

1-1 By: Averitt S.B. No. 1512
1-2 (In the Senate - Filed March 10, 2005; March 22, 2005, read
1-3 first time and referred to Committee on Natural Resources;
1-4 May 17, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; May 17, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1512 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the use and management of surface water resources.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The heading to Section 5.506, Water Code, is
1-13 amended to read as follows:

1-14 Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION
1-15 RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET
1-16 ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND
1-17 INSTREAM USES.

1-18 SECTION 2. Section 5.506, Water Code, is amended by adding
1-19 Subsection (a-1) and amending Subsections (b) and (c) to read as
1-20 follows:

1-21 (a-1) State water that is set aside by the commission to
1-22 meet the needs for freshwater inflows to affected bays and
1-23 estuaries and instream uses under Section 11.1471(a)(2) may be made
1-24 available temporarily for other essential beneficial uses if the
1-25 commission finds that an emergency exists that cannot practically
1-26 be resolved in another way.

1-27 (b) The commission must give written notice of the proposed
1-28 action [suspension] to the Parks and Wildlife Department before the
1-29 commission suspends a permit condition under Subsection (a) or
1-30 makes water available temporarily under Subsection (a-1) [this
1-31 section]. The commission shall give the Parks and Wildlife
1-32 Department an opportunity to submit comments on the proposed action
1-33 [suspension] for a period of 72 hours from receipt of the notice and
1-34 must consider those comments before issuing an order implementing
1-35 the proposed action [imposing the suspension].

1-36 (c) The commission may suspend a permit condition under
1-37 Subsection (a) or make water available temporarily under Subsection
1-38 (a-1) [this section] without notice except as required by
1-39 Subsection (b).

1-40 SECTION 3. Subsection (j), Section 5.701, Water Code, is
1-41 amended to read as follows:

1-42 (j) The fee for other uses of water not specifically named
1-43 in this section is \$1 per acre-foot, except that no political
1-44 subdivision may be required to pay fees to use water for recharge of
1-45 underground freshwater-bearing sands and aquifers or for abatement
1-46 of natural pollution. A fee is not required for a water right that
1-47 is [This fee is waived for applications for instream-use water
1-48 rights] deposited into the Texas Water Trust.

1-49 SECTION 4. Section 11.002, Water Code, is amended by
1-50 amending Subdivision (1) and adding Subdivisions (7), (15), (16),
1-51 (17), (18), and (19) to read as follows:

1-52 (1) "Commission" means the Texas ~~[Natural Resource~~
1-53 ~~Conservation]~~ Commission on Environmental Quality.

1-54 (7) "Developed water" means:

1-55 (A) groundwater that is in a watercourse or
1-56 stream, that would not be in the watercourse or stream but for the
1-57 efforts of the developer, and that is intended for subsequent
1-58 diversion and use by the developer;

1-59 (B) surface water obtained through an approved
1-60 interbasin transfer of water that is in a watercourse or stream,
1-61 that would not be in the watercourse or stream but for the efforts
1-62 of the developer, and that is intended for subsequent diversion and
1-63 use by the developer;

(C) waters imported from another state; or
(D) waters originating in the bays or arms of the

Gulf of Mexico.

(15) "Environmental flow analysis" means the application of a scientifically derived process for predicting the response of an ecosystem to changes in instream flows or freshwater inflows.

(16) "Environmental flow regime" means a schedule of flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Flows commission" means the Environmental Flows Commission.

(19) "Science advisory committee" means the Texas Environmental Flows Science Advisory Committee.

SECTION 5. Subsections (a) and (e), Section 11.023, Water Code, are amended to read as follows:

(a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state [State] water may be appropriated, stored, or diverted for:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- (2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) mining and recovery of minerals;
- (4) hydroelectric power;
- (5) navigation;
- (6) recreation and pleasure;
- (7) public parks; and
- (8) game preserves.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated, stored, or diverted for that purpose, subject to the preferences prescribed in Section 11.024 of this code. The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

SECTION 6. Section 11.0235, Water Code, is amended by amending Subsections (c) and (e) and adding Subsections (d-1) through (d-5) and (f) to read as follows:

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) The legislature finds that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available.

3-1 (d-2) The legislature finds that:

3-2 (1) in those basins in which water is available for
 3-3 appropriation, the commission should establish an environmental
 3-4 set-aside below which water should not be available for
 3-5 appropriation; and

3-6 (2) in those basins in which the unappropriated water
 3-7 that will be set aside for instream flow and freshwater inflow
 3-8 protection is not sufficient to fully satisfy the environmental
 3-9 flow standards established by the commission, a variety of
 3-10 approaches, both public and private, for filling the gap must be
 3-11 explored and pursued.

3-12 (d-3) The legislature finds that while the state has
 3-13 pioneered tools to address freshwater inflow needs for bays and
 3-14 estuaries, there are limitations to those tools in light of both
 3-15 scientific and public policy evolution. To fully address bay and
 3-16 estuary environmental flow issues, the foundation of work
 3-17 accomplished by the state should be improved. While the state's
 3-18 instream flow studies program appears to encompass a comprehensive
 3-19 and scientific approach for establishing a process to assess
 3-20 instream flow needs for rivers and streams across the state, more
 3-21 extensive review and examination of the details of the program,
 3-22 which may not be fully developed until the program is under way, are
 3-23 needed to ensure an effective tool for evaluating riverine
 3-24 environmental flow conditions.

3-25 (d-4) The legislature finds that the management of water to
 3-26 meet instream flow and freshwater inflow needs should be evaluated
 3-27 on a regular basis and adapted to reflect both improvements in
 3-28 science related to environmental flows and future changes in
 3-29 projected human needs for water. In addition, the development of
 3-30 management strategies for addressing environmental flow needs
 3-31 should be an ongoing, adaptive process that considers and addresses
 3-32 local issues.

3-33 (d-5) The legislature finds that recommendations for state
 3-34 action to protect instream flows and freshwater inflows should be
 3-35 developed through a consensus-based, regional approach involving
 3-36 balanced representation of stakeholders and that such a process
 3-37 should be encouraged throughout the state.

3-38 (e) The fact that greater pressures and demands are being
 3-39 placed on the water resources of the state makes it of paramount
 3-40 importance to ensure [~~reexamine the process for ensuring~~] that
 3-41 these important priorities are effectively addressed by detailing
 3-42 how environmental flow standards are to be developed using the
 3-43 environmental studies that have been and are to be performed by the
 3-44 state and others and specifying in clear delegations of authority
 3-45 how those environmental flow standards will be integrated into the
 3-46 regional water planning and water permitting process [~~to the~~
 3-47 commission].

3-48 (f) The legislature recognizes that effective
 3-49 implementation of the approach provided by this chapter for
 3-50 protecting instream flows and freshwater inflows will require more
 3-51 effective water rights administration and enforcement systems than
 3-52 are currently available in most areas of the state.

3-53 SECTION 7. The heading to Section 11.0236, Water Code, is
 3-54 amended to read as follows:

3-55 Sec. 11.0236. [~~STUDY COMMISSION ON WATER FOR~~] ENVIRONMENTAL
 3-56 FLOWS COMMISSION.

