

By: Armbrister

S.B. No. 24

A BILL TO BE ENTITLED

1 AN ACT

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:

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

<u>INDEX WELL</u>	<u>COMAL SPRINGS</u>	<u>CRITICAL</u>	<u>WITHDRAWAL</u>
<u>J-17 LEVEL MSL</u>	<u>FLOW CFS</u>	<u>PERIOD STAGE</u>	<u>REDUCTION</u>
			<u>PERCENTAGE</u>
<u>&lt;665</u>	<u>N/A</u>	<u>I</u>	<u>10%</u>
<u>&lt;650</u>	<u>N/A</u>	<u>II</u>	<u>10%</u>
<u>&lt;640</u>	<u>&lt;150</u>	<u>III</u>	<u>10%</u>
<u>&lt;630</u>	<u>&lt;100</u>	<u>IV</u>	<u>10%</u>

TABLE 2 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES  
FOR THE UVALDE POOL

<u>INDEX WELL J-27 MSL</u>	<u>CRITICAL PERIOD</u>	<u>WITHDRAWAL</u>
<u>FOR UVALDE POOL</u>	<u>STAGE</u>	<u>REDUCTION</u>
		<u>PERCENTAGE</u>
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>II</u>	<u>N/A</u>
<u>&lt;845</u>	<u>III</u>	<u>15%</u>
<u>&lt;842</u>	<u>IV</u>	<u>15%</u>

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

(d) Beginning September 1, 2005, the authority shall reduce

1 the volume of permitted withdrawals to an annualized rate of  
2 340,000 acre-feet, under critical period Stage IV. After January  
3 1, 2012, the authority shall reduce the volume of permitted  
4 withdrawals to 320,000 acre-feet, under critical period Stage IV.

5 (e) After January 1, 2020, the authority, after review and  
6 consideration of recommendations received by the authority under  
7 Section 1.26A of this article, shall adjust the volume of permitted  
8 withdrawals to an appropriate annualized rate under critical period  
9 Stage IV that is consistent with maintaining the protections  
10 contained in Section 1.14(a) of this article.

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

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

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

3           (2) two holders of irrigation permits issued by the  
4 authority;

5           (3) three holders of industrial permits issued by the  
6 authority;

7           (4) four downstream water rights holders in the  
8 Guadalupe River Basin; and

9           (5) one representative of a public interest group  
10 related to instream flows in the Guadalupe River Basin and bay and  
11 estuary inflows from the Guadalupe River.

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

24           (c) The expert science team shall develop an analysis of  
25 spring discharge rates and aquifer levels as a function of  
26 withdrawal levels. Based upon this analysis and the required  
27 elements to be considered by the authority in Section 1.14 of this

1 article, the Edwards Aquifer area expert science team shall,  
2 through a collaborative process designed to achieve consensus,  
3 create recommendations for withdrawal reduction levels and stages  
4 for critical period management including, if appropriate,  
5 establishing separate and different withdrawal reduction levels  
6 and stages for critical period management rules for different pools  
7 of the aquifer and submit them to the Edwards Aquifer Area  
8 Stakeholders Committee, the Environmental Flows Commission or the  
9 Texas Water Development Board if the Environmental Flows Commission  
10 is not established, and the authority. The initial recommendations  
11 must be completed and submitted no later than September 30, 2006.

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

20 (e) The Edwards Aquifer Area Stakeholders Committee shall  
21 review the withdrawal limitation and critical period management  
22 recommendations submitted by the expert science team and shall  
23 consider them in conjunction with other factors, including the  
24 present and future needs for water for other uses related to water  
25 supply planning in the Edwards Aquifer area and the required  
26 elements to be considered by the authority in Section 1.14 of this  
27 article. The stakeholders committee shall develop recommendations

1 regarding a critical period management plan and submit its  
2 recommendations to the authority and to the Environmental Flows  
3 Commission or the Texas Water Development Board if the  
4 Environmental Flows Commission is not established. In developing  
5 its recommendations, the stakeholders committee shall operate on a  
6 consensus basis to the maximum extent possible. The initial  
7 recommendations must be completed and submitted no later than  
8 October 31, 2006.

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

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

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

1        (i) In recognition of the importance of critical period  
2 management to adapt to changed conditions or information, after  
3 submitting its recommendations regarding withdrawal limitations  
4 and strategies to meet the spring flow needs to the authority, the  
5 stakeholders committee, with the assistance of the expert science  
6 team, shall prepare and submit to the Environmental Flows  
7 Commission or the Texas Water Development Board if the  
8 Environmental Flows Commission is not established a work plan. The  
9 work plan must:

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

12            (2) prescribe specific monitoring, studies, and  
13 activities; and

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

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

27            (1) the actions taken in response to each

1 recommendation; and

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

4 SECTION 6. Subsections (b) and (i), Section 1.29, Section  
5 626, Acts of the 73rd Legislature, Regular Session, 1993, are  
6 amended to read as follows:

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

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

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

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

5           (1) the issuance of bonds;

6           (2) the authority's annual budget; and

7           (3) the authority's annual audit.

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

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

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

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

21           (1) Subsections (b) and (d), Section 1.14;

22           (2) Section 1.18;

23           (3) Section 1.21; and

24           (4) Subsections (a), (c), (d), and (h), Section 1.29.

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