

- SUBJECT:** Revising the permitting process for interbasin transfer of state water
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller
- 0 nays
- 2 absent — Johnson, Keffer
- WITNESSES:** For — Martin Rochelle; (*Registered, but did not testify:* Larry Casto, City of Dallas; David Holt, Permian Basin Petroleum Association; Julie Klumpyan, Valero; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corp.; Steve Perry, Chevron USA; Dean Robbins, Texas Water Conservation Association; Stephanie Simpson, Texas Association of Manufacturers; CJ Tredway, Texas Oil & Gas Association; Julie Williams, Chevron USA Inc.)
- Against — Myron Hess, National Wildlife Federation
- On — Ron Ellis, Texas Commission on Environmental Quality; Ken Kramer, Sierra Club - Lone Star Chapter
- BACKGROUND:** Water Code, sec. 11.085 relating to interbasin transfers provides that no person may take or divert state water from a river basin and transfer it to another river basin without first applying and receiving a water right or an amendment to a permit, certified filing, or certificate of adjudication from the Texas Commission on Environmental Quality authorizing the transfer.
- DIGEST:** CSHB 3233 would amend the permitting process for interbasin transfers of surface water rights relating to the economic impact of the transfer, contested case hearings, time line of notice requirements, contractual transfers, and exemptions.
- Economic impact.** The TCEQ could grant an interbasin transfer only to the extent that the detriments to the basin of origin were less than the benefits to the receiving basin, as determined by the TCEQ. The bill would add that the TCEQ consider the following when making that

determination:

- the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply was requested, but not to exceed 50 years;
- factors identified in the applicable approved regional water plans;
- proposed mitigation or compensation, if any, to the basin of origin by the applicant;
- the continued need to use the water for the purposes authorized under the existing permit, certified filing, or certificate of adjudication, if an amendment to an existing water right was sought; and
- the information required to be submitted by the applicant.

The bill would delete a requirement that an interbasin transfer application include information projecting the effects of the interbasin transfer on user rates and fees for classes of ratepayers.

**Contested case hearings.** The bill would limit an evidentiary hearing for an interbasin transfer to the issues relevant under the section of the Water Code dealing with interbasin transfers.

**Notice.** The bill would amend the timeline for notice of application for an interbasin transfer to twice in a 30-day period, rather than once a week for two consecutive weeks.

**Contractual transfer.** The bill would specify that a transfer of water based on a contractual sale of water would be valid for the duration of the water supply contract and any extension or renewal of the contract.

**Exemptions.** CSHB 3233 would add retail public utilities to those entities that would be exempt from requirements for an interbasin transfer application if they provided service in an area that covered both basins.

**Effective date.** This bill would take effect September 1, 2013.

SUPPORTERS  
SAY:

Water Code, sec. 11.085, relating to the permitting of surface water interbasin transfers, was amended in SB 1 by Brown in 1997 to include many additional measures and some burdensome requirements. Prior to the passage of SB 1, more than 100 interbasin transfers were issued across the state, authorizing the transfer of water from water-rich areas to areas

where water was needed. The tremendous growth in the Dallas-Fort Worth Metroplex and the Houston metropolitan area came despite the historic drought of the 1950s and droughts since. This growth was possible in large part because of interbasin water transfers. Since the passage of SB 1, however, very few of these water transfers have been issued, due in large measure to several onerous provisions in the statute.

CSHB 3233 would amend certain provisions of the interbasin transfer statute to facilitate the orderly and efficient processing of future interbasin transfer applications by the Texas Commission on Environmental Quality (TCEQ), while maintaining a fair balance between basins of origin and receiving basins.

**Economic impact.** The bill would allow the TCEQ to rely on regional plans in determining the economic impacts of the permit. Many interbasin transfer permits are for regional projects involving many retail public water systems. Calculating the rate impacts for all of those systems can be challenging because “rates” implies the cost of treated water and many entities only sell raw water. It would be more efficient and effective for TCEQ to use the information they have already considered in the regional plans in evaluating the economic impacts of the transfer. To be consistent, the bill also would limit the factors considered by TCEQ when determining benefits and detriments of affected basins to those items already addressed in the regional plans.

**Contested case hearings.** CSHB 3233 would make it clear that issues to be assessed in any evidentiary hearing for an interbasin transfer be limited to those listed in statute. An application should not be subject to other provisions of the Water Code dealing with new appropriations of water if the interbasin transfer application only related to water supplies already permitted.

**Notice.** CSHB 3233 would provide for the same level of notice for a transfer but would allow notice to be issued in the more reasonable time line of twice in a 30-day period rather than once a week for two consecutive weeks. This would allow flexibility to applicants in providing notice, which can be prohibitive in large basins and rural areas.

**Contractual transfers.** When an interbasin transfer is done contractually the water right or authorization being transferred should reflect the term of the contract. It was potentially arguable that if there was an amendment or

change to the contract that extended the life of the contract, that the water right did not reflect that extension and remained only for the initial amount of time. The bill would clarify that if a contractual transfer of a water right was extended or renewed under the contract, the water right would also be extended or renewed.

**Exemptions.** The bill also would specify that certain interbasin transfer application requirements would not apply to proposed transfers located entirely within certain limited geographic territories that straddle river basin boundaries, including county boundaries, municipal boundaries, and retail water utility service area boundaries. This would enable smaller and more limited interbasin transfers to be authorized without expensive and lengthy application processing.

OPPONENTS  
SAY:

CSHB 3233 would limit the issues to be considered in determining benefits and detriments to affected water basins to certain considerations, including factors identified in the approved regional water plans. This could preclude a meaningful balancing of issues if a regional water plan did not adequately address the listed issues. It would be bad policy to allow a deficiency in water planning to restrict the issues eligible for evaluation during TCEQ's consideration of an interbasin transfer. In addition, even in the best regional water plan, the depth of consideration and discussion of issues, including things such as economic impacts and instream uses and water quality, would be much more general than would be appropriate for an evaluation of an individual interbasin application by TCEQ.

Limiting a hearing involving an interbasin transfer to only issues related to interbasin transfers could be inefficient. For example, at a recent TCEQ hearing on a proposed new reservoir, Lake Ralph Hall, the applicant sought authorization for the new reservoir and for an interbasin transfer for the water from the reservoir. The issues related to the interbasin transfer were considered in the same hearing as the issues under other provisions of the Water Code governing the permit to build the reservoir. CSHB 3233 would require that a similar situation would have to be handled in two separate hearings. This would increase the expense for TCEQ and for all parties, without any clear advantage.

There also could be interbasin transfer applications that involve existing water rights. Even in the case of a proposed transfer of water from an existing water right, there might be issues raised under other sections of

the Water Code. For example, the application might include a request for an increased rate of diversion or a new place of diversion, either of which would require a hearing pursuant to other provisions of the Water Code if an affected person asked for one. This would, again, be inefficient to require two separate hearings.