

PUBLIC COMMENTS

HB 2710

HOUSE COMMITTEE ON NATURAL RESOURCES

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Hearing Date: April 20, 2021 8:00 AM

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Vanessa Puig-Williams

Environmental Defense Fund

Austin, TX

Environmental Defense Fund supports HB 2710 as it provides a voluntary, market based solution to securing additional water for environmental flows in Texas rivers.

The water flowing in Texas rivers is vital to the health of bays and estuaries along the Gulf Coast. Yet most rivers have been over-appropriated and are diverted for various uses. This leaves little water necessary to sustain both aquatic life and recreation.

The intent of HB 2710 is to find a simple way to allocate more water for environmental flows, through incentivizing market-based transactions from already allocated water.

Texas, like most all western states, has adopted a method by which issued water rights are provided due property right protections, but the state can cancel water rights that go unused – basically “use it or lose it.” However, Section 11.173(b) of the Water Code also specifies certain exceptions to cancellation if a water right is unused, for example, if the water right was acquired to meet a recommended strategy under a regional water plan, or non-use due to conservation measures as per applicable conservation plans.

Other western states have included similar protections from cancellation but have also recognized participation in a forbearance agreement for providing water for environmental flows as another means by which statutory protection can be extended from water right cancellation.

A forbearance agreement allows a water right holder (typically an agricultural interest) to forgo water use in a planting season and make that same water available for lease or temporary sale to another entity for another use, including the environment.

Texas does not yet offer that valuable protection from cancellation for such transactions, and this is what HB 2710 seeks to change.

HB 2710 amends Section 11.173(b) to add a statutory exemption from cancellation of a water right to owners who have entered into forbearance agreements with entities that are focused on enhancing and protecting environmental flows on Texas watercourses, bays and estuaries and who have raised private funding to compensate water right holders for agreeing not to use their water right. The bill does four important things:

1. preserves an owners property right to water under a water right
2. adds value to an issued water right
3. incentivize conservation and market-based transactions; and
4. adds protection and dedication of water for the environment.

The bill would not endanger any other issued water rights as the transaction would be from already allocated water.

Carlos Rubinstein

SELF/RSAH2O LLC Consulting

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Austin, TX

Mr. Chairman and Members of the Committee,

My name is Carlos Rubinstein. I am Principal of RSAH2O LLC, an environmental consulting firm focused on Texas water issues. I am submitting comments in FAVOR of HB 2710 by Representative Bowers.

I had the honor of serving as Chairman of the Texas Water Development Board (TWDB) from 2013 – 2015; as Commissioner of the Texas Commission on Environmental Quality (TCEQ) from 2009 – 2013 and as Rio Grande Watermaster from 2000 - 2009.

During my tenure as Rio Grande Watermaster the TCEQ undertook cancellation proceedings of several Rio Grande water rights pursuant to Texas Water Code requirements.

A critical component of any water right cancellation proceeding is the protections afforded to owners of water rights under TWC § 11.173.

During my tenure as Commissioner at TCEQ we undertook the development and adoption of rules as required by SB 3 (2007) regarding environmental flows. Regrettably, the rules adopted did not result in a set aside for environmental flows and provided only a portion of the recommended flow regime strategies recommended by the stakeholder processes as specified in SB 3.

Environmental flow protection relies in part on the voluntary transfer or dedication of water from an existing water right. An effective way of carrying out this dedication of water for the environment is thru a term or perpetual forbearance agreement where the owner of the water right chooses not to divert water under a water right and allows the same quantity to remain in the stream for environmental benefit.

Forbearance agreements often include the creation of a revenue stream (or a way to monetize the nonuse of water) to the benefit of the water right owner.

Unlike other western states, Texas does not provide an incentive nor a property right protection from cancellation for such forbearance agreements.

HB 2710 would provide for such protection from cancellation.

And while HB 2710 could help incentivize forbearance transactions, HB 2710 does not in any way call for a mandatory redistribution of water.

Put another way, the water right holder retains all ownership control and decision to monetize his/her nonuse of water and allow the corresponding amount to remain in the stream for the benefit of the environment.

HB 2710 does not in any way mandate cancellations of water rights.

For all of the reasons stated, I respectfully submit these comments in support of HB 2710.

Carlos Rubinstein, Principal  
RSAH2O, LLC  
April 19, 2021

Jennifer Walker  
National Wildlife Federation  
Austin, TX

National Wildlife Federation is for the bill. This bill would offer protection for water rights holder (and their water rights) that participate in a forbearance agreement for providing water for environmental flows as another means by which statutory protection can be extended from water right cancelation. Texas does not yet offer that valuable protection from cancellation for

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such transactions, and this is what HB 2710 seeks to change.