

Amend CSHB 3 by adding the following as a new Article and numbering it and all sections appropriately:

ARTICLE _____. EDWARDS AQUIFER AUTHORITY.

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

(f) The authority may own, finance, design, ~~[contract with a person who uses water from the aquifer for the authority or that person to]~~ construct, operate, or ~~[own, finance, and]~~ maintain recharge ~~[water supply]~~ facilities. ~~[Management fees or special fees may not be used for purchasing or operating these facilities.]~~ For the purpose of this subsection, "recharge ~~[water supply]~~ facility" means ~~[includes]~~ a dam, reservoir, ~~[treatment facility, transmission facility,]~~ or other method of recharge project and associated facilities, structures, or works but does not include a facility to recirculate water at Comal or San Marcos Springs.

(1) The authority shall provide written notice of the intent to own, finance, design, construct, operate, or maintain recharge facilities to:

(a) each groundwater conservation district in the area in which the recharge facility will be located;

(b) the mayor of each municipality in the area in which the recharge facility will be located;

(c) the county judge of each county in the area in which the recharge facility will be located; and

(d) each member of the legislature who represents the area in which the proposed recharge facility will be located.

(2) Any entity within the county in which a recharge facility is to be constructed will be provided opportunity for input and allowed to provide proposals for partnering with the authority to own, finance, design, construct, operate, or maintain these recharge facilities.

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

(a) Authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act

shall be limited in accordance with this section to:

- (1) protect the water quality of the aquifer;
- (2) protect the water quality of the surface streams to which the aquifer provides springflow;
- (3) achieve water conservation;
- (4) maximize the beneficial use of water available for withdrawal from the aquifer;
- (5) recognize the extent of the hydro-geologic connection and interaction between surface water and groundwater;
- (6) protect aquatic and wildlife habitat;
- (7) ~~[(6)]~~ protect species that are designated as threatened or endangered under applicable federal or state law; and
- (8) ~~[(7)]~~ provide for instream uses, bays, and estuaries.

(c) Except as provided by Subsections ~~[(d)]~~ (f) ~~[(7)]~~ and (h) of this section and Section 1.26 of this article, for the period beginning January 1, 2008, the amount of permitted withdrawals from the aquifer may not exceed or be less than 572,000 ~~[400,000]~~ acre-feet of water for each calendar year, which is the sum of all regular permits issued or for which an application was filed and issuance was pending action by the authority as of January 1, 2005.

(e) The authority may not allow withdrawals from the aquifer through wells drilled after June 1, 1993, except for replacement, test, or exempt wells or to the extent that the authority approves an amendment to an initial regular permit to authorize a change in the point of withdrawal under that permit ~~[additional water as provided by Subsection (d) and then on an interruptible basis]~~.

(f) If the level of the aquifer is equal to or greater than 660 ~~[650]~~ feet above mean sea level as measured at Well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at Well J-27, the authority may authorize withdrawal from the Uvalde pool, on an uninterruptible basis, of permitted amounts. ~~[The authority shall limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.]~~

(h) To accomplish the purposes of this article, ~~[by June 1,~~

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

(1) phased adjustments to [~~reductions in~~] the amount of water that may be used or withdrawn by existing users or categories of other users, including adjustments in accordance with the authority's critical period management plan established under Section 1.26 of this article; or

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

SECTION _____. Subsection (g), Section 1.16, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(g) The authority shall issue an initial regular permit without a term, and an initial regular permit remains in effect until the permit is abandoned or [~~7~~] cancelled [~~7~~, ~~or retired~~].

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

(b) Withdrawal of water under a term permit must be consistent with the authority's critical period management plan established under Section 1.26 of this article. A holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless:

(1) the level of the aquifer is higher than 675 [~~665~~] feet above sea level, as measured at Well J-17;

(2) the flow at Comal Springs as determined by Section 1.26(c) of this article is greater than 350 cubic feet per second;
and

(3) the flow at San Marcos Springs as determined by

Section 1.26(c) of this article is greater than 200 cubic feet per second.

SECTION _____. Subsection (a), Section 1.22, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) The authority may acquire permitted rights to use water from the aquifer for the purposes of:

(1) holding those rights in trust for sale or transfer of the water or the rights to persons within the authority's jurisdiction who may use water from the aquifer;

(2) holding those rights in trust as a means of managing overall demand on the aquifer; or

(3) holding those rights for resale [~~or retirement as a means of complying with pumping reduction requirements under this article, or~~

~~[(4) retiring those rights, including those rights already permitted].~~

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

Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) After review of the recommendations received in the program document, as prescribed by Section 1.26A of this article, the [The] authority by rule shall adopt [prepare and coordinate implementation of] a [plan for] critical period management plan consistent with Sections 1.14(a), (f), and (h) of this article [on or before September 1, 1995]. The critical period management plan shall be adopted by the authority no later than six months after the authority's receipt of the program document. On adoption of the critical period management plan, the authority shall provide a written report to the governor, lieutenant governor, and speaker of the house of representatives describing the actions taken in response to each recommendation and, for each recommendation not implemented, the reason it was not implemented. The plan [mechanisms] must:

(1) distinguish between discretionary use and nondiscretionary use;

(2) require reductions of all discretionary use to the

maximum extent feasible;

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

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

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

(5) allow irrigation use to continue in order to permit the user to complete the irrigation of a crop in progress.

(b) In this section, "MSL" means the elevation above mean sea level, measured in feet, of the surface of the water in a well, and "CFS" means cubic feet per second. Not later than January 1, 2008, the authority shall, by rule, adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts indicated in Tables 1 and 2 whether according to the index well levels or the Comal or San Marcos Springs flow as applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 35 percent under Table 2:

TABLE 1

CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

FOR THE SAN ANTONIO POOL

<u>Comal</u> <u>Springs</u> <u>Flow CFS</u>	<u>San Marcos</u> <u>Springs Flow</u> <u>CFS</u>	<u>Index Well</u> <u>J-17 Level</u> <u>MSL</u>	<u>Critical</u> <u>Period</u> <u>Stage</u>	<u>Withdrawal</u> <u>Reduction-</u> <u>San</u> <u>Antonio Pool</u>
<u><225</u>	<u><96</u>	<u><660</u>	<u>I</u>	<u>20%</u>
<u><200</u>	<u><80</u>	<u><650</u>	<u>II</u>	<u>30%</u>
<u><150</u>	<u>N/A</u>	<u><640</u>	<u>III</u>	<u>35%</u>

<100

N/A

<630

IV

40%

TABLE 2

CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

FOR THE UVALDE POOL

<u>Withdrawal</u>	<u>Index</u>	<u>Well</u>	<u>Critical</u>
<u>Reduction-</u>	<u>J-27</u>		<u>Period</u>
<u>Uvalde Pool</u>	<u>Level MSL</u>		<u>Stage</u>
<u>N/A</u>	<u>- - -</u>		<u>I</u>
<u>5%</u>	<u><850</u>		<u>II</u>
<u>20%</u>	<u><845</u>		<u>III</u>
<u>35%</u>	<u><842</u>		<u>IV</u>

(c) A change to a critical period stage with higher withdrawal reduction percentages is triggered if the 10-day average of daily springflows at the Comal Springs or the San Marcos Springs or the 10-day average of daily aquifer levels at the J-17 Index Well drops below the lowest number of any of the trigger levels indicated in Table 1. A change to a critical period stage with lower withdrawal reduction percentages is triggered only when the 10-day average of daily springflows at the Comal Springs and the San Marcos Springs and the 10-day average of daily aquifer levels at the J-17 Index Well are all above the same stage trigger level. The authority may adjust the withdrawal percentages for Stage IV in Tables 1 and 2 if necessary in order to comply with Subsection (d) or (e) of this section.

(d) Beginning September 1, 2007, the authority may not require the volume of permitted withdrawals to be less than an annualized rate of 340,000 acre-feet, under critical period Stage IV.

(e) After January 1, 2013, the authority may not require the volume of permitted withdrawals to be less than an annualized rate of 320,000 acre-feet, under critical period Stage IV unless, after review and consideration of the recommendations provided under Section 1.26A of this article, the authority determines that a different volume of withdrawals is consistent with Sections

1.14(a), (f), and (h) of this article in maintaining protection for listed, protected and endangered species associated with the aquifer to the extent required by federal law.

(f) Notwithstanding Subsections (d) and (e) of this section, the authority may require further withdrawal reductions before reviewing and considering the recommendations provided under Section 1.26A of this article if the discharge of Comal Springs or San Marcos Springs declines an additional 15 percent after Stage IV withdrawal reductions are imposed under Subsection (b) of this section. This subsection expires on the date that critical period management plan rules adopted by the authority based on the recommendations provided under Section 1.26A of this article take effect.

(g) Notwithstanding the existence of any stage of an interim or final critical period adopted by the authority under this section, a person authorized to withdraw groundwater from the aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed for that stage, be allowed to finish a crop already planted in the calendar year during which the critical period is in effect.

Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT THROUGH RECOVERY IMPLEMENTATION PROGRAM. (a) The authority, with the assistance of Texas A&M University, shall cooperatively develop a recovery implementation program through a facilitated, consensus-based process that involves input from the United States Fish and Wildlife Service, other appropriate federal agencies, and all interested stakeholders, including those listed under Subsection (e)(1) of this section. The recovery implementation program shall be developed for the species that are:

(1) listed as threatened or endangered species under federal law; and

(2) associated with the aquifer.

(b) The authority shall enter into a memorandum of agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture,

the Texas Water Development Board, and other stakeholders in order to develop, not later than December 31, 2007, a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit as outlined in Subsection (d) of this section.

(c) The authority shall enter into an implementing agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders to develop a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit as outlined in Subsection (d) of this section not later than December 31, 2009.

(d) The authority, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders shall jointly prepare a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit with the United States secretary of the interior, through the United States Fish and Wildlife Service and other appropriate federal agencies, under Section 4 or Section 6, Endangered Species Act of 1973 (16 U.S.C. Section 1533 or 1535), as applicable, based on the program developed under Subsection (a) of this section. The program document shall:

(1) provide recommendations for withdrawal adjustments based on a combination of spring discharge rates of the San Marcos and Comal Springs and levels at the J-17 and J-27 wells during critical periods to ensure that federally listed, threatened, and endangered species associated with the Edwards Aquifer will be protected at all times, including throughout a repeat of the drought of record;

(2) include provisions to pursue cooperative and grant funding to the extent available from all state, federal, and other sources for eligible programs included in the cooperative agreement under Subsection (c) of this section, including funding for a program director; and

(3) be approved and executed by the authority, the Commission, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board and the United States Fish and Wildlife Service not later than September 1, 2012, and the agreement shall take effect December 31, 2012.

(e) Texas A&M University shall assist in the creation of a steering committee to oversee and assist in the development of the cooperative agreement under Subsection (c) of this section. The steering committee must be created not later than September 30, 2007. The initial steering committee shall be composed of:

(1) a representative of each of the following entities, as appointed by the governing body of that entity:

(A) the Edwards Aquifer Authority;

(B) the Texas Commission on Environmental Quality;

(C) the Parks and Wildlife Department;

(D) the Department of Agriculture;

(E) the Texas Water Development Board;

(F) the San Antonio Water System;

(G) the Guadalupe-Blanco River Authority;

(H) the San Antonio River Authority;

(I) the South Central Texas Water Advisory Committee; and

(J) Bexar County;

(K) CPS Energy; and

(L) Bexar Metropolitan Water District or its successor; and

(2) nine other persons who respectively must be:

(A) a representative of a holder of an initial regular permit issued to a retail public utility located west of Bexar County, to be appointed by the authority;

(B) a representative of a holder of an initial regular permit issued by the authority for industrial purposes, to be appointed by the authority;

(C) a representative of a holder of an industrial surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(D) a representative of a holder of a municipal surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(E) a representative of a retail public utility in whose service area the Comal Springs or San Marcos Springs is located;

(F) a representative of a holder of an initial regular permit issued by the authority for irrigation, to be appointed by the commissioner of agriculture;

(G) a representative of an agricultural producer from the Edwards Aquifer region, to be appointed by the commissioner of agriculture;

(H) a representative of environmental interests from the Texas Living Waters Project, to be appointed by the governing body of that project; and

(I) a representative of recreational interests in the Guadalupe River Basin, to be appointed by the Parks and Wildlife Commission.

(f) The steering committee shall work with Texas A&M University to:

(1) establish a regular meeting schedule and publish that schedule to encourage public participation; and

(2) not later than October 31, 2007, hire a program director to be housed at Texas A&M University.

(g) Texas A&M University may accept outside funding to pay the salary and expenses of the program director hired under this section and any expenses associated with the university's participation in the creation of the steering committee or subcommittees established by the steering committee.

(h) Where reasonably practicable or as required by law, any meeting of the steering committee, the Edwards Aquifer area expert science subcommittee, or another subcommittee established by the steering committee must be open to the public.

(i) The steering committee appointed under this section shall appoint an Edwards Aquifer area expert science subcommittee not later than December 31, 2007. The expert science subcommittee must be composed of an odd number of not fewer than seven or more

than 15 members who have technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limitations. The Bureau of Economic Geology of The University of Texas at Austin and the River Systems Institute at Texas State University shall assist the expert science subcommittee. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the expert science subcommittee.

(j) The Edwards Aquifer area expert science subcommittee shall, among other things, analyze species requirements in relation to spring discharge rates and aquifer levels as a function of recharge and withdrawal levels. Based on that analysis and the elements required to be considered by the authority under Section 1.14 of this article, the expert science subcommittee shall, through a collaborative process designed to achieve consensus, develop recommendations for withdrawal reduction levels and stages for critical period management including, if appropriate, establishing separate and possibly different withdrawal reduction levels and stages for critical period management for different pools of the aquifer needed to maintain target spring discharge and aquifer levels. The expert science subcommittee shall submit its recommendations to the steering committee and all other stakeholders involved in the recovery implementation program under this section.

(k) The initial recommendations of the Edwards Aquifer area expert science subcommittee must be completed and submitted to the steering committee and other stakeholders not later than December 31, 2008, and should include an evaluation:

(1) of the option of designating a separate San Marcos pool, of how such a designation would affect existing pools, and of the need for an additional well to measure the San Marcos pool, if designated;

(2) of the necessity to maintain minimum springflows, including a specific review of the necessity to maintain a flow to protect the federally threatened and endangered species; and

(3) as to whether adjustments in the trigger levels for the San Marcos Springs flow for the San Antonio pool should be

made.

(1) In developing its recommendations, the Edwards Aquifer area expert science subcommittee shall:

(1) consider all reasonably available science, including any Edwards Aquifer-specific studies, and base its recommendations solely on the best science available; and

(2) operate on a consensus basis to the maximum extent possible.

(m) After development of the cooperative agreement, the steering committee, with the assistance of the Edwards Aquifer area expert science subcommittee and with input from the other recovery implementation program stakeholders, shall prepare and submit recommendations to the authority. The recommendations must:

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

(2) include specific monitoring, studies, and activities that take into account changed conditions and information that more accurately reflects the importance of critical period management; and

(3) establish a schedule for continuing the validation or refinement of the critical period management plan adopted by the authority and the strategies to achieve the program and cooperative agreement described by this section.

(n) In this subsection, "recharge facility" means a dam, reservoir, or other method of recharge project and associated facilities, structures, or works but does not include facilities designed to recirculate water at Comal or San Marcos Springs. The steering committee shall establish a recharge facility feasibility subcommittee to:

(1) assess the need for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities;

(2) formulate plans to allow the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities;

(3) make recommendations to the steering committee as to how to calculate the amount of additional water that is made

available for use from a recharge project including during times of critical period reductions;

(4) maximize available federal funding for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities; and

(5) evaluate the financing of recharge facilities, including the use of management fees or special fees to be used for purchasing or operating the facilities.

(o) The steering committee may establish other subcommittees as necessary, including a hydrology subcommittee, a community outreach and education subcommittee, and a water supply subcommittee.

(p) On execution of the memorandum of agreement described by Subsection (b) of this section, the steering committee described by Subsection (e) of this section may, by majority vote of its members, vote to add members to the steering committee, change the makeup of the committee, or dissolve the committee. If the steering committee is dissolved, the program director hired under Subsection (f) of this section shall assume the duties of the steering committee.

(q) The authority shall provide an annual report to the governor, lieutenant governor, and speaker of the house of representatives not later than January 1 of each year that details:

(1) the status of the recovery implementation program development process;

(2) the likelihood of completion of the recovery implementation program and the cooperative agreement described by Subsection (c) of this section;

(3) the extent to which the recommendations of the Edwards Aquifer area expert science subcommittee are being considered and implemented by the authority;

(4) any other actions that need to be taken in response to each recommendation;

(5) reasons explaining why any recommendation received has not been implemented; and

(6) any other issues the authority considers of value for the efficient and effective completion of the program and the

cooperative agreement under this section.

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

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

(h) Fees assessed by the authority may not be used to fund the cost of reducing withdrawals or retiring permits or of judgments or claims related to withdrawals or permit retirements [~~Special fees collected under Subsection (c) or (d) of this section may not be used to finance a surface water supply reservoir project~~].

(i) The authority and other stakeholders, including state agencies, listed under Section 1.26A of this article shall provide money as necessary [~~, but not to exceed five percent of the money collected under Subsection (d) of this section,~~] to finance the activities of the steering committee and any subcommittees appointed by the steering committee and the program director of the recovery implementation program under Section 1.26A of this article. The authority shall provide, as necessary, up to \$75,000 annually, adjusted for changes in the consumer price index, to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

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

(a) The authority may own, finance, design, construct, [build or] operate, and maintain recharge dams and associated facilities, structures, or works in the contributing or recharge area of the aquifer if the recharge is made to increase the yield of the aquifer, ~~[and]~~ the recharge project does not impair senior water rights or vested riparian rights, and the recharge project is not designed to recirculate water at Comal or San Marcos Springs.

SECTION _____. Subsections (b) and (d), Section 1.14, Section 1.21, and Subsections (a), (c), and (d), Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are repealed.

SECTION _____. (a) Before January 1, 2012, a suit may not be instituted in a state court contesting:

- (1) the validity or implementation of this Act; or
- (2) the groundwater withdrawal amounts recognized in Section 3 of this Act.

(b) If applicable, a party that files a suit in any court shall be automatically removed from the steering committee established under Section 1.26A, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as added by this Act.

(c) A suit against the Edwards Aquifer Authority may not be instituted or maintained by a person who owns, holds, or uses a surface water right and claims injury or potential injury to that right for any reason, including any actions taken by the Edwards Aquifer Authority to implement or enforce Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended. This section does not apply to suits brought pursuant to Section 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION _____. The change in law made by this Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action that is filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION _____. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each

house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.