

- SUBJECT:** Authorizing LCRA to sell water outside its water-service area
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 8 ayes — Counts, King, Cook, Hilderbran, Hope, R. Lewis, Puente, Walker  
0 nays  
1 absent — Corte
- WITNESSES:** For — Joseph J. Beal, Lower Colorado River Authority; John Burke, Lower Colorado Regional Water Planning Group, Region K; Mary Q. Kelly, San Antonio Water System  
  
Against — Myron J. Hess, National Wildlife Federation; Jerry Morrissey, Sierra Club, Alamo Regional Group; Sheril Smith, Sierra Club, Lone Star Chapter
- BACKGROUND:** The 43rd Legislature in 1934 created the Lower Colorado River Authority (LCRA) conservation and reclamation district (Art. 8280-107, V.T.C.S.). The district covers Blanco, Burnet, Llano, Travis, Bastrop, Fayette, Colorado, Wharton, San Saba, and Matagorda counties. A 1947 attorney general's opinion (V-319) found that the act did not authorize LCRA to sell or distribute water outside its boundaries and that the Legislature intended to permit only sales that it expressly authorized.
- DIGEST:** CSHB 1629 would authorize LCRA to enter into a contract to sell water to a municipality or municipally owned utility outside LCRA's water-service area. In addition to its applicable water rate, LCRA would have to impose a surcharge on such sales to be determined by the LCRA board of directors. No regulatory agency or administrative authority could review or modify the board's determination of the surcharge.  
  
A water contract authorized by this bill could extend for a base period of not more than 50 years and could provide a renewal option for not more than 30 additional years. The renewal option would have to require the municipality or utility to reduce its water use progressively during the final 10 years of

the renewal term. If the municipality or utility failed to meet the required reduction, its water rate would increase immediately by a factor of five and it would not be entitled to acquire any additional water from LCRA after the contract expired.

The contract also would have to require that the water rate increase by a factor of five if the municipality or utility initiated legal proceedings to obtain, or obtained, other than through an agreement with LCRA:

- ! an increase in the amount of water taken under a contract; or
- ! an extension of either the base or renewal period of a contract.

The provision for a water-rate increase also would have to apply if LCRA were compelled by any authority to provide the municipality or utility with more than 150,000 acre-feet of water annually or with water beyond the base and renewal terms of the contract.

LCRA could not sell more than a total of 150,000 acre-feet of water in any year under such contracts and would have to own any facilities within its water-service area that were used to provide water under such contracts. Water could not be diverted from the Colorado River upstream of Mansfield Dam. The bill would not authorize LCRA to:

- ! sell surface water rights for use outside the water-service area or sell or lease water other than as authorized;
- ! sell groundwater to a municipality or utility; or
- ! enter into a contract under this statute unless the LCRA board of directors found that the contract would protect and benefit LCRA's water-service area, including municipal, industrial, agricultural, recreational, and environmental interests, be consistent with regional water plans filed with the Texas Water Development Board, and benefit stored water levels in existing LCRA reservoirs.

Payments made under such contracts would be operation and maintenance costs of the municipality's utility system, and the municipality or utility could use revenue bond proceeds to make such payments.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

By authorizing LCRA to sell water to a municipality or utility outside its water-service area, CSHB 1629 would allow the implementation of a “win-win” water development plan for the lower Colorado River basin and San Antonio. Under the plan, the basin would benefit from a reduced water deficit due to increased storage and conservation measures, increased storage levels in the Highland Lakes upstream of Mansfield Dam, and preservation of the basin’s \$300 million rice industry. San Antonio, which has legislative limits on the amount of groundwater it can pump in order to preserve the Edwards Aquifer, would benefit by securing a significant supply of water to help meet its long-term needs.

Funds from the sale of water to San Antonio would allow LCRA to build facilities to store excess flows of the Colorado River downstream from Austin and to carry out conservation measures for agriculture. This would serve the irrigation needs of rice growers in the basin and would allow the levels of the Highland Lakes to remain higher during drought. LCRA also could use funds to provide infrastructure to help rural communities in the western part of the basin meet their water needs.

The San Antonio Water System (SAWS)/LCRA water-sharing plan enabled by CSHB 1629 would help implement plans developed by Regions K and L under SB 1, enacted by the 75th Legislature, through cooperation and consensus-building. The plan’s approach to water development could serve as a model for other regions of Texas.

Restrictions in the bill would protect water resources and rights in the lower Colorado basin and the Highland Lakes. For any authorized contract:

- ! only water could be sold, not water rights;
- ! water would return to the basin after not more than 80 years;
- ! groundwater could not be sold; and
- ! LCRA would have to own facilities used to fulfill the contract.

San Antonio would have to reduce its water use during the final 10 years of the contract or else pay five times the then-current water rate. The city also would have to pay five times the current rate if it sought in court or through a regulatory agency to increase the amount of water or the term of the contract without LCRA's agreement, or if any authority compelled LCRA to provide more water or for a longer term.

The SAWS/LCRA plan would begin with a study period of up to seven years to examine environmental impacts. LCRA has agreed to address the plan's impact on in-stream habitat needs, migratory waterfowl, and Matagorda Bay and its estuaries. LCRA and SAWS have agreed to drop the plan if environmental issues cannot be resolved.

OPPONENTS  
SAY:

CSHB 1629 would be premature. The state should not authorize LCRA to sell water outside its service area before the potential environmental impacts of such a transfer are known. The public deserves more than a promise that environmental studies will be performed.

CSHB 1629 would specify no procedure for public input on water contracts authorized by the bill. As the ultimate stakeholders in any contract, the public needs adequate representation in the planning and approval process.

The bill would not address environmental concerns sufficiently. For instance, it would not ensure adequate inflow of fresh water to Matagorda Bay and its estuaries. Sufficient inflow is critical to aquatic life in this marine habitat, which supports commercial and economic activities in the region.

Contracts authorized under CSHB 1629 would not have to comply with the LCRA's water management plan, which is subject to approval by the Texas Natural Resource Conservation Commission and provides protections for in-stream flows necessary to sustain aquatic life. The bill should include a clear statement that nothing in its provisions would exempt water contracts from otherwise applicable regulatory or judicial review.

The bill would not ensure examination of alternatives such as increased conservation or aquifer storage/recharge, which could make a contract authorized under this bill unnecessary.

NOTES:

The committee substitute amended the filed version by:

- ! defining “water service area” as the area in which LCRA was authorized to use, distribute, and sell water on January 1, 2001, and substituting this term for “Colorado River watershed” throughout the bill; and
- ! removing a provision that outlined the process for amending a contract to increase the volume of water sold.

The companion bill, SB 699 by Armbrister, has been referred to the Senate Natural Resources Committee.