

By: Wilson

H.B. No. 3998

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the transfer of the administration of surface water  
3 rights permitting from the Texas Commission on Environmental  
4 Quality to the Texas Water Development Board and the regulation of  
5 groundwater; authorizing fees; authorizing civil penalties.

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

7 SECTION 1. Section 111.002, Natural Resources Code, is  
8 amended to read as follows:

9 Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. A person is a  
10 common carrier subject to the provisions of this chapter if it:

11 (1) owns, operates, or manages a pipeline or any part  
12 of a pipeline in the State of Texas for the transportation of crude  
13 petroleum or nonpotable water to or for the public for hire, or  
14 engages in the business of transporting crude petroleum or  
15 nonpotable water to another person by pipeline;

16 (2) owns, operates, or manages a pipeline or any part  
17 of a pipeline in the State of Texas for the transportation of crude  
18 petroleum to or for the public for hire and the pipeline is  
19 constructed or maintained on, over, or under a public road or  
20 highway, or is an entity in favor of whom the right of eminent  
21 domain exists;

22 (3) owns, operates, or manages a pipeline or any part  
23 of a pipeline in the State of Texas for the transportation of crude  
24 petroleum to or for the public for hire which is or may be

1 constructed, operated, or maintained across, on, along, over, or  
2 under the right-of-way of a railroad, corporation, or other common  
3 carrier required by law to transport crude petroleum as a common  
4 carrier;

5           (4) under lease, contract of purchase, agreement to  
6 buy or sell, or other agreement or arrangement of any kind, owns,  
7 operates, manages, or participates in ownership, operation, or  
8 management of a pipeline or part of a pipeline in the State of Texas  
9 for the transportation of crude petroleum, bought of others, from  
10 an oil field or place of production within this state to any  
11 distributing, refining, or marketing center or reshipping point  
12 within this state;

13           (5) owns, operates, or manages, wholly or partially,  
14 pipelines for the transportation for hire of coal in whatever form  
15 or of any mixture of substances including coal in whatever form;

16           (6) owns, operates, or manages, wholly or partially,  
17 pipelines for the transportation of carbon dioxide or hydrogen in  
18 whatever form to or for the public for hire, but only if such person  
19 files with the commission a written acceptance of the provisions of  
20 this chapter expressly agreeing that, in consideration of the  
21 rights acquired, it becomes a common carrier subject to the duties  
22 and obligations conferred or imposed by this chapter; or

23           (7) owns, operates, or manages a pipeline or any part  
24 of a pipeline in the State of Texas for the transportation of  
25 feedstock for carbon gasification, the products of carbon  
26 gasification, or the derivative products of carbon gasification, in  
27 whatever form, to or for the public for hire, but only if the person

1 files with the commission a written acceptance of the provisions of  
2 this chapter expressly agreeing that, in consideration of the  
3 rights acquired, it becomes a common carrier subject to the duties  
4 and obligations conferred or imposed by this chapter.

5 SECTION 2. Section 5.012, Water Code, is amended to read as  
6 follows:

7 Sec. 5.012. DECLARATION OF POLICY. (a) The commission is  
8 the agency of the state given primary responsibility for  
9 implementing the constitution and laws of this state relating to  
10 the conservation of natural resources and the protection of the  
11 environment.

12 (b) The board is the agency of the state given primary  
13 responsibility for implementing the constitution and laws of this  
14 state relating to the conservation of water resources.

15 SECTION 3. Section 5.013(a), Water Code, is amended to read  
16 as follows:

17 (a) The commission has general jurisdiction over:

18 (1) ~~[water and water rights including the issuance of~~  
19 ~~water rights permits, water rights adjudication, cancellation of~~  
20 ~~water rights, and enforcement of water rights,~~

21 ~~[(2)]~~ continuing supervision over districts created  
22 under Article III, Sections 52(b)(1) and (2), and Article XVI,  
23 Section 59, of the Texas Constitution;

24 (2) ~~[(3)]~~ the state's water quality program including  
25 issuance of permits, enforcement of water quality rules, standards,  
26 orders, and permits, and water quality planning;

27 (3) ~~[(4)]~~ the determination of the feasibility of

1 certain federal projects;

2           (4) [~~(5)~~] the adoption and enforcement of rules and  
3 performance of other acts relating to the safe construction,  
4 maintenance, and removal of dams;

5           (5) [~~(6)~~] conduct of the state's hazardous spill  
6 prevention and control program;

7           (6) [~~(7)~~] the administration of the state's program  
8 relating to inactive hazardous substance, pollutant, and  
9 contaminant disposal facilities;

10           (7) [~~(8)~~] the administration of a portion of the  
11 state's injection well program;

12           (8) [~~(9)~~] the administration of the state's programs  
13 involving underground water and water wells and drilled and mined  
14 shafts;

15           (9) [~~(10)~~] the state's responsibilities relating to  
16 regional waste disposal;

17           (10) [~~(11)~~] the responsibilities assigned to the  
18 commission by Chapters 361, 363, 382, 401, 505, 506, and 507, Health  
19 and Safety Code; and

20           (11) [~~(12)~~] any other areas assigned to the commission  
21 by this code and other laws of this state.

22           SECTION 4. Section 5.501(b), Water Code, is amended to read  
23 as follows:

24           (b) The commission may issue an emergency order under this  
25 subchapter after providing the notice and opportunity for hearing  
26 that the commission considers practicable under the circumstances  
27 or without notice or hearing. Notice [~~Except as provided by Section~~

1 ~~5.506, notice~~] must be given not later than the 10th day before the  
2 date set for a hearing if the commission requires notice and hearing  
3 before issuing the order. The commission shall give notice not  
4 later than the 20th day before the date set for a hearing on a  
5 temporary order.

6 SECTION 5. Section 5.701(q), Water Code, is amended to read  
7 as follows:

8 (q) Notwithstanding any other law, fees collected for  
9 deposit to the water resource management account under the  
10 following statutes may be appropriated and used to protect water  
11 resources in this state, including assessment of water quality,  
12 reasonably related to the activities of any of the persons required  
13 to pay a fee under:

14 (1) Subsection ~~[Subsections]~~ (b) ~~[and (c)]~~, to the  
15 extent those fees are collected in connection with ~~[water use or]~~  
16 water quality permits;

17 (2) ~~[Subsections (h) (1)],~~

18 ~~[(3) Section 11.138(g)],~~

19 ~~[(4) Section 11.145],~~

20 ~~[(5)]~~ Section 26.0135(h);

21 (3) ~~[(6)]~~ Sections 26.0291, 26.044, and 26.0461; or

22 (4) ~~[(7)]~~ Sections 341.041, 366.058, 366.059,

23 371.024, 371.026, and 371.062, Health and Safety Code.

24 SECTION 6. Section 6.012(a), Water Code, is amended to read  
25 as follows:

26 (a) The board has general jurisdiction over:

27 (1) the development and implementation of a statewide

1 water plan;

2 (2) the administration of the state's various water  
3 assistance and financing programs including those created by the  
4 constitution;

5 (3) the administration of the National Flood Insurance  
6 Program; ~~and~~

7 (4) water and water rights, including the issuance of  
8 water rights permits, water rights adjudication, cancellation of  
9 water rights, and enforcement of water rights; and

10 (5) other areas specifically assigned to the board by  
11 this code or other law.

12 SECTION 7. Section 7.051(b), Water Code, is amended to read  
13 as follows:

14 (b) This subchapter does not apply to violations of Chapter  
15 ~~11,~~ 12, 13, 16, or 36 of this code, or Chapter 341, Health and  
16 Safety Code.

17 SECTION 8. Section 7.102, Water Code, is amended to read as  
18 follows:

19 Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers,  
20 allows, or permits a violation of a statute, rule, order, or permit  
21 relating to Chapter 37 of this code, Chapter 366, 371, or 372,  
22 Health and Safety Code, Subchapter G, Chapter 382, Health and  
23 Safety Code, or Chapter 1903, Occupations Code, shall be assessed  
24 for each violation a civil penalty not less than \$50 nor greater  
25 than \$5,000 for each day of each violation as the court or jury  
26 considers proper. A person who causes, suffers, allows, or permits  
27 a violation of a statute, rule, order, or permit relating to any

1 other matter within the commission's jurisdiction to enforce, other  
2 than violations of Chapter ~~[11,]~~ 12, 13, 16, or 36 of this code, or  
3 Chapter 341, Health and Safety Code, shall be assessed for each  
4 violation a civil penalty not less than \$50 nor greater than \$25,000  
5 for each day of each violation as the court or jury considers  
6 proper. Each day of a continuing violation is a separate violation.

7 SECTION 9. Section 11.002, Water Code, is amended by adding  
8 Subdivision (2-a) and amending Subdivisions (6), (17), and (20) to  
9 read as follows:

10 (2-a) "Executive administrator" means the executive  
11 administrator of the Texas Water Development Board.

12 (6) "Appropriator" means a person who has made  
13 beneficial use of any water in a lawful manner under the provisions  
14 of any act of the legislature before the enactment of Chapter 171,  
15 General Laws, Acts of the 33rd Legislature, 1913, as amended, and  
16 who has filed with the State Board of Water Engineers a record of  
17 the ~~[his]~~ appropriation as required by the 1913 Act, as amended, or  
18 a person who makes or has made beneficial use of any water within  
19 the limitations of a permit lawfully issued by the board  
20 ~~[commission]~~ or one of its predecessors.

21 (17) "Environmental flow standards" means those  
22 requirements adopted by the board ~~[commission]~~ under Section  
23 11.1471.

24 (20) "Best management practices" means those  
25 voluntary efficiency measures developed by the ~~[commission and the]~~  
26 board that save a quantifiable amount of water, either directly or  
27 indirectly, and that can be implemented within a specified time

1 frame.

2 SECTION 10. Section 11.004, Water Code, is amended to read  
3 as follows:

4 Sec. 11.004. BOARD [~~COMMISSION~~] TO RECEIVE CERTIFIED COPIES  
5 OF JUDGMENTS, ETC. When any court of record renders a judgment,  
6 decree, or order affecting the title to any water right, claim,  
7 appropriation, or irrigation facility or affecting any matter over  
8 which the board [~~commission~~] is given supervision by law, the clerk  
9 of the court shall immediately transmit to the board [~~commission~~] a  
10 certified copy of the judgment, decree, or order.

11 SECTION 11. Sections 11.023(a) and (e), Water Code, are  
12 amended to read as follows:

13 (a) To the extent that state water has not been set aside by  
14 the board [~~commission~~] under Section 11.1471(a)(2) to meet  
15 downstream instream flow needs or freshwater inflow needs, state  
16 water may be appropriated, stored, or diverted for:

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

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

23 (3) mining and recovery of minerals;

24 (4) hydroelectric power;

25 (5) navigation;

26 (6) recreation and pleasure;

27 (7) public parks; and

1 (8) game preserves.

2 (e) The amount of water appropriated for each purpose  
3 mentioned in this section shall be specifically appropriated for  
4 that purpose, subject to the preferences prescribed in Section  
5 11.024 [~~of this code~~]. The board [~~commission~~] may authorize  
6 appropriation of a single amount or volume of water for more than  
7 one purpose of use. In the event that a single amount or volume of  
8 water is appropriated for more than one purpose of use, the total  
9 amount of water actually diverted for all of the authorized  
10 purposes may not exceed the total amount of water appropriated.

11 SECTION 12. Sections 11.0235(c) and (d-3), Water Code, are  
12 amended to read as follows:

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

24 (d-3) The legislature finds that:

25 (1) in those basins in which water is available for  
26 appropriation, the board [~~commission~~] should establish an  
27 environmental set-aside below which water should not be available

1 for appropriation; and

2 (2) in those basins in which the unappropriated water  
3 that will be set aside for instream flow and freshwater inflow  
4 protection is not sufficient to fully satisfy the environmental  
5 flow standards established by the board [~~commission~~], a variety of  
6 market approaches, both public and private, for filling the gap  
7 must be explored and pursued.

8 SECTION 13. Sections 11.0236(h) and (m), Water Code, are  
9 amended to read as follows:

10 (h) The board [~~commission~~] shall provide staff support for  
11 the advisory group.

12 (m) The advisory group is abolished on the date that the  
13 board [~~commission~~] has adopted environmental flow standards under  
14 Section 11.1471 for all of the river basin and bay systems in this  
15 state.

16 SECTION 14. Sections 11.02361(e) and (f), Water Code, are  
17 amended to read as follows:

18 (e) The science advisory committee shall:

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

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

24 (A) environmental flow methodologies for bay and  
25 estuary studies and instream flow studies;

26 (B) environmental flow programs at the board and  
27 [~~commission~~] the Parks and Wildlife Department[~~, and the board~~];

1 and

2 (C) the work of the basin and bay expert science  
3 teams described in Section [11.02362](#).

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

10 (1) the actions taken by each agency in response to  
11 each recommendation; and

12 (2) for each recommendation not implemented, the  
13 reason it was not implemented.

14 SECTION 15. Section [11.0237](#), Water Code, is amended to read  
15 as follows:

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

24 (b) This section does not alter the board's ~~[commission's]~~  
25 obligations under Section [11.042](#)(a-1), (b), or (c), [11.046](#)(b),  
26 [11.085](#)(k)(1) [~~11.085(k)(2)(F)~~], [11.134](#)(b)(3)(D), [11.147](#), [11.1471](#),  
27 [11.1491](#), [11.150](#), [11.152](#), [16.058](#), [16.059](#), or [18.004](#).

1 SECTION 16. Section 11.026, Water Code, is amended to read  
2 as follows:

3 Sec. 11.026. PERFECTION OF AN APPROPRIATION. No right to  
4 appropriate water is perfected unless the water has been  
5 beneficially used for a purpose stated in the original declaration  
6 of intention to appropriate water or stated in a permit issued by  
7 the board [~~commission~~] or one of its predecessors.

8 SECTION 17. Sections 11.031(a), (b), (c), (d), (e), and  
9 (g), Water Code, are amended to read as follows:

10 (a) Not later than March 1 of each year, each person who has  
11 a water right issued by the board [~~commission~~] or who impounded,  
12 diverted, or otherwise used state water during the preceding  
13 calendar year shall submit a written report to the board  
14 [~~commission~~] on a form prescribed by the board [~~commission~~]. The  
15 report shall contain all information required by the board  
16 [~~commission~~] to aid in administering the water law and in making  
17 inventory of the state's water resources. However, with the  
18 exception of those persons who hold water rights, no report is  
19 required of persons who take water solely for domestic or livestock  
20 purposes.

21 (b) A person who fails to file an annual report with the  
22 board [~~commission~~] as required by Subsection (a) or fails to timely  
23 comply with a request by the board [~~commission~~] to make information  
24 available under Subsection (d) is liable for a penalty for each day  
25 the person fails to file the statement or comply with the request  
26 after the applicable deadline in an amount not to exceed:

27 (1) \$100 per day if the person is the holder of a water

1 right authorizing the appropriation of 5,000 acre-feet or less per  
2 year; or

3 (2) \$500 per day if the person is the holder of a water  
4 right authorizing the appropriation of more than 5,000 acre-feet  
5 per year.

6 (c) The board [~~commission~~] may waive the requirements of  
7 Subsection (a) [~~of this section~~] for a person who has a water right  
8 or uses state water in an area of the state where watermaster  
9 operations are established.

10 (d) Each person who has a water right issued by the board  
11 [~~commission~~] or who impounds, diverts, or otherwise uses state  
12 water shall maintain water use information required under  
13 Subsection (a) on a monthly basis during the months a water rights  
14 holder uses permitted water. The person shall make the information  
15 available to the board [~~commission~~] on the board's [~~commission's~~]  
16 request. The executive administrator [~~director~~] shall establish a  
17 reasonable deadline by which a person must make available  
18 information requested by the board [~~commission~~] under this  
19 subsection.

20 (e) Except as provided by Subsection (a), the board  
21 [~~commission~~] may request information maintained under Subsection  
22 (d) only during a drought or other emergency shortage of water or in  
23 response to a complaint.

24 (g) The board [~~commission~~] shall establish a process by  
25 which a report required under Subsection (a) may be submitted  
26 electronically through the Internet.

27 SECTION 18. Section 11.034, Water Code, is amended to read

1 as follows:

2           Sec. 11.034. RESERVOIR SITE: LAND AND RIGHTS-OF-WAY. An  
3 appropriator who is authorized to construct a dam or reservoir is  
4 granted the right-of-way, not to exceed 100 feet wide, and the  
5 necessary area for the site, over any public school land,  
6 university land, or asylum land of this state and the use of the  
7 rock, gravel, and timber on the site and right-of-way for  
8 construction purposes, after paying compensation as determined by  
9 the board [~~commission~~]. An appropriator may acquire the reservoir  
10 site and rights-of-way over private land by contract.

11           SECTION 19. Sections 11.035(c), (d), (e), (f), and (g),  
12 Water Code, are amended to read as follows:

13           (c) If the party exercising the power granted by this  
14 section is not a corporation, district, city, or town, the party  
15 [~~he~~] shall apply to the board [~~commission~~] for the condemnation.

16           (d) The executive administrator [~~director~~] shall have the  
17 proposed condemnation investigated. After the investigation, the  
18 board [~~commission~~] may give notice to the party owning the land  
19 proposed to be condemned and hold a hearing on the proposed  
20 condemnation.

21           (e) If after a hearing the board [~~commission~~] determines  
22 that the condemnation is necessary, the executive administrator  
23 [~~director~~] may institute condemnation proceedings in the name of  
24 the State of Texas for the use and benefit of the party who applied  
25 for the condemnation and all others similarly situated.

26           (f) The parties at whose instance a condemnation suit is  
27 instituted shall pay the costs of the suit and condemnation in

1 proportion to the benefits received by each party as fixed by the  
2 board [~~commission~~]. Before using any of the condemned rights or  
3 property, a party receiving the rights or property shall pay the  
4 amount of costs fixed by the board [~~commission~~].

5 (g) If, after the costs of the condemnation proceedings have  
6 been paid, a party seeks to take the benefits of the condemnation  
7 proceedings, the party [~~he~~] shall apply to the board [~~commission~~]  
8 for the benefits. The board [~~commission~~] may grant the application  
9 and fix the fees and charges to be paid by the applicant.

10 SECTION 20. Section 11.036(d), Water Code, is amended to  
11 read as follows:

12 (d) If any person uses the stored or conserved water without  
13 first entering into a contract with the party that conserved or  
14 stored it, the user shall pay for the use at a rate determined by the  
15 board [~~commission~~] to be just and reasonable, subject to court  
16 review as in other cases.

17 SECTION 21. Section 11.041, Water Code, is amended to read  
18 as follows:

19 Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person  
20 entitled to receive or use water from any canal, ditch, flume,  
21 lateral, dam, reservoir, or lake or from any conserved or stored  
22 supply may present to the board [~~commission~~] a written petition  
23 showing:

24 (1) that the person [~~he~~] is entitled to receive or use  
25 the water;

26 (2) that the person [~~he~~] is willing and able to pay a  
27 just and reasonable price for the water;

1           (3) that the party owning or controlling the water  
2 supply has water not contracted to others and available for the  
3 petitioner's use; and

4           (4) that the party owning or controlling the water  
5 supply fails or refuses to supply the available water to the  
6 petitioner, or that the price or rental demanded for the available  
7 water is not reasonable and just or is discriminatory.

8           (b) If the petition is accompanied by a deposit of \$25, the  
9 executive administrator [~~director~~] shall have a preliminary  
10 investigation of the complaint made and determine whether or not  
11 there are probable grounds for the complaint.

12           (c) If, after preliminary investigation, the executive  
13 administrator [~~director~~] determines that probable grounds exist  
14 for the complaint, the board [~~commission~~] shall enter an order  
15 setting a time and place for a hearing on the petition.

16           (d) The board [~~commission~~] may require the complainant to  
17 make an additional deposit or execute a bond satisfactory to the  
18 board [~~commission~~] in an amount fixed by the board [~~commission~~]  
19 conditioned on the payment of all costs of the proceeding.

20           (e) At least 20 days before the date set for the hearing, the  
21 board [~~commission~~] shall transmit by registered mail a certified  
22 copy of the petition and a certified copy of the hearing order to  
23 the person against whom the complaint is made.

24           (f) The board [~~commission~~] shall hold a hearing on the  
25 complaint at the time and place stated in the order. It may hear  
26 evidence orally or by affidavit in support of or against the  
27 complaint, and it may hear arguments. The utility commission may

1 participate in the hearing if necessary to present evidence on the  
2 price or rental demanded for the available water. On completion of  
3 the hearing, the board [~~commission~~] shall render a written  
4 decision.

5 (g) If, after the preliminary investigation, the executive  
6 administrator [~~director~~] determines that no probable grounds exist  
7 for the complaint, the executive administrator [~~director~~] shall  
8 dismiss the complaint. The board [~~commission~~] may either return  
9 the deposit or pay it into the State Treasury.

10 SECTION 22. Section 11.042, Water Code, is amended by  
11 amending Subsections (a), (a-1), (b), and (c) and adding Subsection  
12 (e) to read as follows:

13 (a) Under rules prescribed by the board [~~commission~~], a  
14 person, association of persons, corporation, water control and  
15 improvement district, water improvement district, or irrigation  
16 district supplying stored or conserved water under contract as  
17 provided in this chapter may use the bank and bed of any flowing  
18 natural stream in the state to convey the water from the place of  
19 storage to the place of use or to the diversion point of the  
20 appropriator.

21 (a-1) With prior authorization granted under rules  
22 prescribed by the board [~~commission~~], a person, association of  
23 persons, corporation, water control and improvement district,  
24 water improvement district, or irrigation district supplying water  
25 imported from a source located wholly outside the boundaries of  
26 this state, except water imported from a source located in the  
27 United Mexican States, may use the bed and banks of any flowing

1 natural stream in the state to convey water for use in this state.

2 The authorization must:

3 (1) allow for the diversion of only the amount of water  
4 put into a watercourse or stream, less carriage losses; and

5 (2) include special conditions adequate to prevent a  
6 significant impact to the quality of water in this state.

7 (b) A person who wishes to discharge and then subsequently  
8 divert and reuse the person's existing return flows derived from  
9 privately owned groundwater must obtain prior authorization from  
10 the board [~~commission~~] for the diversion and the reuse of these  
11 return flows. The authorization may allow for the diversion and  
12 reuse by the discharger of existing return flows, less carriage  
13 losses, and shall be subject to special conditions if necessary to  
14 protect an existing water right that was granted based on the use or  
15 availability of these return flows. Special conditions may also be  
16 provided to help maintain instream uses and freshwater inflows to  
17 bays and estuaries. A person wishing to divert and reuse future  
18 increases of return flows derived from privately owned groundwater  
19 must obtain authorization to reuse increases in return flows before  
20 the increase.

21 (c) Except as otherwise provided in Subsection (a) [~~of this~~  
22 ~~section~~], a person who wishes to convey and subsequently divert  
23 water in a watercourse or stream must obtain the prior approval of  
24 the board [~~commission~~] through a bed and banks authorization. The  
25 authorization shall allow to be diverted only the amount of water  
26 put into a watercourse or stream, less carriage losses and subject  
27 to any special conditions that may address the impact of the

1 discharge, conveyance, and diversion on existing permits,  
2 certified filings, or certificates of adjudication, instream uses,  
3 and freshwater inflows to bays and estuaries. Water discharged  
4 into a watercourse or stream under this chapter shall not cause a  
5 degradation of water quality to the extent that the stream  
6 segment's classification would be lowered. [~~Authorizations under  
7 this section and water quality authorizations may be approved in a  
8 consolidated permit proceeding.~~]

9 (e) The board may consult with the commission in determining  
10 special conditions for an authorization issued under this section.

11 SECTION 23. Section 11.046(b), Water Code, is amended to  
12 read as follows:

13 (b) In granting an application for a water right, the board  
14 [~~commission~~] may include conditions in the water right providing  
15 for the return of surplus water, in a specific amount or percentage  
16 of water diverted, and the return point on a watercourse or stream  
17 as necessary to protect senior downstream permits, certified  
18 filings, or certificates of adjudication or to provide flows for  
19 instream uses or bays and estuaries.

20 SECTION 24. Section 11.053, Water Code, is amended to read  
21 as follows:

22 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)  
23 During a period of drought or other emergency shortage of water, as  
24 defined by board [~~commission~~] rule, the executive administrator  
25 [~~director~~] by order may, in accordance with the priority of water  
26 rights established by Section 11.027:

27 (1) temporarily suspend the right of any person who

1 holds a water right to use the water; and

2 (2) temporarily adjust the diversions of water by  
3 water rights holders.

4 (b) The executive administrator [~~director~~] in ordering a  
5 suspension or adjustment under this section shall ensure that an  
6 action taken:

7 (1) maximizes the beneficial use of water;

8 (2) minimizes the impact on water rights holders;

9 (3) prevents the waste of water;

10 (4) takes into consideration the efforts of the  
11 affected water rights holders to develop and implement the water  
12 conservation plans and drought contingency plans required by this  
13 chapter;

14 (5) to the greatest extent practicable, conforms to  
15 the order of preferences established by Section 11.024; and

16 (6) does not require the release of water that, at the  
17 time the order is issued, is lawfully stored in a reservoir under  
18 water rights associated with that reservoir.

19 (c) The board [~~commission~~] shall adopt rules to implement  
20 this section, including rules:

21 (1) defining a drought or other emergency shortage of  
22 water for purposes of this section; and

23 (2) specifying the:

24 (A) conditions under which the executive  
25 administrator [~~director~~] may issue an order under this section;

26 (B) terms of an order issued under this section,  
27 including the maximum duration of a temporary suspension or

1 adjustment under this section; and

2 (C) procedures for notice of, an opportunity for  
3 a hearing on, and the appeal to the board [~~commission~~] of an order  
4 issued under this section.

5 SECTION 25. Section 11.084, Water Code, is amended to read  
6 as follows:

7 Sec. 11.084. SALE OF PERMANENT WATER RIGHT WITHOUT A  
8 PERMIT. No person may sell or offer to sell a permanent water right  
9 unless the person [~~he~~] has perfected a right to appropriate state  
10 water by a certified filing, or unless the person [~~he~~] has obtained  
11 a permit from the board [~~commission~~], authorizing the use of the  
12 water for the purposes for which the permanent water right is  
13 conveyed.

14 SECTION 26. Section 11.0841(c), Water Code, is amended to  
15 read as follows:

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

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

21 (2) the right to act in the same manner that a holder  
22 of a water right may act to protect the holder's rights in seeking  
23 to prevent any person from appropriating water in violation of a  
24 set-aside established by the board [~~commission~~] under Section  
25 11.1471 to meet instream flow needs or freshwater inflow needs; and

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

1 SECTION 27. Sections 11.0842(a), (b), (c), (d), (e), (f),  
2 (g), (h), (i), (j), (k), (l), (m), (n), and (p), Water Code, are  
3 amended to read as follows:

4 (a) If a person violates this chapter, a rule or order  
5 adopted under this chapter [~~or Section 16.236~~], or a permit,  
6 certified filing, or certificate of adjudication issued under this  
7 chapter, the board [~~commission~~] may assess an administrative  
8 penalty against that person as provided by this section. The board  
9 [~~commission~~] may assess an administrative penalty for a violation  
10 relating to a water division or a river basin or segment of a river  
11 basin regardless of whether a watermaster has been appointed for  
12 the water division or river basin or segment of the river basin.

13 (b) The penalty may be in an amount not to exceed \$5,000 for  
14 each day the person is in violation of this chapter, the rule or  
15 order adopted under this chapter, or the permit, certified filing,  
16 or certificate of adjudication issued under this chapter. [~~The  
17 penalty may be in an amount not to exceed \$1,000 for each day the  
18 person is in violation of the rule or order adopted under Section  
19 16.236 of this code.~~] Each day a violation continues may be  
20 considered a separate violation for purposes of penalty assessment.

21 (c) In determining the amount of the penalty, the board  
22 [~~commission~~] shall consider:

23 (1) the nature, circumstances, extent, duration, and  
24 gravity of the prohibited acts, with special emphasis on the  
25 impairment of an existing permit, certified filing, or certificate  
26 of adjudication or the hazard or potential hazard created to the  
27 health, safety, or welfare of the public;

1           (2) the impact of the violation on the instream uses,  
2 water quality, fish and wildlife habitat, or beneficial freshwater  
3 inflows to bays and estuaries;

4           (3) with respect to the alleged violator:

5           (A) the history and extent of previous  
6 violations;

7           (B) the degree of culpability, including whether  
8 the violation was attributable to mechanical or electrical failures  
9 and whether the violation could have been reasonably anticipated  
10 and avoided;

11           (C) demonstrated good faith, including actions  
12 taken by the alleged violator to rectify the cause of the violation  
13 and to compensate affected persons;

14           (D) any economic benefit gained through the  
15 violation; and

16           (E) the amount necessary to deter future  
17 violations; and

18           (4) any other matters that justice may require.

19           (d) If, after examination of a possible violation and the  
20 facts surrounding that possible violation, the executive  
21 administrator [~~director~~] concludes that a violation has occurred,  
22 the executive administrator [~~director~~] shall issue a preliminary  
23 report stating the facts on which that conclusion was based,  
24 recommending that an administrative penalty under this section be  
25 imposed on the person charged, and recommending the amount of the  
26 penalty. The executive administrator [~~director~~] shall base the  
27 recommended amount of the proposed penalty on the factors provided

1 by Subsection (c) [~~of this section~~] and shall analyze each factor  
2 for the benefit of the board [~~commission~~].

3 (e) No later than the 10th day after the date on which the  
4 report is issued, the executive administrator [~~director~~] shall give  
5 written notice of the report to the person charged with the  
6 violation. The notice shall include a brief summary of the charges,  
7 a statement of the amount of the penalty recommended, and a  
8 statement of the right of the person charged to a hearing on the  
9 occurrence of the violation, the amount of the penalty, or both the  
10 occurrence of the violation and the amount of the penalty.

11 (f) No later than the 20th day after the date on which notice  
12 is received, the person charged may either give to the board  
13 [~~commission~~] written consent to the executive administrator's  
14 [~~director's~~] report, including the recommended penalty, or make a  
15 written request for a hearing.

16 (g) If the person charged with the violation consents to the  
17 penalty recommended by the executive administrator [~~director~~] or  
18 fails to timely respond to the notice, the board [~~commission~~] by  
19 order shall either assess the penalty or order a hearing to be held  
20 on the findings and recommendations in the executive  
21 administrator's [~~director's~~] report. If the board [~~commission~~]  
22 assesses the penalty recommended by the report, the board  
23 [~~commission~~] shall give written notice of its decision to the  
24 person charged.

25 (h) If the person charged requests or the board [~~commission~~]  
26 orders a hearing, the board [~~commission~~] shall call a hearing and  
27 give notice of the hearing. As a result of the hearing, the board

1 ~~[commission]~~ by order either may find that a violation has occurred  
2 and may assess a penalty, may find that a violation has occurred but  
3 that no penalty should be assessed, or may find that no violation  
4 has occurred. All proceedings under this subsection are subject to  
5 Chapter 2001, Government Code. In making any penalty decision, the  
6 board ~~[commission]~~ shall analyze each of the factors provided by  
7 Subsection (c) ~~[of this section]~~.

8 (i) The board ~~[commission]~~ shall give notice of its decision  
9 to the person charged, and if the board ~~[commission]~~ finds that a  
10 violation has occurred and assesses an administrative penalty, the  
11 board ~~[commission]~~ shall give written notice to the person charged  
12 of its findings, of the amount of the penalty, and of the person's  
13 right to judicial review of the board's ~~[commission's]~~ order. If  
14 the board ~~[commission]~~ is required to give notice of a penalty under  
15 this subsection or Subsection (g) ~~[of this section]~~, the board  
16 ~~[commission]~~ shall file notice of its decision in the Texas  
17 Register not later than the 10th day after the date on which the  
18 decision is adopted.

19 (j) Within the 30-day period immediately following the day  
20 on which the board's ~~[commission's]~~ order is final, as provided by  
21 Subchapter F, Chapter 2001, Government Code, the person charged  
22 with the penalty shall:

- 23 (1) pay the penalty in full;
- 24 (2) pay the amount of the penalty and file a petition  
25 for judicial review contesting the occurrence of the violation, the  
26 amount of the penalty, or both the occurrence of the violation and  
27 the amount of the penalty; or

1           (3) without paying the amount of the penalty, file a  
2 petition for judicial review contesting the occurrence of the  
3 violation, the amount of the penalty, or both the occurrence of the  
4 violation and the amount of the penalty.

5           (k) Within the 30-day period, a person who acts under  
6 Subsection (j)(3) [~~of this section~~] may:

7           (1) stay enforcement of the penalty by:

8                   (A) paying the amount of the penalty to the court  
9 for placement in an escrow account; or

10                   (B) giving to the court a supersedeas bond that  
11 is approved by the court for the amount of the penalty and that is  
12 effective until all judicial review of the board's [~~commission's~~]  
13 order is final; or

14           (2) request the court to stay enforcement of the  
15 penalty by:

16                   (A) filing with the court a sworn affidavit of  
17 the person stating that the person is financially unable to pay the  
18 amount of the penalty and is financially unable to give the  
19 supersedeas bond; and

20                   (B) giving a copy of the affidavit to the board  
21 [~~commission~~] by certified mail.

22           (1) If the board [~~commission~~] receives a copy of an  
23 affidavit under Subsection (k)(2) [~~of this section~~], it may file  
24 with the court within five days after the date the copy is received  
25 a contest to the affidavit. The court shall hold a hearing on the  
26 facts alleged in the affidavit as soon as practicable and shall stay  
27 the enforcement of the penalty on finding that the alleged facts are

1 true. The person who files an affidavit has the burden of proving  
2 that the person is financially unable to pay the amount of the  
3 penalty and to give a supersedeas bond.

4 (m) If the person does not pay the amount of the penalty and  
5 the enforcement of the penalty is not stayed, the board  
6 [~~commission~~] may refer the matter to the attorney general for  
7 collection of the amount of the penalty.

8 (n) Judicial review of the order or decision of the board  
9 [~~commission~~] assessing the penalty shall be under the substantial  
10 evidence rule and shall be instituted by filing a petition with a  
11 district court in Travis County, as provided by Subchapter G,  
12 Chapter 2001, Government Code.

13 (p) Notwithstanding any other provision to the contrary,  
14 the board [~~commission~~] may compromise, modify, or remit, with or  
15 without condition, any penalty imposed under this section.

16 SECTION 28. Sections 11.0843(a) and (b), Water Code, are  
17 amended to read as follows:

18 (a) Upon witnessing a violation of this chapter or a rule or  
19 order or a water right issued under this chapter, the executive  
20 administrator [~~director~~] or a person designated by the executive  
21 administrator [~~director~~], including a watermaster or the  
22 watermaster's deputy, may issue the alleged violator a field  
23 citation alleging that a violation has occurred and providing the  
24 alleged violator the option of either:

25 (1) without admitting to or denying the alleged  
26 violation, paying an administrative penalty in accordance with the  
27 predetermined penalty amount established under Subsection (b) and

1 taking remedial action as provided in the citation; or

2 (2) requesting a hearing on the alleged violation in  
3 accordance with Section 11.0842.

4 (b) By rule the board [~~commission~~] shall establish penalty  
5 amounts corresponding to types of violations of this chapter or  
6 rules or orders adopted or water rights issued under this chapter.

7 SECTION 29. Subchapter C, Chapter 11, Water Code, is  
8 amended by adding Section 11.0844 to read as follows:

9 Sec. 11.0844. INJUNCTIVE RELIEF. (a) The executive  
10 administrator may enforce a board rule adopted under this chapter  
11 or a provision of a permit issued by the board under this chapter by  
12 injunction or other appropriate remedy.

13 (b) If it appears that a violation or threat of violation of  
14 this chapter or a rule adopted or an order or a permit issued under  
15 this chapter has occurred or is about to occur, the executive  
16 administrator may have a suit instituted in district court for  
17 injunctive relief to restrain the violation or threat of violation.

18 (c) The suit may be brought in the county in which the  
19 defendant resides or in the county in which the violation or threat  
20 of violation occurs.

21 (d) In a suit brought under this section to enjoin a  
22 violation or threat of violation described by Subsection (b), the  
23 court may grant the board, without bond or other undertaking, any  
24 prohibitory or mandatory injunction the facts may warrant,  
25 including a temporary restraining order and, after notice and  
26 hearing, a temporary injunction or permanent injunction.

27 (e) On request of the executive administrator, the attorney

1 general or the prosecuting attorney in a county in which the  
2 violation occurs shall initiate a suit in the name of the state for  
3 injunctive relief. The suit may be brought independently of or in  
4 conjunction with a suit under Section 11.082.

5 SECTION 30. Sections 11.085(a), (d), (e), (i), (j), (k),  
6 (l), and (m), Water Code, are amended to read as follows:

7 (a) No person may take or divert any state water from a river  
8 basin in this state and transfer such water to any other river basin  
9 without first applying for and receiving a water right or an  
10 amendment to a permit, certified filing, or certificate of  
11 adjudication from the board [~~commission~~] authorizing the transfer.

12 (d) Prior to taking action on an application for an  
13 interbasin transfer, the board [~~commission~~] shall conduct at least  
14 one public meeting to receive comments in both the basin of origin  
15 of the water proposed for transfer and the basin receiving water  
16 from the proposed transfer. Notice shall be provided pursuant to  
17 Subsection (g) [~~of this section~~]. Any person may present relevant  
18 information and data at the meeting on the criteria which the board  
19 [~~commission~~] is to consider related to the interbasin transfer.

20 (e) In addition to the public meetings required by  
21 Subsection (d), if the application is contested in a manner  
22 requiring an evidentiary hearing under the rules of the board  
23 [~~commission~~], the board [~~commission~~] shall give notice and hold an  
24 evidentiary hearing, in accordance with board [~~commission~~] rules  
25 and applicable state law. An evidentiary hearing on an application  
26 to transfer water authorized under an existing water right is  
27 limited to considering issues related to the requirements of this

1 section.

2 (i) The applicant shall pay the cost of notice required to  
3 be provided under this section. The board [~~commission~~] by rule may  
4 establish procedures for payment of those costs.

5 (j) In addition to other requirements of this code relating  
6 to the review of and action on an application for a new water right  
7 or amended permit, certified filing, or certificate of  
8 adjudication, the board [~~commission~~] shall:

9 (1) request review and comment on an application for  
10 an interbasin transfer from each county judge of a county located in  
11 whole or in part in the basin of origin. A county judge should make  
12 comment only after seeking advice from the county commissioners  
13 court; and

14 (2) give consideration to the comments of each county  
15 judge of a county located in whole or in part in the basin of origin  
16 prior to taking action on an application for an interbasin  
17 transfer.

18 (k) In addition to other requirements of this code relating  
19 to the review of and action on an application for a new water right  
20 or amended permit, certified filing, or certificate of  
21 adjudication, the board [~~commission~~] shall weigh the effects of the  
22 proposed transfer by considering:

23 (1) [~~the need for the water in the basin of origin and~~  
24 ~~in the proposed receiving basin based on the period for which the~~  
25 ~~water supply is requested, but not to exceed 50 years,~~

26 [(2) ~~factors identified in the applicable approved~~  
27 ~~regional water plans which address the following:~~

1                   ~~[(A) the availability of feasible and~~  
2 ~~practicable alternative supplies in the receiving basin to the~~  
3 ~~water proposed for transfer;~~

4                   ~~[(B) the amount and purposes of use in the~~  
5 ~~receiving basin for which water is needed;~~

6                   ~~[(C) proposed methods and efforts by the~~  
7 ~~receiving basin to avoid waste and implement water conservation and~~  
8 ~~drought contingency measures;~~

9                   ~~[(D) proposed methods and efforts by the~~  
10 ~~receiving basin to put the water proposed for transfer to~~  
11 ~~beneficial use;~~

12                   ~~[(E) the projected economic impact that is~~  
13 ~~reasonably expected to occur in each basin as a result of the~~  
14 ~~transfer; and~~

15                   ~~[(F)]~~ the projected impacts of the proposed  
16 transfer that are reasonably expected to occur on ~~[existing water~~  
17 ~~rights]~~ instream uses, water quality, aquatic and riparian  
18 habitat, and bays and estuaries that must be assessed under  
19 Sections 11.147, 11.150, and 11.152 ~~[of this code]~~ in each basin.  
20 If the water sought to be transferred is currently authorized to be  
21 used under an existing permit, certified filing, or certificate of  
22 adjudication, such impacts shall only be considered in relation to  
23 that portion of the permit, certified filing, or certificate of  
24 adjudication proposed for transfer and shall be based on historical  
25 uses of the permit, certified filing, or certificate of  
26 adjudication for which amendment is sought;

27                   ~~[(3) proposed mitigation or compensation, if any, to~~

1 ~~the basin of origin by the applicant,~~

2 ~~[(4) the continued need to use the water for the~~  
3 ~~purposes authorized under the existing permit, certified filing, or~~  
4 ~~certificate of adjudication, if an amendment to an existing water~~  
5 ~~right is sought,] and~~

6 (2) ~~[(5)]~~ the information required to be submitted by  
7 the applicant.

8 (1) The board ~~[commission]~~ may grant, in whole or in part,  
9 an application for an interbasin transfer only to the extent that:

10 (1) the detriments to the basin of origin during the  
11 proposed transfer period are less than the benefits to the  
12 receiving basin during the proposed transfer period, as determined  
13 by the board ~~[commission]~~ based on consideration of the factors  
14 described by Subsection (k); and

15 (2) the applicant for the interbasin transfer has  
16 prepared a drought contingency plan and has developed and  
17 implemented a water conservation plan that will result in the  
18 highest practicable levels of water conservation and efficiency  
19 achievable within the jurisdiction of the applicant.

20 (m) The board ~~[commission]~~ may grant new or amended water  
21 rights under this section with or without specific terms or periods  
22 of use and with specific conditions under which a transfer of water  
23 may occur.

24 SECTION 31. Sections 11.087(b) and (c), Water Code, are  
25 amended to read as follows:

26 (b) The board ~~[commission]~~ may make and enforce rules and  
27 orders to implement the provisions of this section, including rules

1 and orders designed to:

2 (1) establish an orderly system for water releases and  
3 diversions in order to protect vested rights and to avoid the loss  
4 of released water;

5 (2) prescribe the time that releases of water may  
6 begin and end;

7 (3) determine the proportionate quantities of the  
8 released water in transit and the water that would have been flowing  
9 in the stream without the addition of the released water;

10 (4) require each owner or operator of a dam or  
11 reservoir on the stream between the point of release and the point  
12 of destination to allow free passage of the released water in  
13 transit; and

14 (5) establish other requirements the board  
15 [~~commission~~] considers necessary to effectuate the purposes of this  
16 section.

17 (c) Orders made by the board [~~commission~~] to effectuate its  
18 rules under this section shall be mailed by certified mail to each  
19 diverter of water and to each reservoir owner on the stream between  
20 the point of release and the point of destination of the released  
21 water as shown by the records of the board [~~commission~~].

22 SECTION 32. Section 11.0871, Water Code, is amended to read  
23 as follows:

24 Sec. 11.0871. TEMPORARY DIVERSION OF WATER ON INTERNATIONAL  
25 STREAM. (a) The board [~~commission~~] may authorize, under  
26 conditions stated in an order, a watermaster to provide for the  
27 temporary diversion and use by holders of water rights of storm

1 water or floodwater that spills from dams and reservoirs on an  
2 international stream and otherwise would flow into the Gulf of  
3 Mexico without opportunity for beneficial use.

4 (b) In an order made by the board [~~commission~~] under this  
5 section, the board [~~commission~~] may not discriminate between  
6 holders of water rights from an international stream except to the  
7 extent necessary to protect the holders of water rights from the  
8 same source of supply.

9 (c) The board [~~commission~~] shall give notice by mail to  
10 holders of water rights from an international stream and shall hold  
11 an evidentiary hearing before entry of an order under this section.

12 SECTION 33. Section 11.093, Water Code, is amended to read  
13 as follows:

14 Sec. 11.093. ABATEMENT OF WASTE AS PUBLIC NUISANCE. (a) A  
15 person who permits an unreasonable loss of water through faulty  
16 design or negligent operation of any waterworks using water for a  
17 purpose named in this chapter commits waste, and the board  
18 [~~commission~~] may declare the works causing the waste to be a public  
19 nuisance. The board [~~commission~~] may take the necessary action to  
20 abate the nuisance. Also, any person who may be injured by the  
21 waste may sue in the district court having jurisdiction over the  
22 works causing the waste to have the operation of the works abated as  
23 a public nuisance.

24 (b) In case of a wasteful use of water defined by Section  
25 11.092 [~~of this code~~], the board [~~commission~~] shall declare the use  
26 to be a public nuisance and shall act to abate the nuisance by  
27 directing the person supplying the water to close the water gates of

1 the person wasting the water and to keep them closed until the board  
2 [~~commission~~] determines that the unlawful use of water is  
3 corrected.

4 SECTION 34. Section 11.097, Water Code, is amended to read  
5 as follows:

6 Sec. 11.097. REMOVAL OF OBSTRUCTIONS FROM NAVIGABLE  
7 STREAMS. (a) On its own motion or on written request from a  
8 commissioners court, the board [~~commission~~] shall investigate a  
9 reported natural obstruction in a navigable stream caused by the  
10 accumulation of limbs, logs, leaves, other tree parts, or other  
11 debris. If making the investigation on request of a commissioners  
12 court, the board [~~commission~~] must make its investigation not later  
13 than the 30th day after the date on which it receives the written  
14 request from the commissioners court.

15 (b) On completion of the investigation, if the board  
16 [~~commission~~] determines that the obstruction is creating a hazard  
17 or is having other detrimental effect on the navigable stream, the  
18 board [~~commission~~] shall initiate action to remove the obstruction.

19 (c) In removing an obstruction, the board [~~commission~~] may  
20 solicit the assistance of federal and state agencies including the  
21 Corps of Engineers, Texas National Guard, the Parks and Wildlife  
22 Department, and districts and authorities created under Article  
23 III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the  
24 Texas Constitution. Also, the board [~~commission~~] may enter into  
25 contracts for services required to remove an obstruction. However,  
26 no river authority may require the removal, relocation, or  
27 reconfiguration of a floating structure which was in place before

1 September 1, 1987, [~~the effective date of this Act~~] and the  
2 effective date of any ordinance, rule, resolution, or other act of  
3 the river authority mandating such action unless the board  
4 [~~commission~~] determines the structure is an obstruction to  
5 navigation.

6 SECTION 35. Section 11.121, Water Code, is amended to read  
7 as follows:

8 Sec. 11.121. PERMIT REQUIRED. Except as provided in  
9 Sections 11.1405, 11.142, 11.1421, 11.1422, and 18.003, no person  
10 may appropriate any state water or begin construction of any work  
11 designed for the storage, taking, or diversion of water without  
12 first obtaining a permit from the board [~~commission~~] to make the  
13 appropriation.

14 SECTION 36. Sections 11.122(a) and (c), Water Code, are  
15 amended to read as follows:

16 (a) All holders of permits, certified filings, and  
17 certificates of adjudication issued under former Section 11.323 [~~of~~  
18 ~~this code~~] shall obtain from the board [~~commission~~] authority to  
19 change the place of use, purpose of use, point of diversion, rate of  
20 diversion, acreage to be irrigated, or otherwise alter a water  
21 right. Without obtaining an amendment, the holder of a permit,  
22 certified filing, or certificate of adjudication that includes  
23 industrial or irrigation use may use or supply water for an  
24 agricultural use that was classified as industrial or irrigation  
25 before September 1, 2001.

26 (c) The board [~~commission~~] shall adopt rules to effectuate  
27 the provisions of this section.

1 SECTION 37. Section 11.123, Water Code, is amended to read  
2 as follows:

3 Sec. 11.123. PERMIT PREFERENCES. The board [~~commission~~]  
4 shall give preference to applications in the order declared in  
5 Section 11.024 [~~of this code~~] and to applications which will  
6 effectuate the maximum utilization of water and are calculated to  
7 prevent the escape of water without contribution to a beneficial  
8 public service.

9 SECTION 38. Section 11.126, Water Code, is amended to read  
10 as follows:

11 Sec. 11.126. BOARD [~~COMMISSION~~] REQUIREMENTS. (a) If the  
12 proposed taking or diversion of water for irrigation exceeds nine  
13 cubic feet per second, the executive administrator [~~director~~] may  
14 require additional information as prescribed by this section.

15 (b) The executive administrator [~~director~~] may require a  
16 continuous longitudinal profile, cross sections of the proposed  
17 channel, and the detail plans of any proposed structure, on any  
18 scales and with any definition the executive administrator  
19 [~~director~~] considers necessary or expedient.

20 (c) If the application proposes construction of a dam  
21 greater than six feet in height either for diversion or storage, the  
22 executive administrator [~~director~~] may also require filing a copy  
23 of all plans and specifications and a copy of the engineer's field  
24 notes of any survey of the lake or reservoir. No work on the project  
25 shall proceed until approval of the plans is obtained from the  
26 executive administrator [~~director~~].

27 (d) If the applicant is a corporation, the board

1 ~~[commission]~~ may require filing a certified copy of its articles of  
2 incorporation, a statement of the names and addresses of its  
3 directors and officers, and a statement of the amount of its  
4 authorized capital stock and its paid-up capital stock.

5 (e) If the applicant is not a corporation, the board  
6 ~~[commission]~~ may require filing a sworn statement showing the name  
7 and address of each person interested in the appropriation, the  
8 extent of the person's ~~[his]~~ interest, and the person's ~~[his]~~  
9 financial condition.

10 SECTION 39. Section 11.127, Water Code, is amended to read  
11 as follows:

12 Sec. 11.127. ADDITIONAL REQUIREMENTS: DRAINAGE PLANS. If  
13 the board ~~[commission]~~ believes that the efficient operation of any  
14 existing or proposed irrigation system may be adversely affected by  
15 lack of adequate drainage facilities incident to the work proposed  
16 to be done by an applicant, the board ~~[commission]~~ may require the  
17 applicant to submit to the executive administrator ~~[director]~~ for  
18 approval plans for drainage adequate to guard against any injury  
19 which the proposed work may entail.

20 SECTION 40. Section 11.1271, Water Code, is amended to read  
21 as follows:

22 Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION  
23 PLANS. (a) The board ~~[commission]~~ shall require from an applicant  
24 for a new or amended water right the formulation and submission of a  
25 water conservation plan and the adoption of reasonable water  
26 conservation measures, as defined by Subdivision (8)(B), Section  
27 11.002 ~~[, of this code]~~.

1           (b) The board [~~commission~~] shall require the holder of an  
2 existing permit, certified filing, or certificate of adjudication  
3 for the appropriation of surface water in the amount of 1,000  
4 acre-feet a year or more for municipal, industrial, and other uses,  
5 and 10,000 acre-feet a year or more for irrigation uses, to develop,  
6 submit, and implement a water conservation plan, consistent with  
7 the appropriate approved regional water plan, that adopts  
8 reasonable water conservation measures as defined by Subdivision  
9 (8)(B), Section 11.002 [~~, of this code~~]. The requirement for a water  
10 conservation plan under this section shall not result in the need  
11 for an amendment to an existing permit, certified filing, or  
12 certificate of adjudication.

13           (c) All [~~Beginning May 1, 2005, all~~] water conservation  
14 plans required under this section must include specific, quantified  
15 5-year and 10-year targets for water savings. The entity preparing  
16 the plan shall establish the targets. Targets must include goals  
17 for water loss programs and goals for municipal use in gallons per  
18 capita per day.

19           (d) The [~~commission and the~~] board [~~jointly~~] shall identify  
20 quantified target goals for water conservation that water suppliers  
21 and other entities may use as guidelines in preparing water  
22 conservation plans. Goals established under this subsection are  
23 not enforceable requirements.

24           (e) The [~~commission and~~] board [~~jointly~~] shall develop  
25 model water conservation programs for different types of water  
26 suppliers that suggest best management practices for achieving the  
27 highest practicable levels of water conservation and efficiency

1 achievable for each specific type of water supplier.

2 (f) The board [~~commission~~] shall adopt rules:

3 (1) establishing criteria and deadlines for  
4 submission of water conservation plans, including any required  
5 amendments, and for submission of implementation reports; and

6 (2) requiring the methodology and guidance for  
7 calculating water use and conservation developed under Section  
8 16.403 to be used in the water conservation plans required by this  
9 section.

10 (g) At a minimum, rules adopted under Subsection (f)(2) must  
11 require an entity to report the most detailed level of municipal  
12 water use data currently available to the entity. The board  
13 [~~commission~~] may not adopt a rule that requires an entity to report  
14 municipal water use data that is more detailed than the entity's  
15 billing system is capable of producing.

16 SECTION 41. Section 11.1272, Water Code, is amended to read  
17 as follows:

18 Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY  
19 PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS. (a) The  
20 board [~~commission~~] shall by rule require wholesale and retail  
21 public water suppliers and irrigation districts to develop drought  
22 contingency plans consistent with the appropriate approved  
23 regional water plan to be implemented during periods of water  
24 shortages and drought.

25 (b) The wholesale and retail public water suppliers and  
26 irrigation districts shall provide an opportunity for public input  
27 during preparation of their drought contingency plans and before

1 submission of the plans to the board [~~commission~~].

2 (c) A [~~By May 1, 2005, a~~] drought contingency plan required  
3 by board [~~commission~~] rule adopted under this section must include  
4 specific, quantified targets for water use reductions to be  
5 achieved during periods of water shortages and drought. The entity  
6 preparing the plan shall establish the targets.

7 (d) The [~~commission and the~~] board by [~~joint~~] rule shall  
8 identify quantified target goals for drought contingency plans that  
9 wholesale and retail public water suppliers, irrigation districts,  
10 and other entities may use as guidelines in preparing drought  
11 contingency plans. Goals established under this subsection are not  
12 enforceable requirements.

13 (e) The [~~commission and the~~] board [~~jointly~~] shall develop  
14 model drought contingency programs for different types of water  
15 suppliers that suggest best management practices for accomplishing  
16 the highest practicable levels of water use reductions achievable  
17 during periods of water shortages and drought for each specific  
18 type of water supplier.

19 SECTION 42. Sections [11.1273](#)(b), (c), (d), and (e), Water  
20 Code, are amended to read as follows:

21 (b) Not later than the first anniversary of the date the  
22 executive administrator [~~director~~] determines that an application  
23 to amend a water management plan is administratively complete, the  
24 executive administrator [~~director~~] shall complete a technical  
25 review of the plan.

26 (c) If the executive administrator [~~director~~] submits a  
27 written request for additional information to the applicant, the

1 applicant shall submit the requested information to the executive  
2 administrator [~~director~~] not later than the 30th day after the date  
3 the applicant receives the request or not later than the deadline  
4 agreed to by the executive administrator [~~director~~] and the  
5 applicant, if applicable. The review period required by Subsection  
6 (b) for completing the technical review is tolled until the date the  
7 executive administrator [~~director~~] receives the requested  
8 information from the applicant.

9 (d) The board [~~commission~~] shall provide an opportunity for  
10 public comment and a public hearing on the application, consistent  
11 with the process for other water rights applications.

12 (e) If the board [~~commission~~] receives a request for a  
13 hearing before the period for submitting public comments and  
14 requesting a hearing expires, the board [~~commission~~] shall act on  
15 the request for a hearing and, if the request is denied, act on the  
16 application not later than the 60th day after the date the period  
17 expires. If a request for a hearing is not submitted before the  
18 period expires, the executive administrator [~~director~~] may act on  
19 the application.

20 SECTION 43. Section 11.128, Water Code, is amended to read  
21 as follows:

22 Sec. 11.128. PAYMENT OF FEE. The applicant shall pay the  
23 filing fee prescribed by Section 12.111(e) [~~5.701~~] at the time the  
24 application is filed. The board [~~commission~~] may not record, file,  
25 or consider the application until the executive administrator  
26 [~~director~~] certifies to the board [~~commission~~] that the fee is  
27 paid.

1 SECTION 44. Section 11.129, Water Code, is amended to read  
2 as follows:

3 Sec. 11.129. REVIEW OF APPLICATION; AMENDMENT. The board  
4 [~~commission~~] shall determine whether the application, maps, and  
5 other materials comply with the requirements of this chapter and  
6 the rules of the board [~~commission~~]. The board [~~commission~~] may  
7 require amendment of the application, maps, or other materials to  
8 achieve necessary compliance.

9 SECTION 45. Section 11.130, Water Code, is amended to read  
10 as follows:

11 Sec. 11.130. RECORDING APPLICATIONS. (a) The executive  
12 administrator [~~director~~] shall have all applications for  
13 appropriations recorded in a well-bound book kept for that purpose  
14 in the board [~~commission~~] office.

15 (b) The executive administrator [~~director~~] shall have the  
16 applications indexed alphabetically in the name of:

- 17 (1) the applicant;  
18 (2) the stream or source from which the appropriation  
19 is sought to be made; and  
20 (3) the county in which the appropriation is sought to  
21 be made.

22 SECTION 46. Section 11.131, Water Code, is amended to read  
23 as follows:

24 Sec. 11.131. EXAMINATION AND DENIAL OF APPLICATION WITHOUT  
25 HEARING. (a) The board [~~commission~~] shall make a preliminary  
26 examination of the application, and if it appears that there is no  
27 unappropriated water in the source of supply or that the proposed

1 appropriation should not be allowed for other reasons, the board  
2 [~~commission~~] may deny the application.

3 (b) If the board [~~commission~~] denies the application under  
4 this section and the applicant elects not to proceed further, the  
5 board [~~commission~~] may order any part of the fee submitted with the  
6 application returned to the applicant.

7 SECTION 47. Section 11.1311(a), Water Code, is amended to  
8 read as follows:

9 (a) If a permit for a reservoir project which is listed on  
10 the effective date of this section as a recommended project in the  
11 current state water plan has been abandoned, voluntarily canceled,  
12 or forfeited for failure to commence construction within the time  
13 specified by law, and the reservoir project site is owned by a  
14 municipality, river authority, other political subdivision, or  
15 water supply corporation organized under Chapter 67, the board  
16 [~~commission~~] may reissue that same permit with a new priority date  
17 to the board without notice or hearing[~~, upon submission of an~~  
18 ~~application by the board~~].

19 SECTION 48. Section 11.132, Water Code, is amended to read  
20 as follows:

21 Sec. 11.132. NOTICE. (a) Notice shall be given to the  
22 persons who in the judgment of the board [~~commission~~] may be  
23 affected by an application, including those persons listed in  
24 Subdivision (2), Subsection (d)[~~, of this section~~]. The board  
25 [~~commission~~], on the motion of a board member [~~commissioner~~] or on  
26 the request of the executive administrator [~~director~~] or any  
27 affected person, shall hold a public hearing on the application.

1 (b) If the proposed use is for irrigation, the board  
2 [~~commission~~] shall include in the notice a general description of  
3 the location and area of the land to be irrigated.

4 (c) In the notice, the board [~~commission~~] shall:

5 (1) state the name and address of the applicant;

6 (2) state the date the application was filed;

7 (3) state the purpose and extent of the proposed  
8 appropriation of water;

9 (4) identify the source of supply and the place where  
10 the water is to be stored or taken or diverted from the source of  
11 supply;

12 (5) identify any proposed alternative source of water,  
13 other than state water, identified by the applicant;

14 (6) specify the time and location where the board  
15 [~~commission~~] will consider the application; and

16 (7) give any additional information the board  
17 [~~commission~~] considers necessary.

18 (d) The board [~~commission~~] may act on the application  
19 without holding a public hearing if:

20 (1) not less than 30 days before the date of action on  
21 the application by the board [~~commission~~], the applicant has  
22 published the board's [~~commission's~~] notice of the application at  
23 least once in a newspaper regularly published or circulated within  
24 the section of the state where the source of water is located;

25 (2) not less than 30 days before the date of action on  
26 the application by the board [~~commission~~], the board [~~commission~~]  
27 mails a copy of the notice by first-class mail, postage prepaid, to:

1 (A) each claimant or appropriator of water from  
2 the source of water supply, the record of whose claim or  
3 appropriation has been filed with the board [~~commission~~];

4 (B) each groundwater conservation district with  
5 jurisdiction over the proposed groundwater production, if the  
6 applicant proposes to use groundwater from a well located within a  
7 groundwater conservation district as an alternative source of  
8 water; and

9 (C) all navigation districts within the river  
10 basin concerned; and

11 (3) within 30 days after the date of the newspaper  
12 publication of the board's [~~commission's~~] notice, a public hearing  
13 has not been requested in writing by a board member [~~commissioner~~],  
14 the executive administrator [~~director~~], or an affected person who  
15 objects to the application.

16 (e) The inadvertent failure of the board [~~commission~~] to  
17 mail a notice under Subdivision (2), Subsection (d), [~~of this~~  
18 ~~section~~] to a navigation district that is not a claimant or  
19 appropriator of water does not prevent the board's [~~commission's~~]  
20 consideration of the application.

21 (f) If, on the date specified in the notice prescribed by  
22 Subsection (c) [~~of this section~~], the board [~~commission~~] determines  
23 that a public hearing must be held, the matter shall be remanded for  
24 hearing without the necessity of issuing further notice other than  
25 advising all parties of the time and place where the hearing is to  
26 convene.

27 SECTION 49. Section [11.133](#), Water Code, is amended to read

1 as follows:

2           Sec. 11.133. HEARING. At the time and place stated in the  
3 notice, the board [~~commission~~] shall hold a hearing on the  
4 application. Any person may appear at the hearing in person or by  
5 attorney or may enter an [~~his~~] appearance in writing. Any person  
6 who appears may present objection to the issuance of the permit.  
7 The board [~~commission~~] may receive evidence, orally or by  
8 affidavit, in support of or in opposition to the issuance of the  
9 permit, and it may hear arguments.

10           SECTION 50. Section 11.134, Water Code, is amended to read  
11 as follows:

12           Sec. 11.134. ACTION ON APPLICATION. (a) After the hearing,  
13 the board [~~commission~~] shall make a written decision granting or  
14 denying the application. The application may be granted or denied  
15 in whole or in part.

16           (b) The board [~~commission~~] shall grant the application only  
17 if:

18                   (1) the application conforms to the requirements  
19 prescribed by this chapter and is accompanied by the prescribed  
20 fee;

21                   (2) unappropriated water is available in the source of  
22 supply;

23                   (3) the proposed appropriation:

24                           (A) is intended for a beneficial use;

25                           (B) does not impair existing water rights or  
26 vested riparian rights;

27                           (C) is not detrimental to the public welfare;

1 (D) considers any applicable environmental flow  
2 standards established under Section 11.1471 and, if applicable, the  
3 assessments performed under Sections 11.147(d) and (e) and Sections  
4 11.150, 11.151, and 11.152; and

5 (E) addresses a water supply need in a manner  
6 that is consistent with the state water plan and the relevant  
7 approved regional water plan for any area in which the proposed  
8 appropriation is located, unless the board [~~commission~~] determines  
9 that conditions warrant waiver of this requirement; and

10 (4) the applicant has provided evidence that  
11 reasonable diligence will be used to avoid waste and achieve water  
12 conservation as defined by Section 11.002(8)(B).

13 (b-1) In determining whether an appropriation is  
14 detrimental to the public welfare under Subsection (b)(3)(C), the  
15 board [~~commission~~] may consider only the factors that are within  
16 the jurisdiction and expertise of the board [~~commission~~] as  
17 established by this chapter.

18 (c) The board [~~Beginning January 5, 2002, the commission~~]  
19 may not issue a water right for municipal purposes in a region that  
20 does not have an approved regional water plan in accordance with  
21 Section 16.053(i) unless the board [~~commission~~] determines that  
22 conditions warrant waiver of this requirement.

23 SECTION 51. Section 11.135, Water Code, is amended to read  
24 as follows:

25 Sec. 11.135. ISSUANCE OF PERMIT. (a) On approval of an  
26 application, the board [~~commission~~] shall issue a permit to the  
27 applicant. The applicant's right to take and use water is limited

1 to the extent and purposes stated in the permit.

2 (b) The permit shall be in writing and attested by the seal  
3 of the board [~~commission~~], and it shall contain substantially the  
4 following information:

5 (1) the name of the person to whom the permit is  
6 issued;

7 (2) the date the permit is issued;

8 (3) the date the original application was filed;

9 (4) the use or purpose for which the appropriation is  
10 to be made;

11 (5) the amount or volume of water authorized to be  
12 appropriated for each purpose; if use of the appropriated water is  
13 authorized for multiple purposes, the permit shall contain a  
14 special condition limiting the total amount of water that may  
15 actually be diverted for all of the purposes to the amount of water  
16 appropriated;

17 (6) a general description of the source of supply from  
18 which the appropriation is proposed to be made, including any  
19 alternative source of water that is not state water;

20 (7) the time within which construction or work must  
21 begin and the time within which it must be completed; and

22 (8) any other information the board [~~commission~~]  
23 prescribes.

24 (c) If the appropriation is for irrigation, the board  
25 [~~commission~~] shall also place in the permit a description and  
26 statement of the approximate area of the land to be irrigated.

27 SECTION 52. Section [11.1351](#), Water Code, is amended to read

1 as follows:

2           Sec. 11.1351. PERMIT RESTRICTIONS.       In granting an  
3 application, the board [~~commission~~] may direct that stream flow  
4 restrictions and other conditions and restrictions be placed in the  
5 permit being issued to protect the priority of senior water rights.

6           SECTION 53. Section 11.136(a), Water Code, is amended to  
7 read as follows:

8           (a) The board [~~commission~~] shall transmit the permit by  
9 registered mail to the county clerk of the county in which the  
10 appropriation is to be made.

11           SECTION 54. Sections 11.137(a) and (c), Water Code, are  
12 amended to read as follows:

13           (a) The board [~~commission~~] may issue seasonal permits in the  
14 same manner that it issues regular permits. The provisions of this  
15 chapter governing issuance of regular permits apply to issuance of  
16 seasonal permits.

17           (c) In a seasonal permit, the board [~~commission~~] shall  
18 specify the conditions necessary to fully protect prior  
19 appropriations or vested rights on the stream.

20           SECTION 55. Sections 11.138(a), (b), (d), (f), and (g),  
21 Water Code, are amended to read as follows:

22           (a) The board [~~commission~~] may issue temporary permits for  
23 beneficial purposes to the extent that they do not interfere with or  
24 adversely affect prior appropriations or vested rights on the  
25 stream from which water is to be diverted under such temporary  
26 permit. The board [~~commission~~] may, by appropriate order,  
27 authorize any member of the board [~~commission~~] to approve and issue

1 temporary permits without notice and hearing if it appears to such  
2 issuing party that sufficient water is available at the proposed  
3 point of diversion to satisfy the requirements of the temporary  
4 permit as well as all existing rights. No temporary permit issued  
5 without notice and hearing shall authorize more than 10 acre-feet  
6 of water, nor may it be for a term in excess of one year.

7 (b) The board [~~commission~~] may prescribe rules governing  
8 notice and procedure for the issuance of temporary permits.

9 (d) The board [~~commission~~] may not issue a temporary permit  
10 for a period exceeding three calendar years.

11 (f) A temporary permit expires and shall be cancelled by the  
12 board [~~commission~~] in accordance with the terms of the permit.

13 (g) The board [~~commission~~] may prescribe by rule the fees to  
14 be paid for issuance of temporary permits, but no fee for issuance  
15 or extension of a temporary permit shall exceed \$500.

16 SECTION 56. Sections 11.1381(a), (b), and (c), Water Code,  
17 are amended to read as follows:

18 (a) Until a water right is perfected to the full extent  
19 provided by Section 11.026 [~~of this code~~], the board [~~commission~~]  
20 may issue permits for a term of years for use of state water to which  
21 a senior water right has not been perfected.

22 (b) The board [~~commission~~] shall refuse to grant an  
23 application for a permit under this section if the board  
24 [~~commission~~] finds that there is a substantial likelihood that the  
25 issuance of the permit will jeopardize financial commitments made  
26 for water projects that have been built or that are being built to  
27 optimally develop the water resources of the area.

1           (c) The board [~~commission~~] shall refuse to grant an  
2 application for a term permit if the holder of the senior  
3 appropriative water right can demonstrate that the issuance of the  
4 term permit would prohibit the senior appropriative water right  
5 holder from beneficially using the senior rights during the term of  
6 the term permit. Such demonstration will be made using reasonable  
7 projections based on accepted methods.

8           SECTION 57. Sections 11.139(a), (b), (c), (d), (e), (f),  
9 (g), (h), (i), (j), and (k), Water Code, are amended to read as  
10 follows:

11           (a) Except as provided by Section 11.148 [~~of this code~~], the  
12 board [~~commission~~] may grant an emergency permit, order, or  
13 amendment to an existing permit, certified filing, or certificate  
14 of adjudication after notice to the governor for an initial period  
15 of not more than 120 days if the board [~~commission~~] finds that  
16 emergency conditions exist which present an imminent threat to the  
17 public health and safety and which override the necessity to comply  
18 with established statutory procedures and there are no feasible  
19 practicable alternatives to the emergency authorization. Such  
20 emergency action may be renewed once for not longer than 60 days.

21           (b) A person desiring to obtain an emergency authorization  
22 under this section shall submit to the board [~~commission~~] a sworn  
23 application containing the following information:

24                   (1) a description of the condition of emergency  
25 justifying the granting of the emergency authorization;

26                   (2) a statement setting forth facts which support the  
27 findings required under this section;

1           (3) an estimate of the dates on which the proposed  
2 authorization should begin and end;

3           (4) a description of the action sought and the  
4 activity proposed to be allowed, mandated, or prohibited; and

5           (5) any other statements or information required by  
6 the board [~~commission~~].

7           (c) If the board [~~commission~~] finds the applicant's  
8 statement made under Subsection (b) [~~of this section~~] to be  
9 correct, the board [~~commission~~] may grant emergency authorizations  
10 under this section without notice and hearing or with such notice  
11 and hearing as the board [~~commission~~] considers practicable under  
12 the circumstances.

13           (d) If the board [~~commission~~] grants an emergency  
14 authorization under this section without a hearing, the  
15 authorization shall fix a time and place for a hearing to be held  
16 before the board [~~commission~~]. The hearing shall be held as soon  
17 after the emergency authorization is granted as is practicable but  
18 not later than 20 days after the emergency authorization is  
19 granted.

20           (e) At the hearing, the board [~~commission~~] shall affirm,  
21 modify, or set aside the emergency authorization. Any hearing on an  
22 emergency authorization shall be conducted in accordance with  
23 Chapter 2001, Government Code, and rules of the board [~~commission~~].

24           (f) If an imminent threat to the public health and safety  
25 exists which requires emergency action before the board  
26 [~~commission~~] can take action as provided by Subsections (a) through  
27 (c) [~~of this section~~] and there are no feasible alternatives, the

1 executive administrator [~~director~~] may grant an emergency  
2 authorization after notice to the governor. If the executive  
3 administrator [~~director~~] issues an emergency authorization under  
4 this subsection, the board [~~commission~~] shall hold a hearing as  
5 provided for in Subsections (d) and (e) [~~of this section~~]. The  
6 requirements of Subsection (b) [~~of this section~~] shall be satisfied  
7 by the applicant before action is taken by the executive  
8 administrator [~~director~~] on the request for emergency  
9 authorization.

10 (g) The requirements of Section 11.132 [~~of this code~~]  
11 relating to the time for notice, newspaper notice, and method of  
12 giving a person notice do not apply to a hearing held on an  
13 application for an emergency authorization under this section, but  
14 such general notice of the hearing shall be given as the board  
15 [~~commission~~], under Subsections (c) and (e) [~~of this section~~],  
16 considers practicable under the circumstances.

17 (h) The board [~~commission~~] may grant an emergency  
18 authorization under this section for the temporary transfer and use  
19 of all or part of a permit, certified filing, or certificate of  
20 adjudication for other than domestic or municipal use to a retail or  
21 wholesale water supplier for public health and safety purposes. In  
22 addition to the requirements contained in Subsection (b) [~~of this~~  
23 ~~section~~], the board [~~commission~~] may direct that the applicant will  
24 timely pay the amounts for which the applicant may be potentially  
25 liable under Subsection (j) [~~of this section~~] and to the extent  
26 authorized by law will fully indemnify and hold harmless the state,  
27 the executive administrator [~~director~~], and the board [~~commission~~]

1 from any and all liability for the authorization sought. The board  
2 [~~commission~~] may order bond or other surety in a form acceptable to  
3 the board [~~commission~~] as a condition for such emergency  
4 authorization. The board [~~commission~~] may not grant an emergency  
5 authorization under this section which would cause a violation of a  
6 federal regulation.

7 (i) In transferring the amount of water requested by the  
8 applicant, the executive administrator [~~director~~] or the board  
9 [~~commission~~] shall allocate the requested amount among two or more  
10 permits, certified filings, or certificates of adjudication for  
11 other than domestic or municipal use.

12 (j) The person granted an emergency authorization under  
13 Subsection (h) [~~of this section~~] is liable to the owner and the  
14 owner's agent or lessee from whom the use is transferred for the  
15 fair market value of the water transferred as well as for any  
16 damages caused by the transfer of use. If, within 60 days of the  
17 termination of the authorization, the parties do not agree on the  
18 amount due, or if full payment is not made, either party may file a  
19 complaint with the board [~~commission~~] to determine the amount due.  
20 The board [~~commission~~] may use dispute resolution procedures for a  
21 complaint filed under this subsection. After exhausting all  
22 administrative remedies under this subsection, an owner from whom  
23 the use is transferred may file suit to recover or determine the  
24 amount due in a district court in the county where the owner resides  
25 or has its headquarters. The prevailing party in a suit filed under  
26 this subsection is entitled to recover court costs and reasonable  
27 attorney's fees.

1 (k) The board [~~commission~~] may prescribe rules and adopt  
2 fees which are necessary to carry out the provisions of this  
3 section.

4 SECTION 58. Section 11.140, Water Code, is amended to read  
5 as follows:

6 Sec. 11.140. PERMITS FOR STORAGE FOR PROJECT DEVELOPMENT.  
7 The board [~~commission~~] may issue permits for storage solely for the  
8 purpose of optimum development of projects. The board [~~commission~~]  
9 may convert these permits to permits for beneficial use if  
10 application to have them converted is made to the board  
11 [~~commission~~].

12 SECTION 59. Sections 11.1405(a), (c), (d), (e), (f), (g),  
13 and (h), Water Code, are amended to read as follows:

14 (a) The board [~~commission~~] may issue a permit under this  
15 section to authorize a diversion of state water from the Gulf of  
16 Mexico or a bay or arm of the Gulf of Mexico for desalination and use  
17 for industrial purposes if:

18 (1) the point of diversion is located less than three  
19 miles seaward of any point located on the coast of this state; or

20 (2) the seawater contains a total dissolved solids  
21 concentration based on a yearly average of samples taken monthly at  
22 the water source of less than 20,000 milligrams per liter.

23 (c) A person who diverts and uses state water that consists  
24 of marine seawater under a permit issued under Subsection (a) or as  
25 authorized by Subsection (b) must determine the total dissolved  
26 solids concentration of the seawater at the water source by monthly  
27 sampling and analysis and provide the data collected to the board

1 ~~[commission]~~. A person may not begin construction of a facility for  
2 the diversion of marine seawater for the purposes provided by this  
3 section without obtaining a permit until the person has provided  
4 data to the board ~~[commission]~~ based on the analysis of samples  
5 taken at the water source over a period of at least one year  
6 demonstrating that Subsection (a)(2) does not apply. A person who  
7 has begun construction of a facility for the diversion of marine  
8 seawater for the purposes provided by this section without  
9 obtaining a permit because the person has demonstrated that  
10 Subsection (a)(2) does not apply is not required to obtain a permit  
11 for the facility if the total dissolved solids concentration of the  
12 seawater at the water source subsequently changes so that  
13 Subsection (a)(2) applies.

14 (d) A permit application under this section must be  
15 submitted as required by board ~~[commission]~~ rule.

16 (e) The board ~~[commission]~~ is not required to make a finding  
17 of water availability for an application under this section.

18 (f) The board ~~[commission]~~ shall evaluate whether any  
19 proposed diversion under this section is consistent with any  
20 applicable environmental flow standards established under Section  
21 [11.1471](#).

22 (g) The board ~~[commission]~~ may include any provision in a  
23 permit issued under this section that the board ~~[commission]~~  
24 considers necessary to comply with the environmental flow standards  
25 established under Section [11.1471](#).

26 (h) The board ~~[commission]~~ shall adopt rules providing an  
27 expedited procedure for acting on an application for a permit under

1 Subsection (a). The rules must provide for notice, an opportunity  
2 for the submission of written comment, and an opportunity for a  
3 contested case hearing regarding board [~~commission~~] actions  
4 relating to an application for a permit.

5 SECTION 60. Section 11.141, Water Code, is amended to read  
6 as follows:

7 Sec. 11.141. DATE OF PRIORITY. When the board [~~commission~~]  
8 issues a permit, the priority of the appropriation of water and the  
9 claimant's right to use the water date from the date of filing of  
10 the application.

11 SECTION 61. Sections 11.1421(c), (d), and (e), Water Code,  
12 are amended to read as follows:

13 (c) Before a person first takes water under Subsection (b)  
14 [~~of this section~~], the person must give notice to the board  
15 [~~commission~~] of the proposed appropriation.

16 (d) Each appropriation of water made under Subsection (b)  
17 [~~of this section~~] shall be reported to the board [~~commission~~] in the  
18 manner provided by the board's [~~commission's~~] rules.

19 (e) After notice and hearing, if the board [~~commission~~]  
20 determines that as a result of low freshwater inflows appropriation  
21 of water under Subsection (b) [~~of this section~~] would interfere  
22 with natural productivity of bays and estuaries, the board  
23 [~~commission~~] shall issue an order requiring interruption or  
24 reduction of the appropriation.

25 SECTION 62. Section 11.1422(b), Water Code, is amended to  
26 read as follows:

27 (b) The executive administrator [~~director~~] or a watermaster

1 who has jurisdiction over the river from which a cemetery diverts  
2 water under this section by order may restrict a diversion  
3 authorized by this section if the executive administrator  
4 [~~director~~] or watermaster determines the diversion will harm a  
5 person downstream of the cemetery who acquired a water right before  
6 the date this section took effect. The executive administrator  
7 [~~director~~] or watermaster shall limit the restriction to the extent  
8 of the harm and to the period of the harm.

9 SECTION 63. Sections 11.143(b), (d), (e), (f), (g), (h),  
10 and (i), Water Code, are amended to read as follows:

11 (b) If the applicant elects to proceed under this section,  
12 the applicant [~~he~~] shall submit to the board [~~commission~~] a sworn  
13 application, on a form furnished by the board [~~commission~~],  
14 containing the following information:

15 (1) the name and post-office address of the applicant;

16 (2) the nature and purpose of the use and the amount of  
17 water to be used annually for each purpose;

18 (3) the major watershed and the tributary (named or  
19 unnamed) on which the dam or reservoir is located;

20 (4) the county in which the dam or reservoir is  
21 located;

22 (5) the approximate distance and direction from the  
23 county seat of the county to the location of the dam or reservoir;

24 (6) the survey or the portion of the survey on which  
25 the dam or reservoir is located and, to the best of the applicant's  
26 knowledge and belief, the distance and direction of the midpoint of  
27 the dam or reservoir from a corner of the survey, which information

1 the executive administrator [~~director~~] may require to be marked on  
2 an aerial photograph or map furnished by the board [~~commission~~];

3 (7) the approximate surface area, to the nearest acre,  
4 of the reservoir when it is full and the average depth in feet when  
5 it is full; and

6 (8) the approximate number of square miles in the  
7 drainage area above the dam or reservoir.

8 (d) Except as otherwise specifically provided by this  
9 subsection, before the board [~~commission~~] may approve the  
10 application and issue the permit, it shall give notice and hold a  
11 hearing as prescribed by this section. The board [~~commission~~] may  
12 act on the application without holding a public hearing if:

13 (1) not less than 30 days before the date of action on  
14 the application by the board [~~commission~~], the applicant has  
15 published the board's [~~commission's~~] notice of the application at  
16 least once in a newspaper regularly published or circulated within  
17 the section of the state where the source of water is located;

18 (2) not less than 30 days before the date of action on  
19 the application by the board [~~commission~~], the board [~~commission~~]  
20 mails a copy of the notice by first-class mail, postage prepaid, to  
21 each person whose claim or appropriation has been filed with the  
22 board [~~commission~~] and whose diversion point is downstream from  
23 that described in the application; and

24 (3) within 30 days after the date of the newspaper  
25 publication of the board's [~~commission's~~] notice, a public hearing  
26 is not requested in writing by a board member [~~commissioner~~], the  
27 executive administrator [~~director~~], or an affected person who

1 objects to the application.

2 (e) In the notice, the board [~~commission~~] shall:

3 (1) state the name and post-office address of the  
4 applicant;

5 (2) state the date the application was filed;

6 (3) state the purpose and extent of the proposed  
7 appropriation of water;

8 (4) identify the source of supply, including any  
9 proposed alternative source of water, other than state water,  
10 identified by the applicant, and the place where the water is  
11 stored; and

12 (5) specify the time and place of the hearing.

13 (f) The notice shall be published only once, at least 20  
14 days before the date stated in the notice for the hearing on the  
15 application, in a newspaper having general circulation in the  
16 county where the dam or reservoir is located. At least 15 days  
17 before the date set for the hearing, the board [~~commission~~] shall  
18 transmit a copy of the notice by first-class mail to each person  
19 whose claim or appropriation has been filed with the board  
20 [~~commission~~] and whose diversion point is downstream from that  
21 described in the application. If the notice identifies groundwater  
22 from a well located in a groundwater conservation district as a  
23 proposed alternative source of water, the notice shall be:

24 (1) sent to the groundwater conservation district in  
25 which the well is located; and

26 (2) published, at least 20 days before the date stated  
27 in the notice for the hearing, in a newspaper having general

1 circulation in each county in which the groundwater district is  
2 located.

3 (g) If on the date specified in the notice prescribed by  
4 Subsection (d) [~~of this section~~], the board [~~commission~~] determines  
5 that a public hearing must be held, the matter shall be remanded for  
6 hearing without the necessity of issuing further notice other than  
7 advising all parties of the time and place where the hearing is to  
8 convene.

9 (h) The applicant shall pay the filing fee prescribed by  
10 Section 12.111(e) [~~5.701(e)~~] at the time the applicant [~~he~~] files  
11 the application.

12 (i) The board [~~commission~~] shall approve the application  
13 and issue the permit as applied for in whole or part if it  
14 determines that:

15 (1) there is unappropriated water in the source of  
16 supply;

17 (2) the applicant has met the requirements of this  
18 section;

19 (3) the water is to be used for a beneficial purpose;

20 (4) the proposed use is not detrimental to the public  
21 welfare or to the welfare of the locality; and

22 (5) the proposed use will not impair existing water  
23 rights.

24 SECTION 64. Section 11.144, Water Code, is amended to read  
25 as follows:

26 Sec. 11.144. APPROVAL FOR ALTERATIONS. All holders of  
27 permits and certified filings shall obtain the approval of the

1 board [~~commission~~] before making any alterations, enlargements,  
2 extensions, or other changes to any reservoir, dam, main canal, or  
3 diversion work on which a permit has been granted or a certified  
4 filing recorded. A detailed statement and plans for alterations or  
5 changes shall be filed with the board [~~commission~~] and approved by  
6 the executive administrator [~~director~~] before the alterations or  
7 changes are made. This section does not apply to the ordinary  
8 maintenance or emergency repair of the facility.

9 SECTION 65. Section 11.145, Water Code, is amended to read  
10 as follows:

11 Sec. 11.145. WHEN CONSTRUCTION MUST BEGIN. (a) If a permit  
12 is for appropriation by direct diversion, construction of the  
13 proposed facilities shall begin within the time fixed by the board  
14 [~~commission~~], which shall not exceed two years after the date the  
15 permit is issued. The appropriator shall work diligently and  
16 continuously to the completion of the construction. The board  
17 [~~commission~~] may, by entering an order of record, extend the time  
18 for beginning construction. The board [~~commission~~] may establish  
19 fees, not to exceed \$1,000, for extending the time to begin  
20 construction of the proposed facilities.

21 (b) If the permit contemplates construction of a storage  
22 reservoir, construction shall begin within the time fixed by the  
23 board [~~commission~~], not to exceed two years after the date the  
24 permit is issued. The board [~~commission~~], by entering an order of  
25 record, may extend the time for beginning construction. The board  
26 [~~commission~~] may fix fees, not to exceed \$1,000, for extending the  
27 time to begin construction of reservoirs.

1 SECTION 66. Sections 11.146(c) and (d), Water Code, are  
2 amended to read as follows:

3 (c) If the board [~~commission~~] believes that an  
4 appropriation or permit should be declared forfeited under this  
5 section or any other sections of this code, it should give the  
6 appropriator or permittee 30 days notice and provide the  
7 appropriator or permittee [~~him~~] with an opportunity to be heard.

8 (d) After the hearing, the board [~~commission~~] by entering an  
9 order of record may cancel the appropriation in whole or part. The  
10 board [~~commission~~] shall immediately transmit a certified copy of  
11 the cancellation order by certified mail to the county clerk of the  
12 county in which the permit is recorded. The county clerk shall  
13 record the cancellation order.

14 SECTION 67. Sections 11.147(b), (c), (d), (e), (e-1),  
15 (e-3), (f), and (g), Water Code, are amended to read as follows:

16 (b) In its consideration of an application for a permit to  
17 store, take, or divert water, the board [~~commission~~] shall assess  
18 the effects, if any, of the issuance of the permit on the bays and  
19 estuaries of Texas. For permits issued within an area that is 200  
20 river miles of the coast, to commence from the mouth of the river  
21 thence inland, the board [~~commission~~] shall include in the permit  
22 any conditions considered necessary to maintain beneficial inflows  
23 to any affected bay and estuary system, to the extent practicable  
24 when considering all public interests and the studies mandated by  
25 Section 16.058 as evaluated under Section 11.1491.

26 (c) For the purposes of making a determination under  
27 Subsection (b) [~~of this section~~], the board [~~commission~~] shall

1 consider among other factors:

2 (1) the need for periodic freshwater inflows to supply  
3 nutrients and modify salinity to preserve the sound environment of  
4 the bay or estuary, using any available information, including  
5 studies and plans specified in Section 11.1491 [~~of this code~~] and  
6 other studies considered by the board [~~commission~~] to be reliable;  
7 together with existing circumstances, natural or otherwise, that  
8 might prevent the conditions imposed from producing benefits;

9 (2) the ecology and productivity of the affected bay  
10 and estuary system;

11 (3) the expected effects on the public welfare of not  
12 including in the permit some or all of the conditions considered  
13 necessary to maintain the beneficial inflows to the affected bay or  
14 estuary system;

15 (4) the quantity of water requested and the proposed  
16 use of water by the applicant, as well as the needs of those who  
17 would be served by the applicant;

18 (5) the expected effects on the public welfare of the  
19 failure to issue all or part of the permit being considered; and

20 (6) for purposes of this section, the declarations as  
21 to preferences for competing uses of water as found in Sections  
22 11.024 and 11.033, [~~Water Code~~], as well as the public policy  
23 statement in Section 1.003 [~~Water Code~~].

24 (d) In its consideration of an application to store, take,  
25 or divert water, the board [~~commission~~] shall include in the  
26 permit, to the extent practicable when considering all public  
27 interests, those conditions considered by the board [~~commission~~]

1 necessary to maintain existing instream uses and water quality of  
2 the stream or river to which the application applies. In  
3 determining what conditions to include in the permit under this  
4 subsection, the board [~~commission~~] shall consider among other  
5 factors:

- 6 (1) the studies mandated by Section 16.059; and
- 7 (2) any water quality assessment performed under  
8 Section 11.150.

9 (e) The board [~~commission~~] shall include in the permit, to  
10 the extent practicable when considering all public interests, those  
11 conditions considered by the board [~~commission~~] necessary to  
12 maintain fish and wildlife habitats. In determining what  
13 conditions to include in the permit under this subsection, the  
14 board [~~commission~~] shall consider any assessment performed under  
15 Section 11.152.

16 (e-1) Any permit for a new appropriation of water or an  
17 amendment to an existing water right that increases the amount of  
18 water authorized to be stored, taken, or diverted must include a  
19 provision allowing the board [~~commission~~] to adjust the conditions  
20 included in the permit or amended water right to provide for  
21 protection of instream flows or freshwater inflows. With respect  
22 to an amended water right, the provision may not allow the board  
23 [~~commission~~] to adjust a condition of the amendment other than a  
24 condition that applies only to the increase in the amount of water  
25 to be stored, taken, or diverted authorized by the amendment. This  
26 subsection does not affect an appropriation of or an authorization  
27 to store, take, or divert water under a permit or amendment to a

1 water right issued before September 1, 2007. The board  
2 [~~commission~~] shall adjust the conditions if the board [~~commission~~]  
3 determines, through an expedited public comment process, that such  
4 an adjustment is appropriate to achieve compliance with applicable  
5 environmental flow standards adopted under Section 11.1471. The  
6 adjustment:

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

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

20 (3) must be based on appropriate consideration of any  
21 voluntary contributions to the Texas Water Trust, and of any  
22 voluntary amendments to existing water rights to change the use of a  
23 specified quantity of water to or add a use of a specified quantity  
24 of water for instream flows dedicated to environmental needs or bay  
25 and estuary inflows as authorized by Section 11.0237(a), that  
26 actually contribute toward meeting the applicable environmental  
27 flow standards.

1           (e-3) Notwithstanding Subsections (b)-(e), for the purpose  
2 of determining the environmental flow conditions necessary to  
3 maintain freshwater inflows to an affected bay and estuary system,  
4 existing instream uses and water quality of a stream or river, or  
5 fish and aquatic wildlife habitats, the board [~~commission~~] shall  
6 apply any applicable environmental flow standard, including any  
7 environmental flow set-aside, adopted under Section 11.1471  
8 instead of considering the factors specified by those subsections.

9           (f) On receipt of an application for a permit to store,  
10 take, or divert water, the board [~~commission~~] shall send a copy of  
11 the permit application and any subsequent amendments to the Parks  
12 and Wildlife Department. At its option, the Parks and Wildlife  
13 Department may be a party in hearings on applications for permits to  
14 store, take, or divert water. In making a final decision on any  
15 application for a permit, the board [~~commission~~], in addition to  
16 other information, evidence, and testimony presented, shall  
17 consider all information, evidence, and testimony presented by the  
18 Parks and Wildlife Department [~~and the board~~].

19           (g) The failure of the Parks and Wildlife Department to  
20 appear as a party does not relieve the board [~~commission~~] of the  
21 requirements of this section.

22           SECTION 68. Sections 11.1471(a), (b), (d), (e), and (f),  
23 Water Code, are amended to read as follows:

24           (a) The board [~~commission~~] by rule shall:

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

1 reasonable considering other public interests and other relevant  
2 factors;

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

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

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

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

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

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

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

27 (5) any comments submitted by the advisory group to

1 the board [~~commission~~] under Section 11.02362(q);

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

4 (7) economic factors;

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

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

10 (10) any other appropriate information.

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

22 (e) An environmental flow set-aside established under  
23 Subsection (a)(2) for a river basin and bay system other than the  
24 middle and lower Rio Grande must be assigned a priority date  
25 corresponding to the date the board [~~commission~~] receives  
26 environmental flow regime recommendations from the applicable  
27 basin and bay expert science team and be included in the appropriate

1 water availability models in connection with an application for a  
2 permit for a new appropriation or for an amendment to an existing  
3 water right that increases the amount of water authorized to be  
4 stored, taken, or diverted.

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

22 SECTION 69. Section 11.148, Water Code, is amended to read  
23 as follows:

24 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND  
25 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR  
26 ENVIRONMENTAL FLOWS. (a) Permit conditions relating to beneficial  
27 inflows to affected bays and estuaries and instream uses may be

1 suspended by the board [~~commission~~] if the board [~~commission~~] finds  
2 that an emergency exists and cannot practically be resolved in  
3 other ways.

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

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

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

26 SECTION 70. Section 11.1491, Water Code, is amended to read  
27 as follows:

1           Sec. 11.1491. EVALUATION OF BAYS AND ESTUARIES DATA. (a)  
2 The Parks and Wildlife Department and the board [~~commission~~] shall  
3 have joint responsibility to review the studies prepared under  
4 Section 16.058, to determine inflow conditions necessary for the  
5 bays and estuaries, and to provide information necessary for water  
6 resources management. Each agency shall designate an employee to  
7 share equally in the oversight of the program. Other  
8 responsibilities shall be divided between the Parks and Wildlife  
9 Department and the board [~~commission~~] to maximize present in-house  
10 capabilities of personnel and to minimize costs to the state. Each  
11 agency shall have reasonable access to all information produced by  
12 the other agency. Publication of reports completed under this  
13 section shall be submitted for comment to the board [~~commission~~],  
14 the Parks and Wildlife Department, the advisory group, the science  
15 advisory committee, and any applicable basin and bay area  
16 stakeholders committee and basin and bay expert science team.

17           (b) [~~(c)~~] The board may authorize the use of money from the  
18 research and planning fund established by Chapter 15 [~~of this code~~]  
19 to accomplish the purposes of this section. These funds shall be  
20 used by the board [~~commission~~] in cooperation with the Parks and  
21 Wildlife Department for interagency contracts with cooperating  
22 agencies and universities, and contracts with private sector  
23 establishments, as necessary, to accomplish the purposes of this  
24 section.

25           SECTION 71. Section 11.150, Water Code, is amended to read  
26 as follows:

27           Sec. 11.150. EFFECTS OF PERMITS ON WATER QUALITY. In

1 consideration of an application for a permit under this subchapter,  
2 the board [~~commission~~] shall assess the effects, if any, of the  
3 issuance of the permit on water quality in this state.

4 SECTION 72. Section 11.1501, Water Code, is amended to read  
5 as follows:

6 Sec. 11.1501. CONSIDERATION AND REVISION OF PLANS. In  
7 considering an application for a permit to store, take, or divert  
8 surface water, or for an amendment to a permit, certified filing, or  
9 certificate of adjudication, the board [~~commission~~] shall consider  
10 the state water plan and any approved regional water plan for the  
11 area or areas in which the water is proposed to be stored, diverted,  
12 or used.

13 SECTION 73. Section 11.151, Water Code, is amended to read  
14 as follows:

15 Sec. 11.151. EFFECTS OF PERMITS ON GROUNDWATER. In  
16 considering an application for a permit to store, take, or divert  
17 surface water, the board [~~commission~~] shall consider the effects,  
18 if any, on groundwater or groundwater recharge.

19 SECTION 74. Section 11.152, Water Code, is amended to read  
20 as follows:

21 Sec. 11.152. ASSESSMENT OF EFFECTS OF PERMITS ON FISH AND  
22 WILDLIFE HABITATS. In its consideration of an application for a  
23 permit to store, take, or divert water in excess of 5,000 acre feet  
24 per year, the board [~~commission~~] shall assess the effects, if any,  
25 on the issuance of the permit on fish and wildlife habitats and may  
26 require the applicant to take reasonable actions to mitigate  
27 adverse impacts on such habitat. In determining whether to require

1 an applicant to mitigate adverse impacts on a habitat, the board  
2 [~~commission~~] may consider any net benefit to the habitat produced  
3 by the project. The board [~~commission~~] shall offset against any  
4 mitigation required by the U.S. Fish and Wildlife Service pursuant  
5 to 33 C.F.R. Parts 320-330 any mitigation authorized by this  
6 section.

7 SECTION 75. Section 11.153(c), Water Code, is amended to  
8 read as follows:

9 (c) This section does not preclude the board [~~commission~~]  
10 from considering an aquifer storage and recovery project to be a  
11 component of a project permitted under this chapter that is not  
12 required to be based on the continuous availability of historic,  
13 normal stream flow.

14 SECTION 76. Sections 11.171(3) and (4), Water Code, are  
15 amended to read as follows:

16 (3) "Certificate of adjudication" means a certificate  
17 issued by the commission under former Section 11.323 [~~of this~~  
18 ~~code~~].

19 (4) "Permit" means an authorization by the board or by  
20 the commission under former law granting a person the right to use  
21 water.

22 SECTION 77. Section 11.173(b), Water Code, is amended to  
23 read as follows:

24 (b) A permit, certified filing, or certificate of  
25 adjudication or a portion of a permit, certified filing, or  
26 certificate of adjudication is exempt from cancellation under  
27 Subsection (a):

1           (1) to the extent of the owner's participation in the  
2 Conservation Reserve Program authorized by the Food Security Act,  
3 Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985)  
4 or a similar governmental program;

5           (2) if a significant portion of the water authorized  
6 to be used pursuant to a permit, certified filing, or certificate of  
7 adjudication has been used in accordance with a specific  
8 recommendation for meeting a water need included in the regional  
9 water plan approved pursuant to Section 16.053;

10           (3) if the permit, certified filing, or certificate of  
11 adjudication:

12                 (A) was obtained to meet demonstrated long-term  
13 public water supply or electric generation needs as evidenced by a  
14 water management plan developed by the holder; and

15                 (B) is consistent with projections of future  
16 water needs contained in the state water plan;

17           (4) if the permit, certified filing, or certificate of  
18 adjudication was obtained as the result of the construction of a  
19 reservoir funded, in whole or in part, by the holder of the permit,  
20 certified filing, or certificate of adjudication as part of the  
21 holder's long-term water planning; or

22           (5) to the extent the nonuse resulted from:

23                 (A) the implementation of water conservation  
24 measures under a water conservation plan submitted by the holder of  
25 the permit, certified filing, or certificate of adjudication as  
26 evidenced by implementation reports submitted by the holder;

27                 (B) a suspension, adjustment, or other

1 restriction on the use of the water authorized to be appropriated  
2 under the permit, certified filing, or certificate of adjudication  
3 imposed under an order issued by the executive administrator  
4 [~~director~~]; or

5 (C) an inability to appropriate the water  
6 authorized to be appropriated under the permit, certified filing,  
7 or certificate of adjudication due to drought conditions.

8 SECTION 78. Section 11.174, Water Code, is amended to read  
9 as follows:

10 Sec. 11.174. BOARD [~~COMMISSION~~] MAY INITIATE PROCEEDINGS.  
11 When the board [~~commission~~] finds that its records do not show that  
12 some portion of the water has been used during the past 10 years,  
13 the executive administrator [~~director~~] may initiate proceedings,  
14 terminated by public hearing, to cancel the permit, certified  
15 filing, or certificate of adjudication in whole or in part.

16 SECTION 79. Section 11.175, Water Code, is amended to read  
17 as follows:

18 Sec. 11.175. NOTICE. (a) At least 45 days before the date  
19 of the hearing, the board [~~commission~~] shall send notice of the  
20 hearing to the holder of the permit, certified filing, or  
21 certificate of adjudication being considered for cancellation in  
22 whole or in part. Notice shall be sent by certified mail, return  
23 receipt requested, to the last address shown by the records of the  
24 board [~~commission~~]. The board [~~commission~~] shall also send notice  
25 by regular mail to all other holders of permits, certified filings,  
26 certificates of adjudication, and claims of unadjudicated water  
27 rights filed pursuant to former Section 11.303 [~~of this code~~] in the

1 same watershed.

2 (b) The board [~~commission~~] shall also have the notice of the  
3 hearing published once a week for two consecutive weeks, at least 30  
4 days before the date of the hearing, in a newspaper published in  
5 each county in which diversion of water from the source of supply  
6 was authorized or proposed to be made and in each county in which  
7 the water was authorized or proposed to be used, as shown by the  
8 records of the board [~~commission~~]. If in any such county no  
9 newspaper is published, then the notice may be published in a  
10 newspaper having general circulation in the county.

11 SECTION 80. Section 11.176(a), Water Code, is amended to  
12 read as follows:

13 (a) Except as provided by Subsection (b) [~~of this section~~],  
14 the board [~~commission~~] shall hold a hearing and shall give the  
15 holder of the permit, certified filing, or certificate of  
16 adjudication and other interested persons an opportunity to be  
17 heard and to present evidence on any matter pertinent to the  
18 questions at issue.

19 SECTION 81. Section 11.177, Water Code, is amended to read  
20 as follows:

21 Sec. 11.177. BOARD [~~COMMISSION~~] FINDING; ACTION. (a) At  
22 the conclusion of the hearing, the board [~~commission~~] shall cancel  
23 the permit, certified filing, or certificate of adjudication in  
24 whole or in part to the extent that it finds that:

25 (1) the water or any portion of the water appropriated  
26 under the permit, certified filing, or certificate of adjudication  
27 has not been put to an authorized beneficial use during the 10-year

1 period; and

2 (2) the holder has not used reasonable diligence in  
3 applying the water or the unused portion of the water to an  
4 authorized beneficial use or is otherwise unjustified in the  
5 nonuse.

6 (b) In determining what constitutes reasonable diligence or  
7 a justified nonuse as used in Subsection (a)(2), the board  
8 [~~commission~~] shall give consideration to:

9 (1) whether sufficient water is available in the  
10 source of supply to meet all or part of the appropriation during the  
11 10-year period of nonuse;

12 (2) whether the nonuse is justified by the holder's  
13 participation in the federal Conservation Reserve Program or a  
14 similar governmental program as provided by Section 11.173(b)(1);

15 (3) whether the existing or proposed authorized  
16 purpose and place of use are consistent with an approved regional  
17 water plan as provided by Section 16.053;

18 (4) whether the permit, certified filing, or  
19 certificate of adjudication has been deposited into the Texas Water  
20 Bank as provided by Sections 15.7031 and 15.704 or whether it can be  
21 shown that the water right or water available under the right is  
22 currently being made available for purchase through private  
23 marketing efforts; or

24 (5) whether the permit, certified filing, or  
25 certificate of adjudication has been reserved to provide for  
26 instream flows or bay and estuary inflows.

27 SECTION 82. Section 11.183, Water Code, is amended to read

1 as follows:

2           Sec. 11.183. RESERVOIR. If the holder of a permit,  
3 certified filing, or certificate of adjudication has facilities for  
4 the storage of water in a reservoir, the board [~~commission~~] may  
5 allow the holder [~~him~~] to retain the impoundment to the extent of  
6 the conservation storage capacity of the reservoir for domestic,  
7 livestock, or recreation purposes.

8           SECTION 83. Section 11.203, Water Code, is amended to read  
9 as follows:

10           Sec. 11.203. ARTESIAN WELL: DRILLING RECORD. A person who  
11 drills an artesian well or has one drilled shall keep a complete and  
12 accurate record of the depth, thickness, and character of the  
13 different strata penetrated and when the well is completed shall  
14 transmit a copy of the record to the board [~~commission~~] by  
15 registered or certified mail.

16           SECTION 84. Section 11.204, Water Code, is amended to read  
17 as follows:

18           Sec. 11.204. REPORT OF NEW ARTESIAN WELL. Within one year  
19 after an artesian well is drilled, the owner or operator shall  
20 transmit to the board [~~commission~~] a sworn report stating the  
21 result of the drilling operation, the use to which the water will be  
22 applied, and the contemplated extent of the use.

23           SECTION 85. Section 11.206, Water Code, is amended to read  
24 as follows:

25           Sec. 11.206. IMPROPERLY CASED WELL: NUISANCE. An artesian  
26 well that is not tightly cased, capped, and furnished with  
27 mechanical appliances that readily and effectively prevent water

1 from flowing out of the well and running over the surface of the  
2 ground above the well or wasting through the strata through which it  
3 passes is a public nuisance and subject to abatement by the  
4 executive administrator [~~director~~].

5 SECTION 86. Sections 11.207(a) and (b), Water Code, are  
6 amended to read as follows:

7 (a) Not later than March 1 of each year, a person who during  
8 any part of the preceding calendar year owned or operated an  
9 artesian well for any purpose other than domestic use shall file a  
10 report to the board [~~commission~~] on a form supplied by the board  
11 [~~commission~~].

12 (b) The report shall state:

13 (1) the quantity of water which was obtained from the  
14 well;

15 (2) the nature of the uses to which the water was  
16 applied;

17 (3) the change in the level of the well's water table;  
18 and

19 (4) other information required by the board  
20 [~~commission~~].

21 SECTION 87. Section 11.325, Water Code, is amended to read  
22 as follows:

23 Sec. 11.325. WATER DIVISIONS. The board [~~commission~~] shall  
24 divide the state into water divisions for the purpose of  
25 administering adjudicated water rights. Water divisions may be  
26 created from time to time as the necessity arises. The divisions  
27 shall be constituted to secure the best protection to the holders of

1 water rights and the most economical supervision on the part of the  
2 state.

3 SECTION 88. Section 11.326, Water Code, is amended to read  
4 as follows:

5 Sec. 11.326. APPOINTMENT OF WATERMASTER. (a) The  
6 executive administrator [~~director~~] may appoint one watermaster for  
7 each water division.

8 (b) A watermaster holds office until a successor is  
9 appointed. The executive administrator [~~director~~] may remove a  
10 watermaster at any time.

11 (c) The executive administrator [~~director~~] may employ  
12 assistant watermasters and other employees necessary to aid a  
13 watermaster in the discharge of the watermaster's [~~his~~] duties.

14 (d) In a water division in which the office of watermaster  
15 is vacant, the executive administrator [~~director~~] has the powers of  
16 a watermaster.

17 (e) The executive administrator [~~director~~] shall supervise  
18 and generally direct the watermaster in the performance of the  
19 watermaster's [~~his~~] duties as defined in Section 11.327. A  
20 watermaster is responsible to the executive administrator  
21 [~~director~~] for the proper performance of the watermaster's [~~his~~]  
22 duties.

23 (f) A person dissatisfied with any action of a watermaster  
24 may apply to the executive administrator [~~director~~] for relief.

25 (g) For a water basin in which a watermaster is not  
26 appointed, the executive administrator [~~director~~] shall:

27 (1) evaluate the water basin at least once every five

1 years to determine whether a watermaster should be appointed; and

2 (2) report the findings and make recommendations to  
3 the board [~~commission~~].

4 (h) The board [~~commission~~] shall:

5 (1) determine the criteria or risk factors to be  
6 considered in an evaluation under Subsection (g); and

7 (2) include the findings and recommendations under  
8 Subsection (g) in the board's [~~commission's~~] biennial report to the  
9 legislature.

10 SECTION 89. Sections 11.3261(a), (c), (d), and (e), Water  
11 Code, are amended to read as follows:

12 (a) The executive administrator [~~director~~] shall establish  
13 a watermaster advisory committee consisting of a minimum of nine  
14 members, but no more than 15 members, who are holders of water  
15 rights or representatives of holders of water rights in the water  
16 division of a watermaster. In appointing members of the advisory  
17 committee the executive administrator [~~director~~] shall consider  
18 geographic representation, amount of water rights held, different  
19 types of holders of water rights and users such as water districts,  
20 municipal suppliers, irrigators, and industrial users, and  
21 experience and knowledge in water management practices.

22 (c) An advisory committee member shall serve a term of two  
23 years from the date of initial appointment by the executive  
24 administrator [~~director~~] and hold office until a successor is  
25 appointed.

26 (d) The advisory committee shall meet within 30 days  
27 following initial appointment by the executive administrator

1 [~~director~~] and elect a presiding officer who shall serve on an  
2 annual basis. Following the first meeting, the committee shall  
3 meet regularly as necessary.

4 (e) The advisory committee's duties include:

5 (1) providing recommendations to the executive  
6 administrator [~~director~~] regarding activities of benefit to the  
7 holders of water rights in the administration and distribution of  
8 water to holders of water rights;

9 (2) review and comment to the executive administrator  
10 [~~director~~] on the annual budget of the watermaster operations; and

11 (3) other duties as may be requested by the executive  
12 administrator [~~director~~] with regard to the watermaster operations  
13 or as requested by holders of water rights in a water division which  
14 the committee deems of benefit to the administration of water  
15 rights in water divisions.

16 SECTION 90. Section 11.327(d), Water Code, is amended to  
17 read as follows:

18 (d) A watermaster's duties shall not include activities  
19 which relate to other programs of the board [~~commission~~], except in  
20 situations of imminent threat to public health and safety or the  
21 environment.

22 SECTION 91. Sections 11.3271(e), (f), (g), (h), and (i),  
23 Water Code, are amended to read as follows:

24 (e) The watermaster's duties do not include activities that  
25 relate to other programs of the board [~~commission~~], except as  
26 provided by this section. The watermaster's duties shall include  
27 activities that relate to situations of imminent threat to public

1 health and safety or the environment. The board [~~commission~~] shall  
2 adopt rules:

3 (1) defining situations of imminent threat under this  
4 section; and

5 (2) addressing the watermaster's duties in response to  
6 terrorism.

7 (f) The watermaster may store in a reservoir for release at  
8 a later time water in transit that is being conveyed down the banks  
9 and bed of the Rio Grande under a permit issued by the board  
10 [~~commission~~] and in accordance with rules prescribed by the board  
11 [~~commission~~]. In this section, "water in transit" means privately  
12 owned water, not including state water, that a person has pumped  
13 from an underground reservoir and that is in transit between the  
14 point of discharge into the river and the place of use or the point  
15 of diversion by a person who has contracted with the owner of the  
16 water to purchase the water. The contract must specify that the  
17 contract is for the purchase and delivery of a specified amount of  
18 water less the carriage losses incurred in transit, as described  
19 and measured according to board [~~commission~~] rules.

20 (g) The watermaster may store water under Subsection (f)  
21 only if the storage does not hinder the ability of any other holders  
22 of Rio Grande surface water rights to store the maximum authorized  
23 capacity in a reservoir as specified by board [~~commission~~] rules  
24 and relevant permits, certified filings, or certificates of  
25 adjudication.

26 (h) Before granting a permit to convey water down the banks  
27 and bed of the Rio Grande, the board [~~commission~~] shall adopt rules

1 that provide for the methods and procedures by which the  
2 watermaster shall account for any discharge, delivery, conveyance,  
3 storage, diversion, or associated loss of water conveyed down the  
4 banks and bed of the Rio Grande. A permit to convey water down the  
5 banks and bed of the Rio Grande may not allow the permit holder to  
6 share in any beneficial state water inflows into the Rio Grande.  
7 The permit holder is entitled to convey only the amount of water  
8 specified in the permit, less the carriage losses incurred in  
9 transit, as described and measured according to board [~~commission~~]  
10 rules. A rule adopted by the board [~~commission~~] under this  
11 subsection must be consistent with the Treaty Relating to the  
12 Utilization of the Waters of the Colorado and Tijuana Rivers, and of  
13 the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of  
14 Mexico, concluded by the United States and the United Mexican  
15 States on February 3, 1944, and with any minute order adopted by the  
16 International Boundary and Water Commission.

17 (i) In considering an application for a permit to convey  
18 water down the banks and bed of the Rio Grande, the board  
19 [~~commission~~] shall consider the quality of the water to be  
20 conveyed. The board [~~commission~~] may not issue a permit if it  
21 determines that the water to be conveyed would degrade the water  
22 quality of the Rio Grande.

23 SECTION 92. Section [11.3271\(j\)](#), Water Code, as added by  
24 Chapter 385 (S.B. 1902), Acts of the 78th Legislature, Regular  
25 Session, 2003, is amended to read as follows:

26 (j) Notwithstanding any other law, the watermaster is the  
27 official recorder for all instruments, including deeds, deeds of

1 trust, financing statements, security agreements, and liens, that  
2 the board [~~commission~~] authorizes or requires to be filed in  
3 connection with water rights relating to water in the lower,  
4 middle, or upper basin of the Rio Grande that are subject to a  
5 permit, certified filing, or certificate of adjudication. An  
6 instrument shall be filed with the watermaster under this  
7 subsection in the same manner as required by other law for the same  
8 type of instrument. The filing of an instrument under this  
9 subsection results in the same legal and administrative status and  
10 consequences as a filing under other law for the same type of  
11 instrument. An instrument filed under this subsection shall be  
12 construed by a court, financial institution, or other affected  
13 person in the same manner as an instrument of the same type that is  
14 filed under other law. The watermaster may charge and collect a fee  
15 for the recordation of instruments under this subsection in the  
16 same amount as the fee collected by the county clerk of Cameron  
17 County for the recordation of similar instruments. The board  
18 [~~commission~~] by rule shall prescribe the procedures necessary for  
19 the proper implementation of this subsection, including reasonable  
20 transition provisions, if appropriate.

21 SECTION 93. Sections [11.329](#)(a), (b), (c), (f), and (g),  
22 Water Code, are amended to read as follows:

23 (a) The board [~~commission~~] shall pay the compensation and  
24 necessary expenses of a watermaster, assistant watermasters, and  
25 other necessary employees, but the holders of water rights that  
26 have been determined or adjudicated and are to be administered by  
27 the watermaster shall reimburse the board [~~commission~~] for the

1 compensation and expenses. Necessary expenses shall be limited to  
2 costs associated with streamflow measurement and monitoring, water  
3 accounting, assessment billing and collection associated with a  
4 watermaster's operation, and other duties a watermaster may be  
5 required to perform under this subchapter.

6 (b) After the adjudication decree becomes final, and each  
7 fiscal year thereafter, the executive administrator [~~director~~]  
8 shall provide notice to each holder of water rights under the  
9 decree, at least 30 days prior to the board's [~~commission's~~] holding  
10 a public hearing as provided in Subsection (c), of the proposed  
11 budget for their watermaster operations showing the amount of  
12 compensation and expenses that will be required annually for the  
13 administration of the water rights so determined. This budget  
14 shall be furnished to the watermaster advisory committee for  
15 comment at least 30 days prior to notification to each holder of  
16 water rights.

17 (c) The board [~~commission~~] shall hold a public hearing on  
18 the proposed fiscal year budget for each watermaster operation.  
19 The board [~~commission~~] shall determine the apportionment of the  
20 costs of administration of adjudicated water rights among the  
21 holders of the rights. After a public hearing, the board  
22 [~~commission~~] shall issue an order assessing the annual cost against  
23 the holders of water rights to whom the water will be distributed  
24 under the final decree. The board [~~commission~~] shall equitably  
25 apportion the costs. The executive administrator [~~director~~] may  
26 provide for payments in installments and shall specify the dates by  
27 which payments shall be made to the board [~~commission~~]. At the

1 request of the watermaster advisory committee the board  
2 [~~commission~~] may modify a fiscal year budget for any water  
3 division.

4 (f) An order of the board [~~commission~~] assessing costs  
5 remains in effect until the board [~~commission~~] issues a further  
6 order. The board [~~commission~~] may modify, revoke, or supersede an  
7 order assessing costs with a subsequent order. The board  
8 [~~commission~~] may issue supplementary orders from time to time to  
9 apply to new diversions.

10 (g) The board [~~commission~~] may not assess costs under this  
11 section against a holder of a non-priority hydroelectric right that  
12 owns or operates privately owned facilities that collectively have  
13 a capacity of less than two megawatts or against a holder of a water  
14 right placed in the Texas Water Trust for a term of at least 20  
15 years.

16 SECTION 94. Section 11.329(d), Water Code, as amended by  
17 Chapters 333 (H.B. 3231) and 696 (S.B. 1406), Acts of the 75th  
18 Legislature, Regular Session, 1997, is reenacted and amended to  
19 read as follows:

20 (d) The executive administrator [~~director~~] shall collect  
21 the assessments and shall account for assessments separately for  
22 each water division and shall deposit assessments collected to a  
23 special fund known as the watermaster fund established and governed  
24 by Section 11.3291.

25 SECTION 95. Sections 11.3291(a), (b), (d), and (e), Water  
26 Code, are amended to read as follows:

27 (a) The watermaster fund is created as a special fund in the

1 state treasury and shall be administered by the board [~~commission~~]  
2 under this subchapter and rules adopted by the board [~~commission~~].

3 (b) The legislature hereby appropriates without further  
4 legislative action any funds deposited in the watermaster  
5 [~~watermaster's~~] fund as provided in this subchapter. The  
6 watermaster fund shall be used:

7 (1) to pay the compensation and expenses of the  
8 watermaster in each water division;

9 (2) to pay expenditures for equipment, facilities, and  
10 capital expenditures necessary to the watermaster operation when  
11 recommended by the watermaster advisory committee and the executive  
12 administrator [~~director~~] and approved by the board [~~commission~~]  
13 when hearings are required as provided in Section [11.329](#); and

14 (3) to pay into the general revenue fund for use  
15 without further appropriation for purposes of providing overhead  
16 and administrative expenses of the board [~~commission~~] in an amount  
17 not greater than 10 percent times the approved annual budget under  
18 this subchapter in a water division. Any amounts not used in one  
19 fiscal year shall be carried over and used for the following fiscal  
20 year's operational expenses of the watermaster.

21 (d) The watermaster fund shall consist of:

22 (1) fees collected in each water division;

23 (2) money from gifts, grants, or donations to the fund  
24 for designated or general lawful use; and

25 (3) money from any other source designated by the  
26 legislature or the board [~~commission~~].

27 (e) The board [~~commission~~] may invest, reinvest, and direct

1 the investment of any available money in the fund as provided by law  
2 for the investment of money under Section 404.024, Government Code.

3 SECTION 96. Section 11.330, Water Code, is amended to read  
4 as follows:

5 Sec. 11.330. OUTLET FOR FREE PASSAGE OF WATER. The owner of  
6 any works for the diversion or storage of water shall maintain a  
7 substantial headgate at the point of diversion, or a gate on each  
8 discharge pipe of a pumping plant, constructed so that it can be  
9 locked at the proper place by the watermaster, or a suitable outlet  
10 in a dam to allow the free passage of water that the owner of the dam  
11 is not entitled to divert or impound. The board [~~commission~~] shall  
12 adopt rules, and the executive administrator [~~director~~] shall  
13 enforce the rules, governing the type and location of the headgates  
14 or gates and the outlets to allow the free passage of water.

15 SECTION 97. Section 11.331, Water Code, is amended to read  
16 as follows:

17 Sec. 11.331. MEASURING DEVICES. The board [~~commission~~], by  
18 rule, may require the owner of any works for the diversion, taking,  
19 storage, or distribution of water to construct and maintain  
20 suitable measuring devices at points that will enable the  
21 watermaster to determine the quantities of water to be diverted,  
22 taken, stored, released, or distributed in order to satisfy the  
23 rights of the respective users.

24 SECTION 98. Section 11.332, Water Code, is amended to read  
25 as follows:

26 Sec. 11.332. INSTALLATION OF FLUMES. The board  
27 [~~commission~~], by rule, may require flumes to be installed along the

1 line of any ditch if necessary for the protection of water rights or  
2 other property.

3 SECTION 99. Section 11.333, Water Code, is amended to read  
4 as follows:

5 Sec. 11.333. FAILURE TO COMPLY WITH BOARD [~~COMMISSION~~]  
6 RULES. If the owner of waterworks using state water refuses or  
7 neglects to comply with the rules adopted pursuant to Section  
8 11.330, 11.331, or 11.332 [~~of this code~~], the executive  
9 administrator [~~director~~], after 10 days' [~~days~~] notice or after a  
10 period of additional time that is reasonable under the  
11 circumstances, may direct the watermaster to make adjustments of  
12 the control works to prevent the owner of the works from diverting,  
13 taking, storing, or distributing any water until the owner [~~he~~] has  
14 fully complied with the rules.

15 SECTION 100. Section 11.334, Water Code, is amended to read  
16 as follows:

17 Sec. 11.334. SUIT AGAINST BOARD [~~COMMISSION~~] FOR INJURY.  
18 Any person who is injured by an act of the board [~~commission~~] under  
19 this subchapter may bring suit against the board [~~commission~~] to  
20 review the action or to obtain an injunction. If the water right  
21 involved has been adjudicated as provided in this subchapter as it  
22 previously existed, the court shall issue an injunction only if it  
23 is shown that the board [~~commission~~] has failed to carry into effect  
24 the decree adjudicating the water right.

25 SECTION 101. Sections 11.335(a) and (c), Water Code, are  
26 amended to read as follows:

27 (a) If any area in which water rights of record in the office

1 of the board [~~commission~~] have not been adjudicated, the claimants  
2 of the rights and the board [~~commission~~] may enter into a written  
3 agreement for their administration.

4 (c) An agreement to administer unadjudicated water rights  
5 shall be recorded in the offices of the board [~~commission~~] and of  
6 the county clerk of each county in which any of the works or lands  
7 affected by the agreement are located.

8 SECTION 102. Section 11.336, Water Code, is amended to read  
9 as follows:

10 Sec. 11.336. ADMINISTRATION OF PERMITS ISSUED AFTER  
11 ADJUDICATION. Permits, other than temporary permits, that are  
12 issued by the board [~~commission~~] to appropriate water from an  
13 adjudicated stream or segment are subject to administration in the  
14 same manner as is provided in this subchapter for adjudicated water  
15 rights.

16 SECTION 103. Section 11.337, Water Code, is amended to read  
17 as follows:

18 Sec. 11.337. HEARINGS: NOTICE AND PROCEDURE. (a) The  
19 board [~~commission~~] shall give notice of a hearing or other  
20 proceeding it orders under this subchapter in the manner prescribed  
21 in the procedural rules of the board [~~commission~~], unless this  
22 subchapter specifically provides otherwise.

23 (b) In any proceeding in any part of the state, the board  
24 [~~commission~~] may:

25 (1) take evidence, including the testimony of  
26 witnesses;

27 (2) administer oaths;

1           (3) issue subpoenas and compel the attendance of  
2 witnesses in the same manner as subpoenas are issued out of the  
3 courts of the state;

4           (4) compel witnesses to testify and give evidence; and

5           (5) order the taking of depositions and issue  
6 commissions for the taking of depositions in the same manner as  
7 depositions are obtained in civil actions.

8           (c) Evidence may be taken by a duly appointed reporter  
9 before the board [~~commission~~] or before an authorized  
10 representative who has the power to administer oaths.

11           (d) If a person neglects or refuses to comply with an order  
12 or subpoena issued by the board [~~commission~~] or refuses to testify  
13 on any matter about which the person [~~he~~] may be lawfully  
14 interrogated, the board [~~commission~~] may apply to a district court  
15 of the county in which the proceeding is held to punish the person  
16 [~~him~~] in the manner provided by law for such disobedience in civil  
17 actions.

18           (e) The board [~~commission~~] may adjourn its proceedings from  
19 time to time and from place to place.

20           (f) When a proceeding before the board [~~commission~~] is  
21 concluded, the board [~~commission~~] shall render a decision as to the  
22 matters concerning which the proceeding was held.

23           SECTION 104. Section 11.338, Water Code, is amended to read  
24 as follows:

25           Sec. 11.338. CANCELLATION OF WATER RIGHTS. Nothing in this  
26 subchapter recognizes any abandoned or cancelled water right or  
27 impairs in any way the power of the board [~~commission~~] under general

1 law to forfeit, cancel, or find abandoned any water right,  
2 including adjudicated water rights.

3 SECTION 105. Section 11.340(a), Water Code, is amended to  
4 read as follows:

5 (a) Nothing in this subchapter prevents or precludes a  
6 person who claims the right to divert water from a stream from  
7 filing and prosecuting to a conclusion a suit against other  
8 claimants of the right to divert or use water from the same stream.  
9 However, if the board [~~commission~~] has ordered a determination of  
10 water rights as provided in this subchapter or if the board  
11 [~~commission~~] orders such a determination within 90 days after  
12 notice of the filing of a suit, the suit shall be abated on the  
13 motion of the board [~~commission~~] or any party in interest as to any  
14 issues involved in the water rights determination.

15 SECTION 106. The heading to Subchapter I, Chapter 11, Water  
16 Code, is amended to read as follows:

17 SUBCHAPTER I. BOARD-APPOINTED [~~COMMISSION-APPOINTED~~] WATERMASTER

18 SECTION 107. Section 11.451, Water Code, is amended to read  
19 as follows:

20 Sec. 11.451. BOARD [~~COMMISSION~~] AUTHORITY. On petition of  
21 25 or more holders of water rights in a river basin or segment of a  
22 river basin or on its own motion the board [~~commission~~] may  
23 authorize the executive administrator [~~director~~] to appoint a  
24 watermaster for a river basin or segment of a river basin if the  
25 board [~~commission~~] finds that the rights of senior water rights  
26 holders in the basin or segment of the basin are threatened.

27 SECTION 108. Section 11.452, Water Code, is amended to read

1 as follows:

2           Sec. 11.452. PROCEDURE FOR DETERMINATION.           (a)     On  
3 receiving a petition for appointment of a watermaster or on its own  
4 motion, the board [~~commission~~] shall call and hold a hearing to  
5 determine if a need exists for appointment of a watermaster for the  
6 river basin or segment of the river basin.

7           (b) At the hearing persons who hold water rights in the  
8 river basin or segment of the river basin may appear before the  
9 board [~~commission~~] and submit testimony and evidence relating to  
10 the need for appointment of a watermaster.

11           (c) After the hearing, the board [~~commission~~] shall make a  
12 written determination as to whether a threat exists to the rights of  
13 senior water rights holders in the river basin or segment of the  
14 river basin and shall issue an order either finding that a threat  
15 exists and directing appointment of a watermaster or denying  
16 appointment of a watermaster.

17           SECTION 109. Sections 11.453(a), (c), (d), (e), (f), and  
18 (g), Water Code, are amended to read as follows:

19           (a) On issuance of an order under Section 11.452 [~~of this~~  
20 ~~chapter~~] directing appointment of a watermaster, the executive  
21 administrator [~~director~~] shall appoint a watermaster for the river  
22 basin or segment of the river basin covered by the board  
23 [~~commission~~] order.

24           (c) A watermaster holds office until a successor is  
25 appointed. The executive administrator [~~director~~] may remove a  
26 watermaster at any time.

27           (d) The executive administrator [~~director~~] may employ

1 assistant watermasters and other employees necessary to aid a  
2 watermaster in the discharge of the watermaster's [~~his~~] duties.

3 (e) In a segment or basin in which the office of watermaster  
4 is vacant, the executive administrator [~~director~~] has the powers of  
5 a watermaster.

6 (f) The executive administrator [~~director~~] shall supervise  
7 and generally direct the watermaster in the performance of the  
8 watermaster's [~~his~~] duties. A watermaster is responsible to the  
9 executive administrator [~~director~~] for the proper performance of  
10 the watermaster's [~~his~~] duties.

11 (g) A person dissatisfied with any action of a watermaster  
12 may apply to the executive administrator [~~director~~] for relief.

13 SECTION 110. Sections 11.4531(a) and (e), Water Code, are  
14 amended to read as follows:

15 (a) For each river basin or segment of a river basin for  
16 which the executive administrator [~~director~~] appoints a  
17 watermaster under this subchapter, the executive administrator  
18 [~~director~~] shall appoint a watermaster advisory committee  
19 consisting of at least nine but not more than 15 members. A member  
20 of the advisory committee must be a holder of a water right or a  
21 representative of a holder of a water right in the river basin or  
22 segment of the river basin for which the watermaster is appointed.  
23 In appointing members to the advisory committee, the executive  
24 administrator [~~director~~] shall consider:

- 25 (1) geographic representation;  
26 (2) amount of water rights held;  
27 (3) different types of holders of water rights and

1 users, including water districts, municipal suppliers, irrigators,  
2 and industrial users; and

3 (4) experience and knowledge of water management  
4 practices.

5 (e) The advisory committee shall:

6 (1) make recommendations to the executive  
7 administrator [~~director~~] regarding activities of benefit to the  
8 holders of water rights in the administration and distribution of  
9 water to holders of water rights in the river basin or segment of  
10 the river basin for which the watermaster is appointed;

11 (2) review and comment to the executive administrator  
12 [~~director~~] on the annual budget of the watermaster operation; and

13 (3) perform other advisory duties as requested by the  
14 executive administrator [~~director~~] regarding the watermaster  
15 operation or as requested by holders of water rights and considered  
16 by the committee to benefit the administration of water rights in  
17 the river basin or segment of the river basin for which the  
18 watermaster is appointed.

19 SECTION 111. Section 11.455(b), Water Code, is amended to  
20 read as follows:

21 (b) The executive administrator [~~director~~] shall deposit  
22 the assessments collected under this section to the credit of the  
23 watermaster fund.

24 SECTION 112. Section 11.456, Water Code, is amended to read  
25 as follows:

26 Sec. 11.456. MAINTAINING CURRENT STATUS. (a) To protect  
27 water rights holders in a river basin or segment of a river basin

1 during the proceedings under Section 11.452 [~~of this code~~], the  
2 board [~~commission~~] may issue an order or orders at the beginning of  
3 the proceedings under Section 11.452 [~~of this code~~] or may request  
4 the attorney general to seek injunctive relief to protect the water  
5 rights holders during the proceedings.

6 (b) On request of the board [~~commission~~], the attorney  
7 general shall seek injunctive relief to carry out the purpose of  
8 Subsection (a) [~~of this section~~].

9 (c) The board [~~commission~~] is not required to comply with  
10 the requirements of Chapter 2001, Government Code, in issuing  
11 orders under Subsection (a) [~~of this section~~] and there is no right  
12 of appeal from those orders.

13 SECTION 113. Section 11.457, Water Code, is amended to read  
14 as follows:

15 Sec. 11.457. ASSISTANCE TO WATERMASTER. The executive  
16 administrator [~~director~~] shall provide the watermaster with such  
17 staff and facilities as are necessary to carry out this subchapter.

18 SECTION 114. Section 11.551(3), Water Code, is amended to  
19 read as follows:

20 (3) "Program" means the Concho River Watermaster  
21 Program, a division of the South Texas Watermaster established by  
22 the commission [~~Texas Commission on Environmental Quality~~] and  
23 operating pursuant to rules and regulations promulgated by the  
24 board [~~Texas Commission on Environmental Quality~~].

25 SECTION 115. Section 11.556(a), Water Code, is amended to  
26 read as follows:

27 (a) The executive administrator [~~director~~] shall appoint a

1 person who resides in the area described by Section 11.553 to the  
2 South Texas Watermaster Advisory Committee.

3 SECTION 116. Sections 11.557(a), (b), and (c), Water Code,  
4 are amended to read as follows:

5 (a) The Concho River Watermaster Advisory Committee  
6 consists of 13 members appointed by the executive administrator  
7 [~~director~~] as follows:

8 (1) six members selected from nominations received,  
9 one representing the City of Paint Rock and one representing each of  
10 the following stream segments or tributaries of the Concho River:  
11 Spring Creek, Dove Creek, South Concho, Middle Concho, and main  
12 stem of the Concho below Certificate of Adjudication No. 14-1337  
13 (River Order No. 5460010000);

14 (2) six members selected from a list of candidates  
15 submitted by the City of San Angelo; and

16 (3) one member selected at the executive  
17 administrator's [~~director's~~] discretion.

18 (b) If the executive administrator [~~director~~] does not  
19 receive nominations or a list of candidates as specified under  
20 Subsection (a), after reasonable notice the executive  
21 administrator [~~director~~] may appoint to the advisory committee the  
22 appropriate number of members selected at the executive  
23 administrator's [~~director's~~] discretion.

24 (c) If a vacancy occurs on the advisory committee, the  
25 executive administrator [~~director~~] shall fill the vacancy for the  
26 unexpired term by appointing a person selected in the same manner as  
27 the person being replaced.

1 SECTION 117. Section 11.561, Water Code, is amended to read  
2 as follows:

3 Sec. 11.561. APPLICABILITY OF OTHER LAW AND BOARD  
4 [~~COMMISSION~~] RULES. A provision of this code or a rule adopted by  
5 the board [~~commission~~] that relates to watermasters and does not  
6 conflict with the provisions of this subchapter applies to the  
7 program established under this subchapter.

8 SECTION 118. Section 12.011, Water Code, is amended to read  
9 as follows:

10 Sec. 12.011. PERMIT APPLICATIONS. The board [~~commission~~]  
11 shall receive, administer, and act on all applications for permits  
12 and permit amendments:

13 (1) to appropriate public water for beneficial use or  
14 storage; or

15 (2) to construct works for the impoundment, storage,  
16 diversion, or transportation of public water.

17 SECTION 119. Section 12.012, Water Code, is amended to read  
18 as follows:

19 Sec. 12.012. EVALUATION OF OUTSTANDING PERMITS. The board  
20 [~~commission~~] shall actively and continually evaluate outstanding  
21 permits and certified filings and shall carry out measures to  
22 cancel wholly or partially the certified filings and permits that  
23 are subject to cancellation.

24 SECTION 120. Section 12.014, Water Code, is amended to read  
25 as follows:

26 Sec. 12.014. USE OF BOARD [~~COMMISSION~~] SURVEYS; POLICY.  
27 The board [~~commission~~] shall make use of surveys, studies, and

1 investigations conducted by the staff of the board [~~commission~~] in  
2 order to ascertain the character of the principal requirements of  
3 the district regional division of the watershed areas of the state  
4 for beneficial uses of water, to the end that distribution of the  
5 right to take and use state water may be more equitably administered  
6 in the public interest, that privileges granted for recognized uses  
7 may be economically coordinated so as to achieve the maximum of  
8 public value from the state's water resources, and that the  
9 distinct regional necessities for water control and conservation  
10 and for control of harmful floods may be recognized.

11 SECTION 121. Section 12.017, Water Code, is amended to read  
12 as follows:

13 Sec. 12.017. POWER TO ENTER LAND. Any member or employee of  
14 the commission or the board may enter any person's land, natural  
15 waterway, or artificial waterway for the purpose of making an  
16 investigation that would, in the judgment of the executive director  
17 or the executive administrator, as applicable, assist the  
18 commission or the board, as applicable, in the discharge of its  
19 duties.

20 SECTION 122. Section 12.051(e), Water Code, is amended to  
21 read as follows:

22 (e) In determining feasibility, the board shall consider,  
23 among other relevant factors:

24 (1) the effect of the federal project on water users on  
25 the stream as certified by the board [~~commission~~];

26 (2) the public interest to be served;

27 (3) the development of damsites to the optimum

1 potential for water conservation;

2 (4) the integration of the federal project with other  
3 water conservation activities;

4 (5) the protection of the state's interests in its  
5 water resources; and

6 (6) the engineering practicality of the federal  
7 project, including cost of construction, operation, and  
8 maintenance.

9 SECTION 123. Subchapter E, Chapter 12, Water Code, is  
10 amended by adding Section 12.111 to read as follows:

11 Sec. 12.111. FEES. (a) The executive administrator shall  
12 charge and collect the fees prescribed by law. The executive  
13 administrator shall make a record of fees prescribed when due and  
14 shall render an account to the person charged with the fees. Each  
15 fee is a separate charge and is in addition to other fees unless  
16 provided otherwise. Except as otherwise provided, a fee assessed  
17 and collected under this section shall be deposited to the credit of  
18 the water resource management account.

19 (b) Notwithstanding other provisions, the board by rule may  
20 establish due dates, schedules, and procedures for assessment,  
21 collection, and remittance of fees due the board to ensure the  
22 cost-effective administration of revenue collection and cash  
23 management programs.

24 (c) Notwithstanding other provisions, the board by rule  
25 shall establish uniform and consistent requirements for the  
26 assessment of penalties and interest for late payment of fees owed  
27 the state under the board's jurisdiction. Penalties and interest

1 established under this section may not exceed rates established for  
2 delinquent taxes under Sections 111.060 and 111.061, Tax Code.

3 (d) Except as otherwise provided by law, the fee for filing  
4 an application or petition is \$100 plus the cost of any required  
5 notice.

6 (e) The fee for filing a water permit application is \$100  
7 plus the cost of required notice.

8 (f) The fee for filing an application for fixing or  
9 adjusting rates is \$100 plus the cost of required notice.

10 (g) The fee for recording an instrument in the office of the  
11 board is \$1.25 per page.

12 (h) The fee for the use of water for irrigation is 50 cents  
13 per acre to be irrigated.

14 (i) The fee for impounding water, except under Section  
15 11.142, is 50 cents per acre-foot of storage, based on the total  
16 holding capacity of the reservoir at normal operating level.

17 (j) The fee for other uses of water not specifically named  
18 in this section is \$1 per acre-foot, except that a political  
19 subdivision may not be required to pay fees to use water for  
20 recharge of underground freshwater-bearing sands and aquifers or  
21 for abatement of natural pollution. A fee is not required for a  
22 water right that is deposited into the Texas Water Trust.

23 (k) A fee charged under Subsections (h) through (j) for one  
24 use of water under a permit from the board may not exceed \$50,000.  
25 The fee for each additional use of water under a permit for which  
26 the maximum fee is paid may not exceed \$10,000.

27 (l) The fees prescribed by Subsections (h) through (j) are

1 one-time fees, payable when the application for an appropriation is  
2 made. However, if the total fee for a permit exceeds \$1,000, the  
3 applicant shall pay one-half of the fee when the application is  
4 filed and one-half within 180 days after notice is mailed to the  
5 applicant that the permit is granted. If the applicant does not pay  
6 all of the amount owed before beginning to use water under the  
7 permit, the permit is annulled.

8 (m) If a permit is annulled, the matter reverts to the  
9 status of a pending, filed application and, on the payment of use  
10 fees as provided by Subsections (h) through (l) together with  
11 sufficient postage fees for mailing notice of hearing, the board  
12 shall set the application for hearing and proceed as provided by  
13 this code.

14 (n) A fee imposed under Subsection (j) for the use of saline  
15 tidal water for industrial processes is \$1 per acre-foot of water  
16 diverted for the industrial process, not to exceed a total fee of  
17 \$5,000.

18 (o) Notwithstanding any other law, fees collected for  
19 deposit to the water resource management account under the  
20 following statutes may be appropriated and used to protect water  
21 resources in this state, including assessment of water quality,  
22 reasonably related to the activities of any of the persons required  
23 to pay a fee under:

24 (1) Subsections (d) and (e), to the extent those fees  
25 are collected in connection with water use permits;

26 (2) Subsections (h) through (l);

27 (3) Section [11.138\(g\)](#); and

1           (4) Section 11.145.

2           SECTION 124. Section 12.113, Water Code, is amended to read  
3 as follows:

4           Sec. 12.113. DISPOSITION OF FEES, ETC. (a) The commission  
5 or board, as applicable, shall immediately deposit in the State  
6 Treasury the fees and charges it collects.

7           (b) The board [~~commission~~] shall deposit all costs  
8 collected under Subchapter G, Chapter 11, [~~of this code~~] in the  
9 State Treasury to the credit of the watermaster administration  
10 account, from which the board [~~commission~~] shall pay all expenses  
11 necessary to efficiently administer and perform the duties  
12 described in Sections 11.325 through 11.335 [~~of this code~~].

13          SECTION 125. Section 12.114, Water Code, is amended to read  
14 as follows:

15          Sec. 12.114. DISPOSITION OF FEES PENDING DETERMINATION.  
16 The commission or board, as applicable, shall hold all fees, except  
17 filing fees, which are paid with an application until the  
18 commission or board, as applicable, finally determines whether the  
19 application should be granted. If the application is not granted,  
20 the commission or board, as applicable, shall return the fees to the  
21 applicant.

22          SECTION 126. Subchapter E, Chapter 12, Water Code, is  
23 amended by adding Section 12.115 to read as follows:

24          Sec. 12.115. FEES FOR GROUNDWATER STUDIES AND  
25 DETERMINATIONS. (a) A person who sells wholesale surface water or  
26 groundwater, for uses other than domestic or livestock use, shall  
27 annually report to the board the number of acre-feet sold. The

1 board may create forms for the reports.

2 (b) Retail and wholesale water supplies may include the fees  
3 from this section in their cost of service. A person described by  
4 Subsection (a) shall pay the board a fee to be set by the board, not  
5 to exceed \$1.60 per acre-foot sold, for:

6 (1) wholesale water sold in a year, measured from  
7 September 1 through August 31 of the following year; and

8 (2) water sold in a water market subject to Chapter 14.

9 (c) The board shall use a fee collected under this section  
10 to fund the scientific studies and duties required by Section  
11 16.012 and to operate groundwater management authorities.

12 (d) The reports and fees required by this section are due  
13 not later than October 1 of each year, from sales that occurred from  
14 September 1 of the previous calendar year through August 31 of the  
15 current calendar year.

16 SECTION 127. Section 13.144, Water Code, is amended to read  
17 as follows:

18 Sec. 13.144. NOTICE OF WHOLESAL WATER SUPPLY CONTRACT. A  
19 district or authority created under Section 52, Article III, or  
20 Section 59, Article XVI, Texas Constitution, a retail public  
21 utility, a wholesale water service, or other person providing a  
22 retail public utility with a wholesale water supply shall provide  
23 the utility commission, the board, and the commission with a  
24 certified copy of any wholesale water supply contract with a retail  
25 public utility within 30 days after the date of the execution of the  
26 contract. The submission must include the amount of water being  
27 supplied, term of the contract, consideration being given for the

1 water, purpose of use, location of use, source of supply, point of  
2 delivery, limitations on the reuse of water, a disclosure of any  
3 affiliated interest between the parties to the contract, and any  
4 other condition or agreement relating to the contract.

5 SECTION 128. Section 13.148, Water Code, as added by  
6 Chapter 234 (H.B. 252), Acts of the 83rd Legislature, Regular  
7 Session, 2013, is amended to read as follows:

8 Sec. 13.148. WATER SHORTAGE REPORT. (a) A retail public  
9 utility and each entity from which the utility is obtaining  
10 wholesale water service for the utility's retail system shall  
11 notify the commission and the board when the utility or entity is  
12 reasonably certain that the water supply will be available for less  
13 than 180 days.

14 (b) The commission shall adopt rules to implement this  
15 section and prescribe the form and content of notice required under  
16 this section.

17 SECTION 129. Section 13.381, Water Code, is amended to read  
18 as follows:

19 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party  
20 to a proceeding before the utility commission, the board, or the  
21 commission is entitled to judicial review under the substantial  
22 evidence rule.

23 SECTION 130. Subtitle B, Title 2, Water Code, is amended by  
24 adding Chapter 14 to read as follows:

25 CHAPTER 14. WATER MARKETS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 14.001. DECLARATION OF POLICY. The state shall

1 develop, maintain, and make available to governmental and private  
2 sector decision-makers, world class scientific modeling,  
3 monitoring, and forecasting data for surface water and groundwater  
4 availability in a manner that optimizes economic, social, and  
5 environmental outcomes. The state's policy is to monetize surface  
6 water and groundwater through water trading free markets that  
7 establish true market value. Water shall be freely transported  
8 across the state without unjustified governmental regulation,  
9 other than regulation necessary to conserve the state's natural and  
10 ecological resources, and to ensure environmental sustainability.

11 Sec. 14.002. DEFINITIONS. In this chapter:

12 (1) "Board" means the Texas Water Development Board.

13 (2) "Commission" means the Texas Commission on  
14 Environmental Quality.

15 (3) "Market" means a system for buying, selling, and  
16 trading rights to water.

17 (4) "Railroad commission" means the Railroad  
18 Commission of Texas.

19 (5) "Retail public utility" has the meaning assigned  
20 by Section [13.002](#).

21 SUBCHAPTER B. WATER MARKETS AND CONSERVATION MEASURES

22 Sec. 14.021. STATEMENT OF POLICY. (a) It is the policy of  
23 this state, to the fullest extent possible, to promote and  
24 encourage private capital and resources to be invested, including  
25 in public-private partnerships, to develop water, including the  
26 construction of reservoirs, pipelines, treatment facilities,  
27 aquifer recharge facilities, desalination facilities, and other

1 water development assets or technologies.

2 (b) The commission is encouraged to promptly review new  
3 technologies for water development, treatment, and transportation.

4 Sec. 14.022. MARKETS. (a) The board shall administer water  
5 markets for surface water and groundwater in the state.

6 (b) The board may contract with third parties to administer  
7 one or more markets.

8 Sec. 14.023. PRIVATELY FUNDED PROJECTS. (a)  
9 Notwithstanding any other provision of this code, for a water  
10 development project that is fully or partially funded by private  
11 capital, an agency or political subdivision may not require the  
12 project to be listed on the state water plan or approved by a  
13 regional planning group as a condition to receive a permit or other  
14 authorization for the use of water.

15 (b) A political subdivision, public water supply  
16 corporation, district, or authority may enter into an agreement  
17 with one or more private entities to develop water and wastewater  
18 projects, including agreements in which one or more private  
19 entities own or operate water or wastewater development,  
20 transportation, treatment, processing, distribution, or collection  
21 facilities.

22 Sec. 14.024. RECYCLING FRACKING WATERS. A contract entered  
23 into between landowners and oil and gas exploration companies may  
24 not require the use of non-brackish water for fracking and other oil  
25 and gas exploration.

26 Sec. 14.025. CONSERVATION PRICING. A retail public utility  
27 shall, for its retail water rates, adopt a progressive pricing

1 scheme to encourage water conservation.

2 Sec. 14.026. SMALLER RETAIL WATER UTILITIES. A wholesale  
3 water provider that supplies a retail public utility that provides  
4 potable water service to a customer base of 100,000 or fewer  
5 customers shall offer that retail public utility a renewal of its  
6 wholesale water contract for a period of not less than 20 years.  
7 The wholesale water provider may not increase the water rates  
8 charged to the retail utility by more than 20 percent of the  
9 previous year's rates of the expiring contract for the first five  
10 years of the new contract, and, after the first five years may not  
11 increase the rate charged by more than 20 percent for each  
12 subsequent five-year period.

13 SECTION 131. Section 15.326, Water Code, is amended to read  
14 as follows:

15 Sec. 15.326. PREFERENCES. The board shall give political  
16 subdivisions a preferential right, but not an exclusive right, to  
17 purchase, acquire, or lease facilities and to purchase water from  
18 facilities. Preferences shall be given in these respects in accord  
19 with the provisions of Section 11.123 [~~of this code. The board and~~  
20 ~~the commission shall coordinate their efforts to meet these~~  
21 ~~objectives and to assure that the public water of this state, which~~  
22 ~~is held in trust for the use and benefit of the public, will be~~  
23 ~~conserved, developed, and utilized in the greatest practicable~~  
24 ~~measure for the public welfare].~~

25 SECTION 132. Section 15.7031(c), Water Code, is amended to  
26 read as follows:

27 (c) The dedication of any water rights placed in trust must

1 be reviewed and approved by the board [~~commission~~], in consultation  
2 with the commission [~~board~~] and the Parks and Wildlife Department.  
3 In addition, the Department of Agriculture may provide input to the  
4 board [~~commission~~], as appropriate, during the review and approval  
5 process for dedication of water rights.

6 SECTION 133. Sections 15.704(a) and (b), Water Code, are  
7 amended to read as follows:

8 (a) A water right may be deposited in the water bank for an  
9 initial term of up to 10 years, unless otherwise held in the Texas  
10 Water Trust as established under Section 15.7031 [~~of this code~~],  
11 during which time the water right is exempt from cancellation by the  
12 board [~~commission~~] under the terms of Subchapter E of Chapter 11 [~~of~~  
13 ~~this code~~]. A water right is exempt from cancellation under this  
14 subsection only once even if it has been transferred or  
15 redeposited.

16 (b) The board [~~commission~~] may not bring a cancellation  
17 action under Subchapter E of Chapter 11 [~~of this code~~] for a 10-year  
18 period following board [~~commission~~] approval of any necessary  
19 actions relating to a water right which has been transferred while  
20 on deposit in the water bank.

21 SECTION 134. Section 15.706, Water Code, is amended to read  
22 as follows:

23 Sec. 15.706. REPORTS. The [~~commission and the~~] board shall  
24 provide ready access by the commission [~~other agency~~] through  
25 manual or computer capabilities to all water rights permits, final  
26 water rights decisions, applications, amendments, contracts,  
27 computerized files, computer programs, and other information

1 related to water rights and to the operation of the water bank. The  
2 board [~~commission~~] shall provide the commission [~~board~~] with all  
3 notices of proposed water rights actions.

4 SECTION 135. Sections 16.012(b), (c), (g), (h), (i), (j),  
5 (k), (l), and (m), Water Code, are amended to read as follows:

6 (b) The executive administrator shall:

7 (1) determine suitable locations for future water  
8 facilities, including reservoir sites;

9 (2) determine suitable, cost-effective water supply  
10 alternatives on a regional basis, including voluntary means of  
11 encouraging aggressive water conservation;

12 (3) locate land best suited for irrigation;

13 (4) make estimates of the cost of proposed irrigation  
14 works and the improvement of reservoir sites;

15 (5) examine and survey reservoir sites;

16 (6) monitor the effects of fresh water inflows upon  
17 the bays and estuaries of Texas;

18 (7) monitor instream flows;

19 (8) lead a statewide effort, in coordination with  
20 federal, state, and local governments, institutions of higher  
21 education, and other interested parties, to develop a network for  
22 collecting and disseminating water resource-related information  
23 that is sufficient to support assessment of ambient water  
24 conditions statewide;

25 (9) make recommendations for optimizing the  
26 efficiency and effectiveness of water resource data collection and  
27 dissemination as necessary to ensure that basic water resource data

1 are maintained and available for Texas; ~~and]~~

2 (10) make basic data and summary information developed  
3 under this subsection accessible to state agencies and other  
4 interested persons; and

5 (11) assist groundwater management authorities in  
6 developing desired future conditions and groundwater availability  
7 for the aquifers of this state.

8 (c) In performing the duties required under Subdivisions  
9 (1), (4), (5), (6), and (7) of Subsection (b), the executive  
10 administrator shall consider advice from the Parks and Wildlife  
11 Department and the commission. In addition, the Department of  
12 Agriculture may provide advice to the executive administrator,  
13 where appropriate, regarding any of the duties to be performed  
14 under Subsection (b).

15 (g) The board ~~[No later than December 31, 1999, the~~  
16 ~~commission]~~ shall maintain a ~~[obtain or develop an updated]~~ water  
17 availability model for each ~~[six]~~ river basin in this state and  
18 shall update the models as the board determines necessary ~~[basins~~  
19 ~~as determined by the commission. The commission shall obtain or~~  
20 ~~develop an updated water availability model for all remaining river~~  
21 ~~basins no later than December 31, 2001]~~.

22 (h) ~~[Not later than December 31, 2003, the commission shall~~  
23 ~~obtain or develop an updated water supply model for the Rio Grande.]~~

24 Recognizing that the Rio Grande is an international river touching  
25 on three states of the United States and five states of the United  
26 Mexican States and draining an area larger than the State of Texas,  
27 the model for the Rio Grande basin shall encompass to the extent

1 practicable the significant water demands within the watershed of  
2 the river as well as the unique geology and hydrology of the region.  
3 The board [~~commission~~] may collect data from all jurisdictions that  
4 allocate the waters of the river, including jurisdictions outside  
5 this state.

6 (i) Within 90 days of completing a water availability model  
7 for a river basin, the board [~~commission~~] shall provide to all  
8 holders of existing permits, certified filings, and certificates of  
9 adjudication in that river basin the projected amount of water that  
10 would be available during a drought of record, for the subsequent  
11 calendar quarter.

12 (j) Within 90 days of completing a water availability model  
13 for a river basin, the board [~~commission~~] shall provide to each  
14 regional water planning group created under Section 16.053 [~~of this~~  
15 ~~code~~] in that river basin the projected amount of water that would  
16 be available if cancellation procedures were instigated under the  
17 provisions of Subchapter E, Chapter 11 [~~, of this code~~].

18 (k) Within 90 days of completing a water availability model  
19 for a river basin, the board [~~commission~~], in coordination with the  
20 Parks and Wildlife Department and with input from the Department of  
21 Agriculture and the commission, where appropriate, shall determine  
22 the potential impact of reusing municipal and industrial effluent  
23 on existing water rights, instream uses, and freshwater inflows to  
24 bays and estuaries. Within 30 days of making this determination,  
25 the board [~~commission~~] shall provide the projections to the  
26 commission [~~board~~] and each regional water planning group created  
27 under Section 16.053 [~~of this code~~] in that river basin.

1           (1) The executive administrator shall obtain or develop  
2 groundwater availability models for major and minor aquifers in  
3 coordination with groundwater management authorities, groundwater  
4 conservation districts, and regional water planning groups created  
5 under Section 16.053 that overlie the aquifers. [~~Modeling of major  
6 aquifers shall be completed not later than October 1, 2004.~~] On  
7 completing a groundwater availability model for an aquifer, the  
8 executive administrator shall provide the model to each groundwater  
9 management authority, groundwater conservation district, and each  
10 regional water planning group created under Section 16.053  
11 overlying that aquifer.

12           (m) The executive administrator may conduct surveys of  
13 entities using groundwater and surface water for municipal,  
14 industrial, power generation, or mining purposes at intervals  
15 determined appropriate by the executive administrator to gather  
16 data to be used for long-term water supply planning. Recipients of  
17 the survey shall complete and return the survey to the executive  
18 administrator. A person who fails to timely complete and return the  
19 survey is not eligible for funding from the board for board programs  
20 and is ineligible to obtain permits, permit amendments, or permit  
21 renewals from the board [~~commission~~] under Chapter 11. A person who  
22 fails to complete and return the survey commits an offense that is  
23 punishable as a Class C misdemeanor. This subsection does not apply  
24 to survey information regarding windmills used for domestic and  
25 livestock use.

26           SECTION 136. Sections 16.053(c), (e), (p), (p-2), (p-3),  
27 and (p-4), Water Code, are amended to read as follows:

1 (c) No later than 60 days after the designation of the  
2 regions under Subsection (b), the board shall designate  
3 representatives within each regional water planning area to serve  
4 as the initial coordinating body for planning. The initial  
5 coordinating body may then designate additional representatives to  
6 serve on the regional water planning group. The initial  
7 coordinating body shall designate additional representatives if  
8 necessary to ensure adequate representation from the interests  
9 comprising that region, including the public, counties,  
10 municipalities, industries, agricultural interests, environmental  
11 interests, small businesses, electric generating utilities, river  
12 authorities, water districts, and water utilities. The regional  
13 water planning group shall maintain adequate representation from  
14 those interests. In addition, the groundwater conservation  
15 districts located in [~~each management area, as defined by Section~~  
16 ~~36.001, located in~~] the regional water planning area shall appoint  
17 one representative of a groundwater conservation district located  
18 in the [~~management area and in the~~] regional water planning area to  
19 serve on the regional water planning group. In addition, one  
20 representative from each groundwater management authority located  
21 in the regional planning group shall serve on the regional planning  
22 group. In addition, representatives of the board, the Parks and  
23 Wildlife Department, the Department of Agriculture, and the State  
24 Soil and Water Conservation Board shall serve as ex officio members  
25 of each regional water planning group.

26 (e) Each regional water planning group shall submit to the  
27 development board a regional water plan that:

1           (1) is consistent with the guidance principles for the  
2 state water plan adopted by the development board under Section  
3 16.051(d);

4           (2) provides information based on data provided or  
5 approved by the development board in a format consistent with the  
6 guidelines provided by the development board under Subsection (d);

7           (2-a) is consistent with the desired future conditions  
8 adopted under Section 36.108 for the relevant aquifers located in  
9 the regional water planning area as of the most recent deadline for  
10 the board to adopt the state water plan under Section 16.051 or, at  
11 the option of the regional water planning group, established  
12 subsequent to the adoption of the most recent plan; ~~[provided,~~  
13 ~~however, that if no groundwater conservation district exists within~~  
14 ~~the area of the regional water planning group, the regional water~~  
15 ~~planning group shall determine the supply of groundwater for~~  
16 ~~regional planning purposes; the Texas Water Development Board shall~~  
17 ~~review and approve, prior to inclusion in the regional water plan,~~  
18 ~~that the groundwater supply for the regional planning group without~~  
19 ~~a groundwater conservation district in its area is physically~~  
20 ~~compatible, using the board's groundwater availability models,~~  
21 ~~with the desired future conditions adopted under Section 36.108 for~~  
22 ~~the relevant aquifers in the groundwater management area that are~~  
23 ~~regulated by groundwater conservation districts,]~~

24           (3) identifies:

25           (A) each source of water supply in the regional  
26 water planning area, including information supplied by the  
27 executive administrator on the amount of modeled available

1 groundwater in accordance with the guidelines provided by the  
2 development board under Subsections (d) and (f);

3 (B) factors specific to each source of water  
4 supply to be considered in determining whether to initiate a  
5 drought response;

6 (C) actions to be taken as part of the response;  
7 and

8 (D) existing major water infrastructure  
9 facilities that may be used for interconnections in the event of an  
10 emergency shortage of water;

11 (4) has specific provisions for water management  
12 strategies to be used during a drought of record;

13 (5) includes but is not limited to consideration of  
14 the following:

15 (A) any existing water or drought planning  
16 efforts addressing all or a portion of the region and potential  
17 impacts on public health, safety, or welfare in this state;

18 (B) approved groundwater management authority  
19 [~~conservation district~~] management plans and other plans submitted  
20 under Section 16.054;

21 (C) all potentially feasible water management  
22 strategies, including but not limited to improved conservation,  
23 reuse, and management of existing water supplies, conjunctive use,  
24 acquisition of available existing water supplies, and development  
25 of new water supplies;

26 (D) protection of existing water rights in the  
27 region;

1 (E) opportunities for and the benefits of  
2 developing regional water supply facilities or providing regional  
3 management of water supply facilities;

4 (F) appropriate provision for environmental  
5 water needs and for the effect of upstream development on the bays,  
6 estuaries, and arms of the Gulf of Mexico and the effect of plans on  
7 navigation;

8 (G) ~~[provisions in Section 11.085(k)(1) if~~  
9 ~~interbasin transfers are contemplated;~~

10 [~~(H)~~] voluntary transfer of water within the  
11 region using, but not limited to, regional water banks, sales,  
12 leases, options, subordination agreements, and financing  
13 agreements;

14 (H) [~~(I)~~] emergency transfer of water under  
15 Section 11.139, including information on the part of each permit,  
16 certified filing, or certificate of adjudication for nonmunicipal  
17 use in the region that may be transferred without causing  
18 unreasonable damage to the property of the nonmunicipal water  
19 rights holder; and

20 (I) [~~(J)~~] opportunities for and the benefits of  
21 developing large-scale desalination facilities for:

22 (i) marine seawater that serve local or  
23 regional entities; and

24 (ii) seawater or brackish groundwater that  
25 serve local or regional brackish groundwater production zones  
26 identified and designated under Section 16.060(b)(5);

27 (6) identifies river and stream segments of unique

1 ecological value and sites of unique value for the construction of  
2 reservoirs that the regional water planning group recommends for  
3 protection under Section 16.051;

4 (7) assesses the impact of the plan on unique river and  
5 stream segments identified in Subdivision (6) if the regional water  
6 planning group or the legislature determines that a site of unique  
7 ecological value exists;

8 (8) describes the impact of proposed water projects on  
9 water quality; and

10 (9) includes information on:

11 (A) projected water use and conservation in the  
12 regional water planning area; and

13 (B) the implementation of state and regional  
14 water plan projects, including water conservation strategies,  
15 necessary to meet the state's projected water demands.

16 (p) If a groundwater management authority [~~conservation~~  
17 ~~district~~] files a petition with the development board stating that  
18 a conflict requiring resolution may exist between the authority's  
19 [~~district's~~] approved management plan developed under Section  
20 36.1071 and an approved state water plan, the development board  
21 shall provide technical assistance to and facilitate coordination  
22 between the district and the involved region to resolve the  
23 conflict. Not later than the 45th day after the date the  
24 groundwater management authority [~~conservation district~~] files a  
25 petition with the development board, if the conflict has not been  
26 resolved, the authority [~~district~~] and the involved region shall  
27 mediate the conflict. The authority [~~district~~] and the involved

1 region may seek the assistance of the Center for Public Policy  
2 Dispute Resolution at The University of Texas School of Law or an  
3 alternative dispute resolution system established under Chapter  
4 152, Civil Practice and Remedies Code, in obtaining a qualified  
5 impartial third party to mediate the conflict. The cost of the  
6 mediation services must be specified in the agreement between the  
7 parties and the Center for Public Policy Dispute Resolution or the  
8 alternative dispute resolution system. If the authority [~~district~~]  
9 and the involved region cannot resolve the conflict through  
10 mediation, the development board shall resolve the conflict not  
11 later than the 60th day after the date the mediation is completed as  
12 provided by Subsections (p-1) and (p-2).

13 (p-2) If the development board determines that resolution  
14 of the conflict requires a revision of the authority's [~~district's~~]  
15 approved groundwater conservation [~~district~~] management plan, the  
16 development board shall provide information to the authority  
17 [~~district~~]. The groundwater management authority [~~district~~] shall  
18 prepare any revisions to its plan based on the information provided  
19 by the development board and shall hold, after notice, at least one  
20 public hearing at some central location readily accessible to the  
21 public within the authority [~~district~~]. The groundwater management  
22 authority [~~district~~] shall consider all public and development  
23 board comments, prepare, revise, and adopt its plan, and submit the  
24 revised plan to the development board.

25 (p-3) If the groundwater management authority [~~conservation~~  
26 ~~district~~] disagrees with the decision of the development board  
27 under Subsection (p), the authority [~~district~~] may appeal the

1 decision to a district court in Travis County. Costs for the appeal  
2 shall be set by the court hearing the appeal. An appeal under this  
3 subsection is by trial de novo.

4 (p-4) On the request of the involved region or groundwater  
5 management authority [~~conservation district~~], the development  
6 board shall include discussion of the conflict and its resolution  
7 in the state water plan that the development board provides to the  
8 governor, the lieutenant governor, and the speaker of the house of  
9 representatives under Section 16.051(e).

10 SECTION 137. Section 16.055(j), Water Code, is amended to  
11 read as follows:

12 (j) The board may enforce a violation of [~~notify the~~  
13 ~~commission if the board determines that a person or entity has~~  
14 ~~violated Subsection (h). Notwithstanding Section 7.051(b), a~~  
15 ~~violation of~~] Subsection (h) [~~is enforceable~~] in the same manner as  
16 provided by Chapter 7 for the enforcement by the commission of a  
17 violation of a provision of this code within the commission's  
18 jurisdiction or of a rule adopted by the commission under a  
19 provision of this code within the commission's jurisdiction.

