COMMITTEE ON NATURAL RESOURCES
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 1990

A REPORT TO THE
HOUSE OF REPRESENTATIVES
72ND TEXAS LEGISLATURE

TERRAL SMITH
CHAIRMAN

COMMITTEE CLERK
KAREN L. GIBSON
November 30, 1990

The Honorable Gib Lewis, Speaker
Members of the House of Representatives
Texas State Capitol
Austin, Texas 78769

Dear Mr. Speaker and Fellow Members:

The Committee on Natural Resources of the Seventy-first Legislature herewith presents its interim report and recommendations for consideration by the Seventy-second Legislature.

Respectfully submitted,

[Signature]
Terral Smith, Chairman

[Signatures]
John Willy, Vice-Chairman
Steve Holzhauer
John Culberson
Robert Junell
Dick Swift
Jeff Wentworth
Jerry Yost

P.O. Box 2910 • Austin, Texas 78768-2910 • (512) 463-0802
INTRODUCTION

At the beginning of the 71st Legislature, the Honorable Gib Lewis, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Natural Resources. The committee membership included the following: Terral Smith (R) of Austin, Chairman; John Willy (R) of Angleton, Vice Chairman; Frank Collazo (D) of Port Arthur, Chairman of the Subcommittee on Budget and Oversight; John Culberson (R) of Houston, Steve Holzheuser (R) of Victoria, Rob Junell (D) of San Angelo, Dick Swift (D) of Palestine, Jeff Wentworth (R) of San Antonio and Jerry Yost (R) of Longview.

During the interim, the Committee was assigned nine charges by the Speaker: Budget and Oversight, Conversion of Water Rights, Water Districts, Colonias, Rights of Property Owners, Codification, Groundwater, Water Pollution Abatement, and Underground Gasoline Storage Cleanup. In order to undertake the charges efficiently and effectively, Chairman Smith appointed subcommittees to study the charges.

The subcommittees have completed their hearings and investigations and have issued their respective reports. The Natural Resources Committee has adopted and approved all subcommittee reports, which are incorporated as the following final report for the entire committee. The members approved all sections of the report with the exception of a dissenting vote by Frank Collazo on the recommendations of the subcommittee on the Rights of Property Owners in section IV, C of the report. The subcommittees on Budget and Oversight, Groundwater, Water Pollution Abatement and Underground Gasoline Storage did not meet during the interim.

Finally, the Committee wishes to express appreciation to the Texas Water Commission, the Texas Water Development Board and the citizens who testified at the hearings for their time and efforts on behalf of the committee.
COMMITTEE ON NATURAL RESOURCES
INTERIM SUBCOMMITTEE MEMBERS
71ST LEGISLATURE

Subcommittee on Budget and Oversight

To monitor all activities and to have budget oversight responsibilities for those agencies, boards and commissions as listed in Rule 3, Section 24.

Frank Collazo, Chairman
Dick Swift
Jerry Yost

Subcommittee on the Conversion of Water Rights in South Texas

To study the transfer of water rights from irrigation districts to municipalities in South Texas.

Jeff Wentworth, Chairman
Frank Collazo
Steve Holzheauser

Subcommittee on Water Districts

To study the categories, powers and duties of water and wastewater districts created under the Texas Water Code or by other statutes, including the procedures for the creation of such districts.

Jerry Yost, Chairman
John Culberson
John Willy

Subcommittee on the Colonias

To study current efforts to provide and finance water and wastewater services to the colonias.

John Willy, Chairman
Frank Collazo
John Culberson
Steve Holzheauser
Rob Junell
Dick Swift
Jeff Wentworth
Jerry Yost
Subcommittee on the Rights of Property Owners

To study the rights of property owners along rivers and streams.

Rob Junell, Chairman
Frank Collazo
Jeff Wentworth

Subcommittee on Recodification

To study the recodification of the Texas Water Code.

John Culberson, Chairman
Rob Junell
Jerry Yost

Subcommittee on Groundwater

To study environmental concerns related to water and groundwater quality. (Joint study with Agriculture and Livestock Committee and Environmental Affairs Committee).

Steve Holzheuser, Chairman
Rob Junell
John Willy

Subcommittee on Water Pollution Abatement

To study public and private infrastructure and federal and state regulatory standards relating to water pollution abatement.

Dick Swift, Chairman
Jeff Wentworth
John Willy

Subcommittee on Underground Gasoline Storage Cleanup

To study and monitor the Texas Water Commission in the early stages of implementing the underground gasoline storage cleanup program established by House Bill 1588, 71st Legislature.

Steve Holzheuser, Chairman
John Culberson
Dick Swift
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CONVERSION OF WATER RIGHTS IN SOUTH TEXAS

As there are no major aquifers in the Valley, South Texas relies on the Rio Grande River for approximately 98% of its water. Rapid growth of the economy, population, and industry in Texas has increased demand on the state’s fresh water. Water rights held by irrigation districts are being converted to municipal rights as border cities and the subsequent demand for municipal water grow. The struggle over water rights is one that dates early in the development of Texas.

Background

There have been several unsuccessful attempts at legislation to resolve the struggle over water rights. Riparian rights were based on English Common Law when water, primarily used for powering industry, passed through a water wheel and returned to the stream. The Spaniards promoted a different use for the water, that of agriculture. As agriculture prospered, water laws were based on consumptive use rather than riparian rights. The 1836 Texas Constitution followed English Common Law (Tex. Const. of 1836, art. IV, §13) and tried to adapt irrigation use to those laws, allowing over-appropriation of the available water.

In 1889 the Legislature passed the Irrigation Act, amended in 1895, (Tex. Rev. Civ. Stat. Ann. art. 3115 (1895)) in an attempt to clarify water rights. Texas residents wishing to draw water from state-owned surface waters could acquire a right by filing an affidavit in the County Clerk’s office of the county in which the use was to occur. These affidavits, based on the premise of first in time, first in right, represented claims beyond the capacity of the rivers and resulted in over-appropriation of the Rio Grande.

The Legislature then passed the Irrigation Act of 1913, which created the State Board of Water Engineers (SBWE) and required claimants to file new, specific affidavits, or “certified filings.” The act was intended to reduce claims to acreage actually irrigated, but original claims that were not refiled created confusion in later years.

The Irrigation Act of 1917 (Tex. Rev. Civ. Stat. Ann. art 5011-1/21-ss (1917)) gave the SBWE the power to adjudicate water rights on an administrative basis. The Texas Supreme Court ruled this power unconstitutional as it violated the separation of powers in giving an executive agency judicial powers (III Tex. 82, 229 S.W. 301 (1921)) and the SBWE lost its credibility.

