

By: Puente

H.B. No. 41

Substitute the following for H.B. No. 41:

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C.S.H.B. No. 41

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the maximum permitted withdrawals and critical period
3 management of groundwater in the area regulated by the Edwards
4 Aquifer Authority and to the operations and oversight of the
5 Edwards Aquifer Authority.

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

7 SECTION 1. Subsection (f), Section 1.11, Chapter 626, Acts
8 of the 73rd Legislature, Regular Session, 1993, is amended to read
9 as follows:

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

22 SECTION 2. Subsections (a), (c), (f), and (h), Section
23 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session,
24 1993, are amended to read as follows:

1 (a) Authorizations to withdraw water from the aquifer and
2 all authorizations and rights to make a withdrawal under this Act
3 shall be limited in accordance with this section to:

4 (1) protect the water quality of the aquifer;

5 (2) protect the water quality of the surface streams
6 to which the aquifer provides springflow;

7 (3) achieve water conservation;

8 (4) maximize the beneficial use of water available for
9 withdrawal from the aquifer;

10 (5) recognize the hydro-geologic connection and
11 interaction between surface and groundwater;

12 (6) protect aquatic and wildlife habitat;

13 (7) ~~(6)~~ protect species that are designated as
14 threatened or endangered under applicable federal or state law; and

15 (8) ~~(7)~~ provide for instream uses, bays, and
16 estuaries.

17 (c) Except as provided by Subsections ~~(d)~~ (f) ~~(g)~~ and (h)
18 of this section ~~[and Section 1.26 of this article]~~ for the period
19 beginning January 1, 2005 ~~[2008]~~, the amount of permitted
20 withdrawals from the aquifer may not exceed the sum of all regular
21 permits issued or for which an application has been filed and
22 issuance is pending action by the authority as of January 1, 2005
23 ~~[400,000 acre-feet of water for each calendar year].~~

24 (f) If the level of the aquifer is equal to or greater than
25 665 ~~[650]~~ feet above mean sea level as measured at Well J-17, the
26 authority may authorize withdrawal from the San Antonio pool, on an
27 uninterrupted basis, of permitted amounts. If the level of the

1 aquifer is equal to or greater than 845 feet at Well J-27, the
2 authority may authorize withdrawal from the Uvalde pool, on an
3 uninterrupted basis, of permitted amounts. In accordance with
4 Section 1.26 of this article, the [~~The~~] authority shall limit the
5 additional withdrawals to ensure that springflows are not affected
6 during critical drought conditions.

7 (h) To accomplish the purposes of this article, [~~by June 1,~~
8 ~~1994,~~] the authority, through a program, shall implement and
9 enforce water management practices, procedures, and methods to
10 ensure that, not later than December 31, 2012, the continuous
11 minimum springflows of the Comal Springs and the San Marcos Springs
12 are maintained to protect endangered and threatened species to the
13 extent required by federal law and to achieve other purposes
14 provided by Subsection (a) of this section and Section 1.26 of this
15 article. The authority from time to time as appropriate may revise
16 the practices, procedures, and methods. To meet this requirement,
17 the authority shall require:

18 (1) phased reductions in the amount of water that may
19 be used or withdrawn by existing users or categories of other users,
20 including the authority's critical period management plan
21 established under Section 1.26 of this article; or

22 (2) implementation of alternative management
23 practices, procedures, and methods.

24 SECTION 3. Subsection (c), Section 1.15, Chapter 626, Acts
25 of the 73rd Legislature, Regular Session, 1993, is amended to read
26 as follows:

27 (c) The authority may issue regular permits, term permits,

1 and emergency permits. Except as provided in Section 1.14(f) and
2 Section 1.26 of this article, regular permits may not be issued on
3 an interruptible basis, and the total withdrawals authorized by all
4 regular permits issued by the authority may not exceed the
5 limitations provided by Section 1.14 of this article.

6 SECTION 4. Subsection (b), Section 1.19, Chapter 626, Acts
7 of the 73rd Legislature, Regular Session, 1993, is amended to read
8 as follows:

9 (b) Withdrawal of water under a term permit must be
10 consistent with the authority's critical period management plan
11 established under Section 1.26 of this article. A holder of a term
12 permit may not withdraw water from the San Antonio pool of the
13 aquifer unless the level of the aquifer is higher than 675 [~~665~~]
14 feet above sea level, as measured at Well J-17, and the flow at
15 Comal Springs as determined by Section 1.26(c) of this article is
16 greater than 350 cfs.