3-57 SECTION 8. Section 11.0236, Water Code, is amended by
 3-58 amending Subsections (a), (b), (c), (e) through (j), (n), and (o)
 3-59 and adding Subsection (p) to read as follows:

3-60 (a) In recognition of the importance that the ecological
 3-61 soundness of our riverine, bay, and estuary systems and riparian
 3-62 lands has on the economy, health, and well-being of the state there
 3-63 is created the [~~Study Commission on Water for~~] Environmental Flows
 3-64 Commission.

3-65 (b) The flows [~~study~~] commission is composed of nine [~~15~~]
 3-66 members as follows:

3-67 (1) three [~~two~~] members appointed by the governor;
 3-68 (2) three [~~five~~] members of the senate appointed by
 3-69 the lieutenant governor; and

4-1 (3) three [~~five~~] members of the house of
 4-2 representatives appointed by the speaker of the house of
 4-3 representatives [~~+~~

4-4 [~~(4) the presiding officer of the commission or the~~
 4-5 ~~presiding officer's designee;~~

4-6 [~~(5) the chairman of the board or the chairman's~~
 4-7 ~~designee; and~~

4-8 [~~(6) the presiding officer of the Parks and Wildlife~~
 4-9 ~~Commission or the presiding officer's designee].~~

4-10 (c) Of the members appointed under Subsection (b)(1):

4-11 (1) one member must be a member of the commission;

4-12 (2) one member must be a member of the board; and

4-13 (3) one member must be a member of the Parks and
 4-14 Wildlife Commission [~~(b)(2):~~

4-15 [~~(1) one member must represent a river authority or~~
 4-16 ~~municipal water supply agency or authority;~~

4-17 [~~(2) one member must represent an entity that is~~
 4-18 ~~distinguished by its efforts in resource protection; and~~

4-19 [~~(3) three members must be members of the senate].~~

4-20 (e) Each [~~appointed~~] member of the flows [~~study~~] commission
 4-21 serves at the will of the person who appointed the member.

4-22 (f) The appointed senator with the most seniority and the
 4-23 appointed house member with the most seniority serve together as
 4-24 co-presiding officers of the flows [~~study~~] commission.

4-25 (g) A member of the flows [~~study~~] commission is not entitled
 4-26 to receive compensation for service on the flows [~~study~~] commission
 4-27 but is entitled to reimbursement of the travel expenses incurred by
 4-28 the member while conducting the business of the flows [~~study~~]
 4-29 commission, as provided by the General Appropriations Act.

4-30 (h) The flows [~~study~~] commission may accept gifts and grants
 4-31 from any source to be used to carry out a function of the flows
 4-32 [~~study~~] commission.

4-33 (i) The commission shall provide staff support for the flows
 4-34 [~~study~~] commission.

4-35 (j) The flows [~~study~~] commission shall conduct public
 4-36 hearings and study public policy implications for balancing the
 4-37 demands on the water resources of the state resulting from a growing
 4-38 population with the requirements of the riverine, bay, and estuary
 4-39 systems including granting permits for instream flows dedicated to
 4-40 environmental needs or bay and estuary inflows, use of the Texas
 4-41 Water Trust, and any other issues that the flows [~~study~~] commission
 4-42 determines have importance and relevance to the protection of
 4-43 environmental flows. In evaluating the options for providing
 4-44 adequate environmental flows, the flows [~~study~~] commission shall
 4-45 take notice of the strong public policy imperative that exists in
 4-46 this state recognizing that environmental flows are important to
 4-47 the biological health of our public and private lands, streams and
 4-48 rivers [~~parks, game preserves~~], and bay and estuary systems and are
 4-49 high priorities in the water management [~~permitting~~] process. The
 4-50 flows [~~study~~] commission shall specifically address:

4-51 (1) ways that the ecological soundness of those
 4-52 [~~these~~] systems will be ensured in the water rights administration
 4-53 and enforcement and water allocation processes; and

4-54 (2) appropriate methods to encourage persons
 4-55 voluntarily to convert reasonable amounts of existing water rights
 4-56 to use for environmental flow protection temporarily or permanently
 4-57 [~~process~~].

4-58 (n) The flows [~~study~~] commission may [~~shall~~] adopt rules,
 4-59 procedures, and policies as needed to administer this section, to
 4-60 implement its responsibilities, and to exercise its authority under
 4-61 Sections 11.02361 and 11.02362.

4-62 (o) Chapter 2110, Government Code, does not apply to the
 4-63 size, composition, or duration of the flows commission.

4-64 (p) Not later than December 1, 2006, and every two years
 4-65 thereafter, the flows commission shall issue and promptly deliver
 4-66 to the governor, lieutenant governor, and speaker of the house of
 4-67 representatives copies of a report summarizing:

4-68 (1) any hearings conducted by the flows commission;

4-69 (2) any studies conducted by the flows commission;

5-1 (3) any legislation proposed by the flows commission;
 5-2 (4) progress made in implementing Sections 11.02361
 5-3 and 11.02362; and

5-4 (5) any other findings and recommendations of the
 5-5 flows commission [The study commission is abolished and this
 5-6 section expires September 1, 2005].

5-7 SECTION 9. Subchapter B, Chapter 11, Water Code, is amended
 5-8 by adding Sections 11.02361 and 11.02362 to read as follows:

5-9 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
 5-10 COMMITTEE. (a) The Texas Environmental Flows Science Advisory
 5-11 Committee consists of at least five but not more than nine members
 5-12 appointed by the flows commission.

5-13 (b) The flows commission shall appoint to the science
 5-14 advisory committee persons who will provide an objective
 5-15 perspective and diverse technical expertise, including expertise
 5-16 in hydrology, hydraulics, water resources, aquatic and terrestrial
 5-17 biology, geomorphology, geology, water quality, computer modeling,
 5-18 and other technical areas pertinent to the evaluation of
 5-19 environmental flows.

5-20 (c) Members of the science advisory committee serve
 5-21 five-year terms expiring March 1. A vacancy on the science advisory
 5-22 committee is filled by appointment by the co-presiding officers of
 5-23 the flows commission for the unexpired term.

5-24 (d) Chapter 2110, Government Code, does not apply to the
 5-25 size, composition, or duration of the science advisory committee.

5-26 (e) The science advisory committee shall:

5-27 (1) serve as an objective scientific body to advise
 5-28 and make recommendations to the flows commission on issues relating
 5-29 to the science of environmental flow protection; and

5-30 (2) develop recommendations to help provide overall
 5-31 direction, coordination, and consistency relating to:

5-32 (A) environmental flow methodologies for bay and
 5-33 estuary studies and instream flow studies;

5-34 (B) environmental flow programs at the
 5-35 commission, the Parks and Wildlife Department, and the board; and

5-36 (C) the work of the basin and bay expert science
 5-37 teams described in Section 11.02362.

5-38 (f) To assist the flows commission to assess the extent to
 5-39 which the recommendations of the science advisory committee are
 5-40 considered and implemented, the commission, the Parks and Wildlife
 5-41 Department, and the board shall provide written reports to the
 5-42 flows commission, at intervals determined by the flows commission,
 5-43 that describe:

5-44 (1) the actions taken by each agency in response to
 5-45 each recommendation; and

5-46 (2) for each recommendation not implemented, the
 5-47 reason it was not implemented.

