

By: Morrison

H.B. No. 3848

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 Edwards Aquifer Authority.

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

6 SECTION 1. Section 1.14, Chapter 626, Acts of the 73rd
7 Legislature, Regular Session, 1993, is amended by amending
8 Subsection (b), adding a new Subsection (c), and amending the
9 subsequent subsections to read as follows:

10 (b) Except as provided by Subsections (d), (f), and (h) of
11 this section and Section 1.26 of this article, for the period
12 [~~ending December 31, [2007]~~ beginning January 1, 2010], the amount
13 of permitted withdrawals from the aquifer may not exceed 450,000
14 acre-feet of water for each calendar year.

15 (c) Except as provided by Subsections (d), (f), and (h) of
16 this section and Section 1.26 of this article, for the period
17 beginning February 1, [2008] 2010, the amount of permitted
18 withdrawals from the aquifer may not exceed 400,000 acre-feet of
19 water for each calendar year.

20 SECTION 2. Section 1.21, Chapter 626, Acts of the 73rd
21 Legislature, Regular Session, 1993, is amended by amending
22 Subsections (a) and (c) to read as follows:

23 (a) The authority shall prepare and implement a plan for
24 reducing, by January 1, [~~2008~~] 2010, the maximum annual volume of

1 water authorized to be withdrawn from the aquifer under regular
2 permits to 400,000 acre-feet a year or the adjusted amount
3 determined under Subsection (d) of Section 1.14 of this article.

4 (c) If, on or after February 1, [2008] 2010, the overall
5 volume of water authorized to be withdrawn from the aquifer under
6 regular permits is greater than 400,000 acre-feet a year or greater
7 than the adjusted amount determined under Subsection (d) of Section
8 1.14 of this article, the maximum authorized withdrawal of each
9 regular permit shall be immediately reduced by an equal percentage
10 as is necessary to reduce overall maximum demand to 400,000
11 acre-feet a year or the adjusted amount, as appropriate. The amount
12 reduced may be restored, in whole or in part, as other appropriate
13 measures are implemented that maintain overall demand at or below
14 the appropriate amount.

15 SECTION 3. Section 1.29, Chapter 626, Acts of the 73rd
16 Legislature, Regular Session, 1993, is amended by amending
17 Subsections (a) and (d) to read as follows:

18 (a) The cost of reducing withdrawals or permit retirements
19 must be borne:

20 (1) solely by users of the aquifer for reducing
21 withdrawals from the level on the effective date of this article to
22 450,000 acre-feet a year, or the adjusted amount determined under
23 Subsection (d) of Section 1.14 of this article for the period
24 [~~ending December 31, 2007~~] beginning January 1, 2010; and

25 (2) equally by aquifer users and downstream water
26 rights holders for permit retirements from 450,000 acre-feet a
27 year, or the adjusted amount determined under Subsection (d) of

1 Section 1.14 of this article for the period [~~ending December 31,~~
2 ~~2007~~] beginning January 1, 2010, to 400,000 acre-feet a year, or the
3 adjusted amount determined under Subsection (d) of Section 1.14 of
4 this article, for the period beginning February 1, [2008] 2010.

5 (d) The commission shall assess equitable special fees on
6 all downstream water rights holders in the Guadalupe River Basin to
7 be used solely to finance the retirement of aquifer rights
8 necessary to meet the goals provided by Section 1.21 of this
9 article. Fees assessed under this subsection may not exceed
10 one-half of the cost of permit retirements from 450,000 acre-feet a
11 year, or the adjusted amount determined under Subsection (d) of
12 Section 1.14 of this article, for the period [~~ending December 31,~~
13 ~~2007~~] beginning January 1, 2010, to 400,000 acre-feet a year for the
14 period beginning February 1, [~~2008~~] 2010. The authority shall
15 report to the commission the estimated costs of the retirements.
16 The amount of fees assessed under this subsection shall be
17 determined in accordance with rules adopted by the commission for
18 fees under the South Texas watermaster program with adjustments as
19 necessary to ensure that fees are equitable between users,
20 including priority and nonpriority hydroelectric users. A
21 downstream water rights holder shall pay fees assessed under this
22 subsection to the authority. A fee may not be assessed by the
23 commission under this subsection on contractual deliveries of water
24 stored in Canyon Lake that may be diverted downstream of the San
25 Marcos Springs or Canyon Dam. A person or entity making a
26 contractual sale of water stored upstream of Canyon Dam may not
27 establish a systemwide rate that requires purchasers of

1 upstream-stored water to pay the special fee assessed under this
2 subsection.

3 (e) The authority may not allow withdrawals from the aquifer
4 through wells drilled after June 1, 1993, except additional water
5 as provided by Subsection (d) and then on an interruptible basis.

6 (f) If the level of the aquifer is equal to or greater than
7 650 feet above mean sea level as measured at Well J-17, the
8 authority may authorize withdrawal from the San Antonio pool, on an
9 uninteruptible basis, of permitted amounts. If the level of the
10 aquifer is equal to or greater than 845 feet at Well J-27, the
11 authority may authorize withdrawal from the Uvalde pool, on an
12 uninteruptible basis, of permitted amounts. The authority shall
13 limit the additional withdrawals to ensure that springflows are not
14 affected during critical drought conditions.

15 (g) The authority by rule may define other pools within the
16 aquifer, in accordance with hydrogeologic research, and may
17 establish index wells for any pool to monitor the level of the
18 aquifer to aid the regulation of withdrawals from the pools.

19 (h) To accomplish the purposes of this article, by January
20 1, 2012 [~~June 1, 1994~~], the authority, through a program, shall
21 implement and enforce water management practices, procedures, and
22 methods to ensure that, not later than December 31, 2012, the
23 continuous minimum springflows of the Comal Springs and the San
24 Marcos Springs are maintained to protect endangered and threatened
25 species to the extent required by federal law. The authority from
26 time to time as appropriate may revise the practices, procedures,
27 and methods. To meet this requirement, the authority shall

1 require:

2 (1) phased reductions in the amount of water that may
3 be used or withdrawn by existing users or categories of other users;
4 or

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

7 (i) The Bureau of Economic Geology at the University of
8 Texas shall develop the program of water management practices,
9 procedures, and methods referred to in Subsection (h) of this
10 section jointly with the authority, the commission, the Texas Parks
11 and Wildlife Department, the Texas Department of Agriculture and
12 the Texas Water Development Board. The program shall be developed
13 through a facilitated, consensus-based process that involves input
14 from the U.S. Fish and Wildlife Service and all interested
15 stakeholders, including the San Antonio Water System, other holders
16 of initial regular permits issued by the authority, the South
17 Central Texas Water Advisory Committee, the Guadalupe-Blanco River
18 Authority, other holders of surface water rights in the Guadalupe
19 River Basin, recreational interests in the Guadalupe River Basin,
20 the Guadalupe Basin Coalition, the Texas Farm Bureau, and
21 environmental interests. The authority, the commission, the Texas
22 Parks and Wildlife Department, the Texas Department of Agriculture
23 and the Texas Water Development Board shall provide two reports to
24 the Edwards Aquifer Legislative Oversight Committee, the first not
25 later than January 1, 2008, and the second not later than September
26 1, 2008, summarizing the status of the program development process,
27 and indicating the likelihood of completion of the program and the

1 cooperative agreement described in this subsection by January 1,
2 2012. The authority, the commission, the Texas Parks and Wildlife
3 Department, the Texas Department of Agriculture and the Texas Water
4 Development Board shall jointly prepare a cooperative agreement
5 with the Secretary of the Interior, through the U.S. Fish and
6 Wildlife Service, pursuant to Section 6(c) of the Endangered
7 Species Act of 1973, 16 U.S.C. Section 1531 et seq., based on the
8 program developed under this subsection. The cooperative agreement
9 shall ensure that listed species associated with the Edwards
10 Aquifer will be protected at all times, including throughout a
11 repeat of the drought of record, based on the requirements of the
12 critical period management plan in effect at that time pursuant to
13 section 1.26 of this article. Each agency shall approve and execute
14 the cooperative agreement not later than January 1, 2012 and the
15 agreement shall take effect not later than December 31, 2012. The
16 authority shall adopt rules to implement the cooperative agreement,
17 to take effect not later than December 31, 2012. The cooperative
18 agreement shall include a commitment by the commission to utilize
19 its enforcement powers under Section 1.39 of this article to the
20 extent necessary to require the authority to perform its duties
21 under this Act, including the authority's duty to regulate
22 withdrawals as required by the critical period management plan
23 approved under section 1.26 of this article. The cooperative
24 agreement shall include agreements by the parties to pursue grant
25 funding to the extent available from all available state, federal,
26 and other sources for eligible programs included in the cooperative
27 agreement.

1 SECTION 4. Prior to January 1, 2012, no suit may be
2 instituted in any court contesting:

3 (1) the validity or implementation of this Act; or

4 (2) the groundwater withdrawal amounts recognized in
5 Section 4 of this Act.

6 SECTION 5. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2007.