During the period between the Irrigation Act of 1913 and the drought of the 1950s, two primary water rights adjudication systems, riparian and prior appropriation, caused much confusion.
Riparian rights were based on ownership of land bordering a stream. The landowner was entitled to the water flowing past his land. This right included the corollary that the water passing his land would be undiminished in either quality or quantity (Tyler v. Wilkinson, 24 F. Cas. 472 (C.C. D. R. I. 1827) (No. 141312)), and availability fluctuated with the seasons. The prior appropriation system was based on appropriators diverting water from its natural course. The appropriative right was based on actual use, a fixed and definitive amount (Dilling v. Murray, 6 Ind. 324, 327 (1855) Waters and Water Rights § 51.7 (J. Clark ed. 1967)). The water was appropriated on a first in time, first in right basis, and was limited to beneficial use (TWRC v. Wright 464 S.W. 2d 642 (Tex. 1971)).

In the early 1900s, irrigation systems were built and controlled by private enterprise. After the crash of 1929, farmer-organized water improvement districts or water control and improvement districts took control of private irrigation systems, consequently acquiring the water rights.

Problems over water rights still persisted. The Rio Grande has been compared to a failed bank: everyone with an account has a legal right to withdraw money, but the bank doesn’t have enough money to honor the checks. The lack of enforcement of limitations to avoid over-appropriation and the drought in the early 1950s made everyone realize that something had to be done. Before 1967, the only method of determining vested water rights was by lawsuit in which all claimants to the water were involved.

**The Valley Lawsuit**

Hidalgo and Cameron Counties WC & ID No. 9 v. Starley, 373 S.W. 2d 731 (Tex. 1964), hereafter “Valley lawsuit,” was filed because there was not enough water available to satisfy the demands being made under various claims of right. In 1955, prolonged drought and increased water needs in the area had seriously depleted the available water. The lawsuit involved approximately 3000 parties and turned out to be a very long and expensive process. The lawsuit revealed that the traditional judicial procedures were inadequate to handle water rights adjudication and that there was a need for a statutory plan.

In 1965, the Texas Water Rights Commission was created to oversee the distribution and allocation of surface water through water rights permits. The commission was prohibited from infringing upon existing vested rights in public water, but it was unclear as to what non-permit rights constituted vested rights. Another confusion arose from the lack of record of riparian rights which are not limited to any specific amount of water.

**The Water Rights Adjudication Act**

In 1967, the legislature changed the state’s system of water rights ownership with the passage of the Water Rights Adjudication Act (Tex. Rev. Civ. Stat. Ann. art 7542a (1967) codified as Subchapter G, Chapter 11, Water Code (Vernon 1988)). The Act stated that “the conservation and best utilization of the water resources of this state are a public necessity.” The Act, which is now administered by the Texas Water Commission (Commission), provided for a more efficient and accurate issuance and record of water permits. Under the Act, riparian rights were not automatically destroyed, but claims had to be made by a given date in order to remain valid and to avoid confusion arising from a dual system of water rights. The Act also permitted the appointment of a watermaster for each division and gave the Commission the means to carry out long range
planning while preserving the rights of existing claimants. Water rights adjudication for a watercourse could be implemented on a motion by the Commission, on petition to the Commission signed by 10 or more claimants of water rights from the source of supply, or on petition of the Texas Water Development Board. The Commission recently completed the adjudication of all water rights in Texas, and has begun the process of appointing watermasters throughout the State to enforce the water rights permits.

Because at the time of original adjudication most of the water was used for agriculture, rapid growth of border cities has necessitated a procedure for converting water rights from irrigation use to municipal use. As municipal use of the land grows, there is a corresponding decrease in irrigation water needs.

Irrigation districts, originally created in primarily agricultural areas, such as South Texas, are political subdivisions of the state which can issue governmental obligations and collect ad valorem taxes, but can provide only untreated water. In 1985, the legislature adopted Acts 1985, 69th Legislature, ch. 707, 1 (Tex. Rev. Stat. Ann. art. 973c, (Vernon Supp. 1990)), in an attempt to provide a procedure for orderly transition from farmland to urban property within irrigation districts, and irrigation water to municipal water. The legislation provides for both the exclusion of land from an existing district and payment of the bonded indebtedness. The Act requires that the portion of land to be excluded pay for the portion of bonded debt secured by that property. The Act further requires the district to tax all taxable property, including non-agricultural improvements, and include that value in computing the proper buy-out amount.

In 1989, during the 71st Legislative Session, Representative Alex Moreno and Senator Hector Uribe proposed an alternative to Article 973c. Under the legislation, urbanized property within a water district stayed within the district and paid bond taxes to cover the long term debt and a flat rate tax for operation and maintenance. The rate or assessment provided revenues to the district up to what the district previously accrued for irrigation deliveries to the property; only the authorized usage of water changed.

Opposition to the proposed legislation included several arguments. Some believed the proposed legislation would force water districts to convert irrigation rights to municipal use rights whether or not it was in the best interest of the district and without showing that the water was actually needed by the municipal supplier. Homeowners in the urban property would continue to pay irrigation district taxes, without receiving services from the district unless they demanded irrigation water for their yards, which would subsequently diminish irrigation water available to irrigators in the district. Also, there was no requirement that the urban property be developed. If the land remained farmland, and the irrigation rights were converted and given to the municipal supplier, the land would still need irrigation.

Opponents further argued that the legislation did not specify how the district was to tax or to collect taxes with respect to urban property. Further, if a district had a bonded debt being repaid by ad valorem taxation, future lot owners would be assessed taxes annually on property value. Therefore, taxes would increase for property on which houses or improvements were built. Lot owners would pay higher taxes than irrigators yet not receive services from the irrigation district. Finally, the bills limited revenue of the district with respect to the converted municipal water to "...up to the same amount of revenue as it would have received for the delivery of irrigation waters to the property," even though it is more expensive to deliver municipal water than irrigation water.
Testimony of Irrigators

The subcommittee convened in public hearing in McAllen on September 6, 1990, to address the issue of the conversion of water rights. Testimony from irrigators in South Texas indicated that current laws, if used efficiently, are sufficient. The Valley water suit judgement of 1971 determined individual rights to water to be administered by the Texas Water Commission through the Rio Grande Watermaster. The Valley municipal water rights have priority on any inflows and are assured of a full allocation of water each year. Irrigation water rights are dependent upon the amount of water available after provision for municipal allocation and typically receive less than 100% of their allotment. Since 1971, the Watermaster operation has worked smoothly and adequately to provide timely and appropriate transfer of water rights to municipalities from the agricultural sector, and the municipal interest has never lacked the benefit of its full allocation of water.

The Harlingen Irrigation District and the City of Harlingen have devised a plan for the conversion of land and water rights within the existing statutes. As land is urbanized and removed from the district, waters are earmarked for future municipal conversion as the city requires the use of the waters. This cooperation ensures the conversion of water rights at the proper time. District officials testified, that due to the complexity of different financial structures of each irrigation district and because of diverse needs of each city in the Valley, districts and cities need flexibility to negotiate appropriate transfer agreements. They feel a mechanism is already provided within existing laws.

Rather than changing the laws governing the conversion of water rights, it is felt that more emphasis should be given to water conservation and quality. The Rio Grande water contains high amounts of salts which are detrimental to irrigated crops. These salts must be leached from the soil when irrigating by applying more water than the crops need in order to flush the salts through the soil into the drainage systems. Rainfall is too irregular to flush the salts effectively. Farmers are presently adopting water conserving irrigation systems of drip, micro jets, high efficiency sprinklers and center pivots in an attempt to conserve water and reduce salt accumulation. Other measures being adopted are metering water, measuring soil needs and watering alternate furrows. Salts still accumulate, although in smaller quantities, and periodic flushing is still needed. Most farmers also maintain high soluble calcium levels in the soil for improved soil condition for better water penetration. The improved flushing action requires less water to leach the salts. Although water from the Rio Grande is over-appropriated, reserves plus the annual allocated water help the irrigators through periods of drought.

The following arguments have been made with regard to the difference in payment by irrigators and municipal suppliers. Irrigators within a district’s boundaries are entitled to service under State statutes, whereas the municipal supplier acquires such entitlement only under terms of a contract. Irrigation districts were established, constructed, and maintained for the purpose of delivering raw water for irrigation to farmers within its boundaries. The districts may contract with a city or rural water supply corporation to supply water through the irrigation system to those in its service area. Since an irrigation district’s facilities were initially constructed and are maintained for the purpose of delivering irrigation water to irrigators within its boundaries, the system was initially financed, paid for or is being paid for by those farmers.
The municipal supplier controls the amount of raw water storage it constructs and maintains within its water systems. Raw water storage is costly; therefore, most municipal suppliers depend upon an irrigation district's storage facilities, if available, or continuous deliveries of raw water, which is usually the case. This is less expensive for the municipality than constructing storage and a delivery system. Rural interests argue that irrigators should not be charged for improvements or modifications to the irrigation system solely to enable the system to maintain continuous transportation and delivery of water to a municipal supplier.

Others contend that the irrigation system is designed for intermittent use. The need to maintain continuous transportation of water results in a loss of priority by the irrigators within the system. Farmers' crops frequently suffer while waiting for irrigation water when at the same time deliveries are being made to the municipal supplier. Irrigation districts with reservoirs generally schedule diversions from the Rio Grande so that the best quality water possible is available for use at times when the Rio Grande water is high in salt content. Irrigation districts without reservoirs use their canals and water systems in a similar manner. Continuous transportation to a municipal supplier disrupts such planning and scheduling and often results in the municipal supplier's acquiring delivery of the better quality water.

Irrigators testified that the difference in the pattern of use between the intermittent use of an irrigator and the continuous need of the municipal supplier results in larger maintenance and operation costs. Silt removal and reshaping of the canal to ensure the design flows of the canal are more efficient when there is no water in the canal. Similar problems exist for the maintenance of pipelines. Another cost of providing continuous water is through water loss due to transpiration, percolation and evaporation.

Irrigators also feel that the financial burdens are greater for irrigation districts when dealing with a municipal supplier. Irrigators pay for service in advance in the form of a per acre flat rate charge paid annually. The delayed payment by a municipal supplier for water delivery places the district in a financing position with the municipal supplier which is a cost now incurred in deliveries to irrigators. Other incurred costs include additional legal fees and insurance. It was suggested that the cost for more insured delivery or elimination of risk of disruption in delivery should be paid by the municipal supplier and not by farmers in the district.

Testimony of Municipalities

The representatives of municipalities who testified feel that there ought to be more laws protecting the municipal users. The municipalities are willing to pay the pumping charge and operation costs, but not for the water. City leaders feel that the problems of available water resources are aggravated by an unwillingness of irrigators to convert water rights to the people who reside in the district, a disparity in rates between irrigators and municipal users and conflicts of interest. Other problems governing the water availability in the region stem from the Starley Decision which established a maximum number of acre feet to which a municipality was entitled, but which was based on the assumption that the growth of cities would not exceed 50% of the 1965 population. The decision also did not establish guidelines for an orderly conversion of agricultural rights as land became urbanized.

Another fact brought out at the hearing was that before 1980 most irrigation districts were water control and improvement districts responsible for providing treated water, drainage systems and
wastewater services. Hence, the water rights were allocated under one set of guidelines, but later used under another. Potable water is now provided primarily by non-profit water supply corporations, which did not exist when the Starley decision was rendered. The city officials provided figures from informed sources that estimated nearly 50% of the 80% of water used by irrigators is misused through poor irrigation techniques, improper management, lack of metering and evaporation. Municipalities believe that the low cost of water for irrigators provides no incentive for conversion or discouragement against agricultural waste. Without a mechanism for the orderly conversion of agricultural rights to municipal use, cities and water supply corporations are obliged to commit their limited resources to provide a partial solution to a regional problem.

Although cities are permitted to convert irrigation rights to municipal rights, irrigated lands are entitled to 2 and 1/2 acre feet of water per acre per year. According to Starley, this converts to 1 and 1/9 acre feet of municipal rights. Exclusion of subdivisions from water districts on this basis generally results in the city's retiring the bonded debt of the district on the lands affected by the conversion. This process is reasonable and acceptable to municipal users. However, some districts also charge an additional pumping fee to replace “lost revenue”, whether or not the revenue is actually lost. This disparity in conversion, and the “lost revenue” factor, adds to the complexity of the issues and is a source of significant disagreement.

Municipal officials feel that in light of the aforementioned points, legislation is needed so that upon urbanization of property within a district, the irrigation water previously held for that property would be converted to municipal water for the benefit of the provider of potable water. Appropriate payments to a water control and improvement district for the retirement of bonded debt should be required, and if “lost revenue” can be demonstrated, then the water control and improvement district should be compensated.
WATER DISTRICTS AND RECODIFICATION

Water districts are political subdivisions established to provide water supply and water quality throughout urban, suburban and rural Texas. The districts are generally either created by local legislation or through the authority granted the Texas Water Commission (TWC) and the local county commissioner's court in the Water Code, Chapters 50 through 65. The original constitutional provision allowing the creation of these political subdivisions was Article III, Section 52, which limited the amount of debt the districts could incur. This provision was supplemented by Article XVI, Section 59, which does not have a bonded indebtedness limit. Most of the chapters of the Texas Water Code governing water districts contain a conversion section that allows an Article III district to convert to an Article XVI district. General law provides for the creation of a variety of water districts depending on the needs of the area.

