SUBJECT: Environmental flows, water conservation, and reservoir designation

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 7 ayes — Puente, Hamilton, Creighton, Guillen, Hilderbran, Laubenberg, O'Day

2 nays — Gattis, Gallego

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: For — Norm Archibald, City of Abilene; David Bell, West Central Texas Municipal Water District; Jan Hart Black, Texas Metro 8 Chambers of Commerce; Virginia Blevins, Blake L. English, Larry N. Patterson, Upper Trinity Regional Water District; Robert Howden, Texas Association of Manufacturers; Ramon F. Miguez, City of Dallas; Brinton Payne, Fort Worth Chamber of Commerce; Mike Rickman, North Texas Municipal Water District; Dean Robbins, Texas Water Conservation Association; Walt Sears, Jr., Northeast Texas Municipal Water District; Tommy Spruill, Titus County FWSD/Northeast Texas Water Coalition; David I. Wiedman, Franklin County Water District/Northeast Texas water Coalition; and two others (*Registered, but did not testify*: Fred Aus, Lower Colorado River Authority; Carole D. Baker, Harris-Galveston Subsidence District; Jay Barksdale, Greater Dallas Chamber; Walt Baum, Association of Electric Companies of Texas; Donovan Burton, San Antonio Water System; Snapper Carr, City of Frisco; Aaron Day, City of Fort Worth; Amy Fitzgerald, City of Arlington; Darrin Hall, City of Houston; Gordon Johnson, Miller Brewing Company; Dennis Kearns, BNSF Railway; Ben Loughry, Fort Worth Chamber of Commerce/Integra Realty Resources; Lisa Mayes, San Antonio River Authority; Yesenia Monsour, San Antonio Hispanic Chamber of Commerce; David Morgan, City of Richardson; Dan Pearson, El Paso Water Utility; Shannon Ratliff, City of Carrollton; Monty D. Shank, Upper Neches River Municipal Water Authority; Dan Shelley, City of Cuppell; V. A. Stephens, Texas Association of Manufacturers; Vic Suhm, North Texas Commission; Frank Turner, City of Plano; Todd Votteler, Guadalupe-Blanco River Authority; Christina Wisdom, Texas Chemical Council; Emily Fleming)

Against — David L. Boucher, International Paper Mill Co./ IBEW Local 301; Jean Cothren, International Paper Co./Pulp and Paper Resource Council; Eugene Decker, Friends of Neches River; Benjamin Dennis, Donald Forst, Bart E. Rash, International Paper Co.; Paul Hale, Texas Logging Council - Texas Forestry Association; Barney Krebs, International Paper Co./United Steel Workers; Richard LeTourneau, Region D Water Planning Group; Lee Medley, United Steelworkers District Council; Don Smith, Texas Farm Bureau; Doug Wadley, International Paper and Texarkana Mill; Bill Ward, Texas Logging Council and Ward Timber Co.; Colton Wicks, Delta County Landowners; and five others; (*Registered, but did not testify*: David Arterburn, C. M. English Jr., United Transportation Union; Michael Banks, Friends of Neches River; Ron Hufford, Texas Forestry Association; Glenn Lee, Maeta Lee, Stewart Richardson, Phyllis Ryser, Citizens to Save Bois D'Arc Creek; Julia M. Marsden, Texas League of Women Voters; Michael Ryan, Concerned Members for Accountability - the Cities of Copper Canyon, Double Oak, Flower Mound, Krum; and four others)

On — Myron Hess, National Wildlife Federation; Mary E. Kelly, Environmental Defense; Ken Kramer, Lone Star Chapter of the Sierra Club; David K. Langford, Texas Wildlife Association; Bill Peacock, Texas Public Policy Foundation; Ed Small, Texas and Southwestern Cattle Raisers Association; Ben Vaughn, Coastal Conservation Association; George Frost; (*Registered, but did not testify*: Janice Bezanson, Texas Conservation Alliance; Carolyn Brittin, Texas Water Development Board; Bob Staton, Northeast Texas Regional Water Planning Group)

BACKGROUND: Surface water belongs to the state, which grants rights to use it through permits from the Texas Commission on Environmental Quality (TCEQ). Cities, individuals, and river authorities may apply for water rights permits. TCEQ requires that surface water be used for a "beneficial purpose." In order to obtain a permit, an applicant must show that there is a source of unappropriated water available. Water permits do not guarantee that water will be available, only that the holder has a right to available water. The principle of "prior appropriation" gives priority to those whose water rights have greater seniority.