5-48 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
 5-49 RECOMMENDATIONS. (a) For the purposes of this section, the flows
 5-50 commission, not later than November 1, 2005, shall define the
 5-51 geographical extent of each river basin and bay system in this state
 5-52 for the sole purpose of developing environmental flow regime
 5-53 recommendations under this section and adoption of environmental
 5-54 flow standards under Section 11.1471.

5-55 (b) The flows commission shall give priority in descending
 5-56 order to the following river basin and bay systems of the state for
 5-57 the purpose of developing environmental flow regime
 5-58 recommendations and adopting environmental flow standards:

5-59 (1) the river basin and bay system consisting of the
 5-60 Trinity and San Jacinto Rivers and Galveston Bay and the river basin
 5-61 and bay system consisting of the Sabine and Neches Rivers and Sabine
 5-62 Lake Bay;

5-63 (2) the river basin and bay system consisting of the
 5-64 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
 5-65 river basin and bay system consisting of the Guadalupe, San
 5-66 Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio
 5-67 Bays; and

5-68 (3) the river basin and bay system consisting of the
 5-69 Nueces River and Corpus Christi and Baffin Bays, the river basin and

6-1 bay system consisting of the Rio Grande, the Rio Grande estuary, and
6-2 the Lower Laguna Madre, and the Brazos River and its associated bay
6-3 and estuary system.

6-4 (c) For the river basin and bay systems listed in Subsection
6-5 (b)(1):

6-6 (1) the flows commission shall appoint the basin and
6-7 bay area stakeholders committee not later than November 1, 2005;

6-8 (2) the basin and bay area stakeholders committee
6-9 shall establish a basin and bay expert science team not later than
6-10 March 1, 2006;

6-11 (3) the basin and bay expert science team shall
6-12 finalize environmental flow regime recommendations and submit them
6-13 to the basin and bay area stakeholders committee, the flows
6-14 commission, and the commission not later than March 1, 2007;

6-15 (4) the basin and bay area stakeholders committee
6-16 shall submit to the commission its comments on and recommendations
6-17 regarding the basin and bay expert science team's recommended
6-18 environmental flow regime not later than September 1, 2007; and

6-19 (5) the commission shall adopt the environmental flow
6-20 standards as provided by Section 11.1471 not later than September
6-21 1, 2008.

6-22 (d) The flows commission shall appoint the basin and bay
6-23 area stakeholders committees for the river basin and bay systems
6-24 listed in Subsection (b)(2) not later than September 1, 2006, and
6-25 shall appoint the basin and bay area stakeholders committees for
6-26 the river basin and bay systems listed in Subsection (b)(3) not
6-27 later than September 1, 2007. The flows commission shall establish
6-28 a schedule for the performance of the tasks listed in Subsections
6-29 (c)(2)-(5) with regard to the river basin and bay systems listed in
6-30 Subsections (b)(2) and (3) that will result in the adoption of
6-31 environmental flow standards for that river basin and bay system by
6-32 the commission as soon as is reasonably possible. Each basin and
6-33 bay area stakeholders committee and basin and bay expert science
6-34 team for a river basin and bay system listed in Subsection (b)(2) or
6-35 (3) shall make recommendations to the flows commission with regard
6-36 to the schedule applicable to that river basin and bay system. The
6-37 flows commission shall consider the recommendations of the basin
6-38 and bay area stakeholders committee and basin and bay expert
6-39 science team as well as coordinate with, and give appropriate
6-40 consideration to the recommendations of, the commission, the Parks
6-41 and Wildlife Department, and the board in establishing the
6-42 schedule.

6-43 (e) For a river basin and bay system or a river basin that
6-44 does not have an associated bay system in this state not listed in
6-45 Subsection (b), the flows commission shall establish a schedule for
6-46 the development of environmental flow regime recommendations and
6-47 the adoption of environmental flow standards. The flows commission
6-48 shall develop the schedule in consultation with the commission, the
6-49 Parks and Wildlife Department, the board, and the pertinent basin
6-50 and bay area stakeholders committee and basin and bay expert
6-51 science team. The flows commission may, on its own initiative or on
6-52 request, modify a schedule established under this subsection to be
6-53 more responsive to particular circumstances, local desires,
6-54 changing conditions, or time-sensitive conflicts. This subsection
6-55 does not prohibit, in a river basin and bay system for which the
6-56 flows commission has not yet established a schedule for the
6-57 development of environmental flow regime recommendations and the
6-58 adoption of environmental flow standards, an effort to develop
6-59 information on environmental flow needs and ways in which those
6-60 needs can be met by a voluntary consensus-building process.

6-61 (f) The flows commission shall appoint a basin and bay area
6-62 stakeholders committee for each river basin and bay system in this
6-63 state for which a schedule for the development of environmental
6-64 flow regime recommendations and the adoption of environmental flow
6-65 standards is specified by or established under Subsection (c), (d),
6-66 or (e). Chapter 2110, Government Code, does not apply to the size,
6-67 composition, or duration of a basin and bay area stakeholders
6-68 committee. Each committee must consist of at least 17 members. The
6-69 members must represent appropriate stakeholders, including

7-1 representatives of:

7-2 (1) agricultural water users;

7-3 (2) recreational water users, including coastal
7-4 recreational anglers and businesses supporting water recreation;

7-5 (3) municipalities;

7-6 (4) soil and water conservation districts;

7-7 (5) industrial water users;

7-8 (6) commercial fishermen;

7-9 (7) public interest groups;

7-10 (8) regional water planning groups;

7-11 (9) groundwater conservation districts;

7-12 (10) river authorities and other conservation and
7-13 reclamation districts with jurisdiction over surface water; and

7-14 (11) environmental interests.

7-15 (g) Members of a basin and bay area stakeholders committee
7-16 serve five-year terms expiring March 1. If a vacancy occurs on a
7-17 committee, the remaining members of the committee by majority vote
7-18 shall appoint a member to serve the remainder of the unexpired term.

7-19 (h) Meetings of a basin and bay area stakeholders committee
7-20 must be open to the public.

7-21 (i) Each basin and bay area stakeholders committee shall
7-22 establish a basin and bay expert science team for the river basin
7-23 and bay system for which the committee is established. The basin
7-24 and bay expert science team must be established not later than six
7-25 months after the date the basin and bay area stakeholders committee
7-26 is established. Chapter 2110, Government Code, does not apply to
7-27 the size, composition, or duration of a basin and bay expert science
7-28 team. Each basin and bay expert science team must be composed of
7-29 technical experts with special expertise regarding the river basin
7-30 and bay system or regarding the development of environmental flow
7-31 regimes. A person may serve as a member of more than one basin and
7-32 bay expert science team at the same time.

7-33 (j) The members of a basin and bay expert science team serve
7-34 five-year terms expiring April 1. A vacancy on a basin and bay
7-35 expert science team is filled by appointment by the pertinent basin
7-36 and bay area stakeholders committee to serve the remainder of the
7-37 unexpired term.

7-38 (k) The science advisory committee shall appoint one of its
7-39 members to serve as a liaison to each basin and bay expert science
7-40 team to facilitate coordination and consistency in environmental
7-41 flow activities throughout the state. The commission, the Parks
7-42 and Wildlife Department, and the board shall provide technical
7-43 assistance to each basin and bay expert science team, including
7-44 information about the studies conducted under Sections 16.058 and
7-45 16.059, and may serve as nonvoting members of the basin and bay
7-46 expert science team to facilitate the development of environmental
7-47 flow regime recommendations.

