

SUBJECT: Moratorium on acquiring disposal sites for Laguna Madre dredge material

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Walker, Crabb, F. Brown, Mowery, Truitt, B. Turner

0 nays

3 absent — Geren, Howard, Krusee

WITNESSES: (*On original version:*)

For — Jack Hunt and John Stone, King Ranch

Against — Richard Bludworth, Bludworth Marine LLC d.b.a. Vessel Repair Houston and Port Arthur; Richard Burgard, Marine Fueling Services; Raymond Butler, Gulf Intracoastal Canal Association; Gerald A. Gallion, Bruce Barr Stapp, and William Matthew Woodruff, Texas Waterway Operators Association; Charles H. King Jr., Buffalo Marine Services; C. Berdon Lawrence, Kirby Corp.; Butch Palmer, Port of Harlingen Authority; Kyle Shaw, Higman Marine; Les Sutton, American Waterway Operators; Kelly Marie Teichman, Tug Josephine; Norb Whitlock, American Commercial Barge Line; Michael Wilson, Willacy County Navigation District

On — Jim Randall, Texas Department of Transportation

BACKGROUND: In 1995, the 74th Legislature designated the Texas Transportation Commission as the lead agency for part of the state's role as the nonfederal sponsor of the 425-mile Gulf Coast Intracoastal Waterway (GIW) from the Sabine River to the Brownsville Ship Channel. The commission, along with other state and local agencies, works with the U.S. Army Corps of Engineers to keep the GIW open for navigation by shallow-draft vessels, to prevent the waste of publicly and privately owned natural resources, to preserve the environment, and to protect wildlife and fisheries.

The Corps of Engineers conducts dredging operations to remove sand and other material that collects in the GIW to keep the channel navigable. Along

300-plus miles of the GIW, the dredging spoilage consists of rough sand, and the dredging material often is used to replenish beaches and to prevent coastal erosion.

In 1983, the Texas Department of Transportation (then the Department of Highways and Public Transportation) signed an agreement with the Corps of Engineers that the state would provide the corps with land and easements for disposing of dredge material at no cost to the federal government.

The Laguna Madre, a large body of shallow water separating Padre Island from the South Texas mainland, lies between Corpus Christi and Brownsville. It covers 609 square miles of estuarine and coastal marine systems. The boundary of Padre Island National Seashore encompasses about 20,000 acres of the Laguna Madre. The state owns parts of the Laguna Madre that are managed by the General Land Office and the Texas Parks and Wildlife Department. The King Ranch, Audubon Society, and other private entities also own large sections of land in the region. The region includes vast areas that are environmentally sensitive and provides habitat for migrating birds and for a range of endangered species, including the peregrine falcon and the jaguarundi, a rare wildcat.

Unlike the dredging spoilage for most of the Texas coast, the material in the Laguna Madre channel consists of fine, hypersaline silts with the consistency of talcum powder. Federal law prohibits depositing the dredging spoilage along the barrier islands of the Padre Island National Seashore.

In 1994, representatives of environmental, conservation, and sporting groups, port authorities, and other entities filed *National Audubon Society v. U.S. Corps of Engineers* in federal district court, challenging dredging operations in Laguna Madre. The stipulated settlement of the case in 1995 required a fully funded study of Corps of Engineers dredging policies and an update of the 1975 environmental impact statement.

DIGEST:

CSHB 2684 would prohibit the Texas Transportation Commission from acquiring Laguna Madre property for disposal of dredged material until September 1, 2005, if that land were subject to a habitat conservation plan as defined under Parks and Wildlife Code, sec. 83.011, that was in place on October 1, 1997.

The bill also would mandate an interim study by the House Land and Resource Management Committee to consider options for disposing of dredged materials, including:

- ! open and contained bay placement;
- ! upland placement;
- ! placement in the Gulf of Mexico;
- ! placement to maintain, expand, or enhance dredged material islands; and
- ! other placement options.

The interim committee would have to determine whether the composition of the dredged materials in Laguna Madre would require policies on disposal of dredging material that would be different from those for the rest of the GIW. The committee would have to report findings and recommendations to the House speaker and the Legislature not later than November 1, 2002.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 2684 represents a compromise among the King Ranch property owners, barge operators, port authorities, and environmental groups to keep the GIW between Corpus Christi and Brownsville open to commerce while protecting this environmentally sensitive region. The moratorium on new disposal sites should give the state enough time to complete the interim study and to develop recommendations for the Corps of Engineers on how to meet the needs of all affected stakeholders.

The nature of the dredging material and the environmentally sensitive nature of the area justify different standards for dredging in Laguna Madre. Commercial navigation between Corpus Christi and Port Mansfield is an important consideration in weighing the costs of alternatives to upland disposal of dredging material, but that cannot be the foremost factor. The federal cost analysis should consider the value of the habitat for migratory birds and endangered species and the hatcheries for commercial fish and shrimp in evaluating the expenses for protecting the area.

Protection of Laguna Madre has enjoyed bipartisan support, including the endorsement of both Gov. Ann Richards and Gov. George W. Bush. Federal law already prohibits the upland disposal of Laguna Madre dredging

materials on Padre Island National Seashore, and the same standards should apply to state-owned and privately owned land in the area.

The bill's fiscal note overstates the cost of disposing of dredging material, because the projection is based on the worst-case scenario of the Corps of Engineers prohibiting open-water dumping into the Gulf of Mexico. It is unrealistic to assume that the corps would discontinue open-water dumping. Other less expensive and less environmentally damaging alternatives to upland disposal can be found.

OPPONENTS
SAY:

By denying the use of upland disposal, CSHB 2684 would cost the state more than \$47 million in fiscal 2002-03, according to the bill's fiscal note. If the state modifies the 1983 agreement on providing disposal sites, it will have to bear the cost of using an alternative disposal method.

No new studies are necessary. The Corps of Engineers has evaluated all disposal methods and has ruled out open-water dumping as a cost-effective alternative.

NOTES:

The author plans to offer a floor amendment that would impose a moratorium only until September 1, 2003, which is intended to eliminate the fiscal implications of the bill.

The companion bill, SB 1356 by Armbrister, has been referred to the Senate State Affairs Committee.

The bill as filed would have prohibited the Texas Transportation Commission from condemning any property that belonged to a holder of a federal fish and wildlife permit and that was part of a habitat conservation plan. The committee substitute would add the restriction that the habitat conservation plan be in place before October 1, 1997. It also would set the moratorium until September 1, 2005, and would require the interim study.