

1 AN ACT

2 relating to the management of the water resources of the state,  
3 including the protection of instream flows and freshwater inflows,  
4 and to the management of groundwater in the area regulated by the  
5 Edwards Aquifer Authority and to the operations and oversight of  
6 the authority.

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

8 ARTICLE 1. MANAGEMENT OF STATE WATER

9 SECTION 1.01. The heading to Section 5.506, Water Code, is  
10 amended to read as follows:

11 Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION  
12 RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET  
13 ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND  
14 INSTREAM USES.

15 SECTION 1.02. Section 5.506, Water Code, is amended by  
16 adding Subsection (a-1) and amending Subsections (b) and (c) to  
17 read as follows:

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

24 (b) The commission must give written notice of the proposed

1 action [~~suspension~~] to the Parks and Wildlife Department before the  
2 commission suspends a permit condition under Subsection (a) or  
3 makes water available temporarily under Subsection (a-1) [~~this~~  
4 ~~section~~]. The commission shall give the Parks and Wildlife  
5 Department an opportunity to submit comments on the proposed action  
6 [~~suspension~~] for a period of 72 hours from receipt of the notice and  
7 must consider those comments before issuing an order implementing  
8 the proposed action [~~imposing the suspension~~].

9 (c) The commission may suspend a permit condition under  
10 Subsection (a) or make water available temporarily under Subsection  
11 (a-1) [~~this section~~] without notice except as required by  
12 Subsection (b).

13 SECTION 1.03. Section 5.701(j), Water Code, is amended to  
14 read as follows:

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

22 SECTION 1.04. Section 11.002, Water Code, is amended by  
23 adding Subdivisions (15), (16), (17), (18), and (19) to read as  
24 follows:

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

1 inflows.

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

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

11 (18) "Advisory group" means the environmental flows  
12 advisory group.

13 (19) "Science advisory committee" means the Texas  
14 environmental flows science advisory committee.

15 SECTION 1.05. Section 11.023(a), Water Code, is amended to  
16 read as follows:

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

21 (1) domestic and municipal uses, including water for  
22 sustaining human life and the life of domestic animals;

23 (2) agricultural uses and industrial uses, meaning  
24 processes designed to convert materials of a lower order of value  
25 into forms having greater usability and commercial value, including  
26 the development of power by means other than hydroelectric;

27 (3) mining and recovery of minerals;

- 1 (4) hydroelectric power;
- 2 (5) navigation;
- 3 (6) recreation and pleasure;
- 4 (7) public parks; and
- 5 (8) game preserves.

6 SECTION 1.06. Section 11.0235, Water Code, is amended by  
7 amending Subsections (c) and (e) and adding Subsections (d-1)  
8 through (d-6) and (f) to read as follows:

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

20 (d-1) The legislature has determined that existing water  
21 rights that are converted to water rights for environmental  
22 purposes should be enforced in a manner consistent with the  
23 enforcement of water rights for other purposes as provided by the  
24 laws of this state governing the appropriation of state water.

25 (d-2) The legislature finds that to provide certainty in  
26 water management and development and to provide adequate protection  
27 of the state's streams, rivers, and bays and estuaries, the state

1 must have a process with specific timelines for prompt action to  
2 address environmental flow issues in the state's major basin and  
3 bay systems, especially those systems in which unappropriated water  
4 is still available.

5 (d-3) The legislature finds that:

6 (1) in those basins in which water is available for  
7 appropriation, the commission should establish an environmental  
8 set-aside below which water should not be available for  
9 appropriation; and

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

16 (d-4) The legislature finds that while the state has  
17 pioneered tools to address freshwater inflow needs for bays and  
18 estuaries, there are limitations to those tools in light of both  
19 scientific and public policy evolution. To fully address bay and  
20 estuary environmental flow issues, the foundation of work  
21 accomplished by the state should be improved. While the state's  
22 instream flow studies program appears to encompass a comprehensive  
23 and scientific approach for establishing a process to assess  
24 instream flow needs for rivers and streams across the state, more  
25 extensive review and examination of the details of the program,  
26 which may not be fully developed until the program is under way, are  
27 needed to ensure an effective tool for evaluating riverine

1 environmental flow conditions.

2 (d-5) The legislature finds that the management of water to  
3 meet instream flow and freshwater inflow needs should be evaluated  
4 on a regular basis and adapted to reflect both improvements in  
5 science related to environmental flows and future changes in  
6 projected human needs for water. In addition, the development of  
7 management strategies for addressing environmental flow needs  
8 should be an ongoing, adaptive process that considers and addresses  
9 local issues.

10 (d-6) The legislature finds that recommendations for state  
11 action to protect instream flows and freshwater inflows should be  
12 developed through a consensus-based, regional approach involving  
13 balanced representation of stakeholders and that such a process  
14 should be encouraged throughout the state.

15 (e) The fact that greater pressures and demands are being  
16 placed on the water resources of the state makes it of paramount  
17 importance to ensure [~~reexamine the process for ensuring~~] that  
18 these important priorities are effectively addressed by detailing  
19 how environmental flow standards are to be developed using the  
20 environmental studies that have been and are to be performed by the  
21 state and others and specifying in clear delegations of authority  
22 how those environmental flow standards will be integrated into the  
23 regional water planning and water permitting process [~~to the~~  
24 ~~commission~~].

25 (f) The legislature recognizes that effective  
26 implementation of the approach provided by this chapter for  
27 protecting instream flows and freshwater inflows will require more

1 effective water rights administration and enforcement systems than  
2 are currently available in most areas of the state.

3 SECTION 1.07. Subchapter B, Chapter 11, Water Code, is  
4 amended by adding Sections 11.0236, 11.02361, 11.02362, and 11.0237  
5 to read as follows:

6 Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) In  
7 recognition of the importance that the ecological soundness of our  
8 riverine, bay, and estuary systems and riparian lands has on the  
9 economy, health, and well-being of the state there is created the  
10 environmental flows advisory group.

11 (b) The advisory group is composed of nine members as  
12 follows:

- 13 (1) three members appointed by the governor;  
14 (2) three members of the senate appointed by the  
15 lieutenant governor; and  
16 (3) three members of the house of representatives  
17 appointed by the speaker of the house of representatives.

18 (c) Of the members appointed under Subsection (b)(1):  
19 (1) one member must be a member of the commission;  
20 (2) one member must be a member of the board; and  
21 (3) one member must be a member of the Parks and  
22 Wildlife Commission.

23 (d) Each member of the advisory group serves at the will of  
24 the person who appointed the member.

25 (e) The appointed senator with the most seniority and the  
26 appointed house member with the most seniority serve together as  
27 co-presiding officers of the advisory group.

1       (f) A member of the advisory group is not entitled to  
2 receive compensation for service on the advisory group but is  
3 entitled to reimbursement of the travel expenses incurred by the  
4 member while conducting the business of the advisory group, as  
5 provided by the General Appropriations Act.

6       (g) The advisory group may accept gifts and grants from any  
7 source to be used to carry out a function of the advisory group.

8       (h) The commission shall provide staff support for the  
9 advisory group.

10       (i) The advisory group shall conduct public hearings and  
11 study public policy implications for balancing the demands on the  
12 water resources of the state resulting from a growing population  
13 with the requirements of the riverine, bay, and estuary systems  
14 including granting permits for instream flows dedicated to  
15 environmental needs or bay and estuary inflows, use of the Texas  
16 Water Trust, and any other issues that the advisory group  
17 determines have importance and relevance to the protection of  
18 environmental flows. In evaluating the options for providing  
19 adequate environmental flows, the advisory group shall take notice  
20 of the strong public policy imperative that exists in this state  
21 recognizing that environmental flows are important to the  
22 biological health of our public and private lands, streams and  
23 rivers, and bay and estuary systems and are high priorities in the  
24 water management process. The advisory group shall specifically  
25 address:

26               (1) ways that the ecological soundness of those  
27 systems will be ensured in the water rights administration and



1 enforcement and water allocation processes; and

2 (2) appropriate methods to encourage persons  
3 voluntarily to convert reasonable amounts of existing water rights  
4 to use for environmental flow protection temporarily or  
5 permanently.

