

By: Murr

H.B. No. 3846

A BILL TO BE ENTITLED

AN ACT

relating to the management of the upper San Saba River.

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

SECTION 1. Chapter 11, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. SAN SABA RIVER WATER RIGHTS PLAN

Sec. 11.601. DEFINITIONS. In this subchapter:

(1) "Board" means the water rights board appointed as provided by this subchapter.

(2) "Director" means a member of the board.

(3) "Regulatory authority" means, in accordance with the context in which it is found, the commission or the board.

Sec. 11.602. TERRITORY. This subchapter and the plan and rules adopted by the commission under this subchapter apply only to the San Saba River segment of the Colorado River Basin in Mason, Menard, McCulloch, and Schleicher Counties, including the San Saba River in those counties.

Sec. 11.603. WATER RIGHTS BOARD. (a) The commissioners courts of Mason, Menard, McCulloch, and Schleicher Counties may jointly create a water rights board in the manner provided by this section to:

(1) act as the agent of the commission in administering and enforcing the plan adopted under this subchapter;

and

1           (2) provide information to the commission for the  
2 commission to evaluate when creating the plan and deciding whether  
3 to amend the plan by:

4                   (A) locating, assessing, and assembling research  
5 on stream gains and losses, geology, flows, rainfall, and  
6 evaporation rates in Mason, Menard, McCulloch, and Schleicher  
7 Counties; and

8                   (B) identifying ways to enhance flows in the San  
9 Saba River.

10           (b) The board is a governmental unit under Chapter 101,  
11 Civil Practice and Remedies Code, and the operations of the board  
12 are essential government functions and are not proprietary  
13 functions for any purpose, including the application of that  
14 chapter.

15           (c) The board or a board director or employee is not liable  
16 for damages arising out of the performance of a governmental  
17 function of the board, except as provided by Chapter 101, Civil  
18 Practice and Remedies Code.

19           (d) The board consists of nine directors appointed to  
20 represent Mason, Menard, McCulloch, and Schleicher Counties as  
21 follows:

22                   (1) from Mason County, two directors who are  
23 landowners with riparian domestic and livestock water use rights;

24                   (2) from Menard County, two directors, each of whom  
25 is:

26                           (A) a water right holder; or

27                           (B) a user of water for riparian domestic and

1 livestock purposes;

2 (3) from McCulloch County, two directors, each of whom  
3 is:

4 (A) a landowner who holds a water right; or

5 (B) a user of water for riparian domestic and  
6 livestock purposes;

7 (4) from Schleicher County, two directors who are  
8 groundwater irrigators; and

9 (5) one at-large director appointed by the commission  
10 to represent the population of Mason, Menard, McCulloch, and  
11 Schleicher Counties.

12 (e) The commissioners courts of Mason, Menard, McCulloch,  
13 and Schleicher Counties shall appoint the directors described by  
14 Subsections (d)(1), (2), (3), and (4) from their respective  
15 counties.

16 (f) Directors are appointed for staggered terms of two  
17 years. The term of one director appointed by each county's  
18 commissioners court must expire each year.

19 (g) If a vacancy occurs on the board, the appointing county  
20 commissioners court for the vacant position or the commission, as  
21 applicable, shall appoint a person to fill the vacancy.

22 (h) The board or the commissioners court of the appointing  
23 county may remove a director for misconduct or failure to carry out  
24 the director's duties on receiving a written petition signed by a  
25 majority of the remaining directors.

26 (i) A director is not entitled to reimbursement of expenses  
27 or to compensation.

1       Sec. 11.604. BOARD OFFICERS AND EMPLOYEES. (a) The board  
2 shall meet within 30 days following initial appointment and elect a  
3 president, vice president, and secretary to serve two-year terms.  
4 The secretary shall keep accurate and complete records of all board  
5 proceedings. Following the first meeting, the board shall meet  
6 regularly as necessary.

7       (b) The board shall:

8           (1) appoint a liaison to communicate with state  
9 agencies and consultants;

10           (2) select a mediator, if needed;

11           (3) employ a consultant if needed to analyze data and  
12 identify research needs; and

13           (4) employ an enforcement officer to monitor  
14 compliance with board orders, including by reading pump meters, and  
15 at least annually identify alternative sources of water available  
16 to water right holders and other water users in Mason, Menard,  
17 McCulloch, and Schleicher Counties.

18       (c) The board may appoint other officers, agents, and  
19 employees, set their compensation and term of office, prescribe  
20 their duties and the method by which they may be removed, and  
21 delegate to them any of its powers and duties as it considers  
22 proper.

23       Sec. 11.605. ADVISORY COMMITTEE. (a) If a water rights  
24 board is created under Section 11.603, an advisory committee shall  
25 be created in the manner described by this section to:

26           (1) at least annually, provide recommendations to the  
27 board regarding activities of benefit to water right holders in

1 Mason, Menard, McCulloch, and Schleicher Counties;

2 (2) advise the board on the status of available  
3 surface water and groundwater in Mason, Menard, McCulloch, and  
4 Schleicher Counties, including potential shortages;

5 (3) review and comment to the executive director on  
6 the annual budget of the board; and

7 (4) perform other duties as may be requested by the  
8 board.

9 (b) The advisory committee is composed of:

10 (1) a representative from the commission appointed by  
11 the commission;

12 (2) a hydrologist appointed by the commission; and

13 (3) the general manager of each groundwater  
14 conservation district with territory in Mason, Menard, McCulloch,  
15 or Schleicher County.

16 (c) An advisory committee member is not entitled to  
17 reimbursement of expenses incurred or to compensation.

18 (d) An advisory committee member described by Subsection  
19 (b)(1) or (2) serves a term of two years from the date of  
20 appointment and holds office until a successor is appointed.

21 (e) The advisory committee shall meet:

22 (1) at least once each quarter; and

23 (2) on request by the board.

24 Sec. 11.606. COMMISSION AUTHORITY; DELEGATION. (a) If a  
25 board is appointed under Section 11.603, the commission shall:

26 (1) delegate to the board the authority to enforce the  
27 plan adopted under this subchapter; and

1           (2) supervise the board in the board's performance of  
2 the duties given to the board under this subchapter.

3           (b) The commission shall:

4           (1) conduct not more often than once a year an  
5 investigation of the board to determine the board's compliance with  
6 this subchapter; and

7           (2) prepare an annual report concerning the status of  
8 the board's performance.

9           (c) If the commission determines that the board does not  
10 consistently enforce the plan adopted under this subchapter, the  
11 commission shall hold a hearing and determine whether to continue  
12 the delegation.

13           (d) If the commission delegates authority to the board under  
14 this subchapter, the board is considered the regulatory authority.

15           (e) If the commission has not yet delegated authority to the  
16 board or revokes authority delegated to the board, the commission  
17 is considered the regulatory authority.

18           (f) The regulatory authority is responsible for enforcing  
19 the plan adopted under this subchapter.

20           Sec. 11.607. PLAN. (a) The commission by rule shall adopt  
21 a plan for the administration of water use and water rights in the  
22 segment of the San Saba River described by Section 11.602 in times  
23 of drought or other emergency shortage of water to supplement the  
24 water rights system established by this chapter. For the purposes  
25 of this section, a drought or other emergency shortage of water has  
26 the meaning assigned by commission rules, as provided by Section  
27 11.053(c).

1       (b) Before adopting the plan, the commission shall seek  
2 input on the plan from the board or, if a board has not been created,  
3 from the commissioners courts of Mason, Menard, McCulloch, and  
4 Schleicher Counties.

5       (c) Subject to the limitations provided by Subsections (d),  
6 (e), and (f), the plan must:

7           (1) include measures to maximize the beneficial use of  
8 and minimize waste of the water in the segment of the San Saba River  
9 described by Section 11.602;

10          (2) include measures to protect the environment in the  
11 territory described by Section 11.602;

12          (3) include measures to protect agricultural  
13 activities that require the use of the water in the segment of the  
14 San Saba River described by Section 11.602;

15          (4) include measures to maintain flows in the San Saba  
16 River in Mason and McCulloch Counties while minimizing negative  
17 impacts on irrigation in Menard and Schleicher Counties, which may  
18 include curtailment orders to be issued to water right holders in  
19 Menard and Schleicher Counties;

20          (5) provide that if at any time irrigation from the San  
21 Saba River is prohibited in Menard and Schleicher Counties under  
22 the plan, a person who holds a domestic or livestock riparian right  
23 in the segment of the San Saba River described by Section 11.602 may  
24 not use the right if the person has access to an alternative source  
25 of water; and

26          (6) include a process for the board to request from the  
27 commission temporary changes to required plan measures to respond

1 to conditions in the plan territory.

2 (d) The plan may not require the regulatory authority to  
3 override a water right granted under Subchapter B. The plan may  
4 provide for the regulatory authority to request that a water right  
5 holder curtail use to support the plan.

6 (e) At any time, a person affected by the plan may submit to  
7 the commission a petition to use a right granted to that person  
8 under this chapter to use water from the San Saba River in a manner  
9 or amount that is not authorized under the plan. The commission  
10 shall approve the petition if the person satisfies all other  
11 applicable requirements for exercising the right.

12 (f) The regulatory authority may not enforce a plan  
13 requirement against a person who is exercising a right that has been  
14 approved as described by Subsection (e) during the period the right  
15 is approved by the commission to be exercised.

16 Sec. 11.608. REGISTRATION. (a) Each person who holds a  
17 water right in an area that is included in the territory described  
18 by Section 11.602 in Menard County or McCulloch County must  
19 register the water right with the commission.

20 (b) Each person who uses surface water for domestic or  
21 livestock purposes in an area that is included in the territory  
22 described by Section 11.602 must register the use with the  
23 commission.

24 Sec. 11.609. METERING. (a) The commission by rule shall  
25 require each registered water right holder to:

26 (1) if the right is for 20 acre feet or more of water,  
27 install a pump meter to monitor the water used under the right; or



1           (2) if the right is for less than 20 acre feet of  
2 water, install a pump meter to monitor the water used under the  
3 right if the regulatory authority receives funding from the Texas  
4 Water Development Board or another source to cover the costs of the  
5 meter.

6           Sec. 11.610. BUDGET; ASSESSMENTS. (a) Registered water  
7 right holders shall reimburse the regulatory authority for the  
8 necessary expenses of implementing the plan in the manner provided  
9 by this section.

10           (b) Each fiscal year, the executive director shall:

11           (1) propose a budget for the implementation of the  
12 plan by the regulatory authority;

13           (2) hold a public hearing on the proposed budget at a  
14 location in Mason, Menard, McCulloch, or Schleicher County;

15           (3) not later than the 60th day before the date of the  
16 hearing, provide notice to the board, if a board is created under  
17 Section 11.603, and the advisory committee, if one is created under  
18 Section 11.605, of the proposed budget showing the amount of  
19 expenses that will be required annually for the administration of  
20 water rights and use under the plan; and

21           (4) not later than the 30th day before the date of the  
22 hearing, provide notice to each registered water right holder and  
23 user of the proposed budget showing the amount of expenses that will  
24 be required annually for the administration of water rights and use  
25 under the plan.

26           (c) The board or the advisory committee may request that the  
27 executive director modify the budget before providing the budget to

1 registered water right holders and users under Subsection (b)(4).

2 (d) After the hearing, the commission shall:

3 (1) equitably apportion the costs of the plan among  
4 the registered water right holders; and

5 (2) issue an order assessing the apportioned costs on  
6 registered water right holders, payable to the regulatory  
7 authority.

8 (e) The regulatory authority may provide for payment of an  
9 assessment in installments and shall specify the dates by which  
10 payments shall be made to the regulatory authority.

11 (f) If the commission is the regulatory authority, the  
12 executive director shall collect and deposit the assessments in the  
13 watermaster administration account.

14 (g) Water may not be diverted, taken, or stored by, or  
15 delivered to, any person while the person is delinquent in the  
16 payment of assessed costs.

17 (h) An order of the commission assessing costs remains in  
18 effect until the commission issues a further order. The commission  
19 may modify, revoke, or supersede an order assessing costs with a  
20 subsequent order.

21 Sec. 11.611. GIFTS AND GRANTS. The board may apply for,  
22 request, solicit, contract for, receive, and accept gifts, grants,  
23 donations, and other assistance from any source to carry out its  
24 powers and duties under this subchapter.

25 Sec. 11.612. ENFORCEMENT. (a) The regulatory authority  
26 may issue orders to implement the plan.

27 (b) When issuing an order to implement a measure authorized

1 by the plan, the regulatory authority shall issue the order to each  
2 person who is subject to the order using the United States Postal  
3 Service. If the regulatory authority determines that a person has  
4 not received an order issued to the person, the regulatory  
5 authority shall attempt to contact the person by telephone or in  
6 person.

7 (c) If a person fails to comply with a rule adopted under  
8 this subchapter or a board order, the board may recommend to the  
9 commission that the commission take enforcement action.

10 Sec. 11.613. COMPLAINT; APPEAL. (a) A person dissatisfied  
11 with any action of the board may submit a complaint to the board in  
12 writing using the United States Postal Service not later than the  
13 10th day after the board officially adopts the action.

14 (b) Not later than the 40th day after the date the board  
15 receives the complaint, the board shall:

16 (1) hold a hearing on the complaint; and

17 (2) issue a decision on the complaint.

18 (c) The person may appeal the board's decision to the  
19 commission and request relief. The commission shall evaluate the  
20 board's decision and approve or reverse the decision.

21 (d) If the board receives a complaint regarding water  
22 quality, the board shall forward the complaint to the commission.  
23 The board is not responsible for responding to water quality  
24 complaints.

25 Sec. 11.614. EXPIRATION. This subchapter expires September  
26 1, 2021.

27 SECTION 2. Section [11.3291](#), Water Code, is amended by

1 adding Subsections (f) and (g) to read as follows:

2 (f) If the commission is acting as the regulatory authority  
3 under Subchapter L:

4 (1) the commission is considered to be a watermaster  
5 for the purposes of this section; and

6 (2) the territory described by Section 11.602 is  
7 considered to be a water division for the purposes of this section.

8 (g) Subsection (f) and this subsection expire September 1,  
9 2021.

10 SECTION 3. Notwithstanding Section 11.603(f), Water Code,  
11 as added by this Act, in appointing the initial directors of the  
12 water rights board under Section 11.603, Water Code, as added by  
13 this Act, the county commissioners courts of Mason, Menard,  
14 McCulloch, and Schleicher Counties shall each designate one  
15 director from their respective counties to serve a term that  
16 expires on the first anniversary of the date the director is  
17 appointed.

18 SECTION 4. This Act takes effect September 1, 2017.