board, the use would interfere with the proper conduct of the business of the authority or would interfere with the lawful use of the property. A lease of authority lands, except one expressly permitted by Section 222.022, is not lawful unless it provides for free public use of the lands for recreational purposes and fishing.

(b) All public rights-of-way traversing the areas flooded or to be flooded by the impounded waters shall remain open as a way of free public passage to and from the lakes created, and a charge may not be made to the public for the right to engage in fishing or boating on or swimming in those lakes.

(c) If any citizen of this state or of the United States advises the attorney general that this section has not been complied with, the attorney general may, after investigation of the complaint and notice to the authority, institute the proper legal proceedings, if any are required, to require the authority or its successor to comply with this section.

(d) If any of the authority's land bordering the lakes to be created under this chapter is sold by the authority, the authority shall retain in each tract a strip 20 feet wide abutting the high-water line of the lake for the purpose of passage and use by the public for public sports and amusements; provided, however, that this subsection does not apply to any sales of land by the authority to any state or federal agency to be used for game or fish sanctuaries or preserves or for game or fish propagation purposes.

Sec. 222.024. BONDS EXEMPT FROM TAXATION. All bonds and interest on the bonds issued under the provisions of this chapter are exempt from taxation, except inheritance taxes, by this state or by any municipal corporation, county, or other political subdivision or taxing district of this state.

Sec. 222.025. SOURCE OF AUTHORITY. (a) This chapter, without reference to other statutory provisions, constitutes full authority for the authorization and issuance of bonds under this chapter, and no other act or law regarding the authorization or issuance of obligations or the deposit of the proceeds of obligations, or in any way impeding or restricting the carrying out of the acts authorized by this chapter shall be construed as applying a limitation to any proceedings taken under or acts done under this chapter.

(b) Nothing in this chapter shall prevent the authority from issuing bonds under any applicable general law of this state, provided, however, that no bonds are issued that would be in conflict with Section 222.024.

Sec. 222.026. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) All authority bonds are legal and authorized investments for individuals, partnerships, profit and nonprofit corporations, banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians and for the sinking funds of municipalities, counties, school districts, or other political corporations or subdivisions of this state.

(b) The bonds are eligible to secure the deposit of all public funds of this state and any public funds of municipalities, counties, school districts, or other political corporations or subdivisions of this state and are lawful and sufficient security for those deposits to the extent of their par value when accompanied by all unmatured coupons.

Sec. 222.027. CONSTRUCTION. (a) This chapter and all of its terms and provisions shall be liberally construed to carry out the purposes set forth in this chapter.

(b) Nothing in this chapter affects the meaning of Section 222.011, formerly Section 9, Chapter 74, Acts of the 64th

Legislature, Regular Session, 1975, as it existed prior to the adoption of this chapter, except where specifically amended.

Sec. 222.028. AUTHORITY POWERS IN LAMPASAS COUNTY.
Notwithstanding any other provision of this chapter, the authority may exercise all powers within Lampasas County that it may otherwise exercise within the 10 counties specified in Section 222.003, except that the authority may not provide water or wastewater services in the portion of Lampasas County outside the Colorado River watershed without the consent of the Brazos River Authority.

Sec. 222.029. ADDITIONAL SPECIFIC POWERS.
(a) Notwithstanding any other provision of this chapter, the authority:

(1) may purchase, construct, acquire, own, operate, repair, improve, or extend any facility necessary or convenient to provide water services in Williamson County in cooperation with another special district, a municipality, or another governmental entity;

(2) may not provide water services in the watershed of the Brazos River unless the authority obtains in writing the consent of the Brazos River Authority before the services are provided; and

(3) may transfer surface water from the authority to a place in Williamson County that is outside the watershed of the Colorado River only if the transfer is made to:

(A) a municipality that was a water customer of the authority on May 20, 1997, and located in the watersheds of both the Colorado River and the Brazos River; or

(B) a person or entity that pays for the surface water in an amount sufficient to pay both the authority's applicable water rate and an additional charge to pay the costs of mitigating any adverse effects of the transfer of surface water to Williamson County from the Colorado River watershed, and provided the transfer results in no net loss of water to the Colorado River watershed as determined by the board.

(b) Notwithstanding the amounts of surface water transferred by the authority to municipalities in accordance with Subsection (a)(3)(A), the volume of surface water authorized for transfer by the authority in accordance with Subsection (a)(3)(B) may not exceed 25,000 acre-feet per year, it being the intent of the legislature that the authority not be the sole provider of surface water to Williamson County.

(c) The authority shall determine the amount of the additional charge under Subsection (a)(3)(B). The additional charge may not be less than 10 percent of the authority's applicable rate for surface water to be transferred. The authority shall deposit any money the authority receives from the additional charge, and may deposit any other money as the board determines, into a separate fund designated as the agricultural water conservation fund. The authority may use money from the agricultural water conservation fund only for the development of water resources or other water use strategies to replace or offset the amount of surface water to be transferred to Williamson County, including the development and implementation of methods, programs, and strategies relating to groundwater resources, reuse, conservation, and other opportunities to reduce the reliance on surface water for agricultural irrigation, provided that the methods, programs, and strategies take into consideration the surface water and groundwater needs of the affected Colorado River basin users.

(d) Before its determination of the use of money from the agricultural water conservation fund, the authority shall consult with an advisory committee representing agricultural irrigation interests that is appointed by the county judges of Matagorda, Wharton, and Colorado counties. The board's determination of the additional charge is not subject to review or modification by any regulatory agency or independent reviewing authority. Water resources developed or conserved through the additional charge may be acquired from any source inside or outside the boundaries of the

authority and shall be used to benefit the water service areas of the authority's irrigation operations.

Sec. 222.030. PROVISION OF WATER TO MUNICIPALITY OUTSIDE COLORADO RIVER BASIN. (a) This section applies notwithstanding any other provision of this chapter or other law.

(b) In this section and Section 222.031:

(1) "Municipality" includes a municipally owned utility.

(2) "Water service area" means the area in which the authority is authorized to use, distribute, and sell water on January 1, 2001.

(c) Subject to the limitations and restrictions in this section, the authority may enter into a written contract with a municipality located outside the water service area to distribute and sell water to the municipality.

(d) In addition to the authority's applicable water rate, the authority shall charge a municipality a surcharge determined by the board according to the terms of the contract to enable the authority to develop and manage water resources sufficient to address the projected needs of the authority's water service area and the needs of the municipality to the extent agreed in the contract. The contract must provide that the surcharge be sufficient to allow the authority to recover all capital construction costs incurred by the authority under this section. The board's determination of the surcharge is not subject to review or modification by any regulatory agency or administrative authority.

(e) The use or reservation of water under a contract authorized by this section may extend for a base period of not more than 50 years. A contract may provide an option to renew for not more than an additional 30 years. An option to renew must require that the municipality progressively reduce the amount of water reserved or used by the municipality during the last 10 years of the renewal term and require that the rate paid by the municipality immediately increase by a factor of five if the municipality does not make the required reduction. A contract must provide that the municipality is not entitled to further reservation, use, or delivery of water from the authority at the conclusion of the contract.

(f) A contract authorized by this section must require that the then current rate paid by the municipality immediately increase by a factor of five if:

(1) the municipality initiates legal proceedings in a court or regulatory agency to obtain:

(A) an increase in the amount of surface water taken by the municipality under this section; or

(B) an extension of either the base or renewal periods under Subsection (e); or

(2) the authority is compelled by any authority to reserve, sell, or make available to the municipality more than 150,000 acre-feet of water per year or to reserve, sell, or make available to the municipality water beyond the base and renewal periods under Subsection (e).

(g) The contract must provide that within the water service area the authority must own any personal property, fixtures, or appurtenances that are used for making available, diverting, or delivering water to a municipality under a contract authorized by this section.

(h) Water to be provided under a contract authorized by this section may not be diverted from the Colorado River at diversion points located on the reservoirs that, on May 16, 2001, are owned and operated by the authority upstream of Mansfield Dam. Water to be provided under a contract authorized by this section may be diverted only from off-channel reservoirs built downstream of Mansfield Dam after May 16, 2001.

(i) The authority may not provide water to a municipality under a contract authorized by this section unless the authority demonstrates, through its water management plan, to the commission that the authority will operate its water supply system in

conjunction with the water resources management efforts contemplated by the contract to:

(1) increase the average lake levels of Lake Buchanan and Lake Travis by at least 6 feet and 18 feet, respectively, above the average lake levels of those lakes during times when those lakes would have been operating at less than 90 percent of conservation capacity without those efforts; and

(2) increase the average lake levels of Lake Buchanan and Lake Travis during a repeat of the drought of record at least 10 feet and 20 feet, respectively, above the average lake levels of those lakes during a repeat of the drought of record without those efforts.

(j) As a requirement of the authority's water management plan, the authority shall submit annually to the commission data and a report demonstrating that the authority has operated its water supply system in accordance with the provisions of this section. The data shall include a tabulation that compares actual recorded lake levels with lake levels that would have occurred without the water resources management efforts contemplated by a contract authorized by this section. The commission shall review the data and report submitted by the authority and shall certify, in writing made available to the public, whether the authority has complied with the provisions of this section.

(k) The authority may sell no more than a total of 150,000 acre-feet of water in any year under contracts authorized by this section.

(l) This section does not authorize:

(1) the authority to pump water to the municipality directly from the Colorado River;

(2) the authority to sell its surface water rights to any person or entity for use outside the water service area; or

(3) a sale or lease of water other than as specifically authorized by this section.

(m) The authority may not sell groundwater to a municipality under this section.

(n) The authority may not contract to distribute or sell water under this section unless the board finds, after providing an opportunity for public input, that the contract:

(1) will protect and benefit the lower Colorado River watershed and the authority's water service area, including municipal, industrial, agricultural, recreational, and environmental interests;

(2) is consistent with regional water plans filed with the Texas Water Development Board on or before January 5, 2001;

(3) will ensure that the beneficial inflows remaining after any water diversions will be adequate to maintain the ecological health and productivity of the Matagorda Bay system;

(4) will provide for instream flows no less protective than those included in the authority's Water Management Plan for the Lower Colorado River Basin, as approved by the commission;

(5) will ensure that, before any water is delivered under the contract, the municipality has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the municipality;

(6) provides for a broad public and scientific review process designed to ensure that all information that can be practicably developed is considered in establishing beneficial inflow and instream flow provisions; and

(7) will benefit stored water levels in the authority's existing reservoirs.

(o) A municipality that buys water from the authority under a contract authorized by this section may not resell that water outside the boundaries of the regional water planning area in which the municipality is located, as those boundaries are designated by the Texas Water Development Board as of January 5, 2001.

(p) Nothing in this section shall exempt the authority or any municipality from the permitting requirements of state and

federal law.

Sec. 222.031. AUTHORITY OF MUNICIPALITY TO CONTRACT FOR WATER. Section 222.030 constitutes full authority for a municipality or municipally owned utility to enter into a contract with the authority under that section. The payments made under a contract authorized by that section are operation and maintenance expenses of the municipality's utility system. A municipality or municipally owned utility that enters into a contract under that section may use proceeds from the sale of its revenue bonds to make any such payments.

SECTION 2. (a) The following laws relating to the Brazos River Authority are repealed:

(1) Chapter 13, Special Laws, Acts of the 41st Legislature, 2nd Called Session, 1929;

(2) Chapter 3, Acts of the 43rd Legislature, 4th Called Session, 1934;

(3) Sections 6 and 7, Chapter 19, General Laws, Acts of the 44th Legislature, Regular Session, 1935; and

(4) Chapter 368, Acts of the 44th Legislature, 1st Called Session, 1935.

(b) The following laws relating to the Lower Colorado River Authority are repealed:

(1) Chapter 7, Acts of the 43rd Legislature, 4th Called Session, 1934; and

(2) Section 2, Chapter 132, Acts of the 77th Legislature, Regular Session, 2001.

(c) This Act does not:

(1) limit the powers granted to the Brazos River Authority or the Lower Colorado River Authority by any other law; or

(2) impliedly repeal any laws granting powers to the Brazos River Authority or the Lower Colorado River Authority.

SECTION 3. As soon as practicable on or after the effective date of this Act, the governor shall designate from the members of each board the presiding officers of the Brazos River Authority and the Lower Colorado River Authority. The governor may designate as the presiding officer of a board the person serving in that capacity immediately before the effective date of this Act. A person serving as the presiding officer of a board immediately before the effective date of this Act shall continue to serve in that capacity until the person's successor has been designated.

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

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