6 (j) The advisory group may adopt rules, procedures, and  
7 policies as needed to administer this section, to implement its  
8 responsibilities, and to exercise its authority under Sections  
9 11.02361 and 11.02362.

10 (k) Chapter 2110, Government Code, does not apply to the  
11 size, composition, or duration of the advisory group.

12 (l) Not later than December 1, 2008, and every two years  
13 thereafter, the advisory group shall issue and promptly deliver to  
14 the governor, lieutenant governor, and speaker of the house of  
15 representatives copies of a report summarizing:

16 (1) any hearings conducted by the advisory group;

17 (2) any studies conducted by the advisory group;

18 (3) any legislation proposed by the advisory group;

19 (4) progress made in implementing Sections 11.02361  
20 and 11.02362; and

21 (5) any other findings and recommendations of the  
22 advisory group.

23 (m) The advisory group is abolished on the date that the  
24 commission has adopted environmental flow standards under Section  
25 11.1471 for all of the river basin and bay systems in this state.

26 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY  
27 COMMITTEE. (a) The Texas environmental flows science advisory

1 committee consists of at least five but not more than nine members  
2 appointed by the advisory group.

3 (b) The advisory group shall appoint to the science advisory  
4 committee persons who will provide an objective perspective and  
5 diverse technical expertise, including expertise in hydrology,  
6 hydraulics, water resources, aquatic and terrestrial biology,  
7 geomorphology, geology, water quality, computer modeling, and  
8 other technical areas pertinent to the evaluation of environmental  
9 flows.

10 (c) Members of the science advisory committee serve  
11 five-year terms expiring March 1. A vacancy on the science advisory  
12 committee is filled by appointment by the co-presiding officers of  
13 the advisory group for the unexpired term.

14 (d) Chapter 2110, Government Code, does not apply to the  
15 size, composition, or duration of the science advisory committee.

16 (e) The science advisory committee shall:

17 (1) serve as an objective scientific body to advise  
18 and make recommendations to the advisory group on issues relating  
19 to the science of environmental flow protection; and

20 (2) develop recommendations to help provide overall  
21 direction, coordination, and consistency relating to:

22 (A) environmental flow methodologies for bay and  
23 estuary studies and instream flow studies;

24 (B) environmental flow programs at the  
25 commission, the Parks and Wildlife Department, and the board; and

26 (C) the work of the basin and bay expert science  
27 teams described in Section 11.02362.

1       (f) To assist the advisory group to assess the extent to  
2 which the recommendations of the science advisory committee are  
3 considered and implemented, the commission, the Parks and Wildlife  
4 Department, and the board shall provide written reports to the  
5 advisory group, at intervals determined by the advisory group, that  
6 describe:

7           (1) the actions taken by each agency in response to  
8 each recommendation; and

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

11       (g) The science advisory committee is abolished on the date  
12 the advisory group is abolished under Section 11.0236(m).

13       Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME  
14 RECOMMENDATIONS. (a) For the purposes of this section, the  
15 advisory group, not later than November 1, 2007, shall define the  
16 geographical extent of each river basin and bay system in this state  
17 for the sole purpose of developing environmental flow regime  
18 recommendations under this section and adoption of environmental  
19 flow standards under Section 11.1471.

20       (b) The advisory group shall give priority in descending  
21 order to the following river basin and bay systems of the state for  
22 the purpose of developing environmental flow regime  
23 recommendations and adopting environmental flow standards:

24           (1) the river basin and bay system consisting of the  
25 Trinity and San Jacinto Rivers and Galveston Bay and the river basin  
26 and bay system consisting of the Sabine and Neches Rivers and Sabine  
27 Lake Bay;

1           (2) the river basin and bay system consisting of the  
2 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the  
3 river basin and bay system consisting of the Guadalupe, San  
4 Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas,  
5 and San Antonio Bays; and

6           (3) the river basin and bay system consisting of the  
7 Nueces River and Corpus Christi and Baffin Bays, the river basin and  
8 bay system consisting of the Rio Grande, the Rio Grande estuary, and  
9 the Lower Laguna Madre, and the Brazos River and its associated bay  
10 and estuary system.

11           (c) For the river basin and bay systems listed in Subsection  
12 (b)(1):

13           (1) the advisory group shall appoint the basin and bay  
14 area stakeholders committee not later than November 1, 2007;

15           (2) the basin and bay area stakeholders committee  
16 shall establish a basin and bay expert science team not later than  
17 March 1, 2008;

18           (3) the basin and bay expert science team shall  
19 finalize environmental flow regime recommendations and submit them  
20 to the basin and bay area stakeholders committee, the advisory  
21 group, and the commission not later than March 1, 2009, except that  
22 at the request of the basin and bay area stakeholders committee for  
23 good cause shown, the advisory group may extend the deadline  
24 provided by this subdivision;

25           (4) the basin and bay area stakeholders committee  
26 shall submit to the commission its comments on and recommendations  
27 regarding the basin and bay expert science team's recommended

1 environmental flow regime not later than September 1, 2009; and

2 (5) the commission shall adopt the environmental flow  
3 standards as provided by Section 11.1471 not later than September  
4 1, 2010.

5 (d) The advisory group shall appoint the basin and bay area  
6 stakeholders committees for the river basin and bay systems listed  
7 in Subsection (b)(2) not later than September 1, 2008, and shall  
8 appoint the basin and bay area stakeholders committees for the  
9 river basin and bay systems listed in Subsection (b)(3) not later  
10 than September 1, 2009. The advisory group shall establish a  
11 schedule for the performance of the tasks listed in Subsections  
12 (c)(2) through (5) with regard to the river basin and bay systems  
13 listed in Subsections (b)(2) and (3) that will result in the  
14 adoption of environmental flow standards for that river basin and  
15 bay system by the commission as soon as is reasonably possible.  
16 Each basin and bay area stakeholders committee and basin and bay  
17 expert science team for a river basin and bay system listed in  
18 Subsection (b)(2) or (3) shall make recommendations to the advisory  
19 group with regard to the schedule applicable to that river basin and  
20 bay system. The advisory group shall consider the recommendations  
21 of the basin and bay area stakeholders committee and basin and bay  
22 expert science team as well as coordinate with, and give  
23 appropriate consideration to the recommendations of, the  
24 commission, the Parks and Wildlife Department, and the board in  
25 establishing the schedule.

26 (e) For a river basin and bay system or a river basin that  
27 does not have an associated bay system in this state not listed in

1 Subsection (b), the advisory group shall establish a schedule for  
2 the development of environmental flow regime recommendations and  
3 the adoption of environmental flow standards. The advisory group  
4 shall develop the schedule in consultation with the commission, the  
5 Parks and Wildlife Department, the board, and the pertinent basin  
6 and bay area stakeholders committee and basin and bay expert  
7 science team. The advisory group may, on its own initiative or on  
8 request, modify a schedule established under this subsection to be  
9 more responsive to particular circumstances, local desires,  
10 changing conditions, or time-sensitive conflicts. This subsection  
11 does not prohibit, in a river basin and bay system for which the  
12 advisory group has not yet established a schedule for the  
13 development of environmental flow regime recommendations and the  
14 adoption of environmental flow standards, an effort to develop  
15 information on environmental flow needs and ways in which those  
16 needs can be met by a voluntary consensus-building process.

17 (f) The advisory group shall appoint a basin and bay area  
18 stakeholders committee for each river basin and bay system in this  
19 state for which a schedule for the development of environmental  
20 flow regime recommendations and the adoption of environmental flow  
21 standards is specified by or established under Subsection (c), (d),  
22 or (e). Chapter 2110, Government Code, does not apply to the size,  
23 composition, or duration of a basin and bay area stakeholders  
24 committee. Each committee must consist of at least 17 members. The  
25 membership of each committee must:

26 (1) reflect a fair and equitable balance of interest  
27 groups concerned with the particular river basin and bay system for

1 which the committee is established; and

2 (2) be representative of appropriate stakeholders,  
3 including the following if they have a presence in the particular  
4 river basin and bay system for which the committee is established:

5 (A) agricultural water users, including  
6 representatives of each of the following sectors:

7 (i) agricultural irrigation;

8 (ii) free-range livestock; and

9 (iii) concentrated animal feeding  
10 operation;

11 (B) recreational water users, including coastal  
12 recreational anglers and businesses supporting water recreation;

13 (C) municipalities;

14 (D) soil and water conservation districts;

15 (E) industrial water users, including  
16 representatives of each of the following sectors:

17 (i) refining;

18 (ii) chemical manufacturing;

19 (iii) electricity generation; and

20 (iv) production of paper products or  
21 timber;

22 (F) commercial fishermen;

23 (G) public interest groups;

24 (H) regional water planning groups;

25 (I) groundwater conservation districts;

26 (J) river authorities and other conservation and  
27 reclamation districts with jurisdiction over surface water; and

1                   (K) environmental interests.

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

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

8           (i) Each basin and bay area stakeholders committee shall  
9 establish a basin and bay expert science team for the river basin  
10 and bay system for which the committee is established. The basin  
11 and bay expert science team must be established not later than six  
12 months after the date the basin and bay area stakeholders committee  
13 is established. Chapter 2110, Government Code, does not apply to  
14 the size, composition, or duration of a basin and bay expert science  
15 team. Each basin and bay expert science team must be composed of  
16 technical experts with special expertise regarding the river basin  
17 and bay system or regarding the development of environmental flow  
18 regimes. A person may serve as a member of more than one basin and  
19 bay expert science team at the same time.

20           (j) The members of a basin and bay expert science team serve  
21 five-year terms expiring April 1. A vacancy on a basin and bay  
22 expert science team is filled by appointment by the pertinent basin  
23 and bay area stakeholders committee to serve the remainder of the  
24 unexpired term.

25           (k) The science advisory committee shall appoint one of its  
26 members to serve as a liaison to each basin and bay expert science  
27 team to facilitate coordination and consistency in environmental



1 flow activities throughout the state. The commission, the Parks  
2 and Wildlife Department, and the board shall provide technical  
3 assistance to each basin and bay expert science team, including  
4 information about the studies conducted under Sections 16.058 and  
5 16.059, and may serve as nonvoting members of the basin and bay  
6 expert science team to facilitate the development of environmental  
7 flow regime recommendations.

8 (l) Where reasonably practicable, meetings of a basin and  
9 bay expert science team must be open to the public.

10 (m) Each basin and bay expert science team shall develop  
11 environmental flow analyses and a recommended environmental flow  
12 regime for the river basin and bay system for which the team is  
13 established through a collaborative process designed to achieve a  
14 consensus. In developing the analyses and recommendations, the  
15 science team must consider all reasonably available science,  
16 without regard to the need for the water for other uses, and the  
17 science team's recommendations must be based solely on the best  
18 science available. For the Rio Grande below Fort Quitman, any uses  
19 attributable to Mexican water flows must be excluded from  
20 environmental flow regime recommendations.

21 (n) Each basin and bay expert science team shall submit its  
22 environmental flow analyses and environmental flow regime  
23 recommendations to the pertinent basin and bay area stakeholders  
24 committee, the advisory group, and the commission in accordance  
25 with the applicable schedule specified by or established under  
26 Subsection (c), (d), or (e). The basin and bay area stakeholders  
27 committee and the advisory group may not change the environmental

1 flow analyses or environmental flow regime recommendations of the  
2 basin and bay expert science team.

3 (o) Each basin and bay area stakeholders committee shall  
4 review the environmental flow analyses and environmental flow  
5 regime recommendations submitted by the committee's basin and bay  
6 expert science team and shall consider them in conjunction with  
7 other factors, including the present and future needs for water for  
8 other uses related to water supply planning in the pertinent river  
9 basin and bay system. For the Rio Grande, the basin and bay area  
10 stakeholders committee shall also consider the water accounting  
11 requirements for any international water sharing treaty, minutes,  
12 and agreement applicable to the Rio Grande and the effects on  
13 allocation of water by the Rio Grande watermaster in the middle and  
14 lower Rio Grande. The Rio Grande basin and bay expert science team  
15 may not recommend any environmental flow regime that would result  
16 in a violation of a treaty or court decision. The basin and bay area  
17 stakeholders committee shall develop recommendations regarding  
18 environmental flow standards and strategies to meet the  
19 environmental flow standards and submit those recommendations to  
20 the commission and to the advisory group in accordance with the  
21 applicable schedule specified by or established under Subsection  
22 (c), (d), or (e). In developing its recommendations, the basin and  
23 bay area stakeholders committee shall operate on a consensus basis  
24 to the maximum extent possible.

25 (p) In recognition of the importance of adaptive  
26 management, after submitting its recommendations regarding  
27 environmental flow standards and strategies to meet the

1 environmental flow standards to the commission, each basin and bay  
2 area stakeholders committee, with the assistance of the pertinent  
3 basin and bay expert science team, shall prepare and submit for  
4 approval by the advisory group a work plan. The work plan must:

5 (1) establish a periodic review of the basin and bay  
6 environmental flow analyses and environmental flow regime  
7 recommendations, environmental flow standards, and strategies, to  
8 occur at least once every 10 years;

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

11 (3) establish a schedule for continuing the validation  
12 or refinement of the basin and bay environmental flow analyses and  
13 environmental flow regime recommendations, the environmental flow  
14 standards adopted by the commission, and the strategies to achieve  
15 those standards.

16 (g) In accordance with the applicable schedule specified by  
17 or established under Subsection (c), (d), or (e), the advisory  
18 group, with input from the science advisory committee, shall review  
19 the environmental flow analyses and environmental flow regime  
20 recommendations submitted by each basin and bay expert science  
21 team. If appropriate, the advisory group shall submit comments on  
22 the analyses and recommendations to the commission for use by the  
23 commission in adopting rules under Section 11.1471. Comments must  
24 be submitted not later than six months after the date of receipt of  
25 the analyses and recommendations.

26 (r) Notwithstanding the other provisions of this section,  
27 in the event the commission, by permit or order, has established an

1 estuary advisory council with specific duties related to  
2 implementation of permit conditions for environmental flows, that  
3 council may continue in full force and effect and shall act as and  
4 perform the duties of the basin and bay area stakeholders committee  
5 under this section. The estuary advisory council shall add members  
6 from stakeholder groups and from appropriate science and technical  
7 groups, if necessary, to fully meet the criteria for membership  
8 established in Subsection (f) and shall operate under the  
9 provisions of this section.

10 (s) Each basin and bay area stakeholders committee and basin  
11 and bay expert science team is abolished on the date the advisory  
12 group is abolished under Section 11.0236(m).

13 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO  
14 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission  
15 may not issue a new permit for instream flows dedicated to  
16 environmental needs or bay and estuary inflows. The commission may  
17 approve an application to amend an existing permit or certificate  
18 of adjudication to change the use to or add a use for instream flows  
19 dedicated to environmental needs or bay and estuary inflows.

20 (b) This section does not alter the commission's  
21 obligations under Section 11.042(b) or (c), 11.046(b),  
22 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,  
23 11.150, 11.152, 16.058, or 16.059.

24 SECTION 1.08. Section 11.082(b), Water Code, is amended to  
25 read as follows:

26 (b) The state may recover the penalties prescribed in  
27 Subsection (a) [~~of this section~~] by suit brought for that purpose in

1 a court of competent jurisdiction. The state may seek those  
2 penalties regardless of whether a watermaster has been appointed  
3 for the water division, river basin, or segment of a river basin  
4 where the unlawful use is alleged to have occurred.

5 SECTION 1.09. Section 11.0841, Water Code, is amended by  
6 adding Subsection (c) to read as follows:

7 (c) For purposes of this section, the Parks and Wildlife  
8 Department has:

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

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

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

19 SECTION 1.10. Section 11.0842(a), Water Code, is amended to  
20 read as follows:

21 (a) If a person violates this chapter, a rule or order  
22 adopted under this chapter or Section 16.236 [~~of this code~~], or a  
23 permit, certified filing, or certificate of adjudication issued  
24 under this chapter, the commission may assess an administrative  
25 penalty against that person as provided by this section. The  
26 commission may assess an administrative penalty for a violation  
27 relating to a water division or a river basin or segment of a river

1 basin regardless of whether a watermaster has been appointed for  
2 the water division or river basin or segment of the river basin.

3 SECTION 1.11. Section 11.0843(a), Water Code, is amended to  
4 read as follows:

5 (a) Upon witnessing a violation of this chapter or a rule or  
6 order or a water right issued under this chapter, the executive  
7 director or a person designated by the executive director,  
8 including a watermaster or the watermaster's deputy, [~~as defined by~~  
9 ~~commission rule,~~] may issue the alleged violator a field citation  
10 alleging that a violation has occurred and providing the alleged  
11 violator the option of either:

12 (1) without admitting to or denying the alleged  
13 violation, paying an administrative penalty in accordance with the  
14 predetermined penalty amount established under Subsection (b) [~~of~~  
15 ~~this section~~] and taking remedial action as provided in the  
16 citation; or

17 (2) requesting a hearing on the alleged violation in  
18 accordance with Section 11.0842 [~~of this code~~].

19 SECTION 1.12. Section 11.134(b), Water Code, is amended to  
20 read as follows:

21 (b) The commission shall grant the application only if:

22 (1) the application conforms to the requirements  
23 prescribed by this chapter and is accompanied by the prescribed  
24 fee;

25 (2) unappropriated water is available in the source of  
26 supply;

27 (3) the proposed appropriation:

- 1 (A) is intended for a beneficial use;
- 2 (B) does not impair existing water rights or  
3 vested riparian rights;
- 4 (C) is not detrimental to the public welfare;
- 5 (D) considers any applicable environmental flow  
6 standards established under Section 11.1471 and, if applicable, the  
7 assessments performed under Sections 11.147(d) and (e) and Sections  
8 11.150, 11.151, and 11.152; and
- 9 (E) addresses a water supply need in a manner  
10 that is consistent with the state water plan and the relevant  
11 approved regional water plan for any area in which the proposed  
12 appropriation is located, unless the commission determines that  
13 conditions warrant waiver of this requirement; and
- 14 (4) the applicant has provided evidence that  
15 reasonable diligence will be used to avoid waste and achieve water  
16 conservation as defined by [~~Subdivision (8)(B),~~] Section  
17 11.002(8)(B) [~~11.002~~].

18 SECTION 1.13. Section 11.147, Water Code, is amended by  
19 amending Subsections (b), (d), and (e) and adding Subsections  
20 (e-1), (e-2), and (e-3) to read as follows:

21 (b) In its consideration of an application for a permit to  
22 store, take, or divert water, the commission shall assess the  
23 effects, if any, of the issuance of the permit on the bays and  
24 estuaries of Texas. For permits issued within an area that is 200  
25 river miles of the coast, to commence from the mouth of the river  
26 thence inland, the commission shall include in the permit any  
27 conditions considered necessary to maintain beneficial inflows to

1 any affected bay and estuary system, to the extent practicable when  
2 considering all public interests and the studies mandated by  
3 Section 16.058 as evaluated under Section 11.1491[~~, those~~  
4 ~~conditions considered necessary to maintain beneficial inflows to~~  
5 ~~any affected bay and estuary system~~].

6 (d) In its consideration of an application to store, take,  
7 or divert water, the commission shall include in the permit, to the  
8 extent practicable when considering all public interests, those  
9 conditions considered by the commission necessary to maintain  
10 existing instream uses and water quality of the stream or river to  
11 which the application applies. In determining what conditions to  
12 include in the permit under this subsection, the commission shall  
13 consider among other factors:

14 (1) the studies mandated by Section 16.059; and

15 (2) any water quality assessment performed under  
16 Section 11.150.

17 (e) The commission shall include in the permit, to the  
18 extent practicable when considering all public interests, those  
19 conditions considered by the commission necessary to maintain fish  
20 and wildlife habitats. In determining what conditions to include  
21 in the permit under this subsection, the commission shall consider  
22 any assessment performed under Section 11.152.

23 (e-1) Any permit for a new appropriation of water or an  
24 amendment to an existing water right that increases the amount of  
25 water authorized to be stored, taken, or diverted must include a  
26 provision allowing the commission to adjust the conditions included  
27 in the permit or amended water right to provide for protection of



1 instream flows or freshwater inflows. With respect to an amended  
2 water right, the provision may not allow the commission to adjust a  
3 condition of the amendment other than a condition that applies only  
4 to the increase in the amount of water to be stored, taken, or  
5 diverted authorized by the amendment. This subsection does not  
6 affect an appropriation of or an authorization to store, take, or  
7 divert water under a permit or amendment to a water right issued  
8 before September 1, 2007. The commission shall adjust the  
9 conditions if the commission determines, through an expedited  
10 public comment process, that such an adjustment is appropriate to  
11 achieve compliance with applicable environmental flow standards  
12 adopted under Section 11.1471. The adjustment:

13 (1) in combination with any previous adjustments made  
14 under this subsection may not increase the amount of the  
15 pass-through or release requirement for the protection of instream  
16 flows or freshwater inflows by more than 12.5 percent of the  
17 annualized total of that requirement contained in the permit as  
18 issued or of that requirement contained in the amended water right  
19 and applicable only to the increase in the amount of water  
20 authorized to be stored, taken, or diverted under the amended water  
21 right;

22 (2) must be based on appropriate consideration of the  
23 priority dates and diversion locations of any other water rights  
24 granted in the same river basin that are subject to adjustment under  
25 this subsection; and

26 (3) must be based on appropriate consideration of any  
27 voluntary contributions to the Texas Water Trust, and of any

1 voluntary amendments to existing water rights to change the use of a  
2 specified quantity of water to or add a use of a specified quantity  
3 of water for instream flows dedicated to environmental needs or bay  
4 and estuary inflows as authorized by Section 11.0237(a), that  
5 actually contribute toward meeting the applicable environmental  
6 flow standards.

7 (e-2) Any water right holder who makes a contribution or  
8 amends a water right as described by Subsection (e-1)(3) is  
9 entitled to appropriate credit for the benefits of the contribution  
10 or amendment against the adjustment of the holder's water right  
11 under Subsection (e-1).

12 (e-3) Notwithstanding Subsections (b)-(e), for the purpose  
13 of determining the environmental flow conditions necessary to  
14 maintain freshwater inflows to an affected bay and estuary system,  
15 existing instream uses and water quality of a stream or river, or  
16 fish and aquatic wildlife habitats, the commission shall apply any  
17 applicable environmental flow standard, including any  
18 environmental flow set-aside, adopted under Section 11.1471  
19 instead of considering the factors specified by those subsections.

20 SECTION 1.14. Subchapter D, Chapter 11, Water Code, is  
21 amended by adding Section 11.1471 to read as follows:

22 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

23 (a) The commission by rule shall:

24 (1) adopt appropriate environmental flow standards  
25 for each river basin and bay system in this state that are adequate  
26 to support a sound ecological environment, to the maximum extent  
27 reasonable considering other public interests and other relevant

1 factors;

2 (2) establish an amount of unappropriated water, if  
3 available, to be set aside to satisfy the environmental flow  
4 standards to the maximum extent reasonable when considering human  
5 water needs; and

6 (3) establish procedures for implementing an  
7 adjustment of the conditions included in a permit or an amended  
8 water right as provided by Sections 11.147(e-1) and (e-2).

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

12 (1) the definition of the geographical extent of the  
13 river basin and bay system adopted by the advisory group under  
14 Section 11.02362(a) and the definition and designation of the river  
15 basin by the board under Section 16.051(c);

16 (2) the schedule established by the advisory group  
17 under Section 11.02362(d) or (e) for the adoption of environmental  
18 flow standards for the river basin and bay system, if applicable;

19 (3) the environmental flow analyses and the  
20 recommended environmental flow regime developed by the applicable  
21 basin and bay expert science team under Section 11.02362(m);

22 (4) the recommendations developed by the applicable  
23 basin and bay area stakeholders committee under Section 11.02362(o)  
24 regarding environmental flow standards and strategies to meet the  
25 flow standards;

26 (5) any comments submitted by the advisory group to  
27 the commission under Section 11.02362(q);

1           (6) the specific characteristics of the river basin  
2 and bay system;

3           (7) economic factors;

4           (8) the human and other competing water needs in the  
5 river basin and bay system;

6           (9) all reasonably available scientific information,  
7 including any scientific information provided by the science  
8 advisory committee; and

9           (10) any other appropriate information.

10          (c) Environmental flow standards adopted under Subsection  
11 (a)(1) must consist of a schedule of flow quantities, reflecting  
12 seasonal and yearly fluctuations that may vary geographically by  
13 specific location in a river basin and bay system.

14          (d) As provided by Section 11.023, the commission may not  
15 issue a permit for a new appropriation or an amendment to an  
16 existing water right that increases the amount of water authorized  
17 to be stored, taken, or diverted if the issuance of the permit or  
18 amendment would impair an environmental flow set-aside established  
19 under Subsection (a)(2). A permit for a new appropriation or an  
20 amendment to an existing water right that increases the amount of  
21 water authorized to be stored, taken, or diverted that is issued  
22 after the adoption of an applicable environmental flow set-aside  
23 must contain appropriate conditions to ensure protection of the  
24 environmental flow set-aside.

25          (e) An environmental flow set-aside established under  
26 Subsection (a)(2) for a river basin and bay system other than the  
27 middle and lower Rio Grande must be assigned a priority date

1 corresponding to the date the commission receives environmental  
2 flow regime recommendations from the applicable basin and bay  
3 expert science team and be included in the appropriate water  
4 availability models in connection with an application for a permit  
5 for a new appropriation or for an amendment to an existing water  
6 right that increases the amount of water authorized to be stored,  
7 taken, or diverted.

8 (f) An environmental flow standard or environmental flow  
9 set-aside adopted under Subsection (a) may be altered by the  
10 commission in a rulemaking process undertaken in accordance with a  
11 schedule established by the commission. In establishing a  
12 schedule, the commission shall consider the applicable work plan  
13 approved by the advisory group under Section 11.02362(p). The  
14 commission's schedule may not provide for the rulemaking process to  
15 occur more frequently than once every 10 years unless the work plan  
16 provides for a periodic review under Section 11.02362(p) to occur  
17 more frequently than once every 10 years. In that event, the  
18 commission may provide for the rulemaking process to be undertaken  
19 in conjunction with the periodic review if the commission  
20 determines that schedule to be appropriate. A rulemaking process  
21 undertaken under this subsection must provide for the participation  
22 of stakeholders having interests in the particular river basin and  
23 bay system for which the process is undertaken.

24 SECTION 1.15. The heading to Section 11.148, Water Code, is  
25 amended to read as follows:

26 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND  
27 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR

1 ENVIRONMENTAL FLOWS.

2 SECTION 1.16. Section 11.148, Water Code, is amended by  
3 adding Subsection (a-1) and amending Subsections (b) and (c) to  
4 read as follows:

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

11 (b) Before the commission suspends a permit condition under  
12 Subsection (a) or makes water available temporarily under  
13 Subsection (a-1) [of this section], it must give written notice to  
14 the Parks and Wildlife Department of the proposed action  
15 [suspension]. The commission shall give the Parks and Wildlife  
16 Department an opportunity to submit comments on the proposed action  
17 [suspension] within 72 hours from such time and the commission  
18 shall consider those comments before issuing its order implementing  
19 the proposed action [imposing the suspension].

20 (c) The commission may suspend the permit condition under  
21 Subsection (a) or make water available temporarily under Subsection  
22 (a-1) without notice to any other interested party other than the  
23 Parks and Wildlife Department as provided by Subsection (b) [of  
24 this section]. However, all affected persons shall be notified  
25 immediately by publication, and a hearing to determine whether the  
26 suspension should be continued shall be held within 15 days of the  
27 date on which the order to suspend is issued.

1 SECTION 1.17. Section 11.1491(a), Water Code, is amended to  
2 read as follows:

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

19 SECTION 1.18. Section 11.329(g), Water Code, is amended to  
20 read as follows:

21 (g) The commission may not assess costs under this section  
22 against a holder of a non-priority hydroelectric right that owns or  
23 operates privately owned facilities that collectively have a  
24 capacity of less than two megawatts or against a holder of a water  
25 right placed in the Texas Water Trust for a term of at least 20  
26 years. [~~This subsection is not intended to affect in any way the~~  
27 ~~fees assessed on a water right holder by the commission under~~

1 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~  
2 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~  
3 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~  
4 ~~non-priority hydroelectric right that owns or operates privately~~  
5 ~~owned facilities that collectively have a capacity of less than two~~  
6 ~~megawatts shall be assessed fees at the same rate per acre-foot~~  
7 ~~charged to a holder of a non-priority hydroelectric right that owns~~  
8 ~~or operates privately owned facilities that collectively have a~~  
9 ~~capacity of more than two megawatts.]~~

10 SECTION 1.19. Section 11.404(e), Water Code, is amended to  
11 read as follows:

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

14 (1) a holder of a non-priority hydroelectric right  
15 that owns or operates privately owned facilities that collectively  
16 have a capacity of less than two megawatts; or

17 (2) a holder of a water right placed in the Texas Water  
18 Trust for a term of at least 20 years.

19 SECTION 1.20. Subchapter I, Chapter 11, Water Code, is  
20 amended by adding Section 11.4531 to read as follows:

21 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For  
22 each river basin or segment of a river basin for which the executive  
23 director appoints a watermaster under this subchapter, the  
24 executive director shall appoint a watermaster advisory committee  
25 consisting of at least nine but not more than 15 members. A member  
26 of the advisory committee must be a holder of a water right or a  
27 representative of a holder of a water right in the river basin or



1 segment of the river basin for which the watermaster is appointed.  
2 In appointing members to the advisory committee, the executive  
3 director shall consider:

- 4 (1) geographic representation;  
5 (2) amount of water rights held;  
6 (3) different types of holders of water rights and  
7 users, including water districts, municipal suppliers, irrigators,  
8 and industrial users; and  
9 (4) experience and knowledge of water management  
10 practices.

11 (b) An advisory committee member is not entitled to  
12 reimbursement of expenses or to compensation.

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

16 (d) The advisory committee shall meet within 30 days after  
17 the date the initial appointments have been made and shall select a  
18 presiding officer to serve a one-year term. The committee shall  
19 meet regularly as necessary.

20 (e) The advisory committee shall:

21 (1) make recommendations to the executive director  
22 regarding activities of benefit to the holders of water rights in  
23 the administration and distribution of water to holders of water  
24 rights in the river basin or segment of the river basin for which  
25 the watermaster is appointed;

26 (2) review and comment to the executive director on  
27 the annual budget of the watermaster operation; and

1           (3) perform other advisory duties as requested by the  
2 executive director regarding the watermaster operation or as  
3 requested by holders of water rights and considered by the  
4 committee to benefit the administration of water rights in the  
5 river basin or segment of the river basin for which the watermaster  
6 is appointed.

7           SECTION 1.21. Sections 11.454 and 11.455, Water Code, are  
8 amended to read as follows:

9           Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.  
10 Section 11.327 applies to the duties and authority of a watermaster  
11 appointed for a river basin or segment of a river basin under this  
12 subchapter in the same manner as that section applies to the duties  
13 and authority of a watermaster appointed for a water division under  
14 Subchapter G [A watermaster as the agent of the commission and under  
15 the executive director's supervision shall:

16           ~~[(1) divide the water of the streams or other sources~~  
17 ~~of supply of his segment or basin in accordance with the authorized~~  
18 ~~water rights,~~

19           ~~[(2) regulate or cause to be regulated the controlling~~  
20 ~~works of reservoirs and diversion works in time of water shortage,~~  
21 ~~as is necessary because of the rights existing in the streams of his~~  
22 ~~segment or basin, or as is necessary to prevent the waste of water~~  
23 ~~or its diversion, taking, storage, or use in excess of the~~  
24 ~~quantities to which the holders of water rights are lawfully~~  
25 ~~entitled, and~~

26           ~~[(3) perform any other duties and exercise any~~  
27 ~~authority directed by the commission].~~

1           Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER  
2 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the  
3 compensation and expenses of a watermaster appointed for a river  
4 basin or segment of a river basin under this subchapter in the same  
5 manner as that section applies to the payment of the compensation  
6 and expenses of a watermaster appointed for a water division under  
7 Subchapter G.

8           (b) The executive director shall deposit the assessments  
9 collected under this section to the credit of the watermaster fund.

10           (c) Money deposited under this section to the credit of the  
11 watermaster fund may be used only for the purposes specified by  
12 Section 11.3291 with regard to the watermaster operation under this  
13 subchapter with regard to which the assessments were collected [~~The~~  
14 ~~commission may assess the costs of the watermaster against all~~  
15 ~~persons who hold water rights in the river basin or segment of the~~  
16 ~~river basin under the watermaster's jurisdiction in accordance with~~  
17 ~~Section 11.329 of this code].~~

18           SECTION 1.22. Subchapter F, Chapter 15, Water Code, is  
19 amended by adding Section 15.4063 to read as follows:

20           Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may  
21 authorize the use of money in the research and planning fund:

22           (1) to compensate the members of the Texas  
23 environmental flows science advisory committee established under  
24 Section 11.02361 for attendance and participation at meetings of  
25 the committee and for transportation, meals, lodging, or other  
26 travel expenses associated with attendance at those meetings as  
27 provided by the General Appropriations Act;

1           (2) for contracts with cooperating state and federal  
2 agencies and universities and with private entities as necessary to  
3 provide technical assistance to enable the Texas environmental  
4 flows science advisory committee and the basin and bay expert  
5 science teams established under Section 11.02362 to perform their  
6 statutory duties;

7           (3) to compensate the members of the basin and bay  
8 expert science teams established under Section 11.02362 for  
9 attendance and participation at meetings of the basin and bay  
10 expert science teams and for transportation, meals, lodging, or  
11 other travel expenses associated with attendance at those meetings  
12 as provided by the General Appropriations Act; and

13           (4) for contracts with political subdivisions  
14 designated as representatives of basin and bay area stakeholders  
15 committees established under Section 11.02362 to fund all or part  
16 of the administrative expenses incurred in conducting meetings of  
17 the basin and bay area stakeholders committees or the pertinent  
18 basin and bay expert science teams.

19           SECTION 1.23. Section 16.059(d), Water Code, is amended to  
20 read as follows:

21           (d) The priority studies shall be completed not later than  
22 December 31, 2016 [~~2010~~]. The Parks and Wildlife Department, the  
23 commission, and the board shall establish a work plan that  
24 prioritizes the studies and that sets interim deadlines providing  
25 for publication of flow determinations for individual rivers and  
26 streams on a reasonably consistent basis throughout the prescribed  
27 study period. Before publication, completed studies shall be

1 submitted for comment to the commission, the board, and the Parks  
2 and Wildlife Department.

3 SECTION 1.24. Section 26.0135(h), Water Code, as amended by  
4 Chapters 234 and 965, Acts of the 77th Legislature, Regular  
5 Session, 2001, is reenacted and amended to read as follows:

6 (h) The commission shall apportion, assess, and recover the  
7 reasonable costs of administering the water quality management  
8 programs under this section from users of water and wastewater  
9 permit holders in the watershed according to the records of the  
10 commission generally in proportion to their right, through permit  
11 or contract, to use water from and discharge wastewater in the  
12 watershed. Irrigation water rights, ~~and~~ non-priority  
13 hydroelectric rights of a water right holder that owns or operates  
14 privately owned facilities that collectively have a capacity of  
15 less than two megawatts, and water rights held in the Texas Water  
16 Trust for terms of at least 20 years will not be subject to this  
17 assessment. The cost to river authorities and others to conduct  
18 water quality monitoring and assessment shall be subject to prior  
19 review and approval by the commission as to methods of allocation  
20 and total amount to be recovered. The commission shall adopt rules  
21 to supervise and implement the water quality monitoring,  
22 assessment, and associated costs. The rules shall ensure that  
23 water users and wastewater dischargers do not pay excessive  
24 amounts, that program funds are equitably apportioned among basins,  
25 that a river authority may recover no more than the actual costs of  
26 administering the water quality management programs called for in  
27 this section, and that no municipality shall be assessed cost for

1 any efforts that duplicate water quality management activities  
2 described in Section 26.177 [~~of this chapter~~]. The rules  
3 concerning the apportionment and assessment of reasonable costs  
4 shall provide for a recovery of not more than \$5,000,000 annually.  
5 Costs recovered by the commission are to be deposited to the credit  
6 of the water resource management account and may be used only to  
7 accomplish the purposes of this section. The commission may apply  
8 not more than 10 percent of the costs recovered annually toward the  
9 commission's overhead costs for the administration of this section  
10 and the implementation of regional water quality assessments. The  
11 commission, with the assistance and input of each river authority,  
12 shall file a written report accounting for the costs recovered  
13 under this section with the governor, the lieutenant governor, and  
14 the speaker of the house of representatives on or before December 1  
15 of each even-numbered year.

16 SECTION 1.25. Section 11.1491(b), Water Code, is repealed.

17 SECTION 1.26. (a) The governor, lieutenant governor, and  
18 speaker of the house of representatives shall appoint the initial  
19 members of the environmental flows advisory group as provided by  
20 Section 11.0236, Water Code, as added by this article, as soon as  
21 practicable on or after the effective date of this article.

22 (b) As soon as practicable after taking office, the initial  
23 members of the environmental flows advisory group shall appoint the  
24 initial members of the Texas environmental flows science advisory  
25 committee as provided by Section 11.02361, Water Code, as added by  
26 this article. The terms of the initial members of the committee  
27 expire March 1, 2012.

1 (c) The environmental flows advisory group shall appoint  
2 the members of each basin and bay area stakeholders committee as  
3 provided by Section 11.02362, Water Code, as added by this article.  
4 The terms of the initial members of each committee expire March 1 of  
5 the fifth year that begins after the year in which the initial  
6 appointments are made.

7 (d) Each basin and bay area stakeholders committee shall  
8 appoint the members of the basin and bay expert science team for the  
9 river basin and bay system for which the committee is established as  
10 provided by Section 11.02362, Water Code, as added by this article.  
11 The terms of the initial members of each team expire April 1 of the  
12 fifth year that begins after the year in which the initial  
13 appointments are made.

14 (e) The executive director of the Texas Commission on  
15 Environmental Quality shall appoint the members of the watermaster  
16 advisory committee under Section 11.4531, Water Code, as added by  
17 this article, for each river basin or segment of a river basin for  
18 which the executive director appoints a watermaster under  
19 Subchapter I, Chapter 11, Water Code. The terms of the initial  
20 members of each committee expire August 31 of the first  
21 odd-numbered year that begins after the year in which the initial  
22 appointments are made.

23 SECTION 1.27. The changes in law made by this article  
24 relating to a permit for a new appropriation of water or to an  
25 amendment to an existing water right that increases the amount of  
26 water authorized to be stored, taken, or diverted apply only to:

27 (1) water appropriated under a permit for a new

1 appropriation of water the application for which is pending with  
2 the Texas Commission on Environmental Quality on the effective date  
3 of this Act or is filed with the commission on or after that date; or

4 (2) the increase in the amount of water authorized to  
5 be stored, taken, or diverted under an amendment to an existing  
6 water right that increases the amount of water authorized to be  
7 stored, taken, or diverted and the application for which is pending  
8 with the Texas Commission on Environmental Quality on the effective  
9 date of this Act or is filed with the commission on or after that  
10 date.

11 ARTICLE 2. EDWARDS AQUIFER AUTHORITY

12 SECTION 2.01. Section 1.11, Chapter 626, Acts of the 73rd  
13 Legislature, Regular Session, 1993, is amended by amending  
14 Subsection (f) and adding Subsections (f-1) and (f-2) to read as  
15 follows:

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

26 (f-1) The authority shall provide written notice of the  
27 intent to own, finance, design, construct, operate, or maintain



1 recharge facilities to:

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

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

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

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

10 (f-2) Any entity within the county in which a recharge  
11 facility is to be constructed shall be provided opportunity for  
12 input and allowed to provide proposals for partnering with the  
13 authority to own, finance, design, construct, operate, or maintain  
14 the recharge facility.

15 SECTION 2.02. Sections 1.14(a), (c), (e), (f), and (h),  
16 Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993,  
17 are amended to read as follows:

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

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

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

24 (3) achieve water conservation;

25 (4) maximize the beneficial use of water available for  
26 withdrawal from the aquifer;

27 (5) recognize the extent of the hydro-geologic

1 connection and interaction between surface water and groundwater;

2 (6) protect aquatic and wildlife habitat;

3 (7) [~~(6)~~] protect species that are designated as  
4 threatened or endangered under applicable federal or state law; and

5 (8) [~~(7)~~] provide for instream uses, bays, and  
6 estuaries.

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

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

20 (f) If the level of the aquifer is equal to or greater than  
21 660 [~~650~~] feet above mean sea level as measured at Well J-17, the  
22 authority may authorize withdrawal from the San Antonio pool, on an  
23 uninterruptible basis, of permitted amounts. If the level of the  
24 aquifer is equal to or greater than 845 feet at Well J-27, the  
25 authority may authorize withdrawal from the Uvalde pool, on an  
26 uninterruptible basis, of permitted amounts. [~~The authority shall~~  
27 ~~limit the additional withdrawals to ensure that springflows are not~~

1 ~~affected during critical drought conditions.]~~

2 (h) To accomplish the purposes of this article, [~~by June 1,~~  
3 ~~1994,~~] the authority, through a program, shall implement and  
4 enforce water management practices, procedures, and methods to  
5 ensure that, not later than December 31, 2012, the continuous  
6 minimum springflows of the Comal Springs and the San Marcos Springs  
7 are maintained to protect endangered and threatened species to the  
8 extent required by federal law and to achieve other purposes  
9 provided by Subsection (a) of this section and Section 1.26 of this  
10 article. The authority from time to time as appropriate may revise  
11 the practices, procedures, and methods. To meet this requirement,  
12 the authority shall require:

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

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

20 SECTION 2.03. Section 1.16(g), Chapter 626, Acts of the  
21 73rd Legislature, Regular Session, 1993, is amended to read as  
22 follows:

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

26 SECTION 2.04. Section 1.19(b), Chapter 626, Acts of the  
27 73rd Legislature, Regular Session, 1993, is amended to read as

1 follows:

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

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

9 (2) the flow at Comal Springs as determined by Section  
10 1.26(c) of this article is greater than 350 cubic feet per second;  
11 and

12 (3) the flow at San Marcos Springs as determined by  
13 Section 1.26(c) of this article is greater than 200 cubic feet per  
14 second.

15 SECTION 2.05. Section 1.22(a), Chapter 626, Acts of the  
16 73rd Legislature, Regular Session, 1993, is amended to read as  
17 follows:

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

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

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

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

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

3           SECTION 2.06. Article 1, Chapter 626, Acts of the 73rd  
4 Legislature, Regular Session, 1993, is amended by amending Section  
5 1.26 and adding Section 1.26A to read as follows:

6           Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) After  
7 review of the recommendations received in the program document, as  
8 prescribed by Section 1.26A of this article, the [The] authority by  
9 rule shall adopt [prepare and coordinate implementation of] a [plan  
10 ~~for]~~ critical period management plan consistent with Sections  
11 1.14(a), (f), and (h) of this article [on or before September 1,  
12 ~~1995].~~ The critical period management plan shall be adopted by the  
13 authority no later than six months after the authority's receipt of  
14 the program document. On adoption of the critical period  
15 management plan, the authority shall provide a written report to  
16 the governor, lieutenant governor, and speaker of the house of  
17 representatives describing the actions taken in response to each  
18 recommendation and, for each recommendation not implemented, the  
19 reason it was not implemented. The plan [mechanisms] must:

20                   (1) distinguish between discretionary use and  
21 nondiscretionary use;

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

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

27                   (4) require reduction of nondiscretionary use by

1 permitted or contractual users, to the extent further reductions  
 2 are necessary, in the reverse order of the following water use  
 3 preferences:

- 4 (A) municipal, domestic, and livestock;
- 5 (B) industrial and crop irrigation;
- 6 (C) residential landscape irrigation;
- 7 (D) recreational and pleasure; and
- 8 (E) other uses that are authorized by law; and
- 9 (5) allow irrigation use to continue in order to  
 10 permit the user to complete the irrigation of a crop in progress.

11 (b) In this section, "MSL" means the elevation above mean  
 12 sea level, measured in feet, of the surface of the water in a well,  
 13 and "CFS" means cubic feet per second. Not later than January 1,  
 14 2008, the authority shall, by rule, adopt and enforce a critical  
 15 period management plan with withdrawal reduction percentages in the  
 16 amounts indicated in Tables 1 and 2 whether according to the index  
 17 well levels or the Comal or San Marcos Springs flow as applicable,  
 18 for a total in critical period Stage IV of 40 percent of the  
 19 permitted withdrawals under Table 1 and 35 percent under Table 2:

20 TABLE 1

21 CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

22 <u>FOR THE SAN ANTONIO POOL</u>				
23 <u>Comal</u>	23 <u>San Marcos</u>	23 <u>Index Well</u>	23 <u>Critical</u>	23 <u>Withdrawal</u>
24 <u>Springs Flow</u>	24 <u>Springs Flow</u>	24 <u>J-17 Level</u>	24 <u>Period Stage</u>	24 <u>Reduction-</u>
25 <u>cfs</u>	25 <u>cfs</u>	25 <u>MSL</u>		25 <u>San Antonio</u>
				26 <u>Pool</u>
27 <u>&lt;225</u>	27 <u>&lt;96</u>	27 <u>&lt;660</u>	27 <u>I</u>	27 <u>20%</u>
28 <u>&lt;200</u>	28 <u>&lt;80</u>	28 <u>&lt;650</u>	28 <u>II</u>	28 <u>30%</u>
29 <u>&lt;150</u>	29 <u>N/A</u>	29 <u>&lt;640</u>	29 <u>III</u>	29 <u>35%</u>
30 <u>&lt;100</u>	30 <u>N/A</u>	30 <u>&lt;630</u>	30 <u>IV</u>	30 <u>40%</u>

TABLE 2  
CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

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

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

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

28       (e) After January 1, 2013, the authority may not require the  
 29 volume of permitted withdrawals to be less than an annualized rate

1 of 320,000 acre-feet, under critical period Stage IV unless, after  
2 review and consideration of the recommendations provided under  
3 Section 1.26A of this article, the authority determines that a  
4 different volume of withdrawals is consistent with Sections  
5 1.14(a), (f), and (h) of this article in maintaining protection for  
6 federally listed threatened and endangered species associated with  
7 the aquifer to the extent required by federal law.

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

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

25 Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND  
26 STAGES FOR CRITICAL PERIOD MANAGEMENT THROUGH RECOVERY  
27 IMPLEMENTATION PROGRAM. (a) The authority, with the assistance of



1 Texas A&M University, shall cooperatively develop a recovery  
2 implementation program through a facilitated, consensus-based  
3 process that involves input from the United States Fish and  
4 Wildlife Service, other appropriate federal agencies, and all  
5 interested stakeholders, including those listed under Subsection  
6 (e)(1) of this section. The recovery implementation program shall  
7 be developed for the species that are:

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

10 (2) associated with the aquifer.

11 (b) The authority shall enter into a memorandum of agreement  
12 with the United States Fish and Wildlife Service, other appropriate  
13 federal agencies, the Texas Commission on Environmental Quality,  
14 the Parks and Wildlife Department, the Department of Agriculture,  
15 the Texas Water Development Board, and other stakeholders, not  
16 later than December 31, 2007, in order to develop a program document  
17 that may be in the form of a habitat conservation plan used in  
18 issuance of an incidental take permit as outlined in Subsection (d)  
19 of this section.

20 (c) The authority shall enter into an implementing  
21 agreement with the United States Fish and Wildlife Service, other  
22 appropriate federal agencies, the Texas Commission on  
23 Environmental Quality, the Parks and Wildlife Department, the  
24 Department of Agriculture, the Texas Water Development Board, and  
25 other stakeholders to develop a program document that may be in the  
26 form of a habitat conservation plan used in issuance of an  
27 incidental take permit as outlined in Subsection (d) of this

1 section not later than December 31, 2009.

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

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

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

25 (3) be approved and executed by the authority, the  
26 Texas Commission on Environmental Quality, the Parks and Wildlife  
27 Department, the Department of Agriculture, the Texas Water

1 Development Board, and the United States Fish and Wildlife Service  
2 not later than September 1, 2012, and the agreement shall take  
3 effect December 31, 2012.

4 (e) Texas A&M University shall assist in the creation of a  
5 steering committee to oversee and assist in the development of the  
6 cooperative agreement under Subsection (c) of this section. The  
7 steering committee must be created not later than September 30,  
8 2007. The initial steering committee shall be composed of:

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

11 (A) the Edwards Aquifer Authority;

12 (B) the Texas Commission on Environmental  
13 Quality;

14 (C) the Parks and Wildlife Department;

15 (D) the Department of Agriculture;

16 (E) the Texas Water Development Board;

17 (F) the San Antonio Water System;

18 (G) the Guadalupe-Blanco River Authority;

19 (H) the San Antonio River Authority;

20 (I) the South Central Texas Water Advisory  
21 Committee;

22 (J) Bexar County;

23 (K) CPS Energy; and

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

26 (2) nine other persons who respectively must be:

27 (A) a representative of a holder of an initial

1 regular permit issued to a retail public utility located west of  
2 Bexar County, to be appointed by the authority;

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

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

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

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

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

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

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

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

27 (f) The steering committee shall work with Texas A&M

1 University to:

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

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

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

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

15 (i) The steering committee appointed under this section  
16 shall appoint an Edwards Aquifer area expert science subcommittee  
17 not later than December 31, 2007. The expert science subcommittee  
18 must be composed of an odd number of not fewer than seven or more  
19 than 15 members who have technical expertise regarding the Edwards  
20 Aquifer system, the threatened and endangered species that inhabit  
21 that system, springflows, or the development of withdrawal  
22 limitations. The Bureau of Economic Geology of The University of  
23 Texas at Austin and the River Systems Institute at Texas State  
24 University shall assist the expert science subcommittee. Chapter  
25 2110, Government Code, does not apply to the size, composition, or  
26 duration of the expert science subcommittee.

27 (j) The Edwards Aquifer area expert science subcommittee

1 shall, among other things, analyze species requirements in relation  
2 to spring discharge rates and aquifer levels as a function of  
3 recharge and withdrawal levels. Based on that analysis and the  
4 elements required to be considered by the authority under Section  
5 1.14 of this article, the expert science subcommittee shall,  
6 through a collaborative process designed to achieve consensus,  
7 develop recommendations for withdrawal reduction levels and stages  
8 for critical period management including, if appropriate,  
9 establishing separate and possibly different withdrawal reduction  
10 levels and stages for critical period management for different  
11 pools of the aquifer needed to maintain target spring discharge and  
12 aquifer levels. The expert science subcommittee shall submit its  
13 recommendations to the steering committee and all other  
14 stakeholders involved in the recovery implementation program under  
15 this section.

16 (k) The initial recommendations of the Edwards Aquifer area  
17 expert science subcommittee must be completed and submitted to the  
18 steering committee and other stakeholders not later than December  
19 31, 2008, and should include an evaluation:

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

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

27 (3) as to whether adjustments in the trigger levels

1 for the San Marcos Springs flow for the San Antonio pool should be  
2 made.

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

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

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

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

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

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

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

25 (n) In this subsection, "recharge facility" means a dam,  
26 reservoir, or other method of recharge project and associated  
27 facilities, structures, or works but does not include facilities

1 designed to recirculate water at Comal or San Marcos Springs. The  
2 steering committee shall establish a recharge facility feasibility  
3 subcommittee to:

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

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

10 (3) make recommendations to the steering committee as  
11 to how to calculate the amount of additional water that is made  
12 available for use from a recharge project including during times of  
13 critical period reductions;

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

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

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

24 (p) On execution of the memorandum of agreement described by  
25 Subsection (b) of this section, the steering committee described by  
26 Subsection (e) of this section may, by majority vote of its members,  
27 vote to add members to the steering committee, change the makeup of



1 the committee, or dissolve the committee. If the steering  
2 committee is dissolved, the program director hired under Subsection  
3 (f) of this section shall assume the duties of the steering  
4 committee.

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

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

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

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

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

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

20 (6) any other issues the authority considers of value  
21 for the efficient and effective completion of the program and the  
22 cooperative agreement under this section.

23 SECTION 2.07. Sections 1.29(b), (h), and (i), Chapter 626,  
24 Acts of the 73rd Legislature, Regular Session, 1993, are amended to  
25 read as follows:

26 (b) The authority shall assess equitable aquifer management  
27 fees based on aquifer use under the water management plan to finance

1 its administrative expenses and programs authorized under this  
2 article. Each water district governed by Chapter 36 [~~52~~], Water  
3 Code, that is within the authority's boundaries may contract with  
4 the authority to pay expenses of the authority through taxes in lieu  
5 of user fees to be paid by water users in the district. The contract  
6 must provide that the district will pay an amount equal to the  
7 amount that the water users in the district would have paid through  
8 user fees. The authority may not collect a total amount of fees and  
9 taxes that is more than is reasonably necessary for the  
10 administration of the authority.

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

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

1 article.

2 SECTION 2.08. Section 1.45(a), Chapter 626, Acts of the  
3 73rd Legislature, Regular Session, 1993, is amended to read as  
4 follows:

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

12 SECTION 2.09. Sections 1.14(b) and (d), Section 1.21, and  
13 Sections 1.29(a), (c), and (d), Chapter 626, Acts of the 73rd  
14 Legislature, Regular Session, 1993, are repealed.

15 SECTION 2.10. (a) Before January 1, 2012, a suit may not be  
16 instituted in a state court contesting:

- 17 (1) the validity or implementation of this article; or  
18 (2) the groundwater withdrawal amounts recognized in  
19 Section 2.02 of this Act.

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

24 (c) A suit against the Edwards Aquifer Authority may not be  
25 instituted or maintained by a person who owns, holds, or uses a  
26 surface water right and claims injury or potential injury to that  
27 right for any reason, including any actions taken by the Edwards

1 Aquifer Authority to implement or enforce Article 1, Chapter 626,  
2 Acts of the 73rd Legislature, Regular Session, 1993, as amended.  
3 This section does not apply to suits brought pursuant to Section  
4 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session,  
5 1993.

6 SECTION 2.11. The change in law made by this article applies  
7 only to a cause of action filed on or after the effective date of  
8 this article. A cause of action that is filed before the effective  
9 date of this article is governed by the law in effect immediately  
10 before the effective date of this article, and that law is continued  
11 in effect for that purpose.

12 SECTION 2.12. This article takes effect immediately if this  
13 Act receives a vote of two-thirds of all the members elected to each  
14 house, as provided by Section 39, Article III, Texas Constitution.  
15 If this Act does not receive the vote necessary for immediate  
16 effect, this article takes effect September 1, 2007.

17 ARTICLE 3. EFFECTIVE DATE

18 SECTION 3.01. Except as otherwise provided by this Act,  
19 this Act takes effect September 1, 2007.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3 was passed by the House on March 1, 2007, by the following vote: Yeas 142, Nays 1, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3 on May 28, 2007, by the following vote: Yeas 142, Nays 2, 2 present, not voting.

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Chief Clerk of the House

H.B. No. 3

I certify that H.B. No. 3 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3 on May 28, 2007, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor