

BILL ANALYSIS

Senate Research Center
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S.B. 800
By: Williams
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no state law that protects Texas' rivers from the mining of sand or other aggregates. The San Jacinto River, in 2006, was named one of the nation's most endangered rivers by American Rivers, a national non-profit river conservation group. The mining operations on the San Jacinto River are affecting not only the flow of the river, but are placing at risk the drinking water supply for the City of Houston and surrounding communities.

As proposed, S.B. 800 requires the Texas Commission on Environmental Quality to create a pilot program to protect the water quality of the San Jacinto River.

[**Note:** 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.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Sections 26.603 and 26.604, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

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 applies only to sand and gravel quarries located in a water quality protection area designated by Texas Natural Resource Conservation Commission (TNRCC) rule.

(b) Provides that this subchapter does not apply to permitting, construction, or operation of a municipal solid waste landfill or other solid waste facility, regardless of whether the facility includes an excavation that is associated with past quarrying activities or an excavation, pit, or quarry associated with or related to the operations of a municipal solid waste landfill or other solid waste facility, regardless of the material extracted from or the depth of the excavation, pit, or quarry.

(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 Resources Code.

(d) Requires TNRCC, for the period of September 1, 2009, to September 1, 2029, to apply this subchapter only as a pilot program in the San Jacinto water quality protection area.

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) 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, except as provided by Subsection (c), 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 or is located 100 feet or less from a stream that is a water quality protection area designated under this subchapter.

(c) Authorizes a quarry that is covered by a permit issued by the United States Army Corps of Engineers under Section 404 of the federal Clean Water Act (33 U.S.C. Section 1344) to operate within 100 feet of a stream if that permit authorizes the operation, regardless of whether the quarry is located in a water quality protection area designated under this subchapter.

(d) Requires TNRCC by rule to establish performance criteria and requirements for the general permit required under Subsection (a) to address slope gradients that minimize the potential for erosion of quarry walls and banks into the surface waters and related water quality considerations; potential effects on areas subject to frequent flooding and related risks to public safety and property; the control of surface water drainage and water accumulation to prevent erosion, siltation, or runoff and damage to public or private property; and closure of a quarry, after quarry activities have ended, consistent with best management standards and practices adopted by TNRCC for quarry stabilization and reuse, which is authorized to include soil stabilization and compacting, grading, erosion control measures, removal of waste, debris, and structures, and revegetation.

(e) Requires TNRCC by rule to establish requirements for financial responsibility that are adequate to protect the water resources in the water quality protection area and include those requirements in the general permit required under Subsection (a).

(f) Requires the responsible party for a quarry located in a water quality protection area who is required to obtain an authorization to use a general permit, in addition to any other requirements established by TNRCC rule under Subsections (d) and (e), to include with an application filed with TNRCC for the authorization a proposed plan of action for how the responsible party will restore a receiving water body to background conditions in the event of an unauthorized discharge that affects the water body, and a proposed plan of action for how the responsible party will close the quarry, consistent with TNRCC standards that includes a description of the natural state of the land surrounding the quarry to which state the quarry will be restored, or the specific land use proposed for the quarry site, and a schedule within which the effort to close the quarry is authorized to reasonably be required to be completed after quarry activities have ended.

Sec. 26.604. FINANCIAL RESPONSIBILITY; VIOLATION. (a) Requires TNRCC by rule to adopt requirements for maintaining acceptable evidence of financial responsibility for: restoration of a water body affected by an unauthorized discharge from a permitted quarry, taking corrective action for and compensating for water quality effects caused by an unauthorized discharge resulting from quarrying, and implementing an approved quarry closure and reuse plan if the responsible party is unwilling or unable to meet the requirements of the plan.

(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 detect potential violations of this subchapter in the San Jacinto water quality protection area, to coordinate efforts to conduct visual inspections of the water

protection area and analyses of surface water samples from the San Jacinto River and its tributaries subject to this subchapter.

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

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 chapter or of any TNRCC rule.

(b) Authorizes TNRCC, in addition to the administrative penalties and other available remedies or causes of action, to seek injunctive relief in the district courts of Travis County to require the temporary or permanent closure of a quarry operated without authorization required under this subchapter the temporary or permanent closure of a permitted quarry under this subchapter for which acceptable evidence of financial responsibility is not maintained; the temporary or permanent closure of any quarry responsible for an unauthorized discharge; or corrective action by the responsible party for a quarry this is responsible for and unauthorized discharge.

Sec. 26.607. EMERGENCY ORDERS. Authorizes TNRCC to issue a temporary or emergency order under Section 5.509 (Temporary or Emergency Order Relating to Discharge of Waste or Pollutants) relating to a discharge of waste 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 if TNRCC has incurred any costs in undertaking a corrective or enforcement action with respect to an unauthorized discharge from a quarry under this subchapter, including a reclamation or restoration action, the responsible party 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 are authorized to be assessed by the court.

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 that 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 the 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 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, on or before December 1, 2010, to prepare a report describing its implementation of this subchapter and provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) Requires TNRCC, beginning December 1, 2012, and on December 1 of each succeeding even-numbered year, to deliver a report to the governor, lieutenant governor, and speaker of the house of representatives evaluating the implementation and operation of the water quality protection permitting and enforcement programs developed under this subchapter.

(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 Subchapter N expires September 1, 2029.

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 the rules TCEQ adopted under that subchapter take effect.

SECTION 3. Effective date: upon passage or September 1, 2009.