

PRESENTATION

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**WATER ISSUES IN THE 84TH
TEXAS LEGISLATURE**

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The 84th Texas Legislature and Water Related Issues

I. Introduction

During the 83rd Legislative Session, the Texas Legislature adopted significant legislation changing the Texas water landscape. Several factors contributed to water's surge in importance, but the most relevant were that a majority of the state was experiencing some stage of drought, several Texas cities were in danger of completely running out of water, and Texas had just experienced the hottest year to date, setting records with the number of continuous days above one hundred degrees. When a state experiences such extreme crises, changes will always occur, and in our situation, the importance and reliability of water took the Legislature by storm.

The 83rd Legislature passed HB 4, HB 1025 and Senate Joint Resolution 1 (collectively known as Proposition 6), which constitutionally created the State Water Implementation Fund for Texas ("SWIFT"). This group of legislation authorized the Comptroller to transfer \$2 billion from the "Rainy Day Fund" to the SWIFT account. SWIFT is a revolving loan program administered by the Texas Water Development Board ("TWDB") to fund the state water plan. This legislation also re-structured the TWDB by implicitly unseating the sitting six board members, and explicitly prohibiting the continued employment of the then executive director of the TWDB, and altering the TWDB's composition by establishing a full-time compensated, three-member board. The 83rd Legislature also transferred the economic regulation of water and wastewater rates and services from the Texas Commission on Environmental Quality to the Public Utility Commission.

On January 13, 2015, the Texas Legislature convened for the 84th Legislative Session. While many parts of the state are not nearly as dry or severely drought stricken as they were prior to last session, changes made by the 83rd Legislature and the public's recognition of the state's booming population growth coinciding with a stagnate water supply, will result in changes to the state's water laws.

II. The 84th Legislature

The Texas political landscape underwent a major change prior to the current Legislative Session. For the first time in twenty-four (24) years, all statewide offices were on the ballot for election without an incumbent running.¹ As predicted, Republicans won each statewide office, establishing a "longest-in-the-nation winning streak that dates back to 1994."² Governor Rick Perry, who is the state's longest serving governor, was replaced by Governor Greg Abbott, who was previously the Texas Attorney General. Other statewide offices that underwent a change are: Lt. Governor Dan Patrick was elected to replace Lt. Governor David Dewhurst, Attorney General Ken Paxton was elected to replace Governor Greg Abbott, Comptroller Glenn Hegar was elected to replace Comptroller Susan Combs, Agriculture Commissioner Sid Miller was

¹ *Tripedia: 2014 Statewide Elections*, THE TEXAS TRIBUNE, <http://www.texastribune.org/tribpedia/2014-statewide-elections/> (last visited March 3, 2015).

² *Statewide sweep: Texas GOP hasn't lost since 1994*, THE ASSOCIATED PRESS (Nov. 4, 2014), <http://www.kvue.com/story/news/politics/elections/2014/11/04/statewide-sweep-texas-gop-hasnt-lost-since-1994/18500791/>.

elected to replace Commissioner Todd Staples, and Texas Land Commissioner George P. Bush was elected to replace Commissioner Jerry Paterson.

The change in leadership roles resulted in changes in other areas of government. Lt. Governor Dan Patrick, who is in charge of Senate Committee appointments, shook up the committee assignments this year by not only switching around committee chairs but also changing the scope of historic committees. Previously, all legislation relating to water was referred to and heard in the Senate Natural Resources Committee. Sen. Troy Fraser of Horseshoe Bay has chaired the Committee since the 80th Legislature; however, this session, the Lt. Governor modified the committees and created the Senate Committee on Agriculture, Water and Rural Affairs, and named Sen. Charles Perry as Chairman. Sen. Perry is a freshman Sen. from Lubbock, who was elected to Sen. Robert Duncan's seat when he retired to become Chancellor of Texas Tech University. This committee has received legislation related to surface water rights, the Texas Water Development Board, issues involving the state water plan, river authorities, and groundwater conservation districts. The switch in the committee's scope, I expect, will have an impact on water legislation as it makes its way through the Senate chamber.