7-48 (l) Where reasonably practicable, meetings of a basin and
7-49 bay expert science team must be open to the public.

7-50 (m) Each basin and bay expert science team shall develop
7-51 environmental flow analyses and a recommended environmental flow
7-52 regime for the river basin and bay system for which the team is
7-53 established through a collaborative process designed to achieve a
7-54 consensus. In developing the analyses and recommendations, the
7-55 science team must consider all reasonably available science,
7-56 without regard to the need for the water for other uses, and the
7-57 science team's recommendations must be based solely on the best
7-58 science available.

7-59 (n) Each basin and bay expert science team shall submit its
7-60 environmental flow analyses and environmental flow regime
7-61 recommendations to the pertinent basin and bay area stakeholders
7-62 committee, the flows commission, and the commission in accordance
7-63 with the applicable schedule specified by or established under
7-64 Subsection (c), (d), or (e). The basin and bay area stakeholders
7-65 committee and the flows commission may not change the environmental
7-66 flow analyses or environmental flow regime recommendations of the
7-67 basin and bay expert science team.

7-68 (o) Each basin and bay area stakeholders committee shall
7-69 review the environmental flow analyses and environmental flow

8-1 regime recommendations submitted by the committee's basin and bay
 8-2 expert science team and shall consider them in conjunction with
 8-3 other factors, including the present and future needs for water for
 8-4 other uses related to water supply planning in the pertinent river
 8-5 basin and bay system. The basin and bay area stakeholders committee
 8-6 shall develop recommendations regarding environmental flow
 8-7 standards and strategies to meet the environmental flow standards
 8-8 and submit those recommendations to the commission and to the flows
 8-9 commission in accordance with the applicable schedule specified by
 8-10 or established under Subsection (c), (d), or (e). In developing its
 8-11 recommendations, the basin and bay area stakeholders committee
 8-12 shall operate on a consensus basis to the maximum extent possible.

8-13 (p) In recognition of the importance of adaptive
 8-14 management, after submitting its recommendations regarding
 8-15 environmental flow standards and strategies to meet the
 8-16 environmental flow standards to the commission, each basin and bay
 8-17 area stakeholders committee, with the assistance of the pertinent
 8-18 basin and bay expert science team, shall prepare and submit for
 8-19 approval by the flows commission a work plan. The work plan must:

8-20 (1) establish a periodic review of the basin and bay
 8-21 environmental flow analyses and environmental flow regime
 8-22 recommendations, environmental flow standards, and strategies, to
 8-23 occur at least once every 10 years;

8-24 (2) prescribe specific monitoring, studies, and
 8-25 activities; and

8-26 (3) establish a schedule for continuing the validation
 8-27 or refinement of the basin and bay environmental flow analyses and
 8-28 environmental flow regime recommendations, the environmental flow
 8-29 standards adopted by the commission, and the strategies to achieve
 8-30 those standards.

8-31 (q) In accordance with the applicable schedule specified by
 8-32 or established under Subsection (c), (d), or (e), the flows
 8-33 commission, with input from the science advisory committee, shall
 8-34 review the environmental flow analyses and environmental flow
 8-35 regime recommendations submitted by each basin and bay expert
 8-36 science team. If appropriate, the flows commission shall submit
 8-37 comments on the analyses and recommendations to the commission for
 8-38 use by the commission in adopting rules under Section 11.1471.
 8-39 Comments must be submitted not later than six months after the date
 8-40 of receipt of the analyses and recommendations.

8-41 (r) In the event the commission, by permit or order, has
 8-42 established an estuary advisory council, that council may continue
 8-43 in full force and effect.

8-44 SECTION 10. Subsections (a) and (b), Section 11.0237, Water
 8-45 Code, are amended to read as follows:

8-46 (a) The commission may not issue a new permit for instream
 8-47 flows dedicated to environmental needs or bay and estuary inflows.
 8-48 The ~~[This section does not prohibit the]~~ commission may approve
 8-49 ~~[from issuing]~~ an application to amend ~~[amendment to]~~ an existing
 8-50 permit or certificate of adjudication to change the use to or add a
 8-51 use for instream flows dedicated to environmental needs or bay and
 8-52 estuary inflows.

8-53 (b) This section does not alter the commission's
 8-54 obligations under Section 11.042(b), 11.042(c), 11.046(b),
 8-55 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
 8-56 11.150, 11.152, 16.058, or 16.059.

8-57 SECTION 11. Subsection (b), Section 11.042, Water Code, is
 8-58 amended to read as follows:

8-59 (b) A person who wishes to discharge and then subsequently
 8-60 divert and reuse the person's existing return flows derived from
 8-61 developed water ~~[privately owned groundwater]~~ must obtain prior
 8-62 authorization from the commission for the diversion and the reuse
 8-63 of these return flows. The authorization may allow for the
 8-64 diversion and reuse by the discharger of existing return flows,
 8-65 less carriage losses, and shall be subject to special conditions if
 8-66 necessary to protect an existing water right that was granted based
 8-67 on the use or availability of these return flows. Special
 8-68 conditions may also be provided to help maintain instream uses and
 8-69 freshwater inflows to bays and estuaries. A person wishing to

9-1 divert and reuse future increases of return flows derived from
9-2 developed water [~~privately owned groundwater~~] must obtain
9-3 authorization to reuse increases in return flows before the
9-4 increase.

9-5 SECTION 12. Subsection (b), Section 11.082, Water Code, is
9-6 amended to read as follows:

9-7 (b) The state may recover the penalties prescribed in
9-8 Subsection (a) [~~of this section~~] by suit brought for that purpose in
9-9 a court of competent jurisdiction. The state may seek those
9-10 penalties regardless of whether a watermaster has been appointed
9-11 for the water division, river basin, or segment of a river basin
9-12 where the unlawful use is alleged to have occurred.

9-13 SECTION 13. Section 11.0841, Water Code, is amended by
9-14 adding Subsection (c) to read as follows:

9-15 (c) For purposes of this section, the Parks and Wildlife
9-16 Department has:

9-17 (1) the rights of a holder of a water right that is
9-18 held in the Texas Water Trust, including the right to file suit in a
9-19 civil court to prevent the unlawful use of such a right;

9-20 (2) the right to act in the same manner that a holder
9-21 of a water right may act to protect the holder's rights in seeking
9-22 to prevent any person from appropriating water in violation of a
9-23 set-aside established by the commission under Section 11.1471 to
9-24 meet instream flow needs or freshwater inflow needs; and

9-25 (3) the right to file suit in a civil court to prevent
9-26 the unlawful use of a set-aside established under Section 11.1471.

9-27 SECTION 14. Subsection (a), Section 11.0842, Water Code, is
9-28 amended to read as follows:

9-29 (a) If a person violates this chapter, a rule or order
9-30 adopted under this chapter or Section 16.236 [~~of this code~~], or a
9-31 permit, certified filing, or certificate of adjudication issued
9-32 under this chapter, the commission may assess an administrative
9-33 penalty against that person as provided by this section. The
9-34 commission may assess an administrative penalty for a violation
9-35 relating to a water division or a river basin or segment of a river
9-36 basin regardless of whether a watermaster has been appointed for
9-37 the water division or river basin or segment of the river basin.

9-38 SECTION 15. Subsection (a), Section 11.0843, Water Code, is
9-39 amended to read as follows:

9-40 (a) Upon witnessing a violation of this chapter or a rule or
9-41 order or a water right issued under this chapter, the executive
9-42 director or a person designated by the executive director,
9-43 including a watermaster or the watermaster's deputy, [~~as defined by~~
9-44 commission rule,] may issue the alleged violator a field citation
9-45 alleging that a violation has occurred and providing the alleged
9-46 violator the option of either:

9-47 (1) without admitting to or denying the alleged
9-48 violation, paying an administrative penalty in accordance with the
9-49 predetermined penalty amount established under Subsection (b) [~~of~~
9-50 ~~this section~~] and taking remedial action as provided in the
9-51 citation; or

9-52 (2) requesting a hearing on the alleged violation in
9-53 accordance with Section 11.0842 [~~of this code~~].

9-54 SECTION 16. Subsection (c), Section 11.126, Water Code, is
9-55 amended to read as follows:

9-56 (c) If the application proposes construction of a dam
9-57 greater than six feet in height, measured from the channel invert
9-58 elevation to the top of the dam, either for diversion or storage,
9-59 the executive director may also require filing a copy of all plans
9-60 and specifications and a copy of the engineer's field notes of any
9-61 survey of the lake or reservoir. No work on the project shall
9-62 proceed until approval of the plans is obtained from the executive
9-63 director.

9-64 SECTION 17. Subsection (b), Section 11.134, Water Code, is
9-65 amended to read as follows:

9-66 (b) The commission shall grant the application only if:

9-67 (1) the application conforms to the requirements
9-68 prescribed by this chapter and is accompanied by the prescribed
9-69 fee;

10-1 (2) unappropriated water is available in the source of
 10-2 supply;

10-3 (3) the proposed appropriation:
 10-4 (A) is intended for a beneficial use;
 10-5 (B) does not impair existing water rights or
 10-6 vested riparian rights;

10-7 (C) is not detrimental to the public welfare;
 10-8 (D) considers any applicable environmental flow
 10-9 standards established under Section 11.1471 and, if applicable, the
 10-10 assessments performed under Sections 11.147(d) and (e) and Sections
 10-11 11.150, 11.151, and 11.152; and

10-12 (E) addresses a water supply need in a manner
 10-13 that is consistent with the state water plan and the relevant
 10-14 approved regional water plan for any area in which the proposed
 10-15 appropriation is located, unless the commission determines that
 10-16 conditions warrant waiver of this requirement; and

10-17 (4) the applicant has provided evidence that
 10-18 reasonable diligence will be used to avoid waste and achieve water
 10-19 conservation as defined by [~~Subdivision (8)(B),~~] Section
 10-20 11.002(8)(B) [11.002].

10-21 SECTION 18. Section 11.147, Water Code, is amended by
 10-22 amending Subsections (b), (d), and (e) and adding Subsections (e-1)
 10-23 and (e-2) to read as follows:

10-24 (b) In its consideration of an application for a permit to
 10-25 store, take, or divert water, the commission shall assess the
 10-26 effects, if any, of the issuance of the permit on the bays and
 10-27 estuaries of Texas. For permits issued within an area that is 200
 10-28 river miles of the coast, to commence from the mouth of the river
 10-29 thence inland, the commission shall include in the permit any
 10-30 conditions considered necessary to maintain freshwater inflows to
 10-31 any affected bay and estuary system, to the extent practicable when
 10-32 considering all public interests and the studies mandated by
 10-33 Section 16.058 as evaluated under Section 11.1491[~~, those~~
 10-34 conditions considered necessary to maintain beneficial inflows to
 10-35 any affected bay and estuary system].

10-36 (d) In its consideration of an application to store, take,
 10-37 or divert water, the commission shall include in the permit, to the
 10-38 extent practicable when considering all public interests, those
 10-39 conditions considered by the commission necessary to maintain
 10-40 existing instream uses and water quality of the stream or river to
 10-41 which the application applies. In determining what conditions to
 10-42 include in the permit under this subsection, the commission shall
 10-43 consider among other factors:

10-44 (1) the studies mandated by Section 16.059; and
 10-45 (2) any water quality assessment performed under
 10-46 Section 11.150.

10-47 (e) The commission shall include in the permit, to the
 10-48 extent practicable when considering all public interests, those
 10-49 conditions considered by the commission necessary to maintain fish
 10-50 and wildlife habitats. In determining what conditions to include
 10-51 in the permit under this subsection, the commission shall consider
 10-52 any assessment performed under Section 11.152.

10-53 (e-1) Any permit for a new appropriation of water or an
 10-54 amendment to an existing water right that increases the amount of
 10-55 water authorized to be stored, taken, or diverted must include a
 10-56 provision allowing the commission to adjust the conditions included
 10-57 in the permit or amended water right to provide for protection of
 10-58 instream flows or freshwater inflows. With respect to an amended
 10-59 water right, the provision may not allow the commission to adjust a
 10-60 condition of the amendment other than a condition that applies only
 10-61 to the increase in the amount of water to be stored, taken, or
 10-62 diverted authorized by the amendment. This subsection does not
 10-63 affect an appropriation of or an authorization to store, take, or
 10-64 divert water under a permit or amendment to a water right issued
 10-65 before September 1, 2005. The commission shall adjust the
 10-66 conditions if the commission determines, through an expedited
 10-67 public comment process, that such an adjustment is appropriate to
 10-68 achieve compliance with applicable environmental flow standards
 10-69 adopted under Section 11.1471. The adjustment:

11-1 (1) in combination with any previous adjustments made
 11-2 under this subsection may not increase the amount of the
 11-3 pass-through or release requirement for the protection of instream
 11-4 flows or freshwater inflows by more than 12.5 percent of the
 11-5 annualized total of that requirement contained in the permit as
 11-6 issued or of that requirement contained in the amended water right
 11-7 and applicable only to the increase in the amount of water
 11-8 authorized to be stored, taken, or diverted under the amended water
 11-9 right;

11-10 (2) must be based on appropriate consideration of the
 11-11 priority dates and diversion locations of any other water rights
 11-12 granted in the same river basin that are subject to adjustment under
 11-13 this subsection; and

11-14 (3) must be based on appropriate consideration of any
 11-15 voluntary contributions to the Texas Water Trust that contribute
 11-16 toward meeting the environmental flow standards. Any water right
 11-17 holder making such donation shall be entitled to appropriate credit
 11-18 of such benefits against adjustments of his water right pursuant to
 11-19 Subdivision (1).

11-20 (e-2) Notwithstanding Subsections (b)-(e), for the purpose
 11-21 of determining the environmental flow conditions necessary to
 11-22 maintain freshwater inflows to an affected bay and estuary system,
 11-23 existing instream uses and water quality of a stream or river, or
 11-24 fish and aquatic wildlife habitats, the commission shall apply any
 11-25 applicable environmental flow standard, including any
 11-26 environmental flow set-aside, adopted under Section 11.1471
 11-27 instead of considering the factors specified by those subsections.

11-28 SECTION 19. Subchapter D, Chapter 11, Water Code, is
 11-29 amended by adding Section 11.1471 to read as follows:

11-30 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

11-31 (a) The commission by rule shall:

11-32 (1) adopt appropriate environmental flow standards
 11-33 for each river basin and bay system in this state that are adequate
 11-34 to support a sound ecological environment, to the maximum extent
 11-35 reasonable considering other public interests and other relevant
 11-36 factors;

11-37 (2) establish an amount of unappropriated water, if
 11-38 available, to be set aside to satisfy the environmental flow
 11-39 standards to the maximum extent reasonable when considering human
 11-40 water needs; and

11-41 (3) establish procedures for implementing an
 11-42 adjustment of the conditions included in a permit or an amended
 11-43 water right as provided by Section 11.147(e-1).

11-44 (b) In adopting environmental flow standards for a river
 11-45 basin and bay system under Subsection (a)(1), the commission shall
 11-46 consider:

11-47 (1) the definition of the geographical extent of the
 11-48 river basin and bay system adopted by the flows commission under
 11-49 Section 11.02362(a);

11-50 (2) the schedule for the adoption of environmental
 11-51 flow standards for the river basin and bay system established by the
 11-52 flows commission under Section 11.02362(d) or (e), if applicable;

11-53 (3) the environmental flow analyses and the
 11-54 recommended environmental flow regime developed by the applicable
 11-55 basin and bay expert science team under Section 11.02362(m);

11-56 (4) the recommendations regarding environmental flow
 11-57 standards and strategies to meet the flow standards developed by
 11-58 the applicable basin and bay area stakeholders committee under
 11-59 Section 11.02362(o);

11-60 (5) the specific characteristics of the river basin
 11-61 and bay system;

11-62 (6) economic factors;

11-63 (7) the human and other competing water needs in the
 11-64 river basin and bay system;

11-65 (8) all reasonably available scientific information,
 11-66 including any scientific information provided by the science
 11-67 advisory committee; and

11-68 (9) any other appropriate information.

11-69 (c) Environmental flow standards adopted under Subsection

12-1 (a)(1) must consist of a schedule of flow quantities, reflecting
 12-2 seasonal and yearly fluctuations that may vary geographically by
 12-3 specific location in a river basin and bay system.

12-4 (d) As provided by Section 11.023, the commission may not
 12-5 issue a permit for a new appropriation or an amendment to an
 12-6 existing water right that increases the amount of water authorized
 12-7 to be stored, taken, or diverted if the issuance of the permit or
 12-8 amendment would impair an environmental flow set-aside established
 12-9 under Subsection (a)(2). A permit for a new appropriation or an
 12-10 amendment to an existing water right that increases the amount of
 12-11 water authorized to be stored, taken, or diverted that is issued
 12-12 after the adoption of an applicable environmental flow set-aside
 12-13 must contain appropriate conditions to ensure protection of the
 12-14 environmental flow set-aside.

12-15 (e) An environmental flow set-aside established under
 12-16 Subsection (a)(2) must be assigned a priority date corresponding to
 12-17 the date the commission receives environmental flow regime
 12-18 recommendations from the applicable basin and bay expert science
 12-19 team and be included in the appropriate water availability models
 12-20 in connection with an application for a permit for a new
 12-21 appropriation or for an amendment to an existing water right that
 12-22 increases the amount of water authorized to be stored, taken, or
 12-23 diverted.

12-24 (f) An environmental flow standard or environmental flow
 12-25 set-aside adopted under Subsection (a) may be altered by the
 12-26 commission in a rulemaking process undertaken in accordance with a
 12-27 schedule established by the commission. The commission's schedule
 12-28 may not provide for the rulemaking process to occur more frequently
 12-29 than once every 10 years unless the applicable work plan approved by
 12-30 the flows commission under Section 11.02362(p) provides for a
 12-31 periodic review under that section to occur more frequently than
 12-32 once every 10 years. In that event, the commission may provide for
 12-33 the rulemaking process to be undertaken in conjunction with the
 12-34 periodic review if the commission determines that schedule to be
 12-35 appropriate.

12-36 SECTION 20. The heading to Section 11.148, Water Code, is
 12-37 amended to read as follows:

12-38 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
 12-39 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
 12-40 ENVIRONMENTAL FLOWS.

12-41 SECTION 21. Section 11.148, Water Code, is amended by
 12-42 adding Subsection (a-1) and amending Subsections (b) and (c) to
 12-43 read as follows:

12-44 (a-1) State water that is set aside by the commission to
 12-45 meet the needs for freshwater inflows to affected bays and
 12-46 estuaries and instream uses under Section 11.1471(a)(2) may be made
 12-47 available temporarily for other essential beneficial uses if the
 12-48 commission finds that an emergency exists that cannot practically
 12-49 be resolved in another way.

12-50 (b) Before the commission suspends a permit condition under
 12-51 Subsection (a) or makes water available temporarily under
 12-52 Subsection (a-1) [~~of this section~~], it must give written notice to
 12-53 the Parks and Wildlife Department of the proposed action
 12-54 [~~suspension~~]. The commission shall give the Parks and Wildlife
 12-55 Department an opportunity to submit comments on the proposed action
 12-56 [~~suspension~~] within 72 hours from such time and the commission
 12-57 shall consider those comments before issuing its order implementing
 12-58 the proposed action [~~imposing the suspension~~].

12-59 (c) The commission may suspend the permit condition under
 12-60 Subsection (a) or make water available temporarily under Subsection
 12-61 (a-1) without notice to any other interested party other than the
 12-62 Parks and Wildlife Department as provided by Subsection (b) [~~of~~
 12-63 ~~this section~~]. However, all affected persons shall be notified
 12-64 immediately by publication, and a hearing to determine whether the
 12-65 suspension should be continued shall be held within 15 days of the
 12-66 date on which the order to suspend is issued.

12-67 SECTION 22. Subsection (a), Section 11.1491, Water Code, is
 12-68 amended to read as follows:

12-69 (a) The Parks and Wildlife Department and the commission

13-1 shall have joint responsibility to review the studies prepared
 13-2 under Section 16.058 [~~of this code~~], to determine inflow conditions
 13-3 necessary for the bays and estuaries, and to provide information
 13-4 necessary for water resources management. Each agency shall
 13-5 designate an employee to share equally in the oversight of the
 13-6 program. Other responsibilities shall be divided between the Parks
 13-7 and Wildlife Department and the commission to maximize present
 13-8 in-house capabilities of personnel and to minimize costs to the
 13-9 state. Each agency shall have reasonable access to all information
 13-10 produced by the other agency. Publication of reports completed
 13-11 under this section shall be submitted for comment to [~~both~~] the
 13-12 commission, [~~and~~] the Parks and Wildlife Department, the flows
 13-13 commission, the science advisory committee, and any applicable
 13-14 basin and bay area stakeholders committee and basin and bay expert
 13-15 science team.

13-16 SECTION 23. Subsection (g), Section 11.329, Water Code, is
 13-17 amended to read as follows:

13-18 (g) The commission may not assess costs under this section
 13-19 against a holder of a non-priority hydroelectric right that owns or
 13-20 operates privately owned facilities that collectively have a
 13-21 capacity of less than two megawatts or against a holder of a water
 13-22 right placed in the Texas Water Trust for a term of at least 20
 13-23 years. [This subsection is not intended to affect in any way the
 13-24 fees assessed on a water right holder by the commission under
 13-25 Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular
 13-26 Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts
 13-27 of the 73rd Legislature, Regular Session, 1993, a holder of a
 13-28 non-priority hydroelectric right that owns or operates privately
 13-29 owned facilities that collectively have a capacity of less than two
 13-30 megawatts shall be assessed fees at the same rate per acre-foot
 13-31 charged to a holder of a non-priority hydroelectric right that owns
 13-32 or operates privately owned facilities that collectively have a
 13-33 capacity of more than two megawatts.]

13-34 SECTION 24. Subsection (e), Section 11.404, Water Code, is
 13-35 amended to read as follows:

13-36 (e) The court may not assess costs and expenses under this
 13-37 section against:

13-38 (1) a holder of a non-priority hydroelectric right
 13-39 that owns or operates privately owned facilities that collectively
 13-40 have a capacity of less than two megawatts; or

13-41 (2) a holder of a water right placed in the Texas Water
 13-42 Trust for a term of at least 20 years.

13-43 SECTION 25. Subchapter I, Chapter 11, Water Code, is
 13-44 amended by adding Section 11.4531 to read as follows:

13-45 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
 13-46 each river basin or segment of a river basin for which the executive
 13-47 director appoints a watermaster under this subchapter, the
 13-48 executive director shall appoint a watermaster advisory committee
 13-49 consisting of at least nine but not more than 15 members. A member
 13-50 of the advisory committee must be a holder of a water right or a
 13-51 representative of a holder of a water right in the river basin or
 13-52 segment of the river basin for which the watermaster is appointed.
 13-53 In appointing members to the advisory committee, the executive
 13-54 director shall consider:

13-55 (1) geographic representation;
 13-56 (2) amount of water rights held;
 13-57 (3) different types of holders of water rights and
 13-58 users, including water districts, municipal suppliers, irrigators,
 13-59 and industrial users; and

13-60 (4) experience and knowledge of water management
 13-61 practices.

13-62 (b) An advisory committee member is not entitled to
 13-63 reimbursement of expenses or to compensation.

13-64 (c) An advisory committee member serves a two-year term
 13-65 expiring August 31 of each odd-numbered year and holds office until
 13-66 a successor is appointed.

13-67 (d) The advisory committee shall meet within 30 days after
 13-68 the date the initial appointments have been made and shall select a
 13-69 presiding officer to serve a one-year term. The committee shall

14-1 meet regularly as necessary.

14-2 (e) The advisory committee shall:

14-3 (1) make recommendations to the executive director
 14-4 regarding activities of benefit to the holders of water rights in
 14-5 the administration and distribution of water to holders of water
 14-6 rights in the river basin or segment of the river basin for which
 14-7 the watermaster is appointed;

14-8 (2) review and comment to the executive director on
 14-9 the annual budget of the watermaster operation; and

14-10 (3) perform other advisory duties as requested by the
 14-11 executive director regarding the watermaster operation or as
 14-12 requested by holders of water rights and considered by the
 14-13 committee to benefit the administration of water rights in the
 14-14 river basin or segment of the river basin for which the watermaster
 14-15 is appointed.

14-16 SECTION 26. Section 11.454, Water Code, is amended to read
 14-17 as follows:

14-18 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
 14-19 Section 11.327 applies to the duties and authority of a watermaster
 14-20 appointed for a river basin or segment of a river basin under this
 14-21 subchapter in the same manner as that section applies to the duties
 14-22 and authority of a watermaster appointed for a water division under
 14-23 Subchapter G ~~[A watermaster as the agent of the commission and under~~
 14-24 ~~the executive director's supervision shall.~~

14-25 ~~[(1) divide the water of the streams or other sources~~
 14-26 ~~of supply of his segment or basin in accordance with the authorized~~
 14-27 ~~water rights;~~

14-28 ~~[(2) regulate or cause to be regulated the controlling~~
 14-29 ~~works of reservoirs and diversion works in time of water shortage,~~
 14-30 ~~as is necessary because of the rights existing in the streams of his~~
 14-31 ~~segment or basin, or as is necessary to prevent the waste of water~~
 14-32 ~~or its diversion, taking, storage, or use in excess of the~~
 14-33 ~~quantities to which the holders of water rights are lawfully~~
 14-34 ~~entitled; and~~

14-35 ~~[(3) perform any other duties and exercise any~~
 14-36 ~~authority directed by the commission].~~

14-37 SECTION 27. Section 11.455, Water Code, is amended to read
 14-38 as follows:

14-39 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
 14-40 ~~[ASSESSMENTS].~~ (a) Section 11.329 applies to the payment of the
 14-41 compensation and expenses of a watermaster appointed for a river
 14-42 basin or segment of a river basin under this subchapter in the same
 14-43 manner as that section applies to the payment of the compensation
 14-44 and expenses of a watermaster appointed for a water division under
 14-45 Subchapter G.

14-46 (b) The executive director shall deposit the assessments
 14-47 collected under this section to the credit of the watermaster fund.

14-48 (c) Money deposited under this section to the credit of the
 14-49 watermaster fund may be used only for the purposes specified by
 14-50 Section 11.3291 with regard to the watermaster operation under this
 14-51 subchapter with regard to which the assessments were collected ~~[The~~
 14-52 ~~commission may assess the costs of the watermaster against all~~
 14-53 ~~persons who hold water rights in the river basin or segment of the~~
 14-54 ~~river basin under the watermaster's jurisdiction in accordance with~~
 14-55 ~~Section 11.329 of this code].~~

14-56 SECTION 28. Subchapter F, Chapter 15, Water Code, is
 14-57 amended by adding Section 15.4063 to read as follows:

14-58 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
 14-59 authorize the use of money in the research and planning fund:

14-60 (1) to compensate the members of the Texas
 14-61 Environmental Flows Science Advisory Committee established under
 14-62 Section 11.02361 for attendance and participation at meetings of
 14-63 the committee and for transportation, meals, lodging, or other
 14-64 travel expenses associated with attendance at those meetings as
 14-65 provided by the General Appropriations Act;

14-66 (2) for contracts with cooperating state and federal
 14-67 agencies and universities and with private entities as necessary to
 14-68 provide technical assistance to enable the Texas Environmental
 14-69 Flows Science Advisory Committee and the basin and bay expert

15-1 science teams established under Section 11.02362 to perform their
 15-2 statutory duties;

15-3 (3) to compensate the members of the expert science
 15-4 teams created pursuant to Section 11.02362(i) for attendance and
 15-5 participation at meetings of the teams and for transportation,
 15-6 meals, lodging, or other travel expenses associated with attendance
 15-7 at those meetings as provided by the General Appropriations Act;
 15-8 and

15-9 (4) for contracts with political subdivisions
 15-10 designated as representatives of stakeholder committees
 15-11 established pursuant to Section 11.02362 to fund all or part of the
 15-12 administrative expenses for conducting meetings of the stakeholder
 15-13 committee or the associated expert science team.

15-14 SECTION 29. Section 15.7031, Water Code, is amended by
 15-15 amending Subsection (c) and adding Subsection (e) to read as
 15-16 follows:

15-17 (c) The dedication of any water rights placed in trust must
 15-18 be reviewed and approved by the commission, in consultation with
 15-19 the board, ~~and~~ the Parks and Wildlife Department, and the
 15-20 Environmental Flows Commission. In addition, the Department of
 15-21 Agriculture and the basin and bay area stakeholders committee and
 15-22 basin and bay expert science team established under Section
 15-23 11.02362 for the river basin and bay system to which the water right
 15-24 pertains may provide input to the commission, as appropriate,
 15-25 during the review and approval process for dedication of water
 15-26 rights.

15-27 (e) While a water right is held in the trust, the water
 15-28 authorized for beneficial use under the terms of the water right is
 15-29 considered to be held for instream flows, water quality, fish and
 15-30 wildlife habitat, bay and estuary inflows, or other environmental
 15-31 uses without the need for a permit amendment. After the water right
 15-32 is withdrawn in whole or in part from the trust, the use of the water
 15-33 right or portion of the water right withdrawn must be in accordance
 15-34 with the terms of the water right.

15-35 SECTION 30. Subsection (d), Section 16.059, Water Code, is
 15-36 amended to read as follows:

15-37 (d) The priority studies shall be completed not later than
 15-38 December 31, 2014 ~~[2010]~~. The Parks and Wildlife Department, the
 15-39 commission, and the board shall establish a work plan that
 15-40 prioritizes the studies and that sets interim deadlines providing
 15-41 for publication of flow determinations for individual rivers and
 15-42 streams on a reasonably consistent basis throughout the prescribed
 15-43 study period. Before publication, completed studies shall be
 15-44 submitted for comment to the commission, the board, and the Parks
 15-45 and Wildlife Department.

15-46 SECTION 31. Subsection (h), Section 26.0135, Water Code, as
 15-47 amended by Chapters 234 and 965, Acts of the 77th Legislature,
 15-48 Regular Session, 2001, is reenacted and amended to read as follows:

15-49 (h) The commission shall apportion, assess, and recover the
 15-50 reasonable costs of administering the water quality management
 15-51 programs under this section from users of water and wastewater
 15-52 permit holders in the watershed according to the records of the
 15-53 commission generally in proportion to their right, through permit
 15-54 or contract, to use water from and discharge wastewater in the
 15-55 watershed. Irrigation water rights, ~~and~~ non-priority
 15-56 hydroelectric rights of a water right holder that owns or operates
 15-57 privately owned facilities that collectively have a capacity of
 15-58 less than two megawatts, and water rights held in the Texas Water
 15-59 Trust for terms of at least 20 years will not be subject to this
 15-60 assessment. The cost to river authorities and others to conduct
 15-61 water quality monitoring and assessment shall be subject to prior
 15-62 review and approval by the commission as to methods of allocation
 15-63 and total amount to be recovered. The commission shall adopt rules
 15-64 to supervise and implement the water quality monitoring,
 15-65 assessment, and associated costs. The rules shall ensure that
 15-66 water users and wastewater dischargers do not pay excessive
 15-67 amounts, that program funds are equitably apportioned among basins,
 15-68 that a river authority may recover no more than the actual costs of
 15-69 administering the water quality management programs called for in

16-1 this section, and that no municipality shall be assessed cost for
 16-2 any efforts that duplicate water quality management activities
 16-3 described in Section 26.177 [~~of this chapter~~]. The rules
 16-4 concerning the apportionment and assessment of reasonable costs
 16-5 shall provide for a recovery of not more than \$5,000,000 annually.
 16-6 Costs recovered by the commission are to be deposited to the credit
 16-7 of the water resource management account and may be used only to
 16-8 accomplish the purposes of this section. The commission may apply
 16-9 not more than 10 percent of the costs recovered annually toward the
 16-10 commission's overhead costs for the administration of this section
 16-11 and the implementation of regional water quality assessments. The
 16-12 commission, with the assistance and input of each river authority,
 16-13 shall file a written report accounting for the costs recovered
 16-14 under this section with the governor, the lieutenant governor, and
 16-15 the speaker of the house of representatives on or before December 1
 16-16 of each even-numbered year.

16-17 SECTION 32. Subsections (d), (k), (l), and (m), Section
 16-18 11.0236, Subsection (c), Section 11.0237, and Subsection (b),
 16-19 Section 11.1491, Water Code, are repealed.

16-20 SECTION 33. The Study Commission on Water for Environmental
 16-21 Flows is abolished on the effective date of this Act.

16-22 SECTION 34. (a) The governor, lieutenant governor, and
 16-23 speaker of the house of representatives shall appoint the initial
 16-24 members of the Environmental Flows Commission as provided by
 16-25 Section 11.0236, Water Code, as amended by this Act, as soon as
 16-26 practicable on or after the effective date of this Act.

16-27 (b) As soon as practicable after taking office, the initial
 16-28 members of the Environmental Flows Commission shall appoint the
 16-29 initial members of the Texas Environmental Flows Science Advisory
 16-30 Committee as provided by Section 11.02361, Water Code, as added by
 16-31 this Act. The terms of the initial members of the committee expire
 16-32 March 1, 2010.

16-33 (c) The Environmental Flows Commission shall appoint the
 16-34 members of each basin and bay area stakeholders committee as
 16-35 provided by Section 11.02362, Water Code, as added by this Act. The
 16-36 terms of the initial members of each committee expire March 1 of the
 16-37 fifth year that begins after the year in which the initial
 16-38 appointments are made.

16-39 (d) Each basin and bay area stakeholders committee shall
 16-40 appoint the members of the basin and bay expert science team for the
 16-41 river basin and bay system for which the committee is established as
 16-42 provided by Section 11.02362, Water Code, as added by this Act. The
 16-43 terms of the initial members of each team expire April 1 of the
 16-44 fifth year that begins after the year in which the initial
 16-45 appointments are made.

16-46 (e) The executive director of the Texas Commission on
 16-47 Environmental Quality shall appoint the members of the watermaster
 16-48 advisory committee under Section 11.4531, Water Code, as added by
 16-49 this Act, for each river basin or segment of a river basin for which
 16-50 the executive director appoints a watermaster under Subchapter I,
 16-51 Chapter 11, Water Code. The terms of the initial members of each
 16-52 committee expire August 31 of the first odd-numbered year that
 16-53 begins after the year in which the initial appointments are made.

16-54 SECTION 35. The changes in law made by this Act relating to
 16-55 a permit for a new appropriation of water or to an amendment to an
 16-56 existing water right that increases the amount of water authorized
 16-57 to be stored, taken, or diverted apply only to:

16-58 (1) water appropriated under a permit for a new
 16-59 appropriation of water the application for which is pending with
 16-60 the Texas Commission on Environmental Quality on the effective date
 16-61 of this Act or is filed with the commission on or after that date; or

16-62 (2) the increase in the amount of water authorized to
 16-63 be stored, taken, or diverted under an amendment to an existing
 16-64 water right that increases the amount of water authorized to be
 16-65 stored, taken, or diverted and the application for which is pending
 16-66 with the Texas Commission on Environmental Quality on the effective
 16-67 date of this Act or is filed with the commission on or after that
 16-68 date.

16-69 SECTION 36. This Act takes effect September 1, 2005.

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