20 SECTION 138. Section 16.059(e), Water Code, is amended to  
21 read as follows:

22 (e) Results of studies completed under this section shall be  
23 considered by the board [~~commission~~] in its review of any  
24 management plan, water right, or interbasin transfer.

25 SECTION 139. Section 16.196, Water Code, is amended to read  
26 as follows:

27 Sec. 16.196. PREFERENCES. The board shall give political

1 subdivisions a preferential right, but not an exclusive right, to  
2 purchase, acquire, or lease facilities and to purchase water from  
3 facilities. Preferences shall be given in these respects in accord  
4 with the provisions of Section 11.123 [~~of this code~~] relating to  
5 preferences in the appropriation and use of state water. [~~The board  
6 and the commission shall coordinate their efforts to meet these  
7 objectives and to assure that the public water of this state, which  
8 is held in trust for the use and benefit of the public, will be  
9 conserved, developed, and utilized in the greatest practicable  
10 measure for the public welfare.~~]

11 SECTION 140. Section 16.236(h), Water Code, is amended to  
12 read as follows:

13 (h) Subsection (a) [~~of this section~~] does not apply to:

14 (1) any dam, reservoir, or canal system associated  
15 with a water right issued or recognized by the board [~~commission~~];

16 (2) dams authorized by Section 11.142 [~~of this code~~];

17 (3) a levee or other improvement within the corporate  
18 limits of a city or town provided: (a) plans for the construction  
19 or maintenance or both must be approved by the city or town as a  
20 condition precedent to starting the project and (b) the city or town  
21 requires that such plans be in substantial compliance with rules  
22 and standards adopted by the commission;

23 (4) a levee or other improvement within the boundaries  
24 of any political subdivision which has qualified for the National  
25 Flood Insurance Program as authorized by the National Flood  
26 Insurance Act of 1968 (42 U.S.C. [~~(Title 42, U.S.C.,)~~] Sections  
27 4001-4127) provided: (a) plans for the construction or

1 maintenance or both must be approved by the political subdivision  
2 which is participating in the national flood insurance program as a  
3 condition precedent to starting the project and (b) the political  
4 subdivision requires that such plans be in substantial compliance  
5 with rules and standards adopted by the commission;

6 (5) projects implementing soil and water conservation  
7 practices set forth in a conservation plan with a landowner or  
8 operator and approved by the governing board of a soil and water  
9 conservation district organized under Chapter 201, Agriculture  
10 Code [~~the State Soil Conservation Law, as amended (Article 165a-4,~~  
11 ~~Vernon's Texas Civil Statutes)~~], provided that the governing board  
12 finds the practices do not significantly affect stream flooding  
13 conditions on, along, or near a state stream; or

14 (6) any levee or other improvement constructed outside  
15 of the 100-year floodway. For the purposes of this section,  
16 "100-year floodway" is defined as the channel of a stream and the  
17 adjacent land areas that must be reserved in order to discharge the  
18 100-year flood without cumulatively increasing the water surface  
19 elevation more than one foot above the 100-year flood elevation  
20 prior to encroachment.

21 SECTION 141. Section 16.237(a), Water Code, is amended to  
22 read as follows:

23 (a) If a person violates a commission rule or order adopted  
24 under Section 16.236 [~~of this code~~], the commission may assess an  
25 administrative penalty against that person in the manner [~~as~~]  
26 provided by Section 11.0842 for a violation of a rule or order  
27 adopted under Chapter 11. The penalty may be in an amount not to

1 exceed \$1,000 for each day the person is in violation of the rule or  
2 order. Each day a violation continues may be considered a separate  
3 violation for purposes of penalty assessment [~~of this code~~].

4 SECTION 142. Section 18.001, Water Code, is amended by  
5 amending Subdivision (1) and adding Subdivision (1-a) to read as  
6 follows:

7 (1) "Board" means the Texas Water Development Board.

8 (1-a) "Commission" means the Texas Commission on  
9 Environmental Quality.

10 SECTION 143. Sections 18.003(c), (e), (h), (i), and (j),  
11 Water Code, are amended to read as follows:

12 (c) A person who diverts and uses state water that consists  
13 of marine seawater under a permit required by Subsection (a) or as  
14 authorized by Subsection (b) must determine the total dissolved  
15 solids concentration of the seawater at the water source by monthly  
16 sampling and analysis and provide the data collected to the board  
17 [~~commission~~]. A person may not begin construction of a facility for  
18 the diversion of marine seawater without obtaining a permit until  
19 the person has provided data to the board [~~commission~~] based on the  
20 analysis of samples taken at the water source over a period of at  
21 least one year demonstrating that Subsection (a)(2) does not apply.  
22 A person who has begun construction of a facility for the diversion  
23 of marine seawater without obtaining a permit because the person  
24 has demonstrated that Subsection (a)(2) does not apply is not  
25 required to obtain a permit for the facility if the total dissolved  
26 solids concentration of the seawater at the water source  
27 subsequently changes so that Subsection (a)(2) applies.

1           (e) The board [~~commission~~] shall adopt rules providing an  
2 expedited procedure for acting on an application for a permit  
3 required by Subsection (a). The rules must provide for notice, an  
4 opportunity for the submission of written comment, and an  
5 opportunity for a contested case hearing regarding board  
6 [~~commission~~] actions relating to an application for a permit.

7           (h) The board [~~commission~~] by rule shall prescribe  
8 reasonable measures to minimize impingement and entrainment.

9           (i) The Parks and Wildlife Department and the General Land  
10 Office jointly shall conduct a study to identify zones in the Gulf  
11 of Mexico that are appropriate for the diversion of marine  
12 seawater, taking into account the need to protect marine organisms.  
13 Not later than September 1, 2018, the Parks and Wildlife Department  
14 and the General Land Office shall submit a report on the results of  
15 the study to the board [~~commission~~]. The report must include  
16 recommended diversion zones for designation by the board  
17 [~~commission~~] and recommendations for the number of points from  
18 which, and the rate at which, a facility may divert marine  
19 seawater. Not later than September 1, 2020, the board [~~commission~~]  
20 by rule shall designate appropriate diversion zones. A diversion  
21 zone may be contiguous to, be the same as, or overlap a discharge  
22 zone. The point or points from which a facility may divert marine  
23 seawater must be located in a diversion zone designated by the board  
24 [~~commission~~] under rules adopted under this subsection if:

25                 (1) the facility is authorized by a permit as required  
26 by Subsection (a) issued after the rules are adopted; or

27                 (2) the facility is exempt under Subsection (b) from

1 the requirement of a permit and construction of the facility begins  
2 after the rules are adopted.

3 (j) Until the board [~~commission~~] adopts rules under  
4 Subsection (i), a person must consult the Parks and Wildlife  
5 Department and the General Land Office regarding the point or  
6 points from which a facility the person proposes to construct may  
7 divert marine seawater before submitting an application for a  
8 permit for the facility if Subsection (a) applies or before  
9 beginning construction of the facility if Subsection (b) applies.

10 SECTION 144. Sections 18.004(a) and (b), Water Code, are  
11 amended to read as follows:

12 (a) With prior authorization granted under rules prescribed  
13 by the board [~~commission~~], a person may use the bed and banks of any  
14 flowing natural stream in this state or a lake, reservoir, or other  
15 impoundment in this state to convey marine seawater that has been  
16 treated so as to meet standards that are at least as stringent as  
17 the water quality standards applicable to the receiving stream or  
18 impoundment adopted by the commission.

19 (b) The board [~~commission~~] shall provide for notice and an  
20 opportunity for the submission of written comment but may not  
21 provide an opportunity for a contested case hearing regarding board  
22 [~~commission~~] actions relating to an application for an  
23 authorization under this section to use the bed and banks of a  
24 flowing natural stream to convey treated marine seawater. The  
25 board [~~commission~~] shall provide for notice, an opportunity for the  
26 submission of written comment, and an opportunity for a contested  
27 case hearing regarding board [~~commission~~] actions relating to an

1 application for an authorization under this section to use a lake,  
2 reservoir, or other impoundment to convey treated marine seawater.

3 SECTION 145. Section 26.0291(a), Water Code, is amended to  
4 read as follows:

5 (a) An annual water quality fee is imposed on:

6 (1) each wastewater discharge permit holder,  
7 including the holder of a permit issued under Section 18.005, for  
8 each wastewater discharge permit held; and

9 (2) each user of water in proportion to the user's  
10 water right, through permit or contract, as reflected in the  
11 board's [~~commission's~~] records, provided that the board  
12 [~~commission~~] by rule shall ensure that no fee shall be assessed for  
13 the portion of a municipal or industrial water right directly  
14 associated with a facility or operation for which a fee is assessed  
15 under Subdivision (1) [~~of this subsection~~].

16 SECTION 146. Chapter 35, Water Code, is amended by  
17 designating Sections 35.001 through 35.020 as Subchapter A and  
18 adding a subchapter heading to read as follows:

19 SUBCHAPTER A. GENERAL PROVISIONS

20 SECTION 147. Section 35.001, Water Code, is amended to read  
21 as follows:

22 Sec. 35.001. PURPOSE. In order to provide for the  
23 conservation, preservation, protection, recharging, and prevention  
24 of waste of the groundwater, and of groundwater reservoirs or their  
25 subdivisions, and to control subsidence caused by withdrawal of  
26 water from those groundwater reservoirs or their subdivisions,  
27 consistent with the objectives of Section 59, Article XVI, Texas

1 Constitution, groundwater management authorities shall [~~areas may~~]  
2 be created as provided by this chapter.

3 SECTION 148. Section 35.002(11), Water Code, is amended to  
4 read as follows:

5 (11) "Groundwater management authority [~~Management~~  
6 ~~area~~]" means a state agency created under Subchapter B [~~an area~~  
7 ~~designated and delineated by the Texas Water Development Board as~~  
8 ~~an area suitable for management of groundwater resources~~].

9 SECTION 149. Section 35.020, Water Code, is amended to read  
10 as follows:

11 Sec. 35.020. PUBLIC PARTICIPATION IN GROUNDWATER  
12 MANAGEMENT PROCESS. It is the policy of the state to encourage  
13 public participation in the groundwater management process in areas  
14 within a groundwater management authority [~~area~~] not represented by  
15 a groundwater conservation district.

16 SECTION 150. Chapter 35, Water Code, is amended by adding  
17 Subchapter B to read as follows:

18 SUBCHAPTER B. GROUNDWATER MANAGEMENT AUTHORITIES

19 Sec. 35.051. POLICY. Groundwater management authorities  
20 are created to assist the Texas Water Development Board in  
21 determining desired future conditions and groundwater availability  
22 of the state's aquifers.

23 Sec. 35.052. CREATION. The Texas Water Development Board  
24 shall designate a groundwater management authority for each of the  
25 state's major aquifers that the board identifies as having  
26 reasonably accessible groundwater.

27 Sec. 35.053. DESIRED FUTURE CONDITIONS. A groundwater

1 management authority shall determine desired future conditions and  
2 groundwater availability for each major aquifer and each minor  
3 aquifer within its territory. If a minor aquifer is within more  
4 than one groundwater management authority territory, the Texas  
5 Water Development Board shall designate one groundwater management  
6 authority to manage the minor aquifer.

7 Sec. 35.054. BOARD OF DIRECTORS. (a) Each groundwater  
8 management authority shall be governed by a board of seven  
9 directors appointed by the governor, with the advice and consent of  
10 the senate, to serve for six-year staggered terms. Each member of  
11 the board of directors must reside within the groundwater  
12 management authority's territory, and shall be selected from  
13 different geographic areas from within the authority's territory.

14 (b) A member of the board of directors is entitled to the  
15 same per diem compensation and reimbursement of reasonable travel  
16 expenses as a member of the board of directors of a river authority.

17 Sec. 35.055. POWERS AND DUTIES. A groundwater management  
18 authority may:

19 (1) limit groundwater production based on tract size  
20 or the spacing of wells;

21 (2) conserve, preserve, protect, and recharge  
22 groundwater;

23 (3) control subsidence;

24 (4) prevent degradation of water quality; and

25 (5) prevent waste of groundwater.

26 Sec. 35.056. RULES. (a) Groundwater management  
27 authorities may adopt such rules as may be necessary to govern their

1 operations and any duties or powers granted to them in accordance  
2 with Chapter 2001, Government Code.

3 (b) In adopting a rule under this section, a groundwater  
4 management authority shall:

5 (1) consider all groundwater uses and needs;

6 (2) develop rules that are fair and impartial;

7 (3) consider the groundwater ownership and rights  
8 described by Section 36.002;

9 (4) consider the public interest in:

10 (A) conservation, preservation, protection,  
11 recharging, and prevention of waste of groundwater, and of  
12 groundwater reservoirs or their subdivisions; and

13 (B) controlling subsidence caused by withdrawal  
14 of groundwater from those groundwater reservoirs or their  
15 subdivisions, consistent with the objectives of Section 59, Article  
16 XVI, Texas Constitution;

17 (5) consider the goals developed as part of the  
18 authority's management plan under Section 36.1071; and

19 (6) not discriminate between land that is irrigated  
20 for production and land that was irrigated for production and  
21 enrolled or participating in a federal conservation program.

22 Sec. 35.057. ENFORCEMENT; PENALTIES. (a) A groundwater  
23 management authority may enforce this chapter, Chapter 36, and its  
24 rules against a person by injunction, mandatory injunction, or  
25 other appropriate remedy in a court of competent jurisdiction.

26 (b) The groundwater management authority's board by rule  
27 may set reasonable civil penalties against a person for breach of

1 any rule of the authority not to exceed \$10,000 per day per  
2 violation, and each day of a continuing violation constitutes a  
3 separate violation.

4 (c) A penalty under this section is in addition to any other  
5 penalty provided by law and may be enforced against a person by  
6 complaints filed in the appropriate court of jurisdiction in the  
7 county in which the groundwater management authority's principal  
8 office or meeting place is located.

9 (d) In an enforcement action by a groundwater management  
10 authority against a person that is a governmental entity for a  
11 violation of authority rules, the limits on the amount of fees,  
12 costs, and penalties that an authority may impose under Section  
13 36.122, 36.205, or this section, or under a special law governing a  
14 district operating under Chapter 36, constitute a limit of  
15 liability of the governmental entity for the violation. This  
16 subsection may not be construed to prohibit the recovery by an  
17 authority of fees and costs in an action against any person that is  
18 a governmental entity.

19 (e) A groundwater management authority may, in its sole  
20 discretion, order the limitation or cessation of groundwater  
21 production for any purpose other than for domestic and livestock  
22 use in order to ensure the aquifer's water volume does not fall  
23 below the minimum water volume established by Section  
24 36.1071(e)(3)(H).

25 (f) To assist in enforcement efforts, a groundwater  
26 management authority may delegate enforcement authority under this  
27 section to one or more groundwater conservation districts to act on

1 the authority's behalf under the terms as the authority may  
2 consider appropriate. The authority may rescind or modify the  
3 delegation at any time.

4 Sec. 35.058. COSTS. (a) The costs of operation of the  
5 groundwater management authorities shall be funded by the Texas  
6 Water Development Board from the fees assessed in Section 12.115.

7 (b) A groundwater management authority may, by rule, set and  
8 charge other reasonable fees for administrative acts of the  
9 authority, and may use those fees for any purpose of the authority.

10 Sec. 35.059. CONFLICTS OF LAW. To the extent there is any  
11 conflict between a rule adopted by a groundwater conservation  
12 district and a groundwater management authority, the rules of the  
13 groundwater management authority control.

14 Sec. 35.060. SUITS. A groundwater management authority may  
15 sue and be sued. A person affected by and dissatisfied with any  
16 rule or order made by an authority, including an appeal of a  
17 decision on a permit application, may file a suit against the  
18 authority to challenge the validity of the law, rule, or order.  
19 Venue is in state district court of Travis County.

20 Sec. 35.061. MEETINGS. Meetings of the board of directors  
21 shall be governed by Chapter 551, Government Code.

22 Sec. 35.062. STAFF. The authority's board may hire a  
23 general manager and other staff and outside consultants as  
24 necessary.

25 SECTION 151. Sections 36.001(29) and (30), Water Code, are  
26 amended to read as follows:

27 (29) "Groundwater management authority" has the

1 meaning assigned by Section 35.002 [~~"Evidence of historic or~~  
2 ~~existing use" means evidence that is material and relevant to a~~  
3 ~~determination of the amount of groundwater beneficially used~~  
4 ~~without waste by a permit applicant during the relevant time period~~  
5 ~~set by district rule that regulates groundwater based on historic~~  
6 ~~use. Evidence in the form of oral or written testimony shall be~~  
7 ~~subject to cross-examination. The Texas Rules of Evidence govern~~  
8 ~~the admissibility and introduction of evidence of historic or~~  
9 ~~existing use, except that evidence not admissible under the Texas~~  
10 ~~Rules of Evidence may be admitted if it is of the type commonly~~  
11 ~~relied upon by reasonably prudent persons in the conduct of their~~  
12 ~~affairs]~~.

13           (30) "Desired future condition" means a quantitative  
14 description, adopted in accordance with Section 36.108, of the  
15 desired condition of the groundwater resources in an aquifer [~~a~~  
16 ~~management area]~~ at one or more specified future times.

17           SECTION 152. Section 36.0015(b), Water Code, is amended to  
18 read as follows:

19           (b) In order to provide for the conservation, preservation,  
20 protection, recharging, and prevention of waste of groundwater, and  
21 of groundwater reservoirs or their subdivisions, and to control  
22 subsidence caused by withdrawal of water from those groundwater  
23 reservoirs or their subdivisions, consistent with the objectives of  
24 Section 59, Article XVI, Texas Constitution, groundwater  
25 conservation districts may be created as provided by this chapter.  
26 Groundwater management authorities created as provided by Chapter  
27 35 and groundwater conservation districts created as provided by

1 this chapter are the state's preferred method of groundwater  
2 management in order to protect property rights, balance the  
3 conservation and development of groundwater to meet the needs of  
4 this state, and use the best available science in the conservation  
5 and development of groundwater through rules developed, adopted,  
6 and promulgated by a district in accordance with [~~the provisions~~  
7 ~~of~~] this chapter or by a groundwater management authority in  
8 accordance with Chapter 35 and this chapter.

9 SECTION 153. Section 36.002(d), Water Code, is amended to  
10 read as follows:

11 (d) This section does not:

12 (1) prohibit a district or groundwater management  
13 authority, as applicable, from limiting or prohibiting the drilling  
14 of a well by a landowner for failure or inability to comply with  
15 minimum well spacing or tract size requirements adopted by the  
16 groundwater management authority [~~district~~];

17 (2) affect the ability of a district or groundwater  
18 management authority, as applicable, to regulate groundwater  
19 production as authorized under Section 36.113, 36.116, or 36.122 or  
20 otherwise under this chapter or a special law governing a district;  
21 or

22 (3) require that a rule adopted by a district or  
23 groundwater management authority, as applicable, allocate to each  
24 landowner a proportionate share of available groundwater for  
25 production from the aquifer based on the number of acres owned by  
26 the landowner.

27 SECTION 154. Section 36.012(c), Water Code, is amended to

1 read as follows:

2 (c) The boundaries of a district must be coterminous with or  
3 inside the boundaries of a groundwater management authority [~~area~~]  
4 or a priority groundwater management area.

5 SECTION 155. Sections 36.015(b), (c), and (f), Water Code,  
6 are amended to read as follows:

7 (b) The commission may not certify a petition if the  
8 commission finds that the proposed district cannot be adequately  
9 funded to carry out its purposes based on the financial information  
10 provided in the petition under Section 36.013(c)(6) or that the  
11 boundaries of the proposed district do not provide for the  
12 effective management of the groundwater resources. The commission  
13 shall give preference to boundary lines that are coterminous with  
14 those of a groundwater management authority [~~area~~] but may also  
15 consider boundaries along existing political subdivision  
16 boundaries if such boundaries would facilitate district creation  
17 and confirmation.

18 (c) If a petition proposes the creation of a district in an  
19 area, in whole or in part, that has not been designated as a  
20 groundwater management authority [~~area~~], the commission shall  
21 provide notice to the Texas Water Development Board. On the receipt  
22 of notice from the commission, the Texas Water Development Board  
23 shall initiate the process of designating or expanding a  
24 groundwater management authority [~~area~~] for the area of the  
25 proposed district not included in a management authority [~~area~~].  
26 The commission may not certify the petition until the Texas Water  
27 Development Board has adopted a rule whereby the boundaries of the

1 proposed district are coterminous with or inside the boundaries of  
2 a management authority [~~area~~].

3 (f) Refusal by the commission to certify a petition to  
4 create a district does not invalidate or affect the designation of  
5 any groundwater management authority [~~area~~].

6 SECTION 156. Section 36.063(b), Water Code, is amended to  
7 read as follows:

8 (b) At least 10 days before a hearing under Section  
9 36.108(d-2) [~~or a meeting at which a district will adopt a desired~~  
10 ~~future condition under Section 36.108(d-4)], the board of each  
11 district included in the applicable groundwater management  
12 authority must post notice that includes:~~

13 (1) the proposed desired future conditions and a list  
14 of any other agenda items;

15 (2) the date, time, and location of the meeting or  
16 hearing;

17 (3) the name, telephone number, and address of the  
18 person to whom questions or requests for additional information may  
19 be submitted;

20 (4) the names of the other districts in the  
21 groundwater [~~district's~~] management authority [~~area~~]; and

22 (5) information on how the public may submit comments.

23 SECTION 157. Sections 36.101(a) and (a-1), Water Code, are  
24 amended to read as follows:

25 (a) A district may make and enforce rules, including rules  
26 [~~limiting groundwater production based on tract size or the spacing~~  
27 ~~of wells,~~] to provide for conserving, preserving, protecting, and

1 recharging of the groundwater or of a groundwater reservoir or its  
2 subdivisions in order to control subsidence, prevent degradation of  
3 water quality, or prevent waste of groundwater and to carry out the  
4 powers and duties provided by this chapter. A district may not  
5 adopt rules regarding the spacing of wells, the withdrawal of water  
6 from wells, or water exports, except fees for water exported from a  
7 district [~~In adopting a rule under this chapter, a district shall:~~

8           ~~[(1) consider all groundwater uses and needs;~~  
9           ~~[(2) develop rules that are fair and impartial;~~  
10           ~~[(3) consider the groundwater ownership and rights~~  
11 ~~described by Section 36.002;~~

12           ~~[(4) consider the public interest in conservation,~~  
13 ~~preservation, protection, recharging, and prevention of waste of~~  
14 ~~groundwater, and of groundwater reservoirs or their subdivisions,~~  
15 ~~and in controlling subsidence caused by withdrawal of groundwater~~  
16 ~~from those groundwater reservoirs or their subdivisions,~~  
17 ~~consistent with the objectives of Section 59, Article XVI, Texas~~  
18 ~~Constitution;~~

19           ~~[(5) consider the goals developed as part of the~~  
20 ~~district's management plan under Section 36.1071; and~~

21           ~~[(6) not discriminate between land that is irrigated~~  
22 ~~for production and land that was irrigated for production and~~  
23 ~~enrolled or participating in a federal conservation program].~~

24           (a-1) Any rule of a district or groundwater management  
25 authority that discriminates between land that is irrigated for  
26 production and land that was irrigated for production and enrolled  
27 or participating in a federal conservation program is void.

1 SECTION 158. Sections 36.105(a), (d), and (e), Water Code,  
2 are amended to read as follows:

3 (a) A district or groundwater management authority may  
4 exercise the power of eminent domain to acquire by condemnation a  
5 fee simple or other interest in property if that property interest  
6 is:

7 (1) within the boundaries of the district or  
8 groundwater management authority; and

9 (2) necessary for conservation purposes, including  
10 monitoring, recharge, and reuse.

11 (d) In a condemnation proceeding brought by a district or  
12 groundwater management authority, the district or groundwater  
13 management authority is not required to pay in advance or give bond  
14 or other security for costs in the trial court, to give bond for the  
15 issuance of a temporary restraining order or a temporary  
16 injunction, or to give bond for costs or supersedeas on an appeal or  
17 writ of error.

18 (e) In exercising the power of eminent domain, if the  
19 district or groundwater management authority requires relocating,  
20 raising, lowering, rerouting, changing the grade, or altering the  
21 construction of any railroad, highway, pipeline, or electric  
22 transmission or distribution, telegraph, or telephone lines,  
23 conduits, poles, or facilities, the district or authority must bear  
24 the actual cost of relocating, raising, lowering, rerouting,  
25 changing the grade, or altering the construction to provide  
26 comparable replacement without enhancement of facilities after  
27 deducting the net salvage value derived from the old facility.

1 SECTION 159. Section 36.106, Water Code, is amended to read  
2 as follows:

3 Sec. 36.106. SURVEYS. A district or groundwater management  
4 authority may make surveys of the groundwater reservoir or  
5 subdivision and surveys of the facilities in order to determine the  
6 quantity of water available for production and use and to determine  
7 the improvements, development, and recharging needed by a reservoir  
8 or its subdivision.

9 SECTION 160. Section 36.107, Water Code, is amended to read  
10 as follows:

11 Sec. 36.107. RESEARCH. A district or groundwater  
12 management authority may carry out any research projects deemed  
13 necessary by its [~~the~~] board.

14 SECTION 161. Section 36.1071, Water Code, is amended to  
15 read as follows:

16 Sec. 36.1071. MANAGEMENT PLAN. (a) Following notice and  
17 hearing, the groundwater management authority, with the assistance  
18 and input from all districts within the authority's territory  
19 [~~district~~] shall, in coordination with surface water management  
20 entities on a regional basis, develop a management plan that  
21 addresses the following management goals, as applicable:

- 22 (1) providing the most efficient use of groundwater;  
23 (2) controlling and preventing waste of groundwater;  
24 (3) controlling and preventing subsidence;  
25 (4) addressing conjunctive surface water management  
26 issues;  
27 (5) addressing natural resource issues;

1 (6) addressing drought conditions;

2 (7) addressing conservation, recharge enhancement,  
3 rainwater harvesting, precipitation enhancement, or brush control,  
4 where appropriate and cost-effective; and

5 (8) addressing the desired future conditions adopted  
6 ~~[by the district]~~ under Section 36.108.

7 (b) The management plan, or any amendments to the plan,  
8 shall be developed using the groundwater management authority's  
9 ~~[district's]~~ best available data and forwarded to the regional  
10 water planning group for use in their planning process.

11 (c) The commission and the Texas Water Development Board  
12 shall provide technical assistance ~~[to a district]~~ in the  
13 development of the management plan required under Subsection (a)  
14 which may include, if requested by the groundwater management  
15 authority ~~[district]~~, a preliminary review and comment on the plan  
16 prior to final approval by the groundwater management authority  
17 ~~[board]~~. If such review and comment by the commission is requested,  
18 the commission shall provide comment not later than 30 days from the  
19 date the request is received.

20 (d) The commission and the Texas Water Development Board  
21 shall provide technical assistance to a district or groundwater  
22 management authority during its initial operational phase. If  
23 requested by a district or a groundwater management authority, the  
24 Texas Water Development Board shall provide training ~~[train the~~  
25 ~~district]~~ on basic data collection methodology and provide  
26 technical assistance ~~[to districts]~~.

27 (e) In the management plan described under Subsection (a),

1 the groundwater management authority [~~district~~] shall:

2 (1) identify the performance standards and management  
3 objectives under which the groundwater management authority  
4 [~~district~~] will operate to achieve the management goals identified  
5 under Subsection (a);

6 (2) specify, in as much detail as possible, the  
7 actions, procedures, performance, and avoidance that are or may be  
8 necessary to effect the plan, including specifications and proposed  
9 rules;

10 (3) include estimates of the following:

11 (A) modeled available groundwater in the  
12 groundwater management authority [~~district~~] based on the desired  
13 future condition established under Section 36.108;

14 (B) the amount of groundwater being used within  
15 the groundwater management authority [~~district~~] on an annual basis;

16 (C) the annual amount of recharge from  
17 precipitation, if any, to the groundwater resources within the  
18 groundwater management authority [~~district~~];

19 (D) for each aquifer, the annual volume of water  
20 that discharges from the aquifer to springs and any surface water  
21 bodies, including lakes, streams, and rivers;

22 (E) the annual volume of flow into and out of the  
23 groundwater management authority [~~district~~] within each aquifer  
24 and between aquifers in the groundwater management authority  
25 [~~district~~], if a groundwater availability model is available;

26 (F) the projected surface water supply in the  
27 groundwater management authority [~~district~~] according to the most

1 recently adopted state water plan or water availability model;  
2 [~~and~~]

3 (G) the projected total demand for water in the  
4 groundwater management authority [~~district~~] according to the most  
5 recently adopted state water plan; and

6 (H) the minimum amount of groundwater necessary  
7 to sustain six months of domestic and livestock use during the most  
8 recent drought of record; and

9 (4) consider the water supply needs and water  
10 management strategies included in the adopted state water plan.

11 (f) The groundwater management authority [~~district~~] shall  
12 adopt rules necessary to implement the management plan. Prior to  
13 the development of the management plan and its approval under  
14 Section 36.1072, the groundwater management authority or district  
15 may not adopt rules other than rules pertaining to the registration  
16 and interim permitting of new and existing wells and rules  
17 governing spacing and procedure before the groundwater management  
18 authority's or district's board; however, the groundwater  
19 management authority [~~district~~] may not adopt any rules limiting  
20 the production of wells, except rules requiring that groundwater  
21 produced from a well be put to a nonwasteful, beneficial use. The  
22 district or groundwater management authority may accept  
23 applications for permits under Section 36.113, provided the  
24 district or groundwater management authority does not act on any  
25 such application until the groundwater management authority's  
26 [~~district's~~] management plan is approved as provided in Section  
27 36.1072.

1 (g) The groundwater management authority [~~district~~] shall  
2 adopt amendments to the management plan as necessary. Amendments  
3 to the management plan shall be adopted after notice and hearing and  
4 shall otherwise comply with the requirements of this section.

5 (h) In developing its management plan, the groundwater  
6 management authority [~~district~~] shall use the groundwater  
7 availability modeling information provided by the executive  
8 administrator together with any available site-specific  
9 information that has been provided by the district or groundwater  
10 management authority to the executive administrator for review and  
11 comment before being used in the plan.

12 (i) The data determined in this section and placed in the  
13 final groundwater management plan is not subject to challenge in  
14 court in any collateral legal action.

15 SECTION 162. Sections 36.1072(a-1), (b), (c), (e), (f), and  
16 (g), Water Code, are amended to read as follows:

17 (a-1) A groundwater management authority [~~district~~] shall,  
18 not later than September 1, 2022 [~~three years after the creation of~~  
19 ~~the district or, if the district required confirmation, not later~~  
20 ~~than three years after the election confirming the district's~~  
21 ~~creation~~], submit the management plan required under Section  
22 36.1071 to the executive administrator for review and approval.

23 (b) Within 60 days of receipt of a [~~district's~~] management  
24 plan adopted under Section 36.1071, readopted under Subsection (e)  
25 or (g) [~~of this section~~], or amended under Section 36.1073, the  
26 executive administrator shall approve the [~~district's~~] plan if the  
27 plan is administratively complete. A management plan is

1 administratively complete when it contains the information  
2 required to be submitted under Section 36.1071(a) and (e). The  
3 executive administrator may determine whether conditions justify  
4 waiver of the requirements under Section 36.1071(e)(4).

5 (c) Once the executive administrator has approved a  
6 ~~[district's]~~ management plan:

7 (1) the executive administrator may not revoke but may  
8 require revisions to the approved management plan as provided by  
9 Subsection (g); and

10 (2) the executive administrator may request  
11 additional information from the groundwater management authority  
12 ~~[district]~~ if the information is necessary to clarify, modify, or  
13 supplement previously submitted material, but a request for  
14 additional information does not render the management plan  
15 unapproved.

16 (e) The groundwater management authority ~~[district]~~ may  
17 review the plan annually and must review and readopt the plan with  
18 or without revisions at least once every five years. The  
19 groundwater management authority ~~[district]~~ shall provide the  
20 readopted plan to the executive administrator not later than the  
21 60th day after the date on which the plan was readopted. Approval  
22 of the preceding management plan remains in effect until:

23 (1) the groundwater management authority ~~[district]~~  
24 fails to timely readopt a management plan;

25 (2) the groundwater management authority ~~[district]~~  
26 fails to timely submit the groundwater management authority's  
27 ~~[district's]~~ readopted management plan to the executive

1 administrator; or

2 (3) the executive administrator determines that the  
3 readopted management plan does not meet the requirements for  
4 approval, and the groundwater management authority [~~district~~] has  
5 exhausted all appeals to the Texas Water Development Board [~~or~~  
6 ~~appropriate court~~].