During previous sessions, water related legislation that had some nexus to the Colorado River always received extensive consideration and debate in the Senate Committee on Natural Resources due to Comptroller Glenn Hegar's (who served on the committee) constituency downstream on the Colorado River and bay area and Sen. Fraser's constituency in the Highland Lakes area. Sen. Fraser had served on the committee for some time and was well versed in water related issues. With Sen. Perry leading, the committee will receive a new perspective and, I assume, the focus of the committee's discussion will shift away from surface water and toward groundwater, due to the fact that a majority of the Sen.'s constituency live in drought stricken areas of Texas and rely heavily on groundwater.

The other members of the Senate Committee on Agriculture, Water and Rural Affairs are Sen. Judith Zaffirini (Laredo) as Vice-Chair, Sen. Brandon Creighton (Conroe), Sen. Bob Hall (Canton), Sen. Juan "Chuy" Hinojosa (McAllen), Sen. Lois Kolkhorst (Brenham), and Sen. Jose Rodriguez (El Paso).

Lt. Governor Patrick re-appointed Sen. Fraser as chair of the Senate Committee on Natural Resources and Economic Development. This committee will receive legislation related to oil and gas matters, coastal issues, electricity regulation, employment matters, environmental issues, and water utilities. The other members of the committee are Sen. Craig Estes (Wichita Falls) as Vice-Chair, Sen. Brian Birdwell (Granbury), Sen. Bob Hall (Canton), Sen. Kelly Hancock (North Richland Hills), Sen. Juan "Chuy" Hinojosa (McAllen), Sen. Eduardo "Eddie" Lucio (Brownsville), Sen. Robert Nichols (Jacksonville), Sen. Carlos Uresti (San Antonio), and Sen. Judith Zaffirini (Laredo). This will be Sen. Birdwell, Hall, and Hancock's first time to serve on the Senate Natural Resources Committee.

Changes within the House Committee on Natural Resources occurred as well, but not because of statewide elections. Rep. Allen Ritter (Chairman - Nederland) and Bill Callegari (Vice-Chairman - Katy) chose to retire after the 83rd Legislative Session. Both Rep. Ritter and Callegari brought real interest and knowledge of the states' water resources and each take with

them an enormous amount of institutional knowledge. Rep. Ritter was chair of the Committee during the 81st, 82nd, and 83rd Legislative Sessions, and was instrumental in passing SB 332 during the 81st session and HB 4 last session (which lead to the Constitutional Amendment, Proposition 6).

Speaker Joe Straus chose Rep. Jim Keffer (Eastland) as Chair of the House Natural Resources Committee. Rep. Keffer has been a member of the committee since 2011. Bills referred to this committee will cover groundwater, surface water, desalination, aquifer storage and recovery, utilities and districts, and groundwater conservation districts. The other members of the committee include Rep. Trent Ashby (Lufkin) as Vice-Chair, Rep. Dennis Bonnen (Friendswood), Rep. DeWayne Burns (Cleburne), Rep. James Frank (Wichita Falls), Rep. Kyle Kacal (College Station), Rep. Tracy O. King (Batesville), Rep. Lyle Larson (San Antonio), Rep. Eddie Lucio, III (Brownsville), Rep. Poncho Nevarez (Eagle Pass), Rep. Paul Workman (Austin). This will be Rep. Burns, Frank, Kacal, Nevarez, and Workman's first time to serve on this committee.

III. Legislation

Due to the timing of this paper, and the legislative process, bills likely to pass both chambers and become law are not easily discernible. The Speaker of the House typically does not announce legislative committees until February, meaning the referral of bills to the appropriate committees cannot occur until then, and Legislators have until the sixtieth (60th) day of the session to file bills. However, the technical procedures of the process do not prevent the public from having some sort of idea about what will be the hot topics during session.

