

House Natural Resources Hearing

April 8, 2015

Steve Box, Executive Director

Environmental Stewardship

HB 3298, Larson,

Registering: **AGAINST** the bill.

Chairman Keffer, Representative Larson, and members,

I am Steve Box, Executive Director of Environmental Stewardship. I am registering AGAINST this bill. Honestly I wanted to register on this bill but as I studied the changes needed to make this a balanced bill my colleagues convinced me to change my mind. This bill is clearly stacked AGAINST the balancing mandate of the Conservation Amendment of the Texas Constitution and seeks to stack the deck against conserving and protecting our water resources, especially groundwater. I am offering this testimony and a red-line copy of the bill that attempts to rebalance the bill. I hope that you too will come to see this as a win-win for the State of Texas and will work with the environmental community and the League of independent Voters of Texas in a substantial re-write.

If we are to proceed with the vision articulated in this bill of building a water grid to supply and distribute water throughout Texas, and we are withholding judgment on the wisdom of such a grid for now, then it is appropriate that the Legislature instruct the Texas Water Development Board to investigate reasonable means of accomplishing the needs of the state to both develop and conserve both groundwater and surface water resources.

However, we believe that, for this study process to be meaningful, several provisions need to be added to the bill; provisions to provide guidance to the study, a provision to evaluate the economic, environmental and social impacts of the project, a provision to first call for maximized conservation efforts as an overarching principle,

a provision to conduct the study by way of a stakeholder process, and a provision to evaluate and guide the science that is used in the project. Last but certainly of paramount importance, provisions to achieve balance between conservation and development of groundwater and surface water are imperative.

To that end, we are requesting that you add several provisions to the bill that I will summarize here and that are identified in the committee handout.

SECTION 1. We propose that two guiding principles be added to the findings in section 1. The first principle (5) relates to the need for sound science. Best science needs to be available to ensure the state achieves the objectives of this study.

The second principle (6) is consistent with the Conservation Amendment to the Texas Constitution and seeks to ensure that the study achieves the state's objective of balancing the development and conservation of both groundwater and surface water.

SECTION 1: LEGISLATIVE FINDINGS. The legislature finds that: **Propose adding new (5) and (6):** (5) the best science must inform any process that studies the conservation, efficient use or productivity of water, or that develops a market and conveyance network for waters of the state, to ensure the state achieves the objective of balancing the development and conservation of the state's natural resources, including groundwater, rivers, streams and springs; and

(6) any development of a market and conveyance network for water in the state must take into account the fundamental principle of achieving balance between development and conservation of the waters of the state in order that the natural resource of water be available in perpetuity to the citizens of the state.

SECTION 3. We propose three provisions be added to section 3 of the bill. The first provision (new paragraph 6) addresses our interest that economic, environmental, and social impact be considered in areas identified as potential sources of water, not just recipients of water.

The second provision (new paragraph 14) seeks to establish a stakeholder process for developing and vetting proposals and recommendations that will result from the study. This stakeholder process is crafted based on the stakeholder process used by the Texas Commission on Environmental Quality to develop environmental flow recommendations.

The third provision (new paragraph 16) addresses our interest that the "best available science" is sound science that has been vetted periodically through a method of independent science review.

The two sections of the Water Code cited in subparagraph (D) are critical to informed decision-making and have been in the Water Code for 3 1/2 and 18 years, respectively. The first is regarding the science needed to guide consideration required on the impacts of the desired future conditions (DFCs) on spring flow and other interactions between groundwater and surface water prior to voting to adopt the DFCs. The second is regarding the science needed to guide consideration of whether a permit decision unreasonably affects existing groundwater and surface water resources.

SECTION 3: (b) In conducting the study, the board shall:

Propose adding new (6): (6) identify and evaluate the economic, environmental, and social impacts on the areas identified as potential sources of water for the market and the water grid, including such areas' water needs for municipal, industrial, agricultural, agricultural irrigation, recreational, environmental, and other purposes, not necessarily in that order of priority;

Propose adding new (14) in place of renumbered (13): (14) convene the stakeholders' committee required under and for the purposes described under [new] Section 4.¹

Propose adding new 16: (16) in all aspects of the study and with respect to individual objectives of the study, identify and evaluate (A) the best science that is currently available to achieve an objective of the state, (B) the science that needs to be developed to achieve such objective, (C) propose a method whereby the state can provide for periodic and independent review and evaluation of the science available to, and being used by, decision-makers, and (D) the science that is available, and the science that must be developed, to implement the decision-making considerations required by Section 36.108(d) (3) and (4)² and Section 36.113(d) (2)³.

Thank you,

I'll be pleased to answer questions.

References

¹ Stakeholder committee terms and representation adapted from Chapter 11, Sec. 1102362 DEVELOPMENT OF

(f) The board shall appoint a Water Supply and Demand stakeholders committee for which a schedule for the development of recommendations is specified in this study. Chapter 2110, Government Code, does not apply to the size, composition, or duration of a stakeholders committee. The committee must consist of at least 17 members. The membership of each committee must:

- (1) reflect a fair and equitable balance of interest groups concerned with groundwater and surface water conservation, use and distribution; and
- (2) be representative of appropriate stakeholders, including the following:
 - (A) agricultural water users;
 - (B) recreational water users;
 - (C) municipalities;
 - (D) soil and water conservation districts;
 - (E) industrial water users, including representatives of each of the following sectors:
 - (i) refining;
 - (ii) chemical manufacturing;
 - (iii) electricity generation; and
 - (iv) production of paper products or timber;
 - (F) commercial water purveyors;

- (G) public interest groups;
- (H) regional water planning groups;
- (I) groundwater conservation districts with jurisdiction over groundwater;
- (J) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and
- (K) environmental interests.

(g) Members of the stakeholders committee serve [?]-year terms expiring March 1. If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(h) Meetings of the stakeholders committee must be open to the public.

² 36.108 (d)(4) has been in the Texas Water Code since 2011, yet Groundwater Districts and Groundwater Management Areas fail to adequately consider the impacts of the DFCs on spring flow and other interactions between groundwater and surface water claiming there is not adequate science available. The Texas Water Development Board has not identified and applied the science available and has not developed sound science and guidelines for Districts to use in their decisions on these matters. Subsections (3) and (4) were added to the code in the same Act, yet the TWDB has provided only such information and guidance for (3) total estimated recoverable storage.

36.108(d)(3)-(4) was added by Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 17, Effective September 1, 2011.

SB 660, Section 17, Acts 2011 SECTION 17. Subchapter D, Chapter 36, Water Code, is amended by amending Section 36.108 and adding Sections 36.1081 through 36.1086 to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section:

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption ~~establish~~ desired future conditions for the relevant aquifers within the management area. Before voting on the proposed ~~the~~ ~~establishing~~ ~~the~~ desired future conditions of the aquifers under Subsection (d-2) ~~[this section]~~, the districts shall consider:

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

³ 36.113 (d)(2) has been in the Texas Water Code since 1997 (18 years), yet Groundwater Districts and fail to adequately consider whether the permit decisions unreasonably affects existing groundwater and surface water resources, claiming there is not adequate science available. For eighteen years The Texas Water Development Board has not identified and applied the science available and has not developed sound science and guidelines for Districts to use in their decisions on these matters.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.30, Effective Sept. 1, 1997 Senate Bill 1.

SECTION 4.30. Section 36.113, Water Code, is amended to read as follows:

(d) Before granting or denying a permit, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.