

## **BILL ANALYSIS**

Senate Research Center  
80R15516 JJT-F

C.S.S.B. 359  
By: Williams  
Natural Resources  
4/19/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, there is no statute that regulates the mining of sand or other aggregates in Texas' rivers. The San Jacinto River was named one of the nation's most endangered rivers by American Rivers, a national nonprofit river conservation group. The operations conducted on the river are affecting the drinking water supply for the City of Houston and surrounding communities, as well as affecting the flow of water.

C.S.S.B. 359 expands an existing pilot program to protect parts of the San Jacinto River. The bill requires the Texas Commission on Environmental Quality, the San Jacinto River Authority, and the Texas Parks and Wildlife Department to monitor the aggregate mining operations on parts of the west and east forks of the San Jacinto River by annual visual inspections and water sampling. The bill requires reclamation and restoration of existing quarry sites located within the current pilot program area.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission [Texas Commission on Environmental Quality] under SECTION 1 (Sections 26.603 and 26.604, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Chapter 26, Water Code, by adding Subchapter N, as follows:

#### **SUBCHAPTER N. SAN JACINTO RIVER WATER QUALITY PROTECTION AREA**

Sec. 26.601. DEFINITIONS. Defines "operator," "owner," "pit," "quarry," "responsible party," "San Jacinto water quality protection area," and "water quality protection area."

Sec. 26.602. APPLICABILITY; PILOT PROGRAM. (a) Provides that this subchapter only applies to sand and gravel quarries located in a water quality protection area designated by the Texas Natural Resource Conservation Commission (TNRCC) rule.

(b) Provides that this subchapter does not apply to certain solid waste landfills.

(c) Provides that this subchapter does not apply to an activity, facility, or operation regulated under Chapter 134 (Texas Surface Coal Mining and Reclamation Act), Natural Resource Code.

(d) Authorizes TNRCC to apply this subchapter only as a pilot program in the San Jacinto water quality protection area for the period of September 1, 2007, to September 1, 2027.

Sec. 26.603. REGULATION OF QUARRIES WITHIN WATER QUALITY PROTECTION AREA. (a) Requires TNRCC by rule to require a responsible party to obtain an authorization to use a general permit under Section 26.040 (General Permits)

for any discharges from a quarry any part of which is located in a water quality protection area designated under this subchapter.

(b) Requires TNRCC by rule to prohibit the construction or operation of a new quarry and the expansion of an existing quarry if the new or existing quarry is to be located or is located 100 feet or less from a stream that is in a water quality protection area designated under this subchapter.

(c) Requires TNRCC by rule to establish performance criteria and requirements for the general permit required under Subsection (a) to address certain issues.

(d) Requires TNRCC by rule to establish effluent standards or other water quality requirements, and requirements for financial responsibility, adequate to protect the water resources in the water quality protection area and include those requirements in the general permit required under Subsection (a).

(e) Requires the responsible party for a quarry located in water quality protection area who is required to obtain an authorization to use a general permit to include with an application filed with TNRCC certain information in addition to any other requirements established by TNRCC rule under Subsection (c) and (d).

Sec. 26.604. FINANCIAL RESPONSIBILITY; VIOLATION. (a) Requires TNRCC by rule to adopt requirements for maintaining acceptable evidence of financial responsibility for certain purposes.

(b) Prohibits a responsible party from operating a permitted quarry knowing that acceptable evidence of financial responsibility has not been maintained.

Sec. 26.605. INSPECTIONS OF AND SAMPLING OF WATER IN PILOT AREA. (a) Requires TNRCC, the San Jacinto River Authority, and the Parks and Wildlife Department to coordinate efforts to conduct certain inspections and analyses to detect potential violations of this subchapter in the San Jacinto water quality protection area.

(b) Requires visual inspections and surface water analyses of water samples to be conducted at least twice annually. Requires an inspection of the San Jacinto water quality protection area to be conducted from an aircraft flying over the area at least once each year.

Sec. 26.606. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) Requires TNRCC to enforce this subchapter and impose administrative and civil penalties as authorized by this code for discharges from a quarry in violation of this subchapter or of any TNRCC rule.

(b) Authorizes TNRCC to seek injunctive relief in the district courts of Travis County to require certain closures of and corrective action relating to quarries in addition to the administrative penalties and other available remedies or causes of action.

Sec. 26.607. EMERGENCY ORDERS. Authorizes TNRCC to issue a temporary or emergency order under Section 5.509 relating to a discharge of waste or pollutants from a quarry into or adjacent to water in a water quality protection area designated under this subchapter.

Sec. 26.608. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES WITHIN WATER QUALITY PROTECTION AREA. Provides that a party responsible for any costs incurred in undertaking a corrective or enforcement action with respect to an authorized discharge from a quarry under this subchapter, including a reclamation or restoration action is liable to this state for all reasonable costs of the corrective or enforcement action, including court costs and reasonable attorney's fees, and for any

punitive damages that may be assessed by the court, if TNRCC has incurred any costs from such action.

Sec. 26.609. COOPERATION WITH OTHER STATE AGENCIES. (a) Provides that TNRCC is the principal authority in this state on matters relating to the implementation of this subchapter. Requires all other state agencies engaged in water quality or water pollution control activities in a water quality protection area designated under this subchapter to coordinate those activities with TNRCC.

(b) Authorizes the executive director, with the consent of TNRCC, to enter into contracts, memoranda of understanding, or other agreements with other state agencies for purposes of developing effluent or other water quality requirements, including requirements for financial responsibility, for inclusion in any general permit required by this subchapter that are adequate to protect the water resources in the water quality protection area.

Sec. 26.610. WATER QUALITY PROTECTION AREA REPORTS. (A) Requires TNRCC to prepare a report describing its implementation of this subchapter and provide copies of the report to certain officials on or before December 1, 2008.

(b) Requires TNRCC to deliver a report to certain officials evaluating the implementation and operation of the water quality protection permitting and enforcement programs developed under this subchapter beginning December 1, 2010 and on December 1 of each succeeding even-numbered year.

(c) Authorizes the report under Subsection (b), at the discretion of TNRCC, to be consolidated with any other appropriate agency biennial report, including the report required under Subchapter M (Water Quality Protection Areas), except that information specific to any water quality protection area designated under this subchapter is required to be clearly identified.

Sec. 26.611. EXPIRATION. Provides that this subchapter expires September 1, 2027.

SECTION 2. (a) Requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules to implement Subchapter N, Chapter 26, Water Code, as added by this Act, as soon as practicable.

(b) Requires a responsible party required to obtain an authorization to use a general permit described by Subchapter N, Chapter 26, Water Code, as added by this Act, to submit an application for the authorization on or before the 180th day after the date rules of the TCEQ adopted under that subchapter take effect.

SECTION 3. Effective date: upon passage or September 1, 2007.