During the interim, coalitions and groups come together to discuss policy issues that were not addressed in previous sessions, policy issues they wish to see reformed, and to formulate new policies and encourage both enforcement and conservation. During this most recent interim, there were several topics that received a great amount of attention: (i) aquifer storage and recovery, (ii) desalination (iii) consistency within groundwater conservation districts ("GCDs") and GCDs permitting renewal, and (iv) the Texas Commission on Environmental Quality's impediments to permitting. Other topics that are consistently discussed with regard to water policy and always likely to become draft legislation are (i) issues related to certificates of convenience and necessity and (ii) the use and safety of water as it relates to the oil and gas industry.

a. Newsworthy Legislation

In Governor Abbott's State of the State speech, he announced that this session should be dedicated to ethics reform and transparency in state government.³ To accomplish his goal, Governor Abbott added ethics reform and transparency to his list of emergency items.⁴ The effect of this listing requires the Legislature to devote the first thirty (30) days of session to bills

³ Bob Price, *Abbott: Texas Must Double The Budget for Border Security*, BREITBART, <http://www.breitbart.com/texas/2015/02/17/abbotts-state-of-the-state-address-texas-must-double-the-budget-for-border-security/> (Feb. 17, 2015).

⁴ *Id.*

related to ethics and transparency.⁵ SB 19, authored by Sen. Van Taylor (Plano), attempts to carry out Governor Abbott's wishes. The bill (i) removes an elected official's right to receive their retirement annuity if they are convicted of a crime related to their duties as an elected official, (ii) requires state officials to disclose in their financial statement contracts with governmental entities if the aggregate of goods or services sold exceed \$10,000 per year, and (iii) requires former members of the legislature to cease lobbying for a period of two (2) years after leaving office. Lt. Governor Patrick publicly supports Sen. Taylor's legislation.

Other legislation aimed at increasing the public's trust is HB 1764, authored by Rep. Todd Hunter (Corpus Christi). SB 1087, authored by Sen. Lois Kolkhorst (Brenham), is the bill's companion and includes identical language. The authors' purpose is to close a loophole in the Texas Public Information Act that excludes government employees' e-mails related to public business if the e-mails were transferred on private accounts. The legislation clarifies that public information requests apply to those types of e-mails, regardless if conducted on a private account.

SB 392, authored by Sen. Konni Burton (Colleyville), and HB 814, authored by Rep. Lyle Larson (San Antonio), relate to transparency, but have not received positive support. The legislation provides that a governmental body may post notice of a meeting on the internet instead of the newspaper. Opponents to this bill argue that this prevents transparency because there are still Texans without access to the internet.

Other legislation receiving media attention derives from a groundwater battle brewing in Hays County, Texas. Electro Purification is a private company in the process of completing a groundwater production and transportation project that will produce water from the Trinity Aquifer in Hays County, Texas and transport it to the City of Buda, Texas, the Goforth Water Special Utility District ("SUD"), and a new subdivision near the City of Kyle, Texas. Residents overlying the Trinity Aquifer claim that Electro Purification will drain the Trinity Aquifer, and damage their wells, because this portion of the aquifer is unregulated (meaning the rule of capture applies). This "gap" in regulation results from this portion of the Trinity aquifer underlying the Edwards Aquifer, which is regulated by the Edwards Aquifer Authority. The Barton Springs/Edwards Aquifer Conservation District and the Hays-Trinity Groundwater Conservation District regulate the other portions of the Trinity Aquifer not located in Hays County.

In response to the resident's concerns, Rep. Jason Isaac (Dripping Springs) and Sen. Donna Campbell (New Braunfels) filed legislation aimed at protecting the Trinity Aquifer, the residents of Hays County and slowing down the progress of Electro Purification's project. HB 3405 (companion SB 1440) and HB 3406 (companion SB 1439) attempt to bring the unregulated portion of the Trinity Aquifer into the territory of either the Barton Springs/Edwards Aquifer Conservation District or the Hays-Trinity Groundwater Conservation District so that the rule of capture is no longer applicable. HB 3407 (companion SB 1634) prevents the Goforth Water SUD from exercising eminent domain power outside of its geographic boundaries. Goforth SUD has contracted with Electro Purification to purchase water and use its eminent domain authority to construct the pipeline Electro will use to transport the water.

⁵ TEX. CONST. ART. III, § 5.

Media outlets are also heavily covering legislation aimed at limiting local governments imposing more stringent regulatory measures than the state, consistent with Governor Abbott's statement that "Texas cities [are] contributing to the 'California-zation' of Texas."⁶ Governor Abbott claims that municipal regulations such as Denton's fracking ban or Austin's bag ban are "creating a patchwork quilt of bans and rules and regulations that is eroding the Texas model."⁷

HB 539, filed by Rep. Phil King (Weatherford), requires municipalities that purport to regulate oil and gas measures, to request the Legislative Budget Board to summarize the impact the regulation will have on education funding and other taxing entities in the area. HB 540, also filed by Rep. King, requires a municipality to submit to the Texas Attorney General any proposed municipal order that will either repeal an existing ordinance or purport the passage of a new ordinance, so that the Attorney General may determine if the repeal or new ordinance would violate existing state or federal law or constitute a governmental taking.

Other legislation aimed at curbing "local control" includes HB 40, HB 2855, and SB 1165. HB 40, filed by Rep. Drew Darby (San Angelo), and Senate companion SB 1165, filed by Sen. Troy Fraser (Horseshoe Bay), prohibits municipalities from regulating oil and gas operations, unless those operations pertain to surface activity that is incidental to the oil and gas operation. HB 2855, also filed by Rep. Darby, prohibits a political subdivision from adopting an ordinance, regulation, or similar measure that prohibits an activity regulated by the Texas Railroad Commission ("Commission"). HB 2855 provides that an ordinance may be submitted to the Commission by an affected person, so that the Commission can determine if it prohibits an operation within the Commission's jurisdiction. Sen. Craig Estes (Wichita Falls) and Sen. Don Huffines (Dallas) have filed similar legislation: SB 1806, SB 1673, and SB 343.

b. Aquifer Storage and Recovery

The use of aquifer storage and recovery ("ASR"), as a method to store water, was authorized by the 74th Legislature. However, the permitting and operation of ASR projects has been without regulatory clarity and, in some cases, difficult to implement because of the overlay of groundwater regulation by groundwater conservation districts. Rep. Lyle Larson (San Antonio), Sen. Brandon Creighton (Conroe), and Sen. Charles Perry (Lubbock) have filed legislation developed by the Texas Water Conservation Association ("TWCA") which would clarify this situation: HB 655, SB 1724, and SB 1903.

The companion bills provide the Texas Commission on Environmental Quality ("TCEQ") with the exclusive jurisdiction over the permitting and regulation of ASR injection wells. Groundwater conservation districts ("GCD") are authorized to assess each ASR well (injection and recovery) a registration fee, but may only assess other types of fees, spacing and production requirements if the well operator produces more water than authorized by TCEQ. The bill requires (i) a public comment and notice period when an applicant applies to TCEQ for

⁶ Wade Goodwyn, *New Texas Governor Adds to Tension Between State, City Governments*, NATIONAL PUBLIC RADIO, <http://www.npr.org/2015/01/15/377526831/new-texas-governor-adds-to-tension-between-state-city-governments> (Jan. 15, 2015).

⁷ *Id.*

a permit, (ii) the applicant to publish notice in a newspaper of general circulation in the county where the injection well will be located, and (iii) the applicant to notify nearby GCDs.

The TWCA is one of the largest trade associations in the state. TWCA has, for several sessions, convened representatives from a broad range of stakeholders, who meet regularly during the interim to debate, discuss and propose draft legislation. TWCA's efforts are considered a good starting point for discussion and consideration of policy issues. Bills with the endorsement of the TWCA stakeholder's process often are, with modifications, likely to become law. Because the three ASR bills discussed are TWCA consensus legislation, one of them stands a high chance of becoming law.

c. Desalination and Regulation of the Production of Brackish Groundwater

The regulatory restrictions, market impediments and financial investment associated with the production and transportation of groundwater have increased the interest in production and treatment of brackish groundwater and the use of desalination to produce potable water. Rep. Lyle Larson (San Antonio) filed a group of bills (HB 30, 835, 836) aimed at encouraging the research and use of brackish groundwater and simplifying the overlying regulation of producing brackish groundwater.

Legislation has also been filed to encourage the use of desalination. For example, HB 2031, 4097, and SB 1738 all through various means, attempt to encourage the use of seawater desalination. HB 2230 (Rep. Lyle Larson) provides that nonhazardous brine resulting from desalination may be injected into Class II injection wells and HB 4097 (Rep. Todd Hunter) statutorily provides that desalinated seawater may be used for nonpotable uses.

It remains to be seen which bills related to the use of desalination and brackish groundwater will become law. The regulation of brackish groundwater and the expense of desalination pose barriers to a clear policy decision being reached. The complexity of this area of water policy is evidenced by the number of bills filed related to these topics and the fact that TWCA groundwater stakeholders were unable to agree on recommended legislation.

d. Groundwater Conservation Districts

Groundwater conservation districts ("GCDs") and Water Code Chapter 36 seem to always be a topic of discussion each legislative session. Prior to this session, several topics involving GCDs were discussed and resulted in the filing of a wide variety of bills. Legislation has also been filed to create several new GCDs. At this point of the session, however, we can discern no major efforts to pass particular legislation, thus it is safe to say that each bill described is in play.

Several of the bills filed this session have been recommended by the TWCA groundwater stakeholders group: HB 1248, HB 1221 and HB 950. HB 1248, filed by Rep. Eddie Lucio III (Brownsville), provides that an operating permit may be renewed by a GCD without a hearing if certain factors are satisfied. Rep. Jason Isaac (Dripping Springs) and Sen. Judith Zaffirini (Laredo) also filed legislation related to the renewal or amendment of a permit issued by a groundwater conservation district (HB 1856 and SB 854). HB 1221, filed by Rep. Lucio III, and

the companion bill, SB 1412, filed by Sen. Craig Estes (Wichita Falls), require the seller of residential real property to disclose in writing to the purchaser that the property is subject to groundwater regulation by a groundwater conservation district. In addition, HB 950, filed by Rep. Lucio III, provides the state auditor the authority to conduct financial audits of GCDs.

HB 1972, filed by Rep. Jim Keffer (Eastland), amends Water Code § 36.117(b), by making it clear that producers of groundwater for hydraulic fracking are exempt from obtaining a GCD permit if the groundwater is supplied for drilling, exploring, or completion of oil and gas operations. This specific section of the Water Code was heavily debated last session, and although compromise legislation was considered, a bill was not passed. HB 2179, filed by Rep. Eddie Lucio III (Brownsville), amends GCDs' procedures regarding uncontested and contested hearing requests. The bills requires that (i) a GCD conduct an open hearing when considering a permit or permit amendment, (ii) the GCD's board schedule a preliminary hearing to hear a request for a contested case hearing, and allows the hearing to be conducted by the GCD's Board, the State Office of Administrative Hearings, or a person delegated by the Board, and (iii) requires the GCD to consider a proposal for decision at a final hearing, where evidence may not be presented. SB 517, filed by Sen. Carlos Uresti (San Antonio), requires the applicant of an injection well permit to notify any GCD that has territory within a ten (10) mile radius of the proposed site. In addition, HB 1635, filed by Rep. Ryan Guillen (Rio Grande City), requires the TWDB to develop technical guidance documents to assist GCDs in formulating and adopting their desired future conditions.

Two other bills worth mentioning are HB 2767 and HB 200, both filed by Rep. Jim Keffer (Eastland). The caption of each bill is broad, therefore allowing it to become a possible vehicle for additional amendments relating to the powers, authority, and duties of GCDs. HB 200's caption provides "relating to the regulation of groundwater" and HB 2767's caption provides "relating to powers, duties, and administration of groundwater conservation districts."

The creation of GCDs can be accomplished by petitions, by the TCEQ or through the legislature. The following is a list of legislation proposing to create new GCDs. However, this list may not include all of the GCDs created during the 84th Legislative Session; legislation creating GCDs are considered local bills and may be filed after the sixty (60) day filing deadline.

- (1) HB 2407, Rep. Doug Miller (New Braunfels) & SB 963, Sen. Donna Campbell (New Braunfels): creating the Comal Trinity Groundwater Conservation District
- (2) HB 4038, Rep. Paul Workman (Austin): creating the Western Travis County Groundwater Conservation District
- (3) HB 4123, Rep. Poncho Nevarez: creating the Val Verde County Groundwater Conservation District

e. Water and Sewer Utility Related Matters

The water and wastewater utility industry regulation was subject to major changes due to legislation passed last session. Beginning September 1, 2014, the PUC became responsible for all water and wastewater rate, extension, and service area regulation. Due to the transition's proximity to the 84th Legislature, it was assumed that reform legislation might be filed to

address issues arising from the transition. Additionally, each session typically includes bills that attempt to alleviate the conflicts surrounding certificates of convenience and necessity (“CCN”). However, the amount of legislation filed this session relating to utilities is minimal.

HB 1279, filed by Rep. Matt Schaefer (Tyler), and SB 789, filed by Sen. Kevin Eltife (Tyler) are bracketed bills that allow a municipality to provide sewer service to customers within the municipality’s geographic boundaries without having to obtain a CCN, regardless if the area is within an existing CCN. HB 2073, filed by Rep. Jason Isaac (Dripping Springs), limits what may be classified as an affected person in a contested case hearing pertaining to a municipality seeking approval for an action related to water or sewer utility improvements.

HB 2284, filed by Rep. Amando Walle (Houston), and SB 1526, filed by Sen. Sylvia Garcia (Houston), allow the PUC to file a petition to revoke an investor-owned water utility’s CCN if the PUC has reason to believe the utility has performed certain actions and is located in a specific area. HB 669, filed by Cecil Bell (Magnolia), and SB 1121, filed by Sen. Judith Zaffirini (Laredo), authorize a public utility agency to enter into a contract with a private entity for the provision of water or sewer service or to operate facilities connected with such service. HB 1146, filed by Rep. Kyle Kacal (College Station) provides that the licensed operator of a water supply system may be a volunteer.

f. Oil & Gas Matters Related to Water

Even though oil prices have dropped significantly, bills related to the use of water in energy production continue to be filed in the Texas Legislature. During the 83rd Legislature, part of the water discussion involved the amount of fresh water fracking operators require and the disposal/use of flowback. The concern is that the exploration and production of oil and gas consume large quantities of fresh water that is subsequently rendered forever unusable when injected into disposal wells. The Texas Railroad Commission has amended its regulations in an attempt to encourage operators to recycle their flowback so that it may take the place of fresh water, thereby reducing the amount of fresh water consumed.

HB 4035, filed by Rep. Drew Darby (San Angelo) and HB 4021, filed by Rep. Abel Herrero (Robstown), provide tax severance credit to oil and gas operators who replace the use of water in the fracking process with an alternative fluid. Rep. Herrero’s bill allows an operator to apply for a \$50,000 per well tax credit if the fluid used in the fracking process is something entirely other than fresh water. Rep. Darby’s bill provides the oil and gas operator a tax credit equal to (i) the amount of money spent by the operator to use a production technique that does not involve water, (ii) the amount of money contributed by the operator to a road or water infrastructure project, or (iii) the amount of money the operator donates to a public junior college. Similarly, HB 2691, filed by Rep. Tracy King (Batesville), exempts the sales tax on the purchase of alternative base fluids used in the fracturing process and provides operators a tax credit if at least twenty percent (20%) of the total volume of fluid used in the fracking process is a water alternative.

HB 1331, filed by Rep. Phil King (Parker) encourages the recycling of oil and gas waste by providing protection to producers who generate drill cuttings or fluid oil and gas waste during

the production process, and subsequently enter into a contract to transfer the cuttings/fluid, with the understanding that the cuttings will be treated and used in connection with a beneficial use.

g. Texas Commission on Environmental Quality

Each session, legislation is filed that attempts to improve the Texas Commission on Environmental Quality's ("TCEQ") permitting process; this session is no different. HB 201, filed by Rep. Jeff Leach (Plano), and companion SB 109, filed by Sen. Van Taylor (Plano), impose time limits within TCEQ's water right permit application review process. Specifically, the bill requires TCEQ to notify the water right applicant within thirty (30) days if the permit is administratively complete or is lacking information. Additionally, TCEQ must notify the applicant within 180 days of the technical review process beginning, if the permit is sufficient. The bills also require TCEQ to determine the scope of issues referred to the State Office of Administrative Hearings ("SOAH").

HB 1113, filed by Rep. Travis Clardy (Nacogdoches), and Senate companion, SB 941, filed by Sen. Brandon Creighton (Conroe), provide that TCEQ is not required to hold an evidentiary hearing on the issue of standing, and TCEQ's determination of standing may only be reversed by a court if TCEQ did not consider factors required by law, if TCEQ considered irrelevant factors, or if TCEQ reached an unreasonable result. Opponents claim that the bills will limit access to the TCEQ permitting process.

Sen. Troy Fraser (Horseshoe Bay) filed SB 709, and Rep. Geanie Morrison (Victoria) filed HB 1865 (the companion), which allow TCEQ to limit the amount of time an administrative law judge may consider an issue before issuing a proposal for decision. The bills also limit what TCEQ may consider when deciding if a person requesting a contested case hearing is actually an affected person. Sen. Fraser and Rep. Morrison both claim that the bills will encourage more business in Texas because the bills provide for a more efficient permitting process. However, opponents argue that the legislation further restricts participation in contested case hearings.

Legislation regarding TCEQ's other functions have been filed, as well. HB 2892, filed by Rep. Andrew Murr (Junction), requires TCEQ, or another governmental entity identified by TCEQ, to perform gradient boundary surveys, notify abutting landowners, and hold a public hearing before determining if a watercourse is a navigable stream. Rep. Jeff Leach (Plano) also filed a bill relating to navigable streams. HB 2887 requires a that for a stream to be considered "navigable," it must maintain a constant water depth of twelve (12) inches or greater. It also provides that a fence may be built across a navigable stream, if it is necessary to contain livestock. Current law prohibits the construction of fences accros navigable streams.

h. Miscellaneous Legislation

Not all water related legislation could be categorized, or grouped with similar bills, particularly because the bill either may amends/requires an obscure rule of law, or may address an unpopular area of the law. Sen. Lois Kolkhort's (Brenham) SB 483 (and companion HB 1665, filed by Rep. Dennis Bonnen) require the seller of residential/commercial real property that adjoins an impoundment of water, to submit to the purchaser of the property a written notice

conveying that the water level in the impoundment fluctuates. HB 1153, filed by Rep. Scott Turner (Frisco), repeals two provisions of the Texas Water Code that requires that interbasin transfers of water rights be junior in priority to other water rights granted before the proposed transfer.

HB 1192, filed by Rep. Jason Isaac (Dripping Springs), statutorily allows the use of graywater in toilets and urinal flushing. Rep. Doug Miller (New Braunfels) filed HB 930, which is TWCA consensus legislation. The bill requires TCEQ to establish a field operations program and an apprentice pump installer program. The bill also requires drillers to supervise the recompletion, perforation, or conversion of an oil and gas well to a water well.

SB 636, filed by Sen. Judith Zaffirini (Laredo), creates a Recreational River Use Task Force to assess the effects of recreational use of rivers on local economies, water quality, and environmental health and evaluate the quality of the recreational experience of river users, the safety of recreational users of rivers, and the public policy implications of increased recreational use of rivers. Rep. Eddie Lucio III (Brownsville) filed HB 1232, and Sen. Craig Estes (Wichita Falls) filed SB 1409, which require the Texas Water Development Board to conduct a study of the state's aquifers to define the quality and quantity of the groundwater in the confined and unconfined aquifers.

IV. Conclusion

Unlike the 83rd Legislative Session, this Legislature does not have an over-arching goal to accomplish related to water law. With the funding of the state water plan issue at least temporarily addressed, the Legislature is left to resolve water issues that create divisions among friends and political parties. As Rep. Lyle Larson has said, water politics in Texas is much like Friday night football.

With so many interests represented in the Legislature, and no cohesive purpose, at this point all legislation has the opportunity to either be defeated or become law. This divisiveness is evidenced in the fact that the state's biggest water interest group, TWCA, was able to propose only five recommended pieces of legislation. As the chambers and committees continue to meet and discuss policy, legislation with the ability to become law will become more apparent.