REPORT OF THE
TEXAS NATURAL RESOURCES
STUDY COMMITTEE

JOHN ALLEN
CHAIRMAN
The Honorable Dolph Briscoe, Jr.
Governor of Texas

The Honorable William P. Hobby
Lieutenant Governor of Texas

The Honorable Price Daniel, Jr.
Speaker of the House of Representatives

Gentlemen:

In accordance with the provisions of H.C.R. 128, H.S.R. 516, H.S.R. 547, and H.S.R. 555, Acts of the 62nd Legislature, Regular Session, transmitted herewith is the report of the Texas Natural Resources Study Committee.

Respectfully submitted,

John Allen, Chairman

Bill Clayton, Vice Chairman

George Baker

Phil Cates

Joe Hawn

Lynn Nabers

Bryan Poff, Jr.

Bill Presnal

Paul Silber

Lindon Williams
INTRODUCTION:

The Texas Natural Resources Study Committee was created pursuant to House Concurrent Resolution 128, House Simple Resolution No. 516, House Simple Resolution No. 547, and House Simple Resolution No. 555, 62nd Legislature, Regular Session.

The committee included 11 members, all of whom were members of the House of Representatives appointed by the Speaker of the House. The Speaker named the following persons to the committee: Representative John Allen, of Longview, Representative Bill Clayton, of Springlake, Representative George Baker, of Fort Stockton, Representative Phil Cates, of Lefors, Representative Joe Hawn, of Dallas, Representative Lynn Nabers, of Brownwood, Representative Walt Parker, of Denton, Representative Bryan Poff, Jr., of Amarillo, Representative Bill Presnal, of Bryan, Representative Paul Silber, of San Antonio, and Representative Lindon Williams, of Houston. Representative Allen served as chairman of the committee and Representative Clayton served as vice-chairman of the committee.

During almost a year of deliberations, the Texas Natural Resources Study Committee considered a variety of problems relating to the conservation and development of the state's natural resources and, as a result of this study, submits the following
DRAFT REPORT OF THE NATIONAL WATER COMMISSION:

Almost since the beginning of the nation, there has been a partnership between the federal and the state governments to conserve and develop the nation's water resources. Through this partnership, the United States has grown from an undeveloped wilderness to the greatest industrial nation in the world. Now, tentative recommendations of the National Water Commission concerning the federal government's role in water development threatens the development of our water resources and raises the possibility that the states may be financially unable to furnish adequate water supplies and flood protection to their citizens in the future.

The Texas Natural Resources Study Committee believes that the recommendations proposed by the National Water Commission should be reevaluated and that the traditional role of the federal government as a major participant in water resource development should be maintained. Federal participation benefits not only each individual state, but the entire nation, and the failure of the federal government to assume its share of the responsibility will have an adverse impact nationwide.

WATER DISTRICTS:

In recent years, the rapid growth of the metropolitan areas
has created a need for water and sewer service for both industrial and residential use. This need has led to the creation of several hundred municipal water districts around these metropolitan areas and particularly in the Houston-Harris County area. For the most part, the use of these special districts has been successful, but problems have developed which require some changes in the law.

The Texas Natural Resources Study Committee makes the following recommendations for change which it believes will provide for better informed residents of the districts and will afford more participation in the operation of the districts.

1. The committee recommends legislation to require that written notice be given to all purchasers of property in any district providing water and sewer services and facilities. Failure to give proper notice would make the sale or transfer voidable at the option of the purchaser within a specified time period. Also, the committee recommends that written notice be given to all persons who reside in an area which is part of a proposed district so that the person may have the opportunity to better understand the authority of the proposed district and to participate in the creation hearing.

2. Legislation should be enacted that would more specifically set out the powers of the Texas Water Rights Commission to supervise water districts. This legislation should allow the commission to examine the qualifications of the district directors, require special audits and reports from districts at
any time, issue subpoenas, institute necessary hearings and investigations, and issue rules for supervision of the districts.

3. A law should be enacted providing for annual audits of all district funds by a certified public accountant using a standard set of auditing procedures. The audits should be under the supervisory control of the Texas Water Rights Commission. The commission should approve the accountant to be used and approve the final audit report. The audit report should be made readily available to district taxpayers for inspection.

4. The committee recommends that legislation be adopted that would disqualify persons to serve as tax assessors and collectors where certain relationships exist which might lead to conflict of interest. A person who wilfully violates this recommended law would be guilty of a misdemeanor and assessed a fine.

5. Legislation should be adopted that would require notice of the proposed creation of a district to be given to all cities in whose jurisdiction a proposed district is located and to all counties in which a proposed district is to be located.

6. Article 1182c, Vernon's Texas Civil Statutes, should be amended to provide for dissolution of fresh water supply districts and municipal utility districts located within the boundaries of a city. Also, the law should require a two-thirds vote of the city council for dissolution.

7. The date for election of governing board members of
water districts should be changed from January to the first Saturday in April.

8. The definition of district in Chapter 50, Water Code, should be expanded to include districts created by special act of the legislature.

9. Section 50.106 of the Water Code should be amended to provide a penalty of $50 a day for each day a district wilfully fails to file a required report and to provide notice of violation to the district by certified mail, return receipt requested.

10. Article 1109j, Vernon's Texas Civil Statutes, should be amended to provide for contracts between cities and districts or nonprofit corporations for drainage improvements and to clarify the situation relating to contracts for construction of water treatment plants and sewage treatment plants.

**DAM SAFETY:**

The construction of dams on various waterways in the states has played a major role in the development of the state's water resources, and will continue to do so in the future. However, while dams have served to harness the power of water and to provide much needed water supplies for various areas, the failure to provide adequate supervision over the construction, maintenance, repair, and removal of dams has created and will continue to create problems. In 1972, the United States Congress passed a law directing the Secretary of the Army to inspect dams in all
parts of the United States and to make recommendations to Congress and to the governors of the several states for remedying problems with dams. (86 Stat. 506 (1972)) At the present time, no Texas agency is authorized to inspect or supervise the construction and operation of dams.

So that the state may have active participation in the federal program and, at the same time, provide local supervision of dams in Texas, the Texas Natural Resources Study Committee recommends the passage of a dam safety act which will give the Texas Water Rights Commission authority to adopt rules and regulations and to issue orders to control construction, maintenance, repair, and removal of dams.

GROUNDWATER MANAGEMENT:

Throughout its history, Texas has had an abundant supply of groundwater, and this abundance has led to the development of large and thriving metropolitan areas as well as rich and productive farming areas. However, the problems of water shortage, pollution, and land subsidence resulting from the use and development of groundwater now threaten the very existence of these same metropolitan and farming areas.

Due to the great quantity and good quality of groundwater, very little, if any, governmental regulation has been exercised over the use and development of this water supply in the past.

In 1949, several legislators and concerned citizens first realized that the continued uncontrolled use and development of
groundwater would soon lead to shortage of supply and other problems. Through their efforts, a law was adopted authorizing the creation of underground water districts to provide groundwater management for reservoirs and subdivisions of reservoirs designated by the Texas Water Rights Commission. (Chapter 52, Water Code) Several underground water districts were created in the High Plains area, and one district was created in the Edwards Plateau area by special act of the legislature. (Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes)) Although these districts have proved in most cases to be effective managers, the fact that districts do not cover many of the areas served by groundwater has led to a worsening of groundwater problems in recent years.

In the mid-1950s, it became obvious that the supply of groundwater in the High Plains area was being used at a more rapid rate than it could be replaced. When the state began work on a statewide water plan, the planners determined that without an alternative supply of water, the High Plains area would deplete its groundwater resources around 1990.

In the Edwards Plateau area, groundwater has been developed to supply both farming interests and municipal interests, including the city of San Antonio. Although the water has been in abundant supply in this area, pollution of groundwater threatens its usefulness.

On the Gulf Coast, and particularly in Harris County,
groundwater has been and is being used to supply both industrial and domestic users. However, the large amount of industrialization and the massive population growth in the Gulf Coast area has resulted in increased pumping of groundwater for surface use. Although the effects of this pumping were not as noticeable at first, in recent years the land has begun to subside. The rate of subsidence in the area is now moving at such a rapid pace that the area is threatened with pollution, flooding, and structural problems.

Since state and local government have not taken an active part in the conservation and development of groundwater, there are very few laws with which the state and the local governments can seek to solve these problems which have grown from local problems to serious statewide concerns.

Recognizing this critical situation in groundwater development, the Texas Natural Resources Study Committee has given top priority to finding a workable scheme for groundwater management.

At hearings conducted by the committee, the consensus of all who testified has been that groundwater could best be managed at the local level as provided by present law with a few changes. After considering not only the diversity of the problems in the various groundwater areas but also the differences in the groundwater formations from area to area, the committee agrees that local management would continue to be the best solution if
the local area is concerned enough with its problems to use the underground water district.

Since the boundaries of groundwater reservoirs do not always conform to the exact boundaries of any particular governmental unit and since many existing governmental units do not have the expertise, manpower, and financial resources for such a program, the use of local districts especially designed to handle the conservation and development of groundwater appear to provide the most workable solution.

The committee recommends that the present law relating to the creation of underground water districts be used as the basic framework from which to begin, that an extensive study be made of this statute and other district laws, and that the current law be redrafted so that it can be used in all areas of the state to solve groundwater problems.

WATER PROJECTS:

The development of dams, reservoirs, and other water projects has played an important role in the growth of Texas and in the well-being of its citizens by providing needed water supplies for industrial, agricultural, and municipal purposes and by protecting the public from floods and other natural disasters. In partnership with the federal government, state and local entities have developed surface water resources for the benefit of all citizens. However, in recent years, concern for the total environment has led to a reexamination of the advisability of most water projects.
Of concern to governmental officials as well as private citizens have been not only the benefits to be gained from these projects but also the impact they will have on the environment.

The federal and state governments have begun efforts to give more careful consideration to environmental matters through the requirement of environmental impact statements on all federally funded projects, the creation of a panel of environmental experts to advise the state on water planning, the enlargement of staffs and the creation of new agency divisions to consider environmental problems, and other innovations. However, some citizens continue to be concerned that consideration of environmental factors in connection with particular projects is not adequate and, as a result, have instituted numerous lawsuits to halt these projects. Many of these lawsuits are meritorious and serve as an additional safeguard for the protection of the environment, but other suits have very little merit and serve only to delay projects, increase costs, and deprive citizens in the project area of the benefits.

Since most of the projects which are the subjects of suits to halt construction are federally-funded projects, the suits must be filed in federal court, and the state is not in a position to remedy their misuse. However, the existence of a few projects to be funded solely from state and local money plus the possibility in the near future that the federal government will take a less active role in water development and leave project financing to state and local governments, causes the committee to believe that
the state should develop a policy and adopt statutory safeguards to protect against the misuse of suits to halt water projects.

From the hearings which the committee has held and from its own analysis, the committee has concluded that the state's policy and any legislation relating to suits to halt projects should be based on the following principles:

1. Persons who institute suits to halt water projects should be required to show some direct interest in the project or else they should be required to post a bond to cover the amount of the losses resulting from the delay in the project if the suit is not successful.

2. The courts in which suits to halt water projects are filed should be given the discretion to determine the validity of evidence in the suit before allowing the suit to go to trial.

CONFLICT IN WASTE CONTROL:

During the last few years, Texas has experienced a considerable growth in population, and most of this growth has been in the major metropolitan areas. As a result, the metropolitan areas have been faced with the problem of providing adequate waste control with the cities providing waste control facilities for those areas within their corporate limits, and water districts supplying the same need outside the city boundaries. In meeting these needs, the cities and water districts have gone to considerable expense to furnish modern waste control facilities which meet standards set by federal and state
government.

In 1967, the legislature adopted a statute providing for designation of regional and area-wide waste control systems (Subchapter D, Chapter 21, Water Code), but this statute has led to some conflict between local units of government and those designated to provide regional and area-wide systems. Since most local units of government have already provided systems and are paying or have paid for them, the designation of new area-wide systems has placed an additional financial burden on persons residing in these areas, while at the same time making some facilities no longer useful.

The committee supports the development of regional and area-wide waste control facilities, but believes that the present law makes it possible for some local taxpayers to be placed under unnecessary tax burdens and for some unnecessary facilities to be provided. Therefore, the committee recommends that the law relating to regional and area-wide waste control facilities be amended to provide notice to persons residing in areas proposed for regional or area-wide waste control facilities, so that these persons may participate in the hearings and the development of information leading to designation. Also, the committee recommends that one of the considerations in whether or not a regional or area-wide system is to be designated should be the adequacy of existing facilities in the area.

MULTIPLE USE OF WATER:
Because Texans have had an adequate supply of water in the past, very little attention has been given to the value of municipal sewage effluent and industrial waste discharges. With the increasing demand for water, particularly in and around the metropolitan areas, there is a growing realization that these two largely unnoticed sources of supply can be put to beneficial use. Although the Texas Water Rights Commission regulates the primary purposes for which state water may be used, the present law is not clear as to the subsequent purposes for which a person may use this water.

The Texas Natural Resources Study Committee recommends that serious study be given to and effective legal guidelines developed for the use of municipal sewage effluent and industrial waste discharges so that existing and future water rights may be protected and so that the citizens may put this effluent and these discharges to their maximum beneficial use.

APPROPRIATION OF WATER FOR BENEFICIAL PURPOSES

For many years, the statutes provided specific purposes for which surface water could be appropriated, stored, or diverted (Section 5.023(a), Water Code). In 1969, the legislature generally expanded the purposes for which water could be stored and diverted to "other beneficial purposes" (Section 5.023(b), Water Code). The committee recommends that Section 5.023(b), Water Code, be amended so that water may be appropriated as well as stored and diverted for "other beneficial purposes."

13
CANCELLATION OF ADJUDICATED WATER RIGHTS

The provisions of the Water Code relating to the cancellation, forfeiture, and abandonment of water rights apply only to permits and certified filings. If a nonstatutory claim, such as a riparian right, is adjudicated to be a valid water right, the Texas Water Rights Commission is powerless to forfeit, cancel, or make a finding of abandonment as to this right. This leaves the commission in the situation of having to regulate two kinds of adjudicated water rights—those which are subject to cancellation and those which are not.

The committee recommends that the Water Code be amended to expand the commission's authority over cancellation of water rights to nonstatutory claims.

OBSTRUCTIONS IN PUBLIC STREAMS

Occasionally, natural or man-made obstructions alter the normal and flood flows in public streams, but at the present time there are no statutory provisions authorizing the removal of these obstructions. The committee recommends that Section 5.096, Water Code, be amended to authorize the Texas Water Rights Commission to direct the removal of obstructions from public streams.

AUTHORITY TO EVALUATE AND REGULATE CHANGES IN WATER RIGHTS

The authority of the Texas Water Rights Commission to regulate changes in and require amendments to water rights of water districts and to evaluate water rights when regulation is needed is unclear at the present time. The committee recommends:
1. Section 51.184, Water Code, be amended to require the approval of the Texas Water Rights Commission before there is a change in the purpose of the use of water; and

2. the Water Code be amended to specifically authorize the Texas Water Rights Commission to evaluate the terms and conditions of water rights during cancellation proceedings and at other times when necessary to accomplish its regulatory function of adjusting rights between competitive users.

FEES FOR USE OF PUBLIC WATER

The Texas Water Rights Commission is authorized to charge filing, recording, and use fees in connection with its various duties. Under Section 6.069 of the Water Code, the Parks and Wildlife Department and the Texas Water Development Board are exempt from paying these fees.

The committee recommends that Section 6.069 be amended so that other state agencies and institutions will not be required to pay these fees. The additional agencies and institutions which should be exempt are the Texas Youth Council, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Corrections, and all institutions of higher education.