In 1997, the 75th Legislature enacted SB 1 by Brown, which established the Texas Water Trust. Donation into the trust allows private water rights to be left in the state's rivers and used for the benefit of the environment. In 2001, the 77th Legislature enacted SB 2 by Brown. Among its

provisions, the bill established an instream flow program under which state environmental agencies would collaborate to study river and stream flow conditions necessary to support a sound ecological environment.

On October 28, 2005, Gov. Rick Perry signed executive order RP-50, which created the Environmental Flows Advisory Committee to examine how best to protect instream flows and freshwater inflows. The committee conducted public hearings and issued its recommendations to the Legislature in December 2006.

In 2003, the 78th Legislature enacted SB 1094 by Duncan, which created the Water Conservation Implementation Task Force. The task force was charged with reviewing and recommending water conservation strategies and best management practices to the Legislature.

Under Water Code, sec. 16.053, regional water planning groups are required to submit a regional water plan that provides for the development, management, and conservation of water resources, including drought management.

Under Water Code, sec. 16.051(f), the Legislature may designate a river or stream segment of unique ecological value. Such a designation means that the state may not finance the construction of a reservoir in the segment designated by the Legislature.

Under sec. 16.051(g), the Legislature may designate a site of unique value for the construction of a reservoir. In the event of such designation, a state agency or political subdivision of the state may not obtain a fee title or easement that would prevent the construction of a reservoir on the site.

DIGEST:

ENVIRONMENTAL FLOWS

CSSB 3 would create an administrative process to determine the environmental flow needs in Texas' rivers, bays, and estuaries. After establishing these environmental needs, the bill would require TCEQ to adopt rules to provide environmental flow standards, including set-asides in basins where unappropriated water was available.

Establishing environmental flow standards and set-asides

Under CSSB 3, TCEQ would be charged with:

- determining the environmental flow standards that are necessary to support the ecological environment of each river basin and bay system in the state;
- establishing an amount of unappropriated water to be set aside to satisfy the environmental flow standards; and
- creating a process for reducing the amount of water available under a water rights permit in order to protect environmental flows. This provision would apply only to a permit approved after the bill's effective date.

After determining environmental set-asides in basins with unappropriated water rights, TCEQ could not grant an appropriation of water that interfered with those set-asides. After an environmental flow set-aside had been determined, any new water permit or new amendment to an existing water right increasing the size of that water right would have to include conditions for the protection of the environmental flow set-asides. Environmental flow standards would consist of flow quantities that reflected seasonal and yearly fluctuations that could vary geographically by location in a river basin and bay system.

TCEQ would take these actions in response to recommendations from a structure of advisory groups operating in an administrative process created under the bill. Four new types of entities would contribute to the administrative process established under CSSB 3:

- an environmental flows advisory group;
- an environmental flows science advisory committee;
- environmental flows stakeholders committees for each river basin and bay system in the state; and
- expert science teams for each river basin and bay system in the state.

In adopting environmental flow standards for a river basin and bay system, TCEQ would consider multiple criteria, including:

- the geographical definition of the river basin and bay system;
- the schedule that was established for adopting environmental flow standards for the river basin and bay system;
- environmental flow analyses and recommended environmental flow regimes developed by the river basin and bay system expert science team;
- recommendations from the river basin and bay system stakeholders committee;
- comments from the environmental flows advisory group;
- specific characteristics of the river basin and bay system;
- economic factors;
- other competing water needs in the river basin and bay system; and
- scientific information, including information provided by the science advisory committee.

The bill would prohibit TCEQ from issuing a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. TCEQ could approve an application to amend a permit or certificate of adjudication to change a use to environmental needs or bay and estuary inflows.

Administrative process for developing flow recommendations

Environmental flows advisory group. CSSB 3 would create an environmental flows advisory group. Through studies and public hearings, the advisory group would examine the balance between the water needs of Texas' population and the protection of environmental flows of the state's river, bay, and estuary systems. The advisory group would consider the ecological concerns of river, bay, and estuary systems as they relate to the administration, enforcement, and allocation of water rights in the state. The advisory group also would work to encourage voluntary conversion of water rights for environmental flow protection.

The environmental flows advisory group would consist of nine members:

- three members of the Senate appointed by the lieutenant governor;
- three members of the House of Representatives appointed by the speaker of the House;
- one member of TCEQ appointed by the governor;

- one member of the Texas Water Development Board (TWDB) appointed by the governor; and
- one member of the Texas Parks and Wildlife Department (TPWD) appointed by the governor.

The senator and House member with the most seniority would serve as co-presiding officers.

By December 1, 2008, and every two years thereafter, the advisory group would be required to issue a report summarizing its activities. The report would include proposed legislative changes and would document progress in developing environmental flow regime recommendations initiated under the bill.

Advisory group members would not be entitled to compensation but could be reimbursed for travel expenses. The group could accept gifts and grants to help carry out its functions. TCEQ would provide staff support to the advisory group.

The advisory group would be abolished when TCEQ had adopted environmental flow standards for all of the river basin and bay systems in the state.

Environmental flows science advisory committee. CSSB 3 would establish the environmental flows science advisory committee to aid the environmental flows advisory group's evaluation of environmental flows. The science advisory committee would consist of between five and nine specialists appointed by the environmental flows advisory group. Specialists would serve five-year terms.

Environmental flows stakeholders committees. For each river basin and bay system in the state, the environmental flows advisory committee would appoint a river basin and bay area stakeholders committee consisting of at least 17 members serving five-year terms. Each committee would reflect a balance of interest groups concerned with environmental flows in the basin, including representatives of:

- agricultural water users;
- recreational water users;
- municipalities;
- soil and water conservation districts;

- industrial water users;
- commercial fishermen;
- public interest groups;
- regional water planning groups;
- groundwater conservation districts;
- river authorities; and
- environmental interests.

An existing estuary advisory council would act as the stakeholders committee for the applicable river basin and bay system. TCEQ would appoint additional members to the existing council to comply with membership requirements under the bill.

Expert science teams. Each river basin and bay area stakeholders committee would establish an expert science team comprising technical experts with specific knowledge about the basin or about developing environmental flow regimes. Expert science team members would serve five-year terms. A member of the science advisory team would serve as a liaison to each expert science team in order to coordinate environmental flow activities throughout the state. Technical assistance to each science advisory team would be provided by TCEQ, TPWD, and TWDB. Meetings of the expert science teams would be public when practicable.

Schedule for developing environmental flow recommendations. By November 1, 2007, the environmental flows advisory group would have to geographically define each river basin and bay system in the state for the purpose of studying and making recommendations about environmental flows.

The bill specifies that priority be granted to certain river basins when initiating the environmental flow study and recommendation process. In descending order, the order of priority would be:

1. The Trinity River/San Jacinto River/Galveston Bay system and the Sabine River/Neches River/Sabine Lake Bay system;
2. The Colorado River/Lavaca River/Matagorda Bay/Lavaca Bay system and the Guadalupe River/San Antonio River/Mission/ Aransas River/Mission Bay/Copano Bay/Aransas Bay/San Antonio Bay system; and

3. The Nueces River/Corpus Christi Bay/Baffin Bay system, the Rio Grande River/Rio Grande estuary/Lower Laguna Madre system, and the Brazos River system.

For the two primary priority systems — the Trinity River/San Jacinto River/Galveston Bay system and the Sabine River/Neches River/Sabine Lake Bay system — the environmental flows advisory group would appoint the systems' stakeholders committees by November 1, 2007. The stakeholders committees would appoint expert science teams for the two basin and bay systems by March 1, 2008. The expert science teams would present their environmental flow regime recommendations to the stakeholders committees, the advisory group, and TCEQ by March 1, 2009. TCEQ would adopt environmental flow standards for the two river basin and bay systems by September 1, 2010.

For the two secondary priority river basin and bay systems — the Colorado River/Lavaca River/Matagorda Bay/Lavaca Bay system and the Guadalupe River/San Antonio River/Aransas River/Copano Bay/Aransas Bay/San Antonio Bay system — the environmental flows advisory group would appoint the systems' stakeholders committees by September 1, 2008. For the three tertiary priority river basin and bay systems — the Nueces River/Corpus Christi Bay/Baffin Bay system, the Rio Grande River/Rio Grande estuary/Lower Laguna Madre system, and the Brazos River system — the advisory group would appoint the systems' stakeholders committees by September 1, 2009. For river basin and bay systems in the two lowest-priority groups, the environmental flows advisory group would establish a schedule that would result in the adoption of environmental flow standards for those systems as soon as reasonably possible.

For river basin and bay systems not listed in one of the three priority categories, the environmental flows advisory group would establish a schedule for development of environmental flow regime recommendations and adoption of flow standards. If the environmental flows advisory group had not yet established a schedule for a river basin and bay system, the bill would not prohibit efforts to develop information on environmental flow needs as well as methods by which those needs could be addressed through a consensus-based process.

Developing and submitting environmental flow recommendations. Each river basin and bay system expert science team would be required to develop environmental flow analyses and recommend an environmental flow regime for the corresponding river basin and bay system. The recommendations would be developed through a collaborative, consensus-oriented process. The analyses and recommendations of an expert science team would be made without regard for other water uses and be based solely on the best available science.

For the Rio Grande below Fort Quitman, uses attributable to Mexican water flows would be excluded from environmental flows recommendations. The expert science team for the Rio Grande could not recommend an environmental flow regime that violated a treaty or court decision.

Each expert science team would submit its recommendations to its corresponding stakeholders committee, the environmental flows advisory group, and TCEQ. Neither a stakeholders committee nor the advisory group could change the environmental flows analyses and recommendations submitted by an expert science team.

Each stakeholders committee would consider the recommendations from its expert science team in conjunction with factors such as present and future water needs in the river basin and bay system. The stakeholders committee for the Rio Grande also would consider requirements of any international water treaty or agreement in addition to effects that the Rio Grande watermaster had on water allocation.

A river basin and bay system stakeholders committee would develop recommendations regarding environmental flow standards and strategies. Recommendations would be developed through a consensus-based process to the maximum extent possible. Those recommendations would be submitted to TCEQ and to the environmental flows advisory group in accordance with the schedule laid out in CSSB 3 or established by the advisory group.

The environmental flows advisory group would be authorized to submit to TCEQ comments on environmental flow analyses and recommendations for use by TCEQ in determining environmental flow standards and set-asides.

The bill would establish means to periodically review environmental flow recommendations, standards, and strategies at least once every 10 years.

Adjustment of permit or amendment. A new permit or amendment to an existing water right that would increase the amount of water that could be taken would have to provide for the protection of environmental flows. With respect to an amendment, this provision would affect only the increase in the amount of water to be taken as authorized under the amendment. After an expedited public comment process, an adjustment could be made by TCEQ if such an adjustment was required to comply with environmental flow standards.

Taken with any other adjustments by TCEQ, an adjustment to a permit for compliance with environmental flow standards could not increase the amount of water taken for protection of environmental flows by more than 12.5 percent of the annualized amount of that requirement contained in the permit. For an amended water right, no more than 12.5 percent of the annualized total of the amount of the increase in the water authorized under the amended right could be taken for protection of environmental flows.

In adjusting a permit or amended water right to account for environmental flow standards, TCEQ would have to consider the priority dates and diversion locations of any other water rights in the river basin that were subject to adjustment under CSSB 3. In addition, such an adjustment would have to consider grants made to the Texas Water Trust or other water use amendments that dedicated water for environmental flows and contribute toward meeting environmental flow standards. A water-right holder would receive credit for contributing water for the benefit of environmental flows against an adjustment considered by TCEQ.

A permit or water right amendment issued before September 1, 2007, would be exempt from provisions allowing an adjustment of the water right by TCEQ for compliance with environmental flow standards.

Enforcement. CSSB 3 would grant TPWD the rights of a water-right holder for water rights held in the Texas Water Trust. TPWD also would be authorized to act as a holder of a water right may act in order to prevent a person from violating an environmental flow set-aside established by TCEQ. TPWD could file suit in civil court to prevent unlawful use of an environmental flow set-aside.

Emergency authority to suspend set-asides. CSSB 3 would allow water that had been set aside by TCEQ to meet environmental flow needs to be used temporarily for other essential needs in the event of an emergency that TCEQ determined could not be addressed in another way.

The date by which the environmental flow studies authorized and taking place under current law must be completed would be extended from December 31, 2010, to December 31, 2016.

Other provisions

Funding. The bill would authorize TWDB to use money in the research and planning fund for implementation of CSSB 3. Money could be authorized for:

- compensation and expense reimbursement for members of the environmental flows science advisory committee;
- contracts with state and federal agencies, universities, and private entities for providing technical assistance;
- compensation and expense reimbursement of river basin and bay system expert science teams; and
- contracts with political subdivisions for expenses incurred in conducting meetings of river basin and bay system stakeholders committees or expert science teams.