7 (f) If the executive administrator does not approve the  
8 groundwater management authority's [~~district's~~] management plan,  
9 the executive administrator shall provide to the groundwater  
10 management authority [~~district~~], in writing, the reasons for the  
11 action. Not later than the 180th day after the date a groundwater  
12 management authority [~~district~~] receives notice that its  
13 management plan has not been approved, the groundwater management  
14 authority [~~district~~] may submit a revised management plan for  
15 review and approval. The executive administrator's decision may be  
16 appealed to the development board. [~~If the development board~~  
17 ~~decides not to approve the district's management plan on appeal,~~  
18 ~~the district may request that the conflict be mediated. The~~  
19 ~~district and the board may seek the assistance of the Center for~~  
20 ~~Public Policy Dispute Resolution at The University of Texas School~~  
21 ~~of Law or an alternative dispute resolution system established~~  
22 ~~under Chapter 152, Civil Practice and Remedies Code, in obtaining a~~  
23 ~~qualified impartial third party to mediate the conflict. The cost~~  
24 ~~of the mediation services must be specified in the agreement~~  
25 ~~between the parties and the Center for Public Policy Dispute~~  
26 ~~Resolution or the alternative dispute resolution system. If the~~  
27 ~~parties do not resolve the conflict through mediation, the decision~~

1 ~~of the development board not to approve the district's management~~  
2 ~~plan may be appealed to a district court in Travis County. Costs~~  
3 ~~for the appeal shall be set by the court hearing the appeal. An~~  
4 ~~appeal under this subsection is by trial de novo. The commission~~  
5 ~~shall not take enforcement action against a district under~~  
6 ~~Subchapter I until the latest of the expiration of the 180-day~~  
7 ~~period, the date the development board has taken final action~~  
8 ~~withholding approval of a revised management plan, the date the~~  
9 ~~mediation is completed, or the date a final judgment upholding the~~  
10 ~~board's decision is entered by a district court. An enforcement~~  
11 ~~action may not be taken against a district by the commission or the~~  
12 ~~state auditor under Subchapter I because the district's management~~  
13 ~~plan and the approved regional water plan are in conflict while the~~  
14 ~~parties are attempting to resolve the conflict before the~~  
15 ~~development board, in mediation, or in court. Rules of the district~~  
16 ~~continue in full force and effect until all appeals under this~~  
17 ~~subsection have been exhausted and the final judgment is adverse to~~  
18 ~~the district.]~~

19 (g) A person with a legally defined interest in groundwater  
20 in a groundwater management authority [~~district~~], or the regional  
21 water planning group, may file a petition with the development  
22 board stating that a conflict requiring resolution may exist  
23 between the authority's [~~district's~~] approved management plan  
24 developed under Section 36.1071 and the state water plan. If a  
25 conflict exists, the development board shall provide technical  
26 assistance to and facilitate coordination between the involved  
27 person or regional water planning group and the groundwater

1 management authority [~~district~~] to resolve the conflict. Not later  
2 than the 45th day after the date the person or the regional water  
3 planning group files a petition with the development board, if the  
4 conflict has not been resolved, the groundwater management  
5 authority [~~district~~] and the involved person or regional planning  
6 group may petition the executive administrator to resolve [~~mediate~~]  
7 the conflict. The [~~district and the involved person or regional~~  
8 ~~planning group may seek the assistance of the Center for Public~~  
9 ~~Policy Dispute Resolution at The University of Texas School of Law~~  
10 ~~or an alternative dispute resolution system established under~~  
11 ~~Chapter 152, Civil Practice and Remedies Code, in obtaining a~~  
12 ~~qualified impartial third party to mediate the conflict. The cost~~  
13 ~~of the mediation services must be specified in the agreement~~  
14 ~~between the parties and the Center for Public Policy Dispute~~  
15 ~~Resolution or the alternative dispute resolution system. If the~~  
16 ~~district and the involved person or regional planning group cannot~~  
17 ~~resolve the conflict through mediation, the] development board  
18 shall resolve the conflict not later than the 60th day after the  
19 date the petition is received [~~mediation is completed~~]. The  
20 development board action under this provision may be consolidated,  
21 at the option of the development board, with related action under  
22 Section 16.053(p). If the development board determines that  
23 resolution of the conflict requires a revision of the approved  
24 management plan, the development board shall provide information to  
25 the groundwater management authority [~~district~~]. The groundwater  
26 management authority [~~district~~] shall prepare any revisions to the  
27 plan based on the information provided by the development board and~~

1 shall hold, after notice, at least one public hearing at some  
2 central location within the groundwater management authority  
3 [~~district~~]. The groundwater management authority [~~district~~] shall  
4 consider all public and development board comments, prepare,  
5 revise, and adopt its management plan, and submit the revised  
6 management plan to the development board for approval. On the  
7 request of the groundwater management authority [~~district~~] or the  
8 regional water planning group, the development board shall include  
9 discussion of the conflict and its resolution in the state water  
10 plan that the development board provides to the governor, the  
11 lieutenant governor, and the speaker of the house of  
12 representatives under Section 16.051(e). [~~If the groundwater~~  
13 ~~conservation district disagrees with the decision of the~~  
14 ~~development board under this subsection, the district may appeal~~  
15 ~~the decision to a district court in Travis County. Costs for the~~  
16 ~~appeal shall be set by the court hearing the appeal. An appeal~~  
17 ~~under this subsection is by trial de novo.~~]

18 SECTION 163. Section 36.1073, Water Code, is amended to  
19 read as follows:

20 Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Any amendment  
21 to the management plan shall be submitted to the executive  
22 administrator within 60 days following adoption of the amendment by  
23 the groundwater management authority's [~~district's~~] board. The  
24 executive administrator shall review and approve any amendment  
25 which substantially affects the management plan in accordance with  
26 the procedures established under Section 36.1072.

27 SECTION 164. The heading to Section 36.108, Water Code, is

1 amended to read as follows:

2           Sec. 36.108. JOINT PLANNING IN GROUNDWATER MANAGEMENT  
3 AUTHORITY [~~AREA~~].

4           SECTION 165. Sections 36.108(a), (b), (c), (d), (d-1),  
5 (d-2), (d-3), (e), and (e-2), Water Code, are amended to read as  
6 follows:

7           (a) In this section:

8                 (1) "Development board" means the Texas Water  
9 Development Board.

10                (2) "District representative" means the presiding  
11 officer or the presiding officer's designee for any district  
12 located wholly or partly in the groundwater management authority's  
13 boundaries [~~area~~].

14           (b) If two or more districts are located within the  
15 boundaries of the same groundwater management authority [~~area~~],  
16 each district shall cooperate with and provide any data requested  
17 by the groundwater management authority, and the authority shall  
18 consider the input and recommendations from each district in  
19 developing its management plan [~~forward a copy of that district's~~  
20 ~~new or revised management plan to the other districts in the~~  
21 ~~management area. The boards of the districts shall consider the~~  
22 ~~plans individually and shall compare them to other management plans~~  
23 ~~then in force in the management area]~~].

24           (c) The district representatives shall meet at least  
25 annually to conduct joint planning with the groundwater management  
26 authority in which the districts are located [~~other districts in~~  
27 ~~the management area]~~ and to review the management plans, the

1 accomplishments of the groundwater management authority [~~area~~],  
2 and proposals to adopt new or amend existing desired future  
3 conditions. In reviewing the management plans, the districts and  
4 groundwater management authority shall consider:

5 (1) the goals of the [~~each~~] management plan and its  
6 impact on planning throughout the groundwater management authority  
7 [~~area~~];

8 (2) the effectiveness of the measures established by  
9 the [~~each district's~~] management plan for conserving and protecting  
10 groundwater and preventing waste, and the effectiveness of these  
11 measures in the groundwater management authority [~~area~~] generally;

12 (3) any other matters that the boards of the districts  
13 and the groundwater management authority consider relevant to the  
14 protection and conservation of groundwater and the prevention of  
15 waste in the groundwater management authority area; and

16 (4) the degree to which each management plan achieves  
17 the desired future conditions established during the joint planning  
18 process.

19 (d) Not later than May 1, 2021, and every five years  
20 thereafter, the districts and groundwater management authority  
21 shall consider groundwater availability models and other data or  
22 information for the groundwater management authority [~~area~~] and  
23 shall propose for adoption desired future conditions for the  
24 relevant aquifers within the groundwater management authority  
25 [~~area~~]. Before voting on the proposed desired future conditions of  
26 the aquifers under Subsection (d-3) [~~(d-2)~~], the groundwater  
27 management authority [~~districts~~] shall consider:

1           (1) aquifer uses or conditions within the groundwater  
2 management authority [~~area~~], including conditions that differ  
3 substantially from one geographic area to another;

4           (2) the water supply needs and water management  
5 strategies included in the state water plan;

6           (3) hydrological conditions, including for each  
7 aquifer in the groundwater management authority [~~area~~] the total  
8 estimated recoverable storage as provided by the executive  
9 administrator, and the average annual recharge, inflows, and  
10 discharge;

11           (4) other environmental impacts, including impacts on  
12 spring flow and other interactions between groundwater and surface  
13 water;

14           (5) the impact on subsidence;

15           (6) socioeconomic impacts reasonably expected to  
16 occur;

17           (7) the impact on the interests and rights in private  
18 property, including ownership and the rights of landowners within  
19 the groundwater management authority [~~area landowners~~] and their  
20 lessees and assigns in groundwater as recognized under Section  
21 [36.002](#);

22           (8) the feasibility of achieving the desired future  
23 condition; and

24           (9) any other information relevant to the specific  
25 desired future conditions.

26           (d-1) After considering and documenting the factors  
27 described by Subsection (d) and other relevant scientific and

1 hydrogeological data, the groundwater management authority, with  
2 the input and assistance of the districts, may establish different  
3 desired future conditions for:

4 (1) each aquifer, subdivision of an aquifer, or  
5 geologic strata located in whole or in part within the boundaries of  
6 the groundwater management authority [~~area~~]; or

7 (2) each geographic area overlying an aquifer in whole  
8 or in part or subdivision of an aquifer within the boundaries of the  
9 groundwater management authority [~~area~~].

10 (d-2) The desired future conditions proposed under  
11 Subsection (d) must provide a balance between the highest  
12 practicable level of groundwater production and the conservation,  
13 preservation, protection, recharging, and prevention of waste of  
14 groundwater and control of subsidence in the groundwater management  
15 authority [~~area~~]. This subsection does not prohibit the  
16 establishment of desired future conditions that provide for the  
17 reasonable long-term management of groundwater resources  
18 consistent with the management goals under Section 36.1071(a).  
19 [~~The desired future conditions proposed under Subsection (d) must~~  
20 ~~be approved by a two-thirds vote of all the district~~  
21 ~~representatives for distribution to the districts in the management~~  
22 ~~area.~~] A period of not less than 90 days for public comments begins  
23 on the day the proposed desired future conditions are adopted by the  
24 groundwater management authority's board of directors [~~mailed to~~  
25 ~~the districts~~]. During the public comment period and after posting  
26 notice as required by Section 36.063, the groundwater management  
27 authority [~~each district~~] shall hold a public hearing on any

1 proposed desired future conditions [~~relevant to that district~~].  
2 During the public comment period, the groundwater management  
3 authority [~~district~~] shall make available in its office a copy of  
4 the proposed desired future conditions and any supporting  
5 materials, such as the documentation of factors considered under  
6 Subsection (d) and groundwater availability model run results.  
7 After the close of the public comment period, the groundwater  
8 management authority [~~district~~] shall compile for consideration at  
9 the next groundwater management authority board [~~joint planning~~]  
10 meeting, and shall provide a copy to each district within its  
11 boundaries, a summary of relevant comments received, any suggested  
12 revisions to the proposed desired future conditions, and the basis  
13 for the revisions. Not later than the 30th day after the date the  
14 groundwater management authority sends the documents described by  
15 this subsection to the districts, the districts shall provide  
16 written comments to the groundwater management authority.

17 (d-3) After all the districts have submitted their comments  
18 [~~district summaries~~], the groundwater management authority board  
19 [~~district representatives~~] shall:

20 (1) meet [~~reconvene~~] to review the reports, consider  
21 any district's suggested revisions to the proposed desired future  
22 conditions, and finally adopt the desired future conditions for the  
23 groundwater management authority; and

24 (2) [~~area. The desired future conditions must be~~  
25 ~~approved by a resolution adopted by a two-thirds vote of all the~~  
26 ~~district representatives not later than January 5,~~  
27 ~~2022. Subsequent desired future conditions must be proposed and~~

1 ~~finally adopted by the district representatives before the end of~~  
2 ~~each successive five-year period after that date. The district~~  
3 ~~representatives shall~~ produce a desired future conditions  
4 explanatory report for the groundwater management authority ~~[area]~~  
5 and submit to the development board ~~[and each district in the~~  
6 ~~management area proof that notice was posted for the joint planning~~  
7 ~~meeting,~~] a copy of the resolution~~[7]~~ and a copy of the explanatory  
8 report, which ~~[. The report]~~ must:

9                   (A) ~~[(1)]~~ identify each desired future  
10 condition;

11                   (B) ~~[(2)]~~ provide the policy and technical  
12 justifications for each desired future condition;

13                   (C) ~~[(3)]~~ include documentation that the factors  
14 under Subsection (d) were considered by the groundwater management  
15 authority ~~[districts]~~ and a discussion of how the adopted desired  
16 future conditions impact each factor;

17                   (D) ~~[(4)]~~ list other desired future condition  
18 options considered, if any, and the reasons why those options were  
19 not adopted; and

20                   (E) ~~[(5)]~~ discuss reasons why recommendations  
21 made by advisory committees and relevant public comments received  
22 by the groundwater management authority ~~[districts]~~ were or were  
23 not incorporated into the desired future conditions.

24           (e) Except as provided by this section, a joint meeting  
25 under this section must be held in accordance with Chapter 551,  
26 Government Code. Each district shall comply with Chapter 552,  
27 Government Code. The district representatives may elect one

1 district to be responsible for providing the notice of a joint  
2 meeting that this section would otherwise require of each district  
3 in the groundwater management authority [~~area~~]. Notice of a joint  
4 meeting must be provided at least 10 days before the date of the  
5 meeting by:

6 (1) providing notice to the secretary of state;

7 (2) providing notice to the county clerk of each  
8 county located wholly or partly in a district that is located wholly  
9 or partly in the groundwater management authority [~~area~~]; and

10 (3) posting notice at a place readily accessible to  
11 the public at the district office of each district located wholly or  
12 partly in the groundwater management authority's boundaries, and in  
13 the groundwater management authority office [~~area~~].

14 (e-2) Notice of a joint meeting must include:

15 (1) the date, time, and location of the meeting;

16 (2) a summary of any action proposed to be taken;

17 (3) the name of the groundwater management authority  
18 and each district located wholly or partly in the groundwater  
19 management authority [~~area~~]; and

20 (4) the name, telephone number, and address of one or  
21 more persons to whom questions, requests for additional  
22 information, or comments may be submitted.

23 SECTION 166. Section 36.1081(b), Water Code, is amended to  
24 read as follows:

25 (b) During the joint planning process under Section 36.108,  
26 the district representatives or groundwater management authority  
27 may appoint and convene nonvoting advisory subcommittees who

1 represent social, governmental, environmental, or economic  
2 interests to assist in the development of desired future  
3 conditions.

4 SECTION 167. Sections 36.1083(b), (e), (h), (j), (k), (m),  
5 (n), (o), and (p), Water Code, are amended to read as follows:

6 (b) Not later than the 120th day after the date on which a  
7 groundwater management authority [~~district~~] adopts a desired  
8 future condition [~~under Section 36.108(d-4)~~], an affected person  
9 may file a petition with the groundwater management authority  
10 [~~district~~] requiring that the groundwater management authority  
11 [~~district~~] contract with the office to conduct a hearing appealing  
12 the reasonableness of the desired future condition. The petition  
13 must provide evidence that the groundwater management authority  
14 [~~districts~~] did not establish a reasonable desired future condition  
15 of the groundwater resources in the groundwater management  
16 authority's boundaries [~~area~~].

17 (e) Not later than the 10th day after receiving a petition  
18 described by Subsection (b), the groundwater management authority  
19 [~~district~~] shall submit a copy of the petition to the development  
20 board. On receipt of the petition, the development board shall  
21 conduct:

22 (1) an administrative review to determine whether the  
23 desired future condition established by the groundwater management  
24 authority [~~district~~] meets the criteria in Section 36.108(d); and

25 (2) a study containing scientific and technical  
26 analysis of the desired future condition, including consideration  
27 of:

- 1 (A) the hydrogeology of the aquifer;
- 2 (B) the explanatory report provided to the  
3 development board under Section 36.108(d-3);
- 4 (C) the factors described under Section  
5 36.108(d); and
- 6 (D) any relevant:
- 7 (i) groundwater availability models;
- 8 (ii) published studies;
- 9 (iii) estimates of total recoverable  
10 storage capacity;
- 11 (iv) average annual amounts of recharge,  
12 inflows, and discharge of groundwater; or
- 13 (v) information provided in the petition or  
14 available to the development board.

15 (h) Not later than the 60th day after receiving a petition  
16 under Subsection (b), the groundwater management authority  
17 [~~district~~] shall:

18 (1) contract with the office to conduct the contested  
19 case hearing requested under Subsection (b); and

20 (2) submit to the office a copy of any petitions  
21 related to the hearing requested under Subsection (b) and received  
22 by the groundwater management authority [~~district~~].

23 (j) During the period between the filing of the petition and  
24 the delivery of the study described by Subsection (e)(2), the  
25 groundwater management authority [~~district~~] may seek the  
26 assistance of the Center for Public Policy Dispute Resolution, the  
27 development board, or another alternative dispute resolution

1 system to mediate the issues raised in the petition. If the  
2 groundwater management authority [~~district~~] and the petitioner  
3 cannot resolve the issues raised in the petition, the office will  
4 proceed with a hearing as described by this section.

5 (k) The groundwater management authority [~~district~~] may  
6 adopt rules for notice and hearings conducted under this section  
7 that are consistent with the procedural rules of the office. In  
8 accordance with rules adopted by the groundwater management  
9 authority [~~district~~] and the office, the groundwater management  
10 authority [~~district~~] shall provide:

- 11 (1) general notice of the hearing; and  
12 (2) individual notice of the hearing to:  
13 (A) the petitioner;  
14 (B) any person who has requested notice;  
15 (C) each [~~nonparty~~] district and regional water  
16 planning group located in the same groundwater management authority  
17 [~~management area as a district~~] named in the petition; and  
18 (D) the development board[, ~~and~~  
19 [(~~E~~) ~~the commission~~].

20 (m) The petitioner shall pay the costs associated with the  
21 contract for the hearing under this section. The petitioner shall  
22 deposit with the groundwater management authority [~~district~~] an  
23 amount sufficient to pay the contract amount before the hearing  
24 begins. After the hearing, the office may assess costs to one or  
25 more of the parties participating in the hearing and the  
26 groundwater management authority [~~district~~] shall refund any  
27 excess money to the petitioner. The office shall consider the

1 following in apportioning costs of the hearing:

- 2 (1) the party who requested the hearing;
- 3 (2) the party who prevailed in the hearing;
- 4 (3) the financial ability of the party to pay the  
5 costs;
- 6 (4) the extent to which the party participated in the  
7 hearing; and
- 8 (5) any other factor relevant to a just and reasonable  
9 assessment of costs.

10 (n) On receipt of the administrative law judge's findings of  
11 fact and conclusions of law in a proposal for decision, including a  
12 dismissal of a petition, the groundwater management authority  
13 [~~district~~] shall issue a final order stating the groundwater  
14 management authority's [~~district's~~] decision on the contested  
15 matter and the groundwater management authority's [~~district's~~]  
16 findings of fact and conclusions of law. The groundwater  
17 management authority [~~district~~] may change a finding of fact or  
18 conclusion of law made by the administrative law judge, or may  
19 vacate or modify an order issued by the administrative law judge, as  
20 provided by Section 2001.058(e), Government Code.

21 (o) If the groundwater management authority [~~district~~]  
22 vacates or modifies the proposal for decision, the groundwater  
23 management authority [~~district~~] shall issue a report describing in  
24 detail the groundwater management authority's [~~district's~~] reasons  
25 for disagreement with the administrative law judge's findings of  
26 fact and conclusions of law. The report shall provide the policy,  
27 scientific, and technical justifications for the groundwater

1 management authority's [~~district's~~] decision.

2 (p) If the groundwater management authority [~~district~~] in  
3 its final order finds that a desired future condition is  
4 unreasonable, not later than the 60th day after the date of the  
5 final order, the authority [~~districts in the same management area~~  
6 ~~as the district that received the petition shall reconvene in a~~  
7 ~~joint planning meeting for the purpose of revising the desired~~  
8 ~~future condition. The districts in the management area~~] shall  
9 follow the procedures in Section 36.108 to adopt new desired future  
10 conditions [~~applicable to the district that received the petition~~].

11 SECTION 168. Section 36.10835(a), Water Code, is amended to  
12 read as follows:

13 (a) A final groundwater management authority [~~district~~]  
14 order issued under Section 36.1083 may be appealed to a district  
15 court with jurisdiction over any part of the territory of the  
16 groundwater management authority [~~district~~] that issued the order.  
17 An appeal under this subsection must be filed with the district  
18 court not later than the 45th day after the date the groundwater  
19 management authority [~~district~~] issues the final order. The case  
20 shall be decided under the substantial evidence standard of review  
21 as provided by Section 2001.174, Government Code. If the court  
22 finds that a desired future condition is unreasonable, the court  
23 shall strike the desired future condition and order the groundwater  
24 management authority's board [~~districts in the same management area~~  
25 ~~as the district that received the petition~~] to reconvene not later  
26 than the 60th day after the date of the court order to revise [~~in a~~  
27 ~~joint planning meeting for the purpose of revising~~] the desired

1 future condition. [~~The districts in the management area shall~~  
2 ~~follow the procedures in Section 36.108 to adopt new desired future~~  
3 ~~conditions applicable to the district that received the petition.~~]

4 SECTION 169. Section 36.1084, Water Code, is amended to  
5 read as follows:

6 Sec. 36.1084. MODELED AVAILABLE GROUNDWATER. (a) The  
7 Texas Water Development Board shall require each groundwater  
8 management authority [~~the districts in a management area~~] to submit  
9 to the executive administrator not later than the 60th day after the  
10 date on which the groundwater management authority [~~districts~~]  
11 adopted desired future conditions under Section 36.108(d-3):

12 (1) the desired future conditions adopted under  
13 Section 36.108;

14 (2) proof that notice was posted for the joint  
15 planning meeting; and

16 (3) the desired future conditions explanatory report.

17 (b) The executive administrator shall provide each  
18 groundwater management authority, district and regional water  
19 planning group located wholly or partly in the groundwater  
20 management authority territory [~~area~~] with the modeled available  
21 groundwater in the groundwater management authority [~~area~~] based  
22 upon the desired future conditions adopted by the groundwater  
23 management authority [~~districts~~].

24 SECTION 170. Section 36.1085, Water Code, is amended to  
25 read as follows:

26 Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each  
27 groundwater management authority [~~district in the management area~~]

1 shall ensure that its management plan contains goals and objectives  
2 consistent with achieving the desired future conditions of the  
3 relevant aquifers [~~as adopted during the joint planning process~~].

4 SECTION 171. Section 36.1086, Water Code, is amended to  
5 read as follows:

6 Sec. 36.1086. JOINT EFFORTS BY DISTRICTS [~~IN A MANAGEMENT~~  
7 ~~AREA~~]. Districts located within the same groundwater management  
8 authority territory [~~areas~~] or in adjacent groundwater management  
9 authority territories [~~areas~~] may contract [~~to~~] jointly, with each  
10 other or with groundwater management authorities, to conduct  
11 studies or research, or to construct projects, under terms and  
12 conditions that the districts consider beneficial. These joint  
13 efforts may include studies of groundwater availability and  
14 quality, aquifer modeling, and the interaction of groundwater and  
15 surface water; educational programs; the purchase and sharing of  
16 equipment; and the implementation of projects to make groundwater  
17 available, including aquifer recharge, brush control, weather  
18 modification, desalination, regionalization, and treatment or  
19 conveyance facilities. The districts and authorities may contract  
20 under their existing authorizations including those of Chapter 791,  
21 Government Code, if their contracting authority is not limited by  
22 Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government  
23 Code.

24 SECTION 172. Section 36.109, Water Code, is amended to read  
25 as follows:

26 Sec. 36.109. COLLECTION OF INFORMATION. A district or  
27 groundwater management authority may collect any information the

1 entity's board deems necessary, including information regarding  
2 the use of groundwater, water conservation, and the practicability  
3 of recharging a groundwater reservoir. At the request of the  
4 executive administrator, the district or authority shall provide  
5 any data collected by the district or authority in a format  
6 acceptable to the executive administrator.

7 SECTION 173. Section 36.110, Water Code, is amended to read  
8 as follows:

9 Sec. 36.110. PUBLICATION OF PLANS AND INFORMATION. A  
10 district or authority may publish its plans and the information it  
11 develops, bring them to the attention of the users of groundwater in  
12 the district or authority, and encourage the users to adopt and use  
13 them.

14 SECTION 174. Section 36.111, Water Code, is amended to read  
15 as follows:

16 Sec. 36.111. RECORDS AND REPORTS. (a) The district or  
17 authority may require that records be kept and reports be made of  
18 the drilling, equipping, and completing of water wells and of the  
19 production and use of groundwater.

20 (b) In implementing Subsection (a), a district or authority  
21 may adopt rules that require an owner or operator of a water well  
22 that is required to be registered with or permitted by the district  
23 or authority, except for the owner or operator of a well that is  
24 exempt from permit requirements under Section 36.117(b)(1), to  
25 report groundwater withdrawals using reasonable and appropriate  
26 reporting methods and frequency.

27 SECTION 175. Section 36.112, Water Code, is amended to read

1 as follows:

2           Sec. 36.112. DRILLERS' LOGS. A district or authority shall  
3 require that accurate drillers' logs be kept of water wells and that  
4 copies of drillers' logs and electric logs be filed with the  
5 district or authority.

6           SECTION 176. Sections 36.113(c) and (d), Water Code, are  
7 amended to read as follows:

8           (c) A district may require that only the following be  
9 included in the permit or permit amendment application, as  
10 applicable under the rules of the district:

11           (1) the name and mailing address of the applicant and  
12 the owner of the land on which the well will be located;

13           (2) if the applicant is other than the owner of the  
14 property, documentation establishing the applicable authority to  
15 construct and operate a well for the proposed use;

16           (3) a statement of the nature and purpose of the  
17 proposed use and the amount of water to be used for each purpose;

18           (4) a water conservation plan or a declaration that  
19 the applicant will comply with the groundwater management  
20 authority's [~~district's~~] management plan;

21           (5) the location of each well and the estimated rate at  
22 which water will be withdrawn;

23           (6) a water well closure plan or a declaration that the  
24 applicant will comply with well plugging guidelines and report  
25 closure to the commission;

26           (7) a drought contingency plan; and

27           (8) other information:

1 (A) included in a rule of the district in effect  
2 on the date the application is submitted that specifies what  
3 information must be included in an application for a determination  
4 of administrative completeness; and

5 (B) reasonably related to an issue that a  
6 district by law is authorized to consider.

7 (d) This subsection does not apply to the renewal of an  
8 operating permit issued under Section 36.1145. Before granting or  
9 denying a permit, or a permit amendment issued in accordance with  
10 Section 36.1146, the district shall consider whether:

11 (1) the application conforms to the requirements  
12 prescribed by this chapter and is accompanied by the prescribed  
13 fees;

14 (2) the proposed use of water unreasonably affects  
15 existing groundwater and surface water resources or existing permit  
16 holders;

17 (3) the proposed use of water is dedicated to any  
18 beneficial use;

19 (4) the proposed use of water is consistent with the  
20 groundwater management authority's [~~district's~~] approved  
21 management plan;

22 (5) if the well will be located in the Hill Country  
23 Priority Groundwater Management Area, the proposed use of water  
24 from the well is wholly or partly to provide water to a pond, lake,  
25 or reservoir to enhance the appearance of the landscape;

26 (6) the applicant has agreed to avoid waste and  
27 achieve water conservation; and

1           (7) the applicant has agreed that reasonable diligence  
2 will be used to protect groundwater quality and that the applicant  
3 will follow well plugging guidelines at the time of well closure.

4           SECTION 177. Section 36.1131, Water Code, is amended to  
5 read as follows:

6           Sec. 36.1131. ELEMENTS OF PERMIT. (a) A permit issued by  
7 the district to the applicant under Section 36.113 shall state the  
8 terms and provisions prescribed by the district, which must comply  
9 with the rules and management plan of the groundwater management  
10 authority.

11           (b) The permit may include:

12           (1) the name and address of the person to whom the  
13 permit is issued;

14           (2) the location of the well;

15           (3) the date the permit is to expire if no well is  
16 drilled;

17           (4) a statement of the purpose for which the well is to  
18 be used;

19           (5) a requirement that the water withdrawn under the  
20 permit be put to beneficial use at all times;

21           (6) the location of the use of the water from the well;

22           (7) a water well closure plan or a declaration that the  
23 applicant will comply with well plugging guidelines and report  
24 closure to the commission;

25           (8) the conditions and restrictions, if any, placed on  
26 the rate and amount of withdrawal;

27           (9) any conservation-oriented methods of drilling and

1 operating prescribed by the district;

2 (10) a drought contingency plan prescribed by the  
3 district, which must comply with the groundwater management area's  
4 rules and management plan; and

5 (11) other terms and conditions as provided by Section  
6 36.113.

7 SECTION 178. Section 36.1132, Water Code, is amended to  
8 read as follows:

9 Sec. 36.1132. PERMITS BASED ON MODELED AVAILABLE  
10 GROUNDWATER. (a) A district, to the extent possible, shall issue  
11 permits up to the point that the total volume of exempt and  
12 permitted groundwater production will achieve an applicable  
13 desired future condition under Section 36.108. The groundwater  
14 management authority that includes the territory of the district  
15 shall provide the district with the amount of groundwater  
16 availability and desired future conditions under which the district  
17 may issue permits.

18 (b) The district shall issue permits based on the features  
19 of the aquifer underlying the applicant's land from which the water  
20 is proposed to be drawn, along with the landowner's contiguous  
21 acreage for the land on which the well would exist in relation to  
22 the area of the aquifer [~~In issuing permits, the district shall~~  
23 ~~manage total groundwater production on a long-term basis to achieve~~  
24 ~~an applicable desired future condition and consider:~~

25 [~~(1) the modeled available groundwater determined by~~  
26 ~~the executive administrator,~~

27 [~~(2) the executive administrator's estimate of the~~

1 ~~current and projected amount of groundwater produced under~~  
2 ~~exemptions granted by district rules and Section 36.117,~~

3 ~~[(3) the amount of groundwater authorized under~~  
4 ~~permits previously issued by the district,~~

5 ~~[(4) a reasonable estimate of the amount of~~  
6 ~~groundwater that is actually produced under permits issued by the~~  
7 ~~district, and~~

8 ~~[(5) yearly precipitation and production patterns.]~~

9 ~~[(c) In developing the estimate of exempt use under~~  
10 ~~Subsection (b)(2), the executive administrator shall solicit~~  
11 ~~information from each applicable district].~~

12 SECTION 179. Sections 36.114(a) and (b), Water Code, are  
13 amended to read as follows:

14 (a) The groundwater management authority [~~district~~] by rule  
15 shall determine each activity regulated by the groundwater  
16 management authority [~~district~~] for which a permit or permit  
17 amendment is required. The district shall accept, process, and  
18 consider permits and permit amendments in accordance with the  
19 groundwater management authority's rules.

20 (b) For each activity for which the groundwater management  
21 authority [~~district~~] determines a permit or permit amendment is  
22 required under Subsection (a), and that is not exempt from a hearing  
23 requirement under Section 36.1145, the groundwater management  
24 authority [~~district~~] by rule shall determine whether a hearing on  
25 the permit or permit amendment application is required.

26 SECTION 180. Sections 36.1146(a) and (c), Water Code, are  
27 amended to read as follows:

1 (a) If the holder of an operating permit, in connection with  
2 the renewal of a permit or otherwise, requests a change that  
3 requires an amendment to the permit under groundwater management  
4 authority [~~district~~] rules, the permit as it existed before the  
5 permit amendment process remains in effect until the later of:

6 (1) the conclusion of the permit amendment or renewal  
7 process, as applicable; or

8 (2) final settlement or adjudication on the matter of  
9 whether the change to the permit requires a permit amendment.

10 (c) A district may initiate an amendment to an operating  
11 permit, in connection with the renewal of a permit or otherwise, in  
12 accordance with the groundwater management authority's  
13 [~~district's~~] rules. If a district initiates an amendment to an  
14 operating permit, the permit as it existed before the permit  
15 amendment process shall remain in effect until the conclusion of  
16 the permit amendment or renewal process, as applicable.

17 SECTION 181. Sections 36.116(a), (d), and (e), Water Code,  
18 are amended to read as follows:

19 (a) In order to minimize as far as practicable the drawdown  
20 of the water table or the reduction of artesian pressure, to control  
21 subsidence, to prevent interference between wells, to prevent  
22 degradation of water quality, or to prevent waste, a groundwater  
23 management authority [~~district~~] by rule may regulate:

24 (1) the spacing of water wells by:

25 (A) requiring all water wells to be spaced  
26 a certain distance from property lines or adjoining wells;

27 (B) requiring wells with a certain production

1 capacity, pump size, or other characteristic related to the  
2 construction or operation of and production from a well to be spaced  
3 a certain distance from property lines or adjoining wells; or

4 (C) imposing spacing requirements adopted by the  
5 board of the groundwater management authority; and

6 (2) the production of groundwater by:

7 (A) setting production limits on wells;

8 (B) limiting the amount of water produced based  
9 on acreage or tract size;

10 (C) limiting the amount of water that may be  
11 produced from a defined number of acres assigned to an authorized  
12 well site;

13 (D) limiting the maximum amount of water that may  
14 be produced on the basis of acre-feet per acre or gallons per minute  
15 per well site per acre;

16 (E) managed depletion; or

17 (F) any combination of the methods listed above  
18 in Paragraphs (A) through (E).

19 (d) For better management of the groundwater resources  
20 located in a groundwater management authority [~~district~~] or if a  
21 groundwater management authority [~~district~~] determines that  
22 conditions in or use of an aquifer differ substantially from one  
23 geographic area of the district to another, the groundwater  
24 management authority [~~district~~] may adopt different rules for:

25 (1) each aquifer, subdivision of an aquifer, or  
26 geologic strata located in whole or in part within the boundaries of  
27 the groundwater management authority [~~district~~]; or

1           (2) each geographic area overlying an aquifer or  
2 subdivision of an aquifer located in whole or in part within the  
3 boundaries of the groundwater management authority [~~district~~].

4           (e) In regulating the production of groundwater under  
5 Subsection (a)(2), a groundwater management authority [~~district~~]:

6           (1) shall select a method that is appropriate based on  
7 the hydrogeological conditions of the aquifer or aquifers in the  
8 groundwater management authority [~~district~~]; and

9           (2) may limit the amount of water produced based on  
10 contiguous surface acreage.

11           SECTION 182. Sections 36.117(a), (b), (c), (d), (f), (g),  
12 and (h), Water Code, are amended to read as follows:

13           (a) A groundwater management authority [~~district~~] by rule  
14 may provide an exemption from the groundwater management  
15 authority's [~~district's~~] requirement to obtain any permit required  
16 by this chapter or the groundwater management authority's  
17 [~~district's~~] rules.

18           (b) Except as provided by this section, a groundwater  
19 management authority [~~district~~] shall provide an exemption from a  
20 [~~the~~] district requirement to obtain a permit for:

21           (1) drilling or operating a well used solely for  
22 domestic use or for providing water for livestock or poultry if the  
23 well is:

24           (A) located or to be located on a tract of land  
25 larger than 10 acres; and

26           (B) drilled, completed, or equipped so that it is  
27 incapable of producing more than 25,000 gallons of groundwater a

1 day;

2           (2) drilling a water well used solely to supply water  
3 for a rig that is actively engaged in drilling or exploration  
4 operations for an oil or gas well permitted by the Railroad  
5 Commission of Texas provided that the person holding the permit is  
6 responsible for drilling and operating the water well and the water  
7 well is located on the same lease or field associated with the  
8 drilling rig; or

9           (3) drilling a water well authorized under a permit  
10 issued by the Railroad Commission of Texas under Chapter 134,  
11 Natural Resources Code, or for production from the well to the  
12 extent the withdrawals are required for mining activities  
13 regardless of any subsequent use of the water.

14           (c) A groundwater management authority [~~district~~] may not  
15 restrict the production of water from any well described by  
16 Subsection (b)(1).

17           (d) A groundwater management authority [~~district~~] may  
18 cancel a previously granted exemption and may require an operating  
19 permit for or restrict production from a well and assess any  
20 appropriate fees if:

21           (1) the groundwater withdrawals that were exempted  
22 under Subsection (b)(1) are no longer used solely for domestic use  
23 or to provide water for livestock or poultry;

24           (2) the groundwater withdrawals that were exempted  
25 under Subsection (b)(2) are no longer used solely to supply water  
26 for a rig that is actively engaged in drilling or exploration  
27 operations for an oil or gas well permitted by the Railroad

1 Commission of Texas; or

2           (3) the groundwater withdrawals that were exempted  
3 under Subsection (b)(3) are no longer necessary for mining  
4 activities or are greater than the amount necessary for mining  
5 activities specified in the permit issued by the Railroad  
6 Commission of Texas under Chapter 134, Natural Resources Code.

7           (f) A groundwater management authority [~~district~~] may  
8 require compliance with the groundwater management authority's  
9 [~~district's~~] well spacing rules for the drilling of any well except  
10 a well exempted under Subsection (b)(3).

11           (g) A groundwater management authority [~~district~~] may not  
12 deny an application for a permit to drill and produce water for  
13 hydrocarbon production activities if the application meets all  
14 applicable rules as promulgated by the groundwater management  
15 authority [~~district~~].

16           (h) A groundwater management authority [~~district~~] shall  
17 require the owner of a water well to:

18                 (1) register the well in accordance with rules  
19 promulgated by the groundwater management authority [~~district~~];  
20 and

21                 (2) equip and maintain the well to conform to the  
22 [~~district's~~] rules of the groundwater management authority  
23 requiring installation of casing, pipe, and fittings to prevent the  
24 escape of groundwater from a groundwater reservoir to any reservoir  
25 not containing groundwater and to prevent the pollution or harmful  
26 alteration of the character of the water in any groundwater  
27 reservoir.

1 SECTION 183. Sections 36.119(a), (b), and (g), Water Code,  
2 are amended to read as follows:

3 (a) Drilling or operating a well or wells without a required  
4 permit or producing groundwater in violation of a groundwater  
5 management authority [~~district~~] rule adopted under Section  
6 36.116(a)(2) is declared to be illegal, wasteful per se, and a  
7 nuisance.

8 (b) Except as provided by this section, a landowner or other  
9 person who has a right to produce groundwater from land that is  
10 adjacent to the land on which a well or wells are drilled or  
11 operated without a required permit or permits or from which  
12 groundwater is produced in violation of a groundwater management  
13 authority [~~district~~] rule adopted under Section 36.116(a)(2), or  
14 who owns or otherwise has a right to produce groundwater from land  
15 that lies within one-half mile of the well or wells, may sue the  
16 owner of the well or wells in a court of competent jurisdiction to  
17 restrain or enjoin the illegal drilling, operation, or both. The  
18 suit may be brought with or without the joinder of the district in  
19 which the well or wells are located.

20 (g) Before filing a suit under Subsection (b) or (c), an  
21 aggrieved party must file a written complaint with the district  
22 having jurisdiction over the well or wells drilled or operated  
23 without a required permit or in violation of a groundwater  
24 management authority [~~district~~] rule. The district shall  
25 investigate the complaint and, after notice and hearing and not  
26 later than the 90th day after the date the written complaint was  
27 received by the district, the district shall determine, based on

1 the evidence presented at the hearing, whether a groundwater  
2 management authority [~~district~~] rule has been violated. The  
3 aggrieved party may only file a suit under this section on or after  
4 the 91st day after the date the written complaint was received by  
5 the district.

6 SECTION 184. Section 36.120, Water Code, is amended to read  
7 as follows:

8 Sec. 36.120. INFORMATION. On request of the executive  
9 director or the executive administrator, the district and  
10 groundwater management authority shall make available information  
11 acquired [~~that it acquires~~] concerning the groundwater resources  
12 within its jurisdiction, and shall make that information available  
13 to each other. The district and groundwater management authority  
14 shall also provide information to the commission and Texas Water  
15 Development Board concerning its plans and activities in conserving  
16 and protecting groundwater resources. On request of a district or  
17 groundwater management authority, the executive director and the  
18 executive administrator shall provide information they acquire  
19 concerning the groundwater resources within the district's or  
20 authority's jurisdiction.

21 SECTION 185. Section 36.121, Water Code, is amended to read  
22 as follows:

23 Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS  
24 AND AUTHORITIES OVER WELLS IN CERTAIN COUNTIES. Except as provided  
25 by Section 36.117, a district that is created under this chapter on  
26 or after September 1, 1991, or a groundwater management authority,  
27 shall exempt from regulation under this chapter a well and any water

1 produced or to be produced by a well that is located in a county that  
2 has a population of 14,000 or less if the water is to be used solely  
3 to supply a municipality that has a population of 121,000 or less  
4 and the rights to the water produced from the well are owned by a  
5 political subdivision that is not a municipality, or by a  
6 municipality that has a population of 115,000 or less, and that  
7 purchased, owned, or held rights to the water before the date on  
8 which the district was created, regardless of the date the well is  
9 drilled or the water is produced. The district or groundwater  
10 management authority may not prohibit the political subdivision or  
11 municipality from transporting produced water inside or outside the  
12 district's or authority's boundaries.

13 SECTION 186. Sections 36.122(a), (c), (d), (f), and (g),  
14 Water Code, are amended to read as follows:

15 (a) If an application for a permit or an amendment to a  
16 permit under Section 36.113 proposes the transfer of groundwater  
17 outside of a district's boundaries or to any person other than the  
18 owner of the land on which the well is located regardless of whether  
19 the transfer is inside or outside of the district, the district may  
20 add conditions to the permit in accordance with this section [~~also~~  
21 ~~consider the provisions of this section in determining whether to~~  
22 ~~grant or deny the permit or permit amendment~~].

23 (c) The [~~Except as provided in Section 36.113(e), the~~]  
24 district may not impose more restrictive permit conditions on  
25 transporters than the district imposes on existing in-district  
26 users.

27 (d) The district may impose a reasonable fee for processing

1 an application under this section. The fee may not exceed fees that  
2 the district imposes for processing other applications under  
3 Section 36.113. ~~[An application filed to comply with this section  
4 shall be considered and processed under the same procedures as  
5 other applications for permits under Section 36.113 and shall be  
6 combined with applications filed to obtain a permit for in-district  
7 water use under Section 36.113 from the same applicant.]~~

8 (f) A district may grant a portion of its fee revenue to a  
9 county located within the district for use in public capital  
10 improvements relating to water development, including necessary  
11 road improvements related to the water development activity ~~[In  
12 reviewing a proposed transfer of groundwater out of the district,  
13 the district shall consider:~~

14 ~~[(1) the availability of water in the district and in  
15 the proposed receiving area during the period for which the water  
16 supply is requested,~~

17 ~~[(2) the projected effect of the proposed transfer on  
18 aquifer conditions, depletion, subsidence, or effects on existing  
19 permit holders or other groundwater users within the district, and~~

20 ~~[(3) the approved regional water plan and approved  
21 district management plan].~~

22 (g) The district may not deny a permit based on the fact that  
23 the applicant seeks to transfer groundwater outside of the district  
24 ~~[but may limit a permit issued under this section if conditions in  
25 Subsection (f) warrant the limitation, subject to Subsection (c)].~~

26 SECTION 187. Section 36.123, Water Code, is amended to read  
27 as follows:

1           Sec. 36.123. RIGHT TO ENTER LAND. (a) The directors,  
2 engineers, attorneys, agents, operators, and employees of a  
3 district, groundwater management authority, or water supply  
4 corporation may go on any land to inspect, make surveys, or perform  
5 tests to determine the condition, value, and usability of the  
6 property, with reference to the proposed location of works,  
7 improvements, plants, facilities, equipment, or appliances. The  
8 cost of restoration shall be borne by the district, authority, or  
9 [~~the~~] water supply corporation.

10           (b) District and groundwater management authority employees  
11 and agents are entitled to enter any public or private property  
12 within the boundaries of the district or adjacent to any reservoir  
13 or other property owned by the district or authority at any  
14 reasonable time for the purpose of inspecting and investigating  
15 conditions relating to the quality of water in the state or the  
16 compliance with any rule, regulation, permit, or other order of the  
17 district or authority. District or groundwater management  
18 authority employees or agents acting under this authority who enter  
19 private property shall observe the establishment's rules and  
20 regulations concerning safety, internal security, and fire  
21 protection and shall notify any occupant or management of their  
22 presence and shall exhibit proper credentials.

23           SECTION 188. Section 36.124(a), Water Code, is amended to  
24 read as follows:

25           (a) A governmental act or proceeding of a district or  
26 groundwater management authority is conclusively presumed, as of  
27 the date it occurred, valid and to have occurred in accordance with

1 all applicable statutes and rules if:

2 (1) the third anniversary of the effective date of the  
3 act or proceeding has expired; and

4 (2) a lawsuit to annul or invalidate the act or  
5 proceeding has not been filed on or before that third anniversary.

6 SECTION 189. Section 36.158, Water Code, is amended to read  
7 as follows:

8 Sec. 36.158. GRANTS. A district or groundwater management  
9 authority may make or accept grants, gratuities, advances, or loans  
10 in any form to or from any source approved by its ~~[the]~~ board,  
11 including any governmental entity, and may enter into contracts,  
12 agreements, and covenants in connection with grants, gratuities,  
13 advances, or loans that the board considers appropriate.

14 SECTION 190. Section 36.159, Water Code, is amended to read  
15 as follows:

16 Sec. 36.159. GROUNDWATER [~~CONSERVATION~~ ~~DISTRICT~~]  
17 MANAGEMENT PLAN FUNDS. The Texas Water Development Board may  
18 allocate funds from the water assistance fund to a district or  
19 groundwater management authority to:

20 (1) conduct initial data collections under this  
21 chapter;

22 (2) develop and implement a long-term management plan  
23 under Section 36.1071; and

24 (3) participate in regional water plans.

25 SECTION 191. Section 36.160, Water Code, is amended to read  
26 as follows:

27 Sec. 36.160. FUNDS. The Texas Water Development Board, the

1 commission, the Parks and Wildlife Department, the Texas  
2 Agricultural Extension Service, and institutions of higher  
3 education may allocate funds to carry out the objectives of this  
4 chapter and Chapter 35, which include but are not limited to:

5 (1) conducting initial and subsequent studies and  
6 surveys under Sections 36.106, 36.107, and 36.109;

7 (2) providing appropriate education in affected areas  
8 identified in Section 35.007 relating to the problems and issues  
9 concerning water management that may arise;

10 (3) processing priority groundwater management area  
11 evaluations under this chapter and Chapter 35;

12 (4) providing technical and administrative assistance  
13 to newly created districts under this chapter and Chapter 35;

14 (5) covering the costs of newspaper notices required  
15 under Sections 35.009 and 36.014 and failed elections in accordance  
16 with Sections 35.014(c), 36.017(h), and 36.019; and

17 (6) providing for assistance from the Parks and  
18 Wildlife Department to the Texas Water Development Board, a  
19 groundwater management authority, or a district for the purpose of  
20 assessing fish and wildlife resource habitat needs as they may  
21 apply to overall management plan goals and objectives of the  
22 district.

23 SECTION 192. Section 36.161(a), Water Code, is amended to  
24 read as follows:

25 (a) The Texas Water Development Board may provide funds  
26 under Sections 36.159 and 36.160, Chapters 15, 16, and 17, and  
27 Subchapter L of this chapter to a district or groundwater

1 management authority if the Texas Water Development Board  
2 determines that such funding will allow the district or authority  
3 to comply or continue to comply with provisions of this chapter.

4 SECTION 193. Section 36.207, Water Code, is amended to read  
5 as follows:

6 Sec. 36.207. USE OF FEES. A district may use funds obtained  
7 from administrative, production, or export fees collected under a  
8 special law governing the district or this chapter for any purpose  
9 consistent with the district's public purposes [~~approved~~  
10 ~~management plan~~], including, without limitation, making grants,  
11 loans, or contractual payments to achieve, facilitate, or expedite  
12 reductions in groundwater pumping or the development or  
13 distribution of alternative water supplies.

14 SECTION 194. Section 36.251(b), Water Code, is amended to  
15 read as follows:

16 (b) Only the district, the groundwater management authority  
17 in which the district exists, the applicant, and parties to a  
18 contested case hearing may participate in an appeal of a decision on  
19 the application that was the subject of that contested case  
20 hearing. An appeal of a decision on a permit application must  
21 include the applicant as a necessary party.

22 SECTION 195. Subchapter B, Chapter 36, Water Code, is  
23 amended by adding Section 36.022 to read as follows:

24 Sec. 36.022. NONDISCRIMINATION IN PERMITTING DECISIONS.  
25 Notwithstanding any provision in a special law governing a  
26 district, a district may not:

27 (1) discriminate in any permitting decision, rule, or

1 other action using historic or existing use as a criteria; or  
2 (2) prevent or limit exportation of water from the  
3 district.

4 SECTION 196. Section 49.3189, Water Code, is amended to  
5 read as follows:

6 Sec. 49.3189. CONVERSION OF WATER RIGHTS. After a district  
7 excludes land from the district's territory under this subchapter,  
8 the municipality or other municipal supplier that proposes to serve  
9 the land with a potable water supply may petition the district to  
10 convert the proportionate water rights previously allocated for the  
11 land from irrigation use rights to municipal use rights for the use  
12 and benefit of the municipality or other municipal supplier. The  
13 district shall compute the proportionate water rights available and  
14 shall initiate administrative proceedings to convert the  
15 irrigation use rights to municipal use rights. Before the district  
16 is obligated to initiate the administrative proceedings, the  
17 municipality or other municipal supplier must deposit with the  
18 district the amount that the district estimates the district will  
19 incur as reasonable expenses and attorney's fees in those  
20 proceedings. On approval of the conversion by the Texas Water  
21 Development Board [~~commission~~], the district shall deliver the  
22 water to the municipality or other municipal supplier in the manner  
23 those entities may agree to under this code.

24 SECTION 197. Section 49.503(b), Water Code, is amended to  
25 read as follows:

26 (b) A municipal water supplier that serves land described by  
27 Subsection (a) may petition the district in accordance with this

1 section to convert the proportionate irrigation water right to the  
2 Rio Grande from irrigation use to municipal use with municipal  
3 priority of allocation under Texas Water Development Board  
4 [~~commission~~] rules, for the use and benefit of the municipal water  
5 supplier.

6 SECTION 198. Sections 49.506(a) and (b), Water Code, are  
7 amended to read as follows:

8 (a) Not later than the second anniversary of the date the  
9 municipal water supplier files a petition under Section 49.503:

10 (1) a district shall provide the municipal water  
11 supplier with the proportionate water rights described by Section  
12 49.505 from the district's existing water rights; or

13 (2) a district shall, if the district does not have  
14 sufficient existing water rights:

15 (A) apply for appropriate amendments to the  
16 district's water rights under Texas Water Development Board  
17 [~~commission~~] rules to convert the proportionate water rights from  
18 irrigation use to municipal use with municipal priority of  
19 allocation; and

20 (B) provide to the municipal water supplier the  
21 converted rights described by Section 49.505.

22 (b) The district may continue to use the irrigation use  
23 water for district purposes until:

24 (1) the Texas Water Development Board [~~commission~~]  
25 approves the amendment to the district's water rights; or

26 (2) the water is otherwise provided to the municipal  
27 water supplier.

1 SECTION 199. Section 49.509(a), Water Code, is amended to  
2 read as follows:

3 (a) Subject to Subsection (d), the Rio Grande Regional Water  
4 Authority annually at its January meeting shall calculate the  
5 current market value by using the average price per acre-foot of  
6 municipal use water after conversion from irrigation use water to  
7 municipal use water with a municipal priority of allocation under  
8 Texas Water Development Board [~~commission~~] rules of the last three  
9 purchases involving:

- 10 (1) a municipal water supplier;
- 11 (2) a party other than a municipal water supplier; and
- 12 (3) at least 100 acre-feet of municipal use water,  
13 with municipal priority of allocation.

14 SECTION 200. Section 51.852, Water Code, is amended to read  
15 as follows:

16 Sec. 51.852. COOPERATION WITH TEXAS WATER DEVELOPMENT  
17 BOARD, AUTHORITY, CORPS OF ENGINEERS, AND OTHER OWNERS. The  
18 commission, in conjunction with the Texas Water Development Board,  
19 the authority, the United States Army Corps of Engineers, and other  
20 reservoir owners in the Trinity River basin, shall develop and  
21 implement a coordinated basinwide water release program for flood  
22 routing and control.

23 SECTION 201. Section 51.853, Water Code, is amended to read  
24 as follows:

25 Sec. 51.853. COOPERATION WITH TEXAS WATER DEVELOPMENT  
26 BOARD, AUTHORITY, AND OWNERS. The commission, in conjunction with  
27 the Texas Water Development Board, the authority, and all reservoir

1 owners in the Trinity River basin, may review, at least every 10  
2 years, all water rights permits affecting the basin.

3 SECTION 202. Section 51.854, Water Code, is amended to read  
4 as follows:

5 Sec. 51.854. FLOOD WARNING SYSTEM. The commission, the  
6 Texas Water Development Board, and the authority, in conjunction  
7 with affected political subdivisions, shall develop a basinwide  
8 flood warning system to alert the public and local officials of  
9 imminent flooding in order to effectuate orderly withdrawal from  
10 floodplains and to institute other appropriate precautions.

11 SECTION 203. Sections 55.193(a), (b), and (d), Water Code,  
12 are amended to read as follows:

13 (a) Any district which has a permit issued by the Texas  
14 Water Development Board [~~commission~~] to construct a reservoir and  
15 to appropriate water from a stream or watershed for irrigation or  
16 other purposes may convey to another district an interest in the  
17 reservoir or water rights.

18 (b) The conveyance shall be recorded in the office of the  
19 county clerk of the county in which the property is located and in  
20 the office of the executive administrator of the Texas Water  
21 Development Board [~~director~~].

22 (d) After the conveyance is filed in the office of the  
23 executive administrator of the Texas Water Development Board  
24 [~~director~~], the rights conveyed vest in the district to which the  
25 conveyance was made as if the rights were granted directly by the  
26 Texas Water Development Board [~~commission~~].

27 SECTION 204. Section 55.198, Water Code, is amended to read

1 as follows:

2           Sec. 55.198. PUMPING AND DELIVERING WATER TO LAND NEAR  
3 DISTRICT. The district may enter into a contract with a person who  
4 owns or uses land in the vicinity of the district and who has a  
5 permit from the Texas Water Development Board [~~commission~~] to  
6 appropriate water for use in irrigation or for domestic or  
7 commercial uses to pump or deliver the water to the person's land.

8           SECTION 205. Section 58.180, Water Code, is amended to read  
9 as follows:

10           Sec. 58.180. AMENDMENTS TO WATER RIGHTS. The board may  
11 apply to the Texas Water Development Board [~~commission~~] to amend  
12 its water rights as provided by Section 11.122 [~~of this code~~] and  
13 the rules of the Texas Water Development Board [~~commission~~].

14           SECTION 206. Section 580.001, Local Government Code, is  
15 amended to read as follows:

16           Sec. 580.001. WATER CONTRACTS IN BORDER MUNICIPALITIES AND  
17 COUNTIES. The governing body of a municipality or county that has a  
18 boundary that is contiguous with the border between this state and  
19 the Republic of Mexico may contract for the acquisition of water or  
20 water rights with a border municipality or state in the Republic of  
21 Mexico if the contract is approved and monitored by the Texas Water  
22 Development Board [~~Natural Resource Conservation Commission~~] and  
23 the International Boundary and Water Commission, United States and  
24 Mexico.

25           SECTION 207. Section 111.0192(a), Natural Resources Code,  
26 is amended to read as follows:

27           (a) The right of eminent domain granted under this chapter

1 to any pipelines transporting coal in whatever form shall not  
2 include and cannot be used to condemn water or water rights for use  
3 in the transportation of coal by pipeline, and no Texas water from  
4 any source shall be used in connection with the transportation,  
5 maintenance, or operation of a coal slurry pipeline (except water  
6 used for drinking, toilet, bath, or other personal uses at pumping  
7 stations or offices) within the State of Texas unless the Texas  
8 Water Development Board [~~Natural Resource Conservation Commission~~]  
9 shall determine, after public hearing, that the use will not be  
10 detrimental to the water supply of the area from which the water is  
11 sought to be extracted.

12 SECTION 208. Section 111.305, Natural Resources Code, is  
13 amended to read as follows:

14 Sec. 111.305. OTHER AGENCIES. (a) The commission shall  
15 seek and act on the recommendations of the Texas [~~Natural Resource~~  
16 ~~Conservation~~] Commission on Environmental Quality, the Governor's  
17 Energy Advisory Council, or their successors responsible for  
18 environmental determinations and shall specify the proper use and  
19 disposal of nondischargeable water.

20 (b) Neither the authority conveyed to the commission by this  
21 subchapter to issue certificates and to promulgate rules governing  
22 pipelines transporting coal in whatever form nor the powers and  
23 duties conveyed on those pipelines by this chapter shall affect,  
24 diminish, or otherwise limit the jurisdiction and authority of the  
25 Texas Water Development Board and the Texas [~~Natural Resource~~  
26 ~~Conservation~~] Commission on Environmental Quality to regulate by  
27 applicable rules the acquisition, use, control, disposition, and

1 discharge of water or water rights in Texas.

2 SECTION 209. Section 22.022(b), Parks and Wildlife Code, is  
3 amended to read as follows:

4 (b) Improvements may include the construction of dams to  
5 impound water to form a lake or lakes for recreational and other  
6 conservation purposes within the park. Before constructing any dam  
7 or lake, the commission must obtain permits required by law from the  
8 Texas Water Development Board [~~Rights Commission~~].

9 SECTION 210. Section 22.072, Parks and Wildlife Code, is  
10 amended to read as follows:

11 Sec. 22.072. PERMIT FOR DAM. A dam may not be constructed  
12 until a permit has been obtained from the Texas Water Development  
13 Board [~~Rights Commission~~].

14 SECTION 211. Section 8104.206, Special District Local Laws  
15 Code, is amended to read as follows:

16 Sec. 8104.206. ACQUISITION OF WATER RIGHTS NOT PREVENTED.  
17 This chapter does not prevent the authority from acquiring water  
18 rights under any law or permit if the acquisition is approved by  
19 order or later permit from the Texas Water Development Board  
20 [~~Commission on Environmental Quality~~].

21 SECTION 212. The following provisions of the Water Code are  
22 repealed:

- 23 (1) Section 5.506;  
24 (2) Sections 5.701(c), (h), (i), (j), (k), (l), (m),  
25 and (o);  
26 (3) Section 11.030;  
27 (4) Sections 11.085(t) and (u);

- 1 (5) Sections 11.202(d) and (e);
- 2 (6) Section 11.301;
- 3 (7) Section 11.302;
- 4 (8) Section 11.303;
- 5 (9) Section 11.304;
- 6 (10) Section 11.305;
- 7 (11) Section 11.306;
- 8 (12) Section 11.307;
- 9 (13) Section 11.308;
- 10 (14) Section 11.309;
- 11 (15) Section 11.310;
- 12 (16) Section 11.311;
- 13 (17) Section 11.312;
- 14 (18) Section 11.313;
- 15 (19) Section 11.314;
- 16 (20) Section 11.315;
- 17 (21) Section 11.316;
- 18 (22) Section 11.317;
- 19 (23) Section 11.318;
- 20 (24) Section 11.319;
- 21 (25) Section 11.320;
- 22 (26) Section 11.321;
- 23 (27) Section 11.322;
- 24 (28) Section 11.323;
- 25 (29) Section 11.324;
- 26 (30) Section 11.3271(j), as added by Chapter 281 (H.B.
- 27 2250), Acts of the 78th Legislature, Regular Session, 2003;

- 1 (31) Section 11.551(2);
- 2 (32) Section 16.012(f);
- 3 (33) Section 35.004;
- 4 (34) Section 36.001(13);
- 5 (35) Section 36.014(b);
- 6 (36) Section 36.108(d-4);
- 7 (37) Sections 36.1083(q) and (r);
- 8 (38) Section 36.113(e);
- 9 (39) Section 36.116(b);
- 10 (40) Sections 36.122(b), (h), (i), (j), (k), (m), (n),
- 11 (o), and (p);
- 12 (41) Section 36.301;
- 13 (42) Section 36.3011;
- 14 (43) Sections 36.302(c), (d), and (f); and
- 15 (44) Section 55.001(4).

16 SECTION 213. (a) In this section:

- 17 (1) "Board" means the Texas Water Development Board.
- 18 (2) "Commission" means the Texas Commission on
- 19 Environmental Quality.

20 (b) Not later than September 1, 2020, the board and the  
21 commission shall enter into a memorandum of understanding relating  
22 to the transfer of the administration of surface water rights  
23 permitting from the commission to the board. The memorandum of  
24 understanding must include a timetable and specific steps and  
25 methods for the transfer on January 1, 2021, of all powers, duties,  
26 obligations, rights, contracts, leases, records, assets, real or  
27 personal property, personnel, and unspent and unobligated

1 appropriations and other funds that relate primarily to the  
2 administration of surface water rights permitting from the  
3 commission to the board.

4 (c) On January 1, 2021:

5 (1) all powers, duties, obligations, rights,  
6 contracts, leases, records, assets, real or personal property,  
7 personnel, and unspent and unobligated appropriations and other  
8 funds of the commission that relate primarily to the administration  
9 of surface water rights permitting are transferred to the board;

10 (2) all rules, policies, forms, procedures, and  
11 decisions of the commission that relate primarily to the  
12 administration of surface water rights permitting are continued in  
13 effect as rules, policies, forms, procedures, and decisions of the  
14 board, until superseded by a rule or other appropriate action of the  
15 board; and

16 (3) any investigation, complaint, action, contested  
17 case, or other proceeding involving the commission that relates  
18 primarily to the administration of surface water rights permitting  
19 is transferred without change in status to the board, and the board  
20 assumes, without a change in status, the position of the commission  
21 in any investigation, complaint, action, contested case, or other  
22 proceeding that relates primarily to the administration of surface  
23 water rights permitting involving the commission.

24 (d) The transfer of the powers and duties of the commission  
25 that relate primarily to the administration of surface water rights  
26 permitting to the board does not affect the validity of a right,  
27 privilege, or obligation accrued, a permit or license issued, a

1 penalty, forfeiture, or punishment assessed, a rule adopted, a  
2 proceeding, investigation, or remedy begun, a decision made, or  
3 other action taken by or in connection with the commission.

4 SECTION 214. Nothing in this Act shall be construed to  
5 affect any existing surface water right, certificate of  
6 adjudication, certified filing, or other surface water quantity  
7 permit, or surface water priority.

8 SECTION 215. A water contract entered into before the  
9 effective date of this Act under which groundwater is exported from  
10 a groundwater conservation district to another geographic area has  
11 a five-year exemption from a reduction in exports by a limitation  
12 imposed from a groundwater management authority, unless water  
13 availability is threatened or impaired for another well located  
14 within one mile from the well that is producing exported water.

15 SECTION 216. (a) A fee established by Section 12.115, Water  
16 Code, as added by this Act, is due on October 1, 2022, for water  
17 sales occurring between September 1, 2021, and August 31, 2022.

18 (b) Not later than January 1, 2021, the Texas Water  
19 Development Board shall designate groundwater management  
20 authorities as required by Section 35.052, Water Code, as added by  
21 this Act.

22 SECTION 217. To the extent of any conflict, this Act  
23 prevails over another Act of the 86th Legislature, Regular Session,  
24 2019, relating to nonsubstantive additions to and corrections in  
25 enacted codes.

26 SECTION 218. This Act takes effect September 1, 2019.