

BILL ANALYSIS

Senate Research Center

H.B. 2250
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Natural Resources
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Engrossed

DIGEST AND PURPOSE

The Rio Grande watermaster is responsible for allocating, monitoring and controlling the use of surface water in the Rio Grande Basin from Fort Quitman to the mouth of the Rio Grande. Unlike elsewhere in Texas where water is a flow resource, surface water in the Rio Grande below Amistad is a stock resource meaning that water accumulates in Amistad and Falcon reservoirs and is released on demand. Amistad and Falcon reservoirs are considered one system with water frequently released from the upstream dam (Amistad) to replenish Falcon reservoir and meet the demands in the Lower Rio Grande Valley. The watermaster is the authorized agent allowed to request releases of United States water held in storage at Amistad/Falcon. In addition to the existing authority of watermasters, H.B. 2250 makes clear that the Rio Grande watermaster has certain roles in cases of imminent threat to public health and safety or the environment. H.B. 2250 requires the Texas Commission on Environmental Quality (TCEQ) to make rules to define the scope of those duties. The bill also clarifies that the Rio Grande watermaster has the authority, in accordance with rules prescribed by TCEQ, to transport new water from an upriver seller to a down river buyer and to divert the water to the buyer (subject to a water loss formula). A bed and banks permit would be required for the transportation of the water.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 11.3271, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter G, Chapter 11, Water Code, by adding Section 11.3271, as follows:

Sec. 11.3271. POWERS AND DUTIES OF RIO GRANDE WATERMASTER; DELIVERY OF WATER DOWN BANKS AND BED OF RIO GRANDE. (a) Provides that this section applies only to the watermaster with jurisdiction over the Rio Grande and the water division for which that watermaster is appointed.

(b) Requires the watermaster to divide the water of the streams or other sources of supply of the division in accordance with the adjudicated water rights.

(c) Requires the watermaster to regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of the division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(d) Authorizes the watermaster to regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

(e) Provides that the watermaster's duties do not include activities that relate to other programs of the commission, except as provided by this section. Requires the watermaster's duties to include activities that relate to situations of imminent

threat to public health and safety or the environment. Requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules defining situations of imminent threat under this section and addressing the watermaster's duties in response to terrorism.

(f) Authorizes the watermaster to store in a reservoir for release at a later time water in transit that is being conveyed down the banks and bed of the Rio Grande under a permit issued by TCEQ and in accordance with rules prescribed by the commission. Defines "water in transit". Requires the contract to specify that the contract is for the purchase and delivery of a specified amount of water less the carriage losses incurred in transit, as described and measured according to commission rules.

(g) Authorizes the watermaster to store water under Subsection (f) only if the storage does not hinder the ability of any other holders of Rio Grande surface water rights to store the maximum authorized capacity in a reservoir as specified by TCEQ rules and relevant permits, certified filings, or certificates of adjudication.

(h) Requires TCEQ, before granting a permit to convey water down the banks and bed of the Rio Grande, to adopt rules that provide for the methods and procedures by which the watermaster shall account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the banks and bed of the Rio Grande. Prohibits a permit to convey water down the banks and bed of the Rio Grande from allowing the permit holder to share in any beneficial state water inflows into the Rio Grande. Provides that the permit holder is entitled to convey only the amount of water specified in the permit, less the carriage losses incurred in transit, as described and measured according to TCEQ rules. Requires a rule adopted by TCEQ under this subsection to be consistent with the Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, concluded by the United States and the United Mexican States on February 3, 1944, and with any minute order adopted by the International Boundary and Water Commission.

(i) Requires TCEQ, in considering an application for a permit to convey water down the banks and bed of the Rio Grande, to consider the quality of the water to be conveyed. Prohibits TCEQ from issuing a permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande.

(j) Provides that notwithstanding any other law, the watermaster is the official recorder for all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens, that TCEQ authorizes or requires to be filed in connection with water rights relating to water in the lower, middle, or upper basin of the Rio Grande that are subject to a permit, certified filing, or certificate of adjudication. Requires an instrument to be filed with the watermaster under this subsection in the same manner as required by other law for the same type of instrument. Provides that the filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument. Requires an instrument filed under this subsection to be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law. Authorizes the watermaster to charge and collect a fee for the recordation of instruments under this subsection in the same amount as the fee collected by the county clerk of Cameron County for the recordation of similar instruments. Requires TCEQ by rule to prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate.

(k) Provides that this section does not apply to the Rio Grande above the Fort Quitman Dam.

SECTION 2. (a) Effective date: September 1, 2003.

(b) Requires TCEQ, as soon as practicable after September 1, 2003, to adopt rules necessary for the implementation of this Act and to expedite any application for a permit for the delivery of water down the banks and bed of the Rio Grande under Section 11.042, Water Code.