Watermaster provisions. For a river basin in which a watermaster had been appointed, the executive director of TCEQ would appoint a watermaster advisory committee consisting of between nine and 15 members. Such a committee would make recommendations to the TCEQ executive director about activities to benefit water rights holders in the basin, review and comment on the annual budget of the watermaster operation, and perform other advisory duties recommended by the executive director. A member of the committee would have to hold a water right or represent a person who held a water right in the river basin. In appointing a watermaster advisory committee, the executive director would consider geographic representation, amount of water rights held, diversity among types of water rights users, and experience with water management practices. Members would not be entitled to expense reimbursement or compensation and would serve two-year terms.

Repealed. The bill would repeal a section of current law governing TCEQ and TPWD review of environmental flow studies.

Applicability. To the extent CSSB 3 deals with a permit for a new appropriation of water or with an amendment to an existing water right, changes in law would apply only to a permit or amendment that was pending before TCEQ on the bill's effective date or was filed with TCEQ on or after the bill's effective date.

WATER CONSERVATION

Water conservation awareness program. The TWDB executive administrator would have to develop and implement a statewide public awareness program to educate Texas residents about water conservation. The TWDB executive administrator only would be required to develop and implement the program if the Legislature appropriated sufficient money for that purpose.

Water conservation plan. A retail public utility providing potable water service to 3,300 or more connections would have to submit to the TWDB chief administrator a water conservation plan based on specific goals generated in accordance with best management practices developed by TCEQ and TWDB.

Water conservation plan review. Each entity required to submit a water conservation plan to TCEQ would have to submit a copy of the plan and report on implementation to the TWDB executive administrator. The executive administrator would review the plan and report to determine compliance with rules adopted by TWDB and TCEQ. Those rules would identify the minimum requirements for the plan. TWDB could notify TCEQ if an entity had violated its requirements. The entity would be subject to enforcement actions by TCEQ if it committed a violation.

Priority for conservation. The bill would direct TWDB to give priority to applications for funds for water supply projects in the state water plan that had demonstrated water conservation savings or would achieve water conservation savings.

Regional water plan amendment. The bill would provide a procedure by which a regional water planning group could adopt a minor amendment to its regional water plan. A minor amendment that would not result in an

overallocation of water, did not relate to a new reservoir, and would not affect environmental flows could be adopted at a public meeting.

Policy findings. CSSB 3 would state that it was the policy of the state to encourage voluntary land stewardship to benefit the water of the state and to encourage public participation in the groundwater management process in areas within a groundwater management area not represented by a groundwater conservation district.

Climate change study. The bill would direct TWDB and the Far West Texas regional water planning area to convene a conference dedicated to the impact of climate change on surface water supplies, including the potential impact on the Rio Grande.

Reservoir Designation

The bill would designate 15 sites as having unique value for the construction of a dam and reservoir, determining that the sites were necessary to meet water supply needs. Those sites would include:

- Lower Bois d'Arc reservoir in Fannin County;
- Lake Ralph Hall reservoir in Fannin County;
- Tehuacana Creek reservoir in Freestone County;
- Bedias reservoir in Grimes, Madison, and Walker counties;
- Brushy Creek reservoir in Falls County;
- Texana Stage II reservoir in Jackson County;
- Goldthwaite channel dam reservoir on the Colorado River;
- Wheeler Branch off-channel reservoir in Somervell County;
- Cedar Ridge reservoir in Throckmorton, Shackelford, and Haskell counties;
- Lake 07 reservoir in Lubbock County;
- Lake 08 reservoir in Lubbock County;
- Nueces off-channel reservoir in Live Oak County;
- Ringgold reservoir in Clay County;
- Muenster reservoir in Cooke County; and
- Brownsville Weir and reservoir in Cameron County.

For a proposed reservoir located in the Region D (North East Texas) Regional Water Planning Area, the bill would reserve 20 percent of the water authorized to be appropriated for one or more entities located in that

region. If one or more entities located outside Region D held the right to appropriate a majority of the water from the reservoir, the entity or entities would have to pay all the costs of constructing, operating, and maintaining the reservoir. This requirement would hold until an entity located in Region D began diