

By: Puente

H.B. No. 1292

Substitute the following for H.B. No. 1292:

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C.S.H.B. No. 1292

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the management of groundwater in the area regulated by
3 the Edwards Aquifer Authority and to the operations and oversight
4 of the authority.

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

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

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

20 SECTION 2. Chapter 626, Acts of the 73rd Legislature,
21 Regular Session, 1993, is amended by adding Section 1.111 to read as
22 follows:

23 Sec. 1.111. RECOVERY IMPLEMENTATION PROGRAM FOR LISTED
24 THREATENED AND ENDANGERED SPECIES. (a) The authority, the

1 commission, the Parks and Wildlife Department, and the Texas Water
2 Development Board shall cooperate in the development of a recovery
3 implementation program for the species that are:

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

6 (2) associated with the aquifer.

7 (b) The recovery implementation program must be developed
8 through a cooperative agreement with the United States secretary of
9 the interior, through the United States Fish and Wildlife Service,
10 under Section 6(c), Endangered Species Act of 1973 (16 U.S.C.
11 Section 1535). The authority and the state agencies shall use all
12 good faith efforts to approve and execute the cooperative agreement
13 not later than January 1, 2012, so that the agreement may take
14 effect not later than December 31, 2012. The cooperative agreement
15 must include agreements by the parties to pursue grant funding to
16 the extent available from all available state, federal, and other
17 sources for eligible programs under the cooperative agreement. In
18 developing the cooperative agreement, the authority, the
19 commission, the Parks and Wildlife Department, and the Texas Water
20 Development Board shall solicit advice from the United States Fish
21 and Wildlife Service and, to the extent practicable, all interested
22 stakeholders, including the San Antonio Water System, other holders
23 of initial regular permits issued by the authority, the South
24 Central Texas Water Advisory Committee, the Guadalupe-Blanco River
25 Authority, other holders of surface water rights in the Guadalupe
26 River Basin, recreational interests in the Guadalupe River Basin,
27 the Guadalupe Basin Coalition, the Texas Farm Bureau, and

1 environmental interests.

2 (c) Not later than October 31 of each even-numbered year,
3 the authority shall file with the governor and each house of the
4 legislature a written report on the progress of the recovery
5 implementation program and any actions taken as a result of the
6 program.

7 (d) On completion of the recovery implementation program,
8 the results of the program shall provide the basis for reevaluation
9 and adjustment, if necessary, of the amount of permitted
10 withdrawals authorized under Section 1.14(c) of this article and
11 the withdrawal reduction percentages specified by Section 1.26(b)
12 of this article.

13 SECTION 3. Sections 1.14(c), (e), (f), and (h), Chapter
14 626, Acts of the 73rd Legislature, Regular Session, 1993, are
15 amended to read as follows:

16 (c) Except as provided by Subsections [~~(d)~~] (f)[~~7~~] and (h)
17 of this section [~~and Section 1.26 of this article~~], for the period
18 beginning January 1, 2008, the amount of permitted withdrawals from
19 the aquifer may not exceed the sum of the amounts of groundwater
20 authorized to be withdrawn under:

21 (1) all initial regular permits identified in the
22 Order Implementing a Final Phase-2 Proportional Adjustment and
23 Amending Certain Initial Regular Permits issued by the board on
24 November 8, 2005;

25 (2) a final order issued by the board granting an
26 application for an initial regular permit that was timely filed and
27 was pending with the authority on November 8, 2005; and

1 (3) a final judgment of a court in:

2 (A) an administrative appeal from a final
3 decision of the board on an application for an initial regular
4 permit; and

5 (B) any other type of cause of action that
6 requires the authority to issue a permit [~~400,000 acre-feet of~~
7 ~~water for each calendar year~~].

8 (e) The authority may not allow withdrawals from the aquifer
9 through wells drilled after June 1, 1993[~~, except additional water~~
10 ~~as provided by Subsection (d) and then on an interruptible basis~~].

11 (f) If the level of the aquifer is equal to or greater than
12 660 [~~650~~] feet above mean sea level as measured at Well J-17, the
13 authority may authorize withdrawal from the San Antonio pool, on an
14 uninteruptible basis, of permitted amounts. If the level of the
15 aquifer is equal to or greater than 845 feet at Well J-27, the
16 authority may authorize withdrawal from the Uvalde pool, on an
17 uninteruptible basis, of permitted amounts. If the springflow of
18 the San Marcos Springs is equal to or greater than 120 cubic feet
19 per second at the San Marcos Springs gauging station, the authority
20 may authorize withdrawal from the San Marcos pool, on an
21 uninteruptible basis, of permitted amounts. In accordance with
22 Section 1.26 of this article, the [~~The~~] authority shall limit the
23 additional withdrawals to ensure that springflows are not affected
24 during critical drought conditions.

25 (h) To accomplish the purposes of this article, [~~by June 1,~~
26 ~~1994,~~] the authority, through a program, shall implement and
27 enforce water management practices, procedures, and methods to

1 ensure that, not later than December 31, 2012, the continuous
2 minimum springflows of the Comal Springs and the San Marcos Springs
3 are maintained to protect endangered and threatened species to the
4 extent required by federal law. The authority from time to time as
5 appropriate may revise the practices, procedures, and methods. To
6 meet this requirement, the authority shall require:

7 (1) phased reductions in the amount of water that may
8 be used or withdrawn by existing users or categories of other users
9 in accordance with Section 1.26 of this article; or

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

12 SECTION 4. Section 1.15(c), Chapter 626, Acts of the 73rd
13 Legislature, Regular Session, 1993, is amended to read as follows:

14 (c) The authority may issue regular permits, term permits,
15 and emergency permits. Except as provided by Sections 1.14(f) and
16 (h) and 1.26 of this article, initial regular permits may not be
17 issued on an interruptible basis, and the total withdrawals
18 authorized by all initial regular permits issued by the authority
19 may not exceed the limitations provided by Section 1.14 of this
20 article.

21 SECTION 5. Section 1.19, Chapter 626, Acts of the 73rd
22 Legislature, Regular Session, 1993, is amended by amending
23 Subsection (b) and adding Subsection (d) to read as follows:

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

1 aquifer unless the level of the aquifer is higher than 675 [~~665~~]
2 feet above sea level, as measured at Well J-17, and the flow at
3 Comal Springs as determined by Section 1.26(c) of this article is
4 greater than 350 cubic feet per second.

5 (d) A holder of a term permit may not withdraw water from the
6 San Marcos pool of the aquifer unless the springflow of the San
7 Marcos Springs is greater than 200 cubic feet per second, as
8 measured at the San Marcos Springs gauging station.

9 SECTION 6. Sections 1.21 and 1.26, Chapter 626, Acts of the
10 73rd Legislature, Regular Session, 1993, are amended to read as
11 follows:

12 Sec. 1.21. PERMIT RETIREMENT. (a) If required in order to
13 implement Section 1.14(h) of this article, the [~~The~~] authority
14 shall prepare and, by rule, implement a plan to retire [~~for~~
15 ~~reducing, by January 1, 2008,~~] the amount of groundwater [~~maximum~~
16 ~~annual volume of water~~] authorized under Section 1.14(c) of this
17 article to be withdrawn from the aquifer under initial regular
18 permits to the required reduction level [~~400,000 acre-feet a year~~
19 ~~or the adjusted amount determined under Subsection (d) of Section~~
20 ~~1.14 of this article~~].

21 (b) The plan must be enforceable and must include [~~water~~
22 ~~conservation and reuse measures,~~] measures to retire water rights
23 in order [~~, and other water management measures designed~~] to achieve
24 the required reduction level [~~levels or appropriate management of~~
25 ~~the resource~~].

26 (c) The authority may implement the retirement plan through
27 voluntary acquisitions. If voluntary methods are unsuccessful in

1 attaining the required reduction level, the authority shall reduce
2 the amount of water authorized to be withdrawn under each initial
3 regular permit [~~If, on or after January 1, 2008, the overall volume~~
4 ~~of water authorized to be withdrawn from the aquifer under regular~~
5 ~~permits is greater than 400,000 acre-feet a year or greater than the~~
6 ~~adjusted amount determined under Subsection (d) of Section 1.14 of~~
7 ~~this article, the maximum authorized withdrawal of each regular~~
8 ~~permit shall be immediately reduced]~~ by an equal percentage as [is]
9 necessary to achieve the required reduction level [~~reduce overall~~
10 ~~maximum demand to 400,000 acre-feet a year or the adjusted amount,~~
11 ~~as appropriate]~~. The amount reduced may be restored, in whole or in
12 part, as other appropriate measures are implemented that maintain
13 overall demand at or below the appropriate amount.

14 Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) The
15 authority shall prepare and coordinate implementation of a [~~plan~~
16 ~~for~~] critical period management plan in a manner consistent with
17 Sections 1.14(f) and (h) of this article [~~on or before September 1,~~
18 ~~1995]~~. The mechanisms must:

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

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

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

26 (4) require reduction of nondiscretionary use by
27 permitted or contractual users, to the extent further reductions

1 are necessary, in the reverse order of the following water use
2 preferences:

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

8 (b) In this section, "MSL" means the elevation, measured in
9 feet, of the surface of the water in a well above mean sea level, and
10 "CFS" means cubic feet per second. Not later than January 1, 2008,
11 the authority shall, by rule, adopt and enforce a critical period
12 management plan with withdrawal reduction percentages in the
13 amounts indicated in Tables 1, 2, and 3, whether according to the
14 index well levels or Comal Springs flow as may be applicable, for a
15 total in critical period Stage IV of 40 percent of the permitted
16 withdrawals under Table 1, 30 percent under Table 2, and 40 percent
17 under Table 3:

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

20 <u>INDEX WELL</u>	20 <u>COMAL</u>	20 <u>SAN MARCOS</u>	20 <u>CRITICAL</u>	20 <u>WITHDRAWAL</u>
21 <u>J-17 LEVEL</u>	21 <u>SPRINGS FLOW</u>	21 <u>SPRINGS FLOW</u>	21 <u>PERIOD STAGE</u>	21 <u>REDUCTION</u>
22 <u>MSL</u>	22 <u>CFS</u>	22 <u>CFS</u>		22 <u>PERCENTAGE</u>
23 <u><660</u>	23 <u>N/A</u>	23 <u><96</u>	23 <u>I</u>	23 <u>15%</u>
24 <u><650</u>	24 <u>N/A</u>	24 <u><80</u>	24 <u>II</u>	24 <u>5%</u>
25 <u><640</u>	25 <u><150</u>	25 <u>N/A</u>	25 <u>III</u>	25 <u>10%</u>
26 <u><630</u>	26 <u><100</u>	26 <u>N/A</u>	26 <u>IV</u>	26 <u>10%</u>

TABLE 2 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

FOR THE UVALDE POOL

<u>INDEX WELL J-27 LEVEL</u>	<u>CRITICAL PERIOD</u>	<u>WITHDRAWAL REDUCTION</u>
<u>MSL</u>	<u>STAGE</u>	<u>PERCENTAGE</u>
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>II</u>	<u>N/A</u>
<u><845</u>	<u>III</u>	<u>15%</u>
<u><842</u>	<u>IV</u>	<u>15%</u>

TABLE 3 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

FOR THE SAN MARCOS POOL

<u>SAN MARCOS SPRINGS LEVEL</u>	<u>CRITICAL PERIOD</u>	<u>WITHDRAWAL REDUCTION</u>
<u>MSL</u>	<u>STAGE</u>	<u>PERCENTAGE</u>
<u><120</u>	<u>I</u>	<u>20%</u>
<u><110</u>	<u>II</u>	<u>5%</u>
<u><96</u>	<u>III</u>	<u>5%</u>
<u><80</u>	<u>IV</u>	<u>10%</u>

(c) The authority shall continuously track the average daily discharge rate measured over each period of five consecutive days at the Comal Springs to determine whether a reduction in withdrawals to the Stage III reduction level is required. The authority shall track the average daily discharge rate measured for any five days in a period of 10 consecutive days to determine whether a reduction in withdrawals to the Stage IV reduction level is required. If, after a reduction in withdrawals to the Stage IV reduction level is required, the discharge rate at the Comal Springs or the San Marcos Springs declines by an additional 15 percent, the board, by order, may require further withdrawal

1 reductions. Notwithstanding any other provision of this article,
2 the aggregate permitted withdrawals for the San Antonio pool, the
3 Uvalde pool, and any other pool defined under Section 1.14(g) of
4 this article may not be reduced to less than 340,000 acre-feet for
5 each calendar year.

6 (d) From time to time, the authority, by rule, may amend the
7 withdrawal reduction criteria of the authority's critical period
8 management plan as set forth in Subsection (b) of this section based
9 on consultation with and consideration of any recommendations of
10 the United States Fish and Wildlife Service.

11 SECTION 7. Sections 1.29(a), (b), (d), and (i), Chapter
12 626, Acts of the 73rd Legislature, Regular Session, 1993, are
13 amended to read as follows:

14 (a) Seventy-five percent of the [The] cost of [reducing
15 withdrawals or] permit retirements under Section 1.21 of this
16 article must be borne[+]

17 [~~(1) solely by users of the aquifer for reducing~~
18 ~~withdrawals from the level on the effective date of this article to~~
19 ~~450,000 acre-feet a year, or the adjusted amount determined under~~
20 ~~Subsection (d) of Section 1.14 of this article for the period ending~~
21 ~~December 31, 2007, and~~

22 [~~(2) equally] by aquifer users and 25 percent of the~~
23 cost must be borne by [downstream] water rights holders whose
24 points of diversion are downstream of the Comal Springs and the San
25 Marcos Springs in the Guadalupe River Basin [for permit retirements
26 from 450,000 acre-feet a year, or the adjusted amount determined
27 under Subsection (d) of Section 1.14 of this article for the period

1 ~~ending December 31, 2007, to 400,000 acre-feet a year, or the~~
2 ~~adjusted amount determined under Subsection (d) of Section 1.14 of~~
3 ~~this article, for the period beginning January 1, 2008].~~

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

16 (d) The commission shall assess equitable special fees on
17 all [~~downstream~~] water rights holders whose points of diversion are
18 downstream of the Comal Springs and the San Marcos Springs in the
19 Guadalupe River Basin to be used solely to finance the retirement of
20 aquifer rights necessary to meet the goals provided by Section 1.21
21 of this article. Fees assessed under this subsection may not exceed
22 25 percent [~~one-half~~] of the total cost of permit retirements under
23 Section 1.21 of this article [~~from 450,000 acre-feet a year, or the~~
24 ~~adjusted amount determined under Subsection (d) of Section 1.14 of~~
25 ~~this article, for the period ending December 31, 2007, to 400,000~~
26 ~~acre-feet a year for the period beginning January 1, 2008)]. The
27 authority shall report to the commission the estimated costs of the~~

1 retirements. The amount of fees assessed under this subsection
2 shall be determined in accordance with rules adopted by the
3 commission for fees under the South Texas watermaster program with
4 adjustments as necessary to ensure that fees are equitable between
5 users, including priority and nonpriority hydroelectric users. A
6 downstream water rights holder shall pay fees assessed under this
7 subsection to the authority. A fee may not be assessed by the
8 commission under this subsection on contractual deliveries of water
9 stored in Canyon Lake that may be diverted downstream of the San
10 Marcos Springs or Canyon Dam. A person or entity making a
11 contractual sale of water stored upstream of Canyon Dam may not
12 establish a systemwide rate that requires purchasers of
13 upstream-stored water to pay the special fee assessed under this
14 subsection.

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

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

22 (a) The authority may own, finance, design, construct,
23 [~~build or~~] operate, and maintain recharge dams and associated
24 facilities, structures, or works in the contributing or recharge
25 area of the aquifer if the recharge is made to increase the yield of
26 the aquifer and the recharge project does not impair senior water
27 rights or vested riparian rights.

1 SECTION 9. Sections 1.14(b) and (d) and 1.18, Chapter 626,
2 Acts of the 73rd Legislature, Regular Session, 1993, are repealed.

3 SECTION 10. This Act takes effect September 1, 2007.