Types of Districts
Following is a brief summary of the different types of water districts and their powers and duties:

1) Article 7809-7880
The law providing for the creation of Water Control and Preservation Districts was repealed in 1983. The statute is retained for existing WCPD's. The districts were created under Article III, Section 52 of the Texas Constitution by the commissioner's court. The district's powers and duties include water conservation and water quality protection, the power of eminent domain and taxing authority.

2) Article 8280-15, Section 1-22
Municipal Management Districts may be created under both Articles of the Constitution by the TWC. The district's powers include the supply of treated and untreated water, the provision of drainage and flood control, water conservation and water quality protection, resource conservation and recreation, hydroelectric service, and taxing authority. The district does not have the power of eminent domain.

3) Chapter 50, Subchapter M, Texas Water Code
Regional Districts may be created under Article XVI, Section 59 by the TWC. The district's powers and duties include the supply of both treated and untreated water, provision of drainage and flood control, water conservation and water quality protection, irrigation, navigation, the power of eminent domain, resource conservation and recreation, hydroelectric service and taxing authority.
4) Chapter 51, Texas Water Code
Water Control and Improvement Districts may be created under Article XVI, Section 59 of the Texas Constitution by either the commissioner's court or the TWC. The powers and duties include the supply of both treated and untreated water, provision for drainage and flood control, water conservation and water quality protection, irrigation, navigation, the power of eminent domain, resource conservation and recreation, hydroelectric service and taxing authority. Water Control and Improvement Districts created under Article III, Section 52 have all of the above powers except for the supply of treated water and hydroelectric service.

5) Chapter 52, Texas Water Code
Underground Water Conservation Districts may be created under Article XVI, Section 59 by the TWC. The district's powers include the supply of treated water, provision for drainage and flood control, water conservation and water quality protection, the power of eminent domain and taxing authority.

6) Chapter 53, Texas Water Code
Fresh Water Supply Districts may be created under Article XVI, Section 59 by the commissioner's court. The district's powers include the supply of treated water, water conservation and water quality protection, the power of eminent domain and taxing authority.

7) Chapter 54, Texas Water Code
Municipal Utility Districts may be created under Article XVI, Section 59 by the TWC. The district's powers and duties include the supply of treated and untreated water, the provision of drainage and flood control, water conservation and water quality protection, irrigation, navigation, the power of eminent domain, resource conservation and recreation, hydroelectric service and taxing authority. The district does not require voter approval for revenue bonds.

8) Chapter 55, Texas Water Code
Water Improvement Districts may be created under Article XVI, Section 59 or Article III, Section 52 by either the TWC or commissioner's court. Article XVI districts have the power to supply both treated and untreated water, drainage and flood control, water conservation and water quality protection, irrigation, the power of eminent domain, resource conservation and recreation and taxing authority. Article III districts have the same powers with the exception of the supply of treated water.

9) Chapter 56, Texas Water Code
Drainage Districts may be created under both articles of the constitution by the commissioner's court. The district's powers include drainage and flood control, water quality protection, the power of eminent domain and taxing authority.

10) Chapter 57, Texas Water Code
Levee Improvement Districts may be created under Article XVI, Section 59 by the commissioner's court. The district's powers include drainage and flood control, water quality protection, the power of eminent domain and taxing authority.

11) Chapter 58, Texas Water Code
Irrigation Districts may be created under both articles of the constitution by either the TWC or the commissioner's court. The district's powers include the supply of untreated water,
provision of drainage and flood control, water conservation and water quality protection, irrigation, the power of eminent domain and taxing authority.

12) **Chapters 61 and 62, Texas Water Code**

Navigation Districts may be created under either Article III, Section 52 or Article XVI, Section 59 by the commissioner's court. Article III districts have the powers of water quality protection, navigation, eminent domain and taxing authority. Article XVI districts have the above powers plus drainage and flood control and water conservation.

13) **Chapter 63, Texas Water Code**

Self Liquidating Navigation Districts may be created under Article XVI, Section 59 by the commissioner's court. These districts have the same powers as the Article XVI Navigation Districts plus the supply of untreated water and irrigation.

14) **Chapter 65, Texas Water Code**

Special Utility Districts may be created under Article XVI, Section 59 by the TWC. The districts have the powers and duties of the supply of both treated and untreated water, the provision of drainage and flood control, water quality protection, irrigation, the power of eminent domain, but no taxing authority.

15) **Chapter 66, Texas Water Code**

Stormwater Control Districts may be created under Article XVI, Section 59 by the TWC. The districts provide flood and drainage control, water quality protection and have the power of eminent domain and taxing authority.

Due to the increasing number and the wide variety of districts being created, the Texas Water Code has become cumbersome and difficult for the general public to access. Residents and district officials are often uncertain of their district powers and administrative details, which vary from district to district. Chapters 50 through 66 of the Water Code govern the creation and operation of general law water districts and navigation districts. Chapter 50 provides for laws generally applicable to all districts. The other chapters each govern the creation, operation, and authority of a specific type of district, with only slightly varying powers.

**Difficulties of Recodification**

The Subcommittee on Water Districts and the Subcommittee on Recodification jointly examined the feasibility of recodifying the water district chapters of the Water Code by consolidating certain like provisions of general law districts, i.e.; election procedures, bonding requirements, procedures for annexation. It was initially believed that the administrative procedures could be consolidated into one chapter without substantive changes. Since navigation districts are unique in that their primary purpose is not the control, supply or quality of water, but the operation and maintenance of a port, these chapters were addressed separately.

For the first hearing the Water Commission put together a Side-by-Side comparison of the water and navigation district chapters of the Water Code for study. Using this document, the commission drafted legislation in an attempt to accomplish the above goals.

Because the Subcommittee on Recodification and the Water District Subcommittee are closely related in subject, the two met jointly for the first meeting on June 25, 1990, separately for a second on July 12, 1990 (Water Districts) and September 17, 1990 (Recodification), and jointly for a third on September 17, 1990. The Subcommittee on Recodification met for a final hearing on November 30. The meetings were all held in Austin.
At the first meeting testimony was taken from general managers of irrigation districts who felt that the present laws were adequate and should not be changed. In studying the Side-by-Side and the draft legislation attempting to recodify the Water Code, witnesses at the subsequent meetings agreed that although the intent to clarify the Code was a good one, it was not possible to do so without making substantive changes. There are some aspects of recodification that do fall under the definition, but because of the complex nature of the Water Code, there are also aspects which cannot be simply recodified.
WATER DISTRICTS - RECOMMENDATIONS

The end result of legislation to be proposed during the 72nd Legislature would more aptly be defined as an attempt to solidify rather than recodify the Texas Water Code. Anticipated changes that will be the basis for legislation will be based on recodification where practical and solidification where deemed plausible with regard to provisions that are similar throughout the various chapters of the Water Code.

Additionally, in order for district managers, board members and the public to more comprehensively access the administrative procedures and the election section of Chapter 50, the Committee will recommend changes to make the Code more coherent. The changes will only affect the time and place of meetings, the office location, the types of employees, and who can file performance bonds and in what amount. The powers and authority granted the districts will be dealt with on an individual basis and as separate legislation, allowing for full debate. The integrity of existing districts in the scope of powers and authority must enjoy close scrutiny by all parties affected. The ultimate result must be a consensus which allows these political subdivisions to operate in a manner which is of the greatest benefit to people they are intended to serve.
RECODIFICATION - RECOMMENDATIONS

After ascertaining the difficulty of recodifying like provisions of the water district chapters of the Water Code without substantive changes, the Subcommittee on Recodification focused on codifying the special law districts into a single chapter. The enabling legislation for full county and multi-county special law districts will be added to the Water Code in a single chapter, without changes to the legislation.

Due to the great length of time and amount of work this project will require, the Subcommittee recommends the following as a starting point and as an assurance that this project will continue to progress.

1) Require, as part of all Water Quality Impact Statements submitted to the House Natural Resources Committee, a statement describing any variations from the standard district creation bill format. This requirement could be added to the House Rules under the Water Quality Impact Statements or be made a part of the House Natural Resources Committee rules. Encouraging standardization of all district creation bills would facilitate codifying newly created districts when that stage of the project is reached.

2) Maintain the Recodification Subcommittee as a standing subcommittee of the full committee throughout the next session. This subcommittee could meet with members of the TWC and Legislative Council in an effort to follow through with the various stages this project will require.
COLONIAS

Colonias are unincorporated rural subdivisions characterized by substandard housing and inadequate water, sewer and plumbing systems. Located primarily in counties with large urban populations, the colonias are considered among the poorest areas in the nation. Most of the residents are Hispanic, speaking Spanish as their primary language. Agriculture is the major source of employment along the border, but the mechanization of farming has decreased the number of jobs available, making the unemployment rate in the Valley the highest in the United States.

Colonias persist and continue to increase in number because residents, often unable to afford to buy land or a home anywhere else, purchase property in largely unimproved developments. The pride of owning their own home maintains the residents determination to live and remain in the colonias despite the hardships. Colonias are marked by unpaved streets, poor drainage especially due to the high clay content and impermeability of the soils, inadequate drinking water, almost non-existent sewage service, and a lack of heat or air-conditioning. Houses are often built of scrap lumber, plastic trashbags, flattened cardboard boxes and corrugated metal roofs. Some colonias receive electrical services, but a few residents must rely on car batteries for their energy. Garbage is often buried in a pit in the yard. Most families have annual incomes of less than $6,000 and lot payments leave little extra money for food and home improvements.

Most colonias have access to some water supply, usually through a private, non-profit supply company, but the water often comes to a yard tap, rather than providing indoor plumbing. Water that is available from public spigots may be salty and must often be carried long distances to the homes. Some residents pay a fee to use a community well built by the land developer, but often the wells are contaminated due to improper construction or insufficient waste disposal practices.

Because of the conditions in which they live, the colonias residents are faced with many health problems that are characteristic of Third World countries. Outdoor latrines and improperly installed septic systems often flood in heavy rainfall, promoting high exposure to bacteria or pathogens which cause disease. Flooding also results in environmentally hazardous pools in which children play. The fertility rate is high in the Valley, but, prenatal care is inadequate and many births occur outside of the hospital. An extensive number of dental problems go untreated. Health insurance is inadequate or non-existent for the residents due to ignorance of Medicaid.

Education is also affected adversely by the living conditions in the colonias. Children experience developmental and learning shortfalls. The dropout rate is as high as 50%, most students dropping out by the eighth grade, sometimes as early as the fifth. Illiteracy is another problem facing many of the residents.
Conditions have improved as water supply corporations, with the aid of grants and loans available from the Department of Agriculture, have brought water supplies to many of the colonias. But, this funding has declined significantly in the past decade, forcing colonias to compete with local government entities for limited funds provided by block-grant proposals submitted to the state by local governments on behalf of colonias for the construction of wastewater systems.

**Model Rules**

During the 71st Regular Session, the legislature passed Senate Bill 2, establishing an economically distressed areas assistance program to provide water supply and sewer services, to provide for the issuance of bonds to help finance the program, and to provide for penalties and injunctive relief. The bill granted authority to the Texas Water Development Board (TWDB), the Texas Water Commission (TWC), and the Texas Department of Health (TDH) to adopt rules regarding minimum standards for water supply and sewer service to meet health and safety requirements for economically distressed areas.

An Economically Distressed Area Project consists of four steps. Phase I of the facility engineering portion of the project includes identifying problems, developing proposed solutions, selecting the most cost effective solution and collecting data on the project area's income, family sizes, housing values and the number of houses occupied as of June 1, 1989. The TWDB will provide up to 75% of the funding for eligible projects. The remaining 25% can be in the form of "in kind" contributions.

Phase II of the facility engineering process includes plans and specifications, engineering reports for required permits, surveys and soil tests and financial assistance which is the same as Phase I, but the costs are included within the total project costs at the financial closing.

The third step is the financial closing. In determining the amount of financial assistance and the amount that must be paid back, if any, the board shall consider rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services. The board will also consider sources of funding available to the political subdivision from federal and private funds and from other state funds, and any local funds of the political subdivision. For the loan portion of the financial assistance, the political subdivision will issue bonds to be purchased by the TWDB. The county must contribute 2.5% of the project costs at closing or guarantee repayment of debt service.

The final step is the project construction in which the project is built according to plans and specifications.

Bonds purchased by the TWDB will go towards providing financial assistance to political subdivisions to build water systems for water and wastewater service to the economically distressed area residents. The residents in turn pay monthly water bills to the political subdivisions. Repayment of the loan portion to the TWDB is based upon the determination made by the TWDB in accordance with Section 17.893(e). The state of Texas will make payments to the TWDB to cover the difference between bond payments and the money received from the political subdivision.

As instructed by SB 2, the TWDB, TWC, and the TDH drafted model rules which must be adopted and enforced by a county before the county, water districts or water supply corporations located within the county and outside the boundaries of a municipality can participate in the Economically
Distressed Areas financial assistance programs. Rules adopted by the commissioners court under this section must apply to all the unincorporated areas of the county. Per the provisions of SB 2, the model rules pertain only to residential developments with tracts of one acre or less, and do not provide rules for roads and drainage. Counties must adopt their own procedural requirements for subdivision approval.

Comments on the Rules

Following is a compilation of concerns and criticisms of the model rules from individuals and groups who believe that the present rules will not prevent future colonias. The legislative changes following each concern are options available to the Legislature for redress of these concerns.

Robert B. Stewart of the Community Resource Group, Inc. expressed concern regarding the current plat requirement. Language in Sections 212.004 and 232.001 of the Local Government Code creates a loophole in the law that allows for the continued legal development of colonias. The language states:

The owner of a tract of land ... divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. (Emphasis added.)

The use of the word “and” instead of “or” indicates that plats are required only if the subdivider plans to include streets, alleys, squares, parks, etc. and to divide the land. (Op. Tex. Att’y Gen. No. JM-110 (1999)). This loophole allows for the division of a tract of land into small lots, or one acre or less, without provision for roads, and for the sale of the unimproved lots without streets or drainage improvements. Public infrastructure is only required for land that is platted.

Plats specify lot sizes, lot location, provide a description of any utility easements, lay out streets, provide for any drainage improvements, and specify what other infrastructure will be built. Since the filing of a plat is often the first opportunity for cities to regulate development and the only opportunity for counties to regulate development and to require the developer to build improvements, it is important to coordinate development and improvements at one time to avoid problems which would be costly to fix at a later time.

This problem can be addressed if the Legislature amends Sections 212.004 and 232.001 Local Government Code by deleting the word “and” and substituting the word “or” in the first sentence of the sections.

Judges J. Edgar Ruiz of Hidalgo County, Luther Jones of El Paso County and Bill Rapp of Willacy County expressed concern over the one acre limitation on lots regulated by the model rules. The limitation of residential developments with tracts of one acre or less, it was pointed out, is no more stringent than what is required under the Texas Department of Health construction Standards for on-site sewerage facilities. It is feared that developers will create 1.1 acre lots rather than comply with the more costly model rules to construct water and wastewater infrastructure. This acreage limitation will defeat the intent of the law to prevent colonias.

Prior to SB 2, counties had no ability to require a subdivider to build water or wastewater systems. SB 2 gives counties that authority by adding Section 232.0035 to the Local Government Code.
A similar section, 212.0105, was added for municipalities. Both those sections are limited to subdivisions with lots intended for residential purposes that are one acre or less.

If the Legislature wishes to rethink the acreage limitation, they can remove it or expand it by amending Section 212.0105 and 232.0035 Local Government Code.

Judges J. Edgar Ruiz, Luther Jones and Mayor Rodolfo Villareal of Alamo are also concerned with the lack of provisions for street and drainage standards in the model rules. The model rules make no provisions for streets and drainage within subdivisions. One of the main problems in the colonias is the lack of paved streets and drainage to handle flooding exacerbated by the impermeability of the soils. Lack of road and drainage standards in the model rules allows the possibility that SB 2 money will be used to provide water and wastewater improvements in a county that still allows for unpaved subdivisions. Standards for streets and drainage facilities are needed to protect the public health, accommodate prospective traffic, and afford satisfactory access to police, firefighting, and other emergency vehicles.

Section 16.350 of the Water Code does not permit counties to change the standard of the model rules. Since there is not an agreement as to the standards of a county road, counties may not be willing to accept and maintain a road which was built by a developer and turned over for maintenance if the standards do not match those of the county.

If the Legislature wishes to add road and drainage standards to the model rules, Section 16.343 can be amended to either add road and drainage standards or add that the model rules can provide for other items authorized by other statutes.

Judge Luther Jones is concerned that the model rules limit local governments' minimum standards rather than allowing for more stringent regulations if there is a local need and a reasonable basis for the regulations. Currently the model rules supersede any conflicting county regulations. Section 16.343 of the Water Code requires the model rules to assure that minimum standards for safe and sanitary water supply and sewer services are met. It is suggested that the model rules should function similar to the Texas Department of Health's regulations for on-site sewerage facilities, as a minimum standard to be met or exceeded by local governments as seen fit.

The model rules committee understood the Legislature intended both cities and counties to adopt only the water and sewer requirements provided for in the model rules. Senate Bill 2 created a new section 16.350(b) of the Water Code. That section provided:

The county commissioners or the municipal governing body shall adopt the rules in the form of model rules developed under Section 16.343 of this code.

Senate Bill 2 created additional confusion by granting cities authority to exceed the model rules in the municipalities extraterritorial jurisdiction with regard to water supply and sewer service, but not within its own city limits. Section 16.350(b) would seem to restrict a city's authority in matters of water and sewer services to the provisions of the model rules.

If the Legislature wishes the model rules to be minimum standards and grant local governments the authority to pass rules that meet or exceed those standards, Section 16.350(b) needs to be deleted by amendment and Sections 212.0105 and 232.0035 Local Government Code and Section 16.343 of the Water Code need to be amended.

Robert B. Stewart of the Community Resource Group fears that the model rules may lead to the proliferation of small utilities. Currently a developer is given the option to connect to an existing system or to build new independent systems. Section 16.343 of the Water Code does not
authorize the model rules to require developers to build collection and distribution lines that connect to an existing system. When there is no existing utility, a developer may establish a utility district. The primary problem with these small rural utility systems is that the system is simply too small with too few customers for the system to be affordable for the customers in the system and simply establishing a water or wastewater utility does not insure that service.

Currently, a public utility wishing to render service to the public must first obtain from the Texas Water Commission a certificate of convenience and necessity. Most cities currently require developers to build collection water distribution and sewer collection lines that tie into existing systems, if the new development is within a certain distance of an existing system, generally 500 to 1,000 feet. The suggestion was made that the model rules should follow current city practice.

This objection can be overcome by requiring the model rules to provide that new systems be hooked into existing systems, if they are within reasonable distance of the existing system.

Evonne Charboneau of Texas Rural Legal Aid expressed concerns regarding the financial guarantees provided for in the rules. Section 16.343 of the Water Code requires the model rules to assure that adequate drinking water and adequate sewer facilities are available to residential areas. However, the rules allow the developer to obtain approval of plats before water and sewerage facilities have been constructed. Instead, a developer may provide financial guarantees and an agreement to provide water and sewage disposal at a later time. While the rules attempt to prevent the occupancy of subdivisions without water and wastewater facilities, there is a practical problem of enforcement. This allows the problem of colonias with substandard living conditions to continue to exist. Also there is the very real prospect of the developer and the bank issuing the letter of credit and both being unable to meet the financial guarantee, a situation that has been seen frequently in Texas in the last few years. The financial guarantees may prove only to be the basis for lengthy litigation instead of insuring services will be provided within all subdivisions. It is felt that the model rules should prohibit the developer from selling property until water and wastewater facilities have been constructed or installed.

The model rules committee felt the model rules must provide for financial guarantees in lieu of actual construction of the facilities by the developer because SB 2 provided for these guarantees in Section 212.0106 (related to municipalities) and Section 232.0036 (related to counties) of the Local Government Code. Therefore the committee believed the legislature must have intended to provide for the option of financial guarantees for water infrastructure in counties with colonia type development.

The model rules do provide for standards for the financial guarantees. The Texas Association of Builders objected to those provisions. In their view, the Legislature intended local governments to have this control. The model rules committee understands the argument, but the Legislature required the rules to assure adequate drinking water and waste facilities are available in residential areas. The model rules provided standards for the financial guarantees because the committee strongly felt that some cities and counties would set weak standards, or none at all, for these guarantees. Developers would then have a way to effectively end-run the model rules, by posting the ineffective financial guarantees and never building the improvements.

Several alternatives are available to the Legislature:

Option 1 - Remove the possibility of financial guarantees. This defect could be remedied by deleting Sections 212.0106 and 232.0036 of the Local Government Code.
Option 2 - Allow local governments to remove the possibility of financial guarantees. An amendment clarifying this intent would be helpful.

Option 3 - Adopt the Texas Association of Builders interpretation, that the Legislature correctly allowed each county to set its own standards for financial guarantees. The intention of the Legislature could be clarified by amending Section 16.343 of the Water Code.

An additional conflict surrounds the timing involving the receipt of money, under SB 2 and the enforcement of the rules. In order to receive money under SB 2, the county or municipality must adopt and enforce the model rules according to Section 16.350 of the Water Code. But, under Sections 212.0105 and 232.0035, Local Government Code, non-border counties and cities in non-border counties only have authority to enforce the model rules if they have received SB 2 money.

The Legislature can solve this dilemma of catch-22 in one of two ways:

Option 1 - Give all affected counties, and municipalities in affected counties, the authority to adopt model rules. Affected counties were defined by SB 2 as those with a per capita income 25% below the state average, and unemployment 25% above the state average for the last three years. (Section 16.341, Water Code) The amendment should also provide that once the county passes the model rules, the county maintains authority to enforce the model rules even if their per capita or unemployment figures change.

Option 2 - Let political subdivisions apply for funds under SB 2 conditioned on their passage of model rules. This is not presently technically allowed by Section 16.350 of the Water Code.

The model rules are clearly designed to prevent as many future colonias as possible. Language in Senate Bill 2, added to Section 16.350 of the Water Code, indicates that only a city applying for SB 2 money for a project outside its city limits is required to adopt the model rules. The county involved is not explicitly required to adopt the rules also.

The Legislature could clarify its intent and prevent the development of more colonias by amending Section 16.350 of the Water Code to require the county to adopt the model rules before any Economically Distressed Areas projects are funded in the county.

Counties Which Have Adopted Rules

The following are results of a survey of the fourteen border counties and major cities within those counties to determine which have adopted the model rules. The survey was conducted from September 27th through October 15th, 1990. The results are listed alphabetically by county with reporting cities listed under their particular county.
# Model Rules, Senate Bill 2

<table>
<thead>
<tr>
<th>Governmental Entity</th>
<th>Model Rules Adopted (Date Adopted)</th>
<th>No. of Residential Subdivisions (1 acre or less) approved W/O water or sewer since June 1, 1989</th>
<th>No. of Residential Subdivisions (1 acre or less) approved W/O Water or Sewer since Adoption of Model Rules</th>
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<td>g) Pharr</td>
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RECOMMENDATIONS

In light of the suggestions covered in this report and the progress of the adoption and enforcement of the model rules thus far, the following are suggestions for proposed legislation for the 72nd Legislature.

Bill 1 – Clean-up amendments to the Water Code
   a) Allow cities and counties to pass stricter standards than the model rules provide for by deleting Section 16.350(b) and amending Sections 212.0105 and 232.0035, Local Government Code and Section 16.343, Water Code.
   b) Allow political subdivisions to apply for funds under SB 2 conditioned on their passage of model rules. This is not presently technically allowed by Section 16.350 of the Water Code.
   c) Require counties to adopt model rules when a city applies for SB 2 money for outside its ETJ. Clarify intent by amending Section 16.350 of the Water Code to require the county to adopt model rules before any Economically Distressed Areas projects are funded in the county.

Bill 2 – Amend Sections 212.004 and 232.001, Local Government Code by deleting the word “and” and substituting the word “or”. Currently subdivision platting and accompanying infrastructure is only required if the subdivider splits the land into lots AND intends to put in streets, parks, or other public improvements to serve the lots. Consider adding a clause that specifies intent to pertain only to colonia development.

Bill 3 – Change 1 acre limitation by amending Section 212.0105 and Section 232.0035, Local Government Code. Presently the model rules are limited to residential development with lots of 1 acre or less. It is cheaper for the developer to divide land into 1.1 acre lots than it is to put in water infrastructure.
RIGHTS OF PROPERTY OWNERS

Property owners along rivers and streams have long been faced with destruction of property by trespassers. It is believed by some that the Penal Code's trespass law does not adequately protect landowners from trespassing by people using the state's rivers. The trespass law as stated today claims that:

"A person commits an offense if he enters or remains on a property or in a building of another without effective consent and he: (1) had notice that the entry was forbidden; or (2) received notice to depart but failed to do so."

Conversely, there are some who believe that the public has a right to use the banks and riverbeds of rivers and streams for purposes of navigation and recreation. Legislation introduced by Senator Sims and sponsored by Representative Junell during the 71st Legislative Session attempted to address the concerns of property owners, but there is much controversy surrounding the issue.

Rights Are Uncertain

The question of a property owner's rights is affected by several conditions: when the lands were purchased; the nature of the body of water in question; and the nature of the use of the water by the public. Most land deeds in Texas date back many years and state that the landowner owns the land up to the edge of the water or even to the center of the river. The state of Texas owns the water flowing through the rivers.

Other factors affect the issue of property owner's rights. The river's edge varies with the level of the water. In times of flooding or drought the water line will vary drastically, thus confusing the issue of property lines. Also, since landowners are not obligated to post private property or no trespassing signs, those persons travelling on the river are not always adequately informed that they are trespassing. Fences are occasionally washed away in floods and not mended immediately due to the expensive cost of repair. Natural enclosures are not always well defined as property boundaries. Finally, hazards or accidents on the river may force someone from the river onto the private property. Both property owners and waterway users should be aware of their own rights as well as the rights of others, but presently, those rights are in question.
Different Viewpoints

The subcommittee met during the interim on March 20, 1990 to accept testimony from both the recreational water users and the property owners along rivers and streams. Recreational users in general believe that the state owns, except on Spanish land grant rivers, the stream bed to the mid-gradient point, the point half-way between a normal water level and the high water mark short of flood stage. Reasons for the mid-gradient boundary solution include the fact that rivers rise and fall with rainfall, or dam releases, thus alternately shrinking or expanding the river bed. Placement of fences or posted signs requires a fixed property line. Streams periodically shift in courses adding to one bank and reducing the other. Further arguments against a river trespass bill include forced trespass in the event of an obstacle or accident on the river. Many canoeists and clubs participate in clean-up programs along rivers and streams. Recreation promotes development of skills and self-confidence, and an appreciation and respect for the land, both public and private.

It is generally felt by the recreational users that the existing laws are sufficient. Education of the laws through public service announcements and printed literature should be increased. It was suggested that the trespass law be posted at “put in” points along the river to make the river users more aware and enforcement of the already existing laws be increased. Problems should be reported to the Texas River Protection Association so that the problems can be addressed. Communication between property owners and recreational clubs should be increased in order to work together to alleviate problems.

Landowners see the situation somewhat differently. Although laws already exist for punishing riverside trespass, it often is not possible to apprehend the offender. Properties are large and law enforcement personnel too few to cover the vast areas involved. Lack of control over recreational use leads to the pollution of the state’s waters.

Notice must be conveyed orally, by written notice, by enclosure obviously designed to exclude intruders or to contain livestock, or by signs posted prominently on the property. Landowners maintain that it is not always feasible to notify river users that they are trespassing by building fences which are costly and which wash away in flooding, or by posting numerous signs which are abused and removed by trespassers, or orally. Other arguments against public access to river ranchland include intimidation of livestock which rely on the river for watering, trespassing by environmentalists searching for “endangered flora or fauna”, and garbage dumped by trespassers fishing or hunting on the property without permission. Fences are torn down or gates left open allowing livestock to escape. Fires are built and trash left behind. Windmills have been used for target practice, water well meters have been smashed, sheep, calves, and steers have been shot, grass fires started, graves destroyed, and deer poached.

Recommendations

As the problem is a difficult one to resolve to everyone’s satisfaction, the subcommittee studied the statutes of other states and suggests that the Montana statute could work in Texas also. The statute defines “enter or remain unlawfully” as:

"a person enters or remains in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post
notice denying entry onto private land. Such privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person."

Under the statute a written notice or a painted fluorescent square not less that 50 square inches in size must be placed on a post, structure or natural object. Metal fence posts that are used as notices must be painted entirely. The notices must be posted at each outer gate and normal point of access to the property, including both sides of a body of water intersecting a boundary line. The department of fish, wildlife, and parks shall attempt to educate the public of the above provision.
THE LAVACA-COLORADO WATERMASTER PLAN

The committee held a second meeting on August 30 to discuss the proposed Lavaca-Colorado Watermaster Plan to be implemented by the TWC.

Section 11.327, Water Code, gives authority to the Texas Water Commission to establish a watermaster program “in time of water shortage”. The enabling legislation for a watermaster program was passed in 1967. In 1987, HB 1787 was passed by the Legislature allowing for the appointment of a watermaster by the Commission following a petition of rights holders. Aside from this legislation, there have been no substantial revisions or interest in the program’s implementation by the Legislature. In 1988 the Commission implemented the South Texas Watermaster on the Guadalupe, San Antonio, and Nueces River Basin. There was opposition to the formation of the watermaster at that time.

Watermaster programs are completely funded by the water right holder. Each water right holder is assessed a flat annual rate (currently $50.00) and a rate for the amount of water used and the purpose of the usage. Water right holders are responsible for purchasing meters to gauge water usage from each pump. Meters cost $500.00 each. When a water right holder wants to pump water they are required to call and inform the watermaster of their intention to do so. If they pump without permission or without a meter they can be forbidden to pump. All appeals are to the Commission.

There is little, if any, legislative oversight over the size of the budget and the fees charged to finance the programs. The budget of the watermaster programs on the Rio Grande and South Texas Basin have more than doubled since their implementation. A 27% and 23% increase, respectively, were requested for this year.

The TWC announced the implementation of the Colorado-Lavaca Watermaster in the spring of 1990. The Commission printed and circulated materials explaining the program to the water right holders. Some of the statements in the materials were false and misleading. The Commission held public meetings around the basin during the spring and summer of 1990. No commissioner attended any of the meetings. Although there was no record taken of the comments made at these public meetings by the staff of the commission, it was estimated that over 90% of those in attendance at the meetings were opposed to the watermaster program.

At the hearing held by this subcommittee on August 30, 1990 there was no testimony in favor of the watermaster. All testimony was opposed to its implementation on the Colorado-Lavaca River basin.

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Findings of the Subcommittee

1. There are approximately 1,574 accounts of water rights holders on the Colorado-Lavaca River basin. 98% of those accounts take only 1.8% of the total water in the basin. 2% of the accounts have rights to 98.2% of the water in the basin. Despite this, all accounts will be required to pay a fee, have a meter, and will be subject to regulation by the watermaster.

2. At least one of the major water rights holder, the LCRA, is already doing many of the tasks that would be assigned to the watermaster. The addition of a watermaster would be duplicative of the LCRA’s efforts.

3. In the past 10 years there have been an average of 11 complaints per year on the entire Colorado-Lavaca Basin concerning overuse or unauthorized use of water. Only 4 of those complaints were prosecuted by the Commission.

4. The reservoirs on the Colorado, particularly in West Texas, are being assessed a fee based upon the capacity of the reservoir. West Texas reservoirs are seldom over 50% full at anytime during a year.

5. The establishment of a watermaster may cause an overuse of water by rights holders. Many holders fear they will lose their right if it is not totally used each year.

6. Contained within the budget of the watermaster is a category for indirect charges. These charges are not of the watermaster but of the Commission itself. It does not appear that these are allowable charges under the statute.

7. The watermaster program is not contained in the Water Development Board’s proposed water plan for Texas. This runs contra to a unified water plan for the State of Texas.

The Colorado-Lavaca River basin is a much different river basin than either the South Texas or the Rio Grande basins. The major users on the basin, including the City of Austin, the LCRA, the LCRA, and the Colorado River Municipal Water District, have all stated that they are not opposed to letting the 72nd Legislature review the watermaster program to see if it is really needed. As the Commission has failed to show any compelling need for the implementation of this program at this time, the subcommittee recommends delaying the watermaster program in the Colorado-Lavaca River basin through the next session.
SOURCES