17 SECTION 5. Article 1, Chapter 626, Acts of the 73rd
18 Legislature, Regular Session, 1993, is amended by amending Section
19 1.26 and adding Section 1.26A to read as follows:

20 Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) After
21 review of the recommendations received, as prescribed in Section
22 1.26A of this article, the [~~The~~] authority shall prepare and
23 coordinate implementation of a [~~plan for~~] critical period
24 management plan in a manner consistent with Section 1.14(a) of this
25 article [~~on or before September 1, 1995~~]. The mechanisms must:

26 (1) distinguish between discretionary use and
27 nondiscretionary use;

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

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

6 (4) require reduction of nondiscretionary use by
7 permitted or contractual users, to the extent further reductions
8 are necessary, in the reverse order of the following water use
9 preferences:

- 10 (A) municipal, domestic, and livestock;
- 11 (B) industrial and crop irrigation;
- 12 (C) residential landscape irrigation;
- 13 (D) recreational and pleasure; and
- 14 (E) other uses that are authorized by law.

15 (b) In this section, "MSL" means the elevation, measured in
16 feet, of the surface of the water in a well above mean sea level, and
17 "CFS" means cubic feet per second. Not later than January 1, 2006,
18 the authority shall, by rule, adopt and enforce a critical period
19 management plan with withdrawal reduction percentages in the
20 amounts indicated in Tables 1 and 2 whether according to the index
21 well levels or Comal Springs flow as may be applicable, for a total
22 in critical period Stage IV of 40 percent of the permitted
23 withdrawals under Table 1 and 30 percent under Table 2:

24 TABLE 1 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES
25 FOR THE SAN ANTONIO POOL

26 <u>INDEX WELL J-17</u>	<u>COMAL SPRINGS</u>	<u>CRITICAL</u>	<u>WITHDRAWAL REDUCTION</u>
27 <u>LEVEL MSL</u>	<u>FLOW CFS</u>	<u>PERIOD STAGE</u>	<u>PERCENTAGE</u>

1	<u><665</u>	<u>N/A</u>	<u>I</u>	<u>10%</u>
2	<u><650</u>	<u>N/A</u>	<u>II</u>	<u>10%</u>
3	<u><640</u>	<u><150</u>	<u>III</u>	<u>10%</u>
4	<u><630</u>	<u><100</u>	<u>IV</u>	<u>10%</u>

5 TABLE 2 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

6 FOR THE UVALDE POOL

7	<u>INDEX WELL J-27 MSL FOR</u>	<u>CRITICAL PERIOD</u>	<u>WITHDRAWAL REDUCTION</u>
8	<u>UVALDE POOL</u>	<u>STAGE</u>	<u>PERCENTAGE</u>
9	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
10	<u>N/A</u>	<u>II</u>	<u>N/A</u>
11	<u><845</u>	<u>III</u>	<u>15%</u>
12	<u><842</u>	<u>IV</u>	<u>15%</u>

13 (c) The authority shall continuously track the average
 14 daily discharge rate measured over each period of five consecutive
 15 days at Comal Springs to determine whether a reduction in
 16 withdrawals to the Stage III reduction level is required. The
 17 authority shall track the average daily discharge rate measured for
 18 any five days in a period of 10 consecutive days to determine
 19 whether a reduction in withdrawals to the Stage IV reduction level
 20 is required.

21 (d) Beginning November 1, 2005, the authority shall reduce
 22 the volume of permitted withdrawals to an annualized rate of
 23 340,000 acre-feet, under critical period Stage IV. After January
 24 1, 2012, the authority shall reduce the volume of permitted
 25 withdrawals to 320,000 acre-feet, under critical period Stage IV.

26 (e) After January 1, 2020, the authority, after review and
 27 consideration of recommendations received by the authority under

1 Section 1.26A of this article, shall adjust the volume of permitted
2 withdrawals to an appropriate annualized rate under critical period
3 Stage IV that is consistent with maintaining the protections
4 contained in Section 1.14(a) of this article.

5 (f) From time to time, the authority by rule may amend the
6 withdrawal reduction criteria of the authority's critical period
7 management plan as set forth in Subsections (b), (c), and (e) of
8 this section, after review and consideration of the recommendations
9 from the Environmental Flows Commission, or the Texas Water
10 Development Board if the Environmental Flows Commission is not
11 established, the Edwards Aquifer area expert science team, and the
12 Edwards Aquifer Area Stakeholders Committee, as prescribed in
13 Section 1.26A of this article. The amended plan must be consistent
14 with Section 1.14(a) of this article.

15 Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND
16 STAGES FOR CRITICAL PERIOD MANAGEMENT. (a) The Environmental
17 Flows Commission, as established under Section 11.0236, Water Code,
18 or the Texas Water Development Board if the Environmental Flows
19 Commission is not established, shall appoint a 15-member Edwards
20 Aquifer Area Stakeholders Committee not later than January 1, 2006.
21 The composition of the committee will be as follows:

22 (1) five holders of municipal permits issued by the
23 authority;

24 (2) two holders of irrigation permits issued by the
25 authority;

26 (3) three holders of industrial permits issued by the
27 authority;

1 (4) two downstream water rights holders in the
2 Guadalupe River basin;

3 (5) two downstream water rights holders in the Nueces
4 River basin; and

5 (6) one representative of a public interest group
6 related to instream flows in the Guadalupe River basin and bay and
7 estuary inflows from the Guadalupe River.

8 (b) The Edwards Aquifer Area Stakeholders Committee shall
9 appoint a seven-member Edwards Aquifer area expert science team not
10 later than April 30, 2006. The expert science team must be composed
11 of technical experts with special expertise regarding the Edwards
12 Aquifer system, springflows, or the development of withdrawal
13 limitations. Chapter 2110, Government Code, does not apply to the
14 size, composition, or duration of the expert science team. A member
15 of the Texas Environmental Flows Science Advisory Committee, or a
16 designee of the Texas Water Development Board if the Texas
17 Environmental Flows Science Advisory Committee is not established
18 in Section 11.02361, Water Code, shall serve as liaison to the
19 Edwards Aquifer area expert science team.

20 (c) The expert science team shall develop an analysis of
21 spring discharge rates and aquifer levels as a function of
22 withdrawal levels. Based upon this analysis and the required
23 elements to be considered by the authority in Section 1.14 of this
24 article, the Edwards Aquifer area expert science team shall,
25 through a collaborative process designed to achieve consensus,
26 create recommendations for withdrawal reduction levels and stages
27 for critical period management including, if appropriate,

1 establishing separate and different withdrawal reduction levels
2 and stages for critical period management rules for different pools
3 of the aquifer and submit them to the Edwards Aquifer Area
4 Stakeholders Committee, the Environmental Flows Commission or the
5 Texas Water Development Board if the Environmental Flows Commission
6 is not established, and the authority. The initial recommendations
7 must be completed and submitted no later than September 30, 2006.

8 (d) In developing its recommendations, the Edwards Aquifer
9 area expert science team must consider all reasonably available
10 science, including any Edwards Aquifer specific studies, and the
11 recommendations must be based solely on the best science available.
12 The Edwards Aquifer Area Stakeholders Committee may not change the
13 recommendations of the Edwards Aquifer area expert science team
14 regarding the withdrawal limitations appropriate to achieve the
15 purposes of Section 1.14 of this article.

16 (e) The Edwards Aquifer Area Stakeholders Committee shall
17 review the withdrawal limitation and critical period management
18 recommendations submitted by the expert science team and shall
19 consider them in conjunction with other factors, including the
20 present and future needs for water for other uses related to water
21 supply planning in the Edwards Aquifer area and the required
22 elements to be considered by the authority in Section 1.14 of this
23 article. The stakeholders committee shall develop recommendations
24 regarding a critical period management plan and submit its
25 recommendations to the authority and to the Environmental Flows
26 Commission or the Texas Water Development Board if the
27 Environmental Flows Commission is not established. In developing

1 its recommendations, the stakeholders committee shall operate on a
2 consensus basis to the maximum extent possible. The initial
3 recommendations must be completed and submitted no later than
4 October 31, 2006.

5 (f) The Environmental Flows Commission or the Texas Water
6 Development Board if the Environmental Flows Commission is not
7 established shall submit to the authority its comments on and
8 recommendations regarding the Edwards Aquifer area expert science
9 team's recommended withdrawal reduction levels and stages for
10 critical period management needed to maintain target spring
11 discharge and aquifer levels. The withdrawal reduction
12 recommendations shall be based upon a combination of spring
13 discharge rates of the San Marcos and Comal Springs and levels at
14 the J-17 and J-27 wells.

15 (g) The Edwards Aquifer area expert science team, the
16 Edwards Aquifer Area Stakeholders Committee, and the Environmental
17 Flows Commission or the Texas Water Development Board if the
18 Environmental Flows Commission is not established shall submit
19 recommendations to the authority for use in developing its rules
20 relative to establishing the critical period management plan.

21 (h) Where reasonably practicable, meetings of the Edwards
22 Aquifer area expert science team and Edwards Aquifer Area
23 Stakeholders Committee must be open to the public.

24 (i) In recognition of the importance of critical period
25 management to adapt to changed conditions or information, after
26 submitting its recommendations regarding withdrawal limitations
27 and strategies to meet the springflow needs to the authority, the

1 stakeholders committee, with the assistance of the expert science
2 team, shall prepare and submit to the Environmental Flows
3 Commission or the Texas Water Development Board if the
4 Environmental Flows Commission is not established a work plan. The
5 work plan must:

6 (1) establish a periodic review of the critical period
7 management plan, to occur at least once every five years;

8 (2) prescribe specific monitoring, studies, and
9 activities; and

10 (3) establish a schedule for continuing the validation
11 or refinement of the critical period management plan adopted by the
12 authority, and the strategies to achieve the plan.

13 (j) To assist the Environmental Flows Commission or the
14 Texas Water Development Board if the Environmental Flows Commission
15 is not established to assess the extent to which the
16 recommendations of the Edwards Aquifer area expert science team are
17 considered and implemented, the authority shall provide written
18 reports to the Environmental Flows Commission or the Texas Water
19 Development Board if the Environmental Flows Commission is not
20 established, at intervals determined by the Environmental Flows
21 Commission or the Texas Water Development Board if the
22 Environmental Flows Commission is not established, that describe:

23 (1) the actions taken in response to each
24 recommendation; and

25 (2) for each recommendation not implemented, the
26 reason it was not implemented.

27 SECTION 6. Subsections (b) and (i), Section 1.29, Chapter

1 626, Acts of the 73rd Legislature, Regular Session, 1993, are
2 amended to read as follows:

3 (b) The authority shall assess equitable aquifer management
4 fees based on aquifer use under the water management plan to finance
5 its administrative expenses and programs authorized under this
6 article. Each water district governed by Chapter 36 [~~52~~], Water
7 Code, that is within the authority's boundaries may contract with
8 the authority to pay expenses of the authority through taxes in lieu
9 of user fees to be paid by water users in the district. The contract
10 must provide that the district will pay an amount equal to the
11 amount that the water users in the district would have paid through
12 user fees. The authority may not collect a total amount of fees and
13 taxes that is more than is reasonably necessary for the
14 administration of the authority.

15 (i) The authority shall provide money as necessary, but not
16 to exceed \$75,000, annually adjusted for changes in the consumer
17 price index [~~five percent of the money collected under Subsection~~
18 ~~(d) of this section~~], to finance the South Central Texas Water
19 Advisory Committee's administrative expenses and programs
20 authorized under this article.

21 SECTION 7. Chapter 626, Acts of the 73rd Legislature,
22 Regular Session, 1993, is amended by adding Section 1.29A to read as
23 follows:

24 Sec. 1.29A. BUDGETARY ADVISORY COMMITTEE. (a) The
25 authority shall appoint a budgetary advisory committee no later
26 than November 30, 2005, to consult and advise the authority on the
27 following prior to its submission to the board:

- 1 (1) the issuance of bonds;
- 2 (2) the authority's annual budget; and
- 3 (3) the authority's annual audit.

4 (b) Each voting member of the board shall appoint one member
5 of the budgetary advisory committee.

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

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

15 SECTION 9. The following sections of Chapter 626, Acts of
16 the 73rd Legislature, Regular Session, 1993, are repealed:

- 17 (1) Subsections (b) and (d), Section 1.14;
- 18 (2) Section 1.18;
- 19 (3) Section 1.21; and
- 20 (4) Subsections (a), (c), (d), and (h), Section 1.29.

21 SECTION 10. This Act takes effect November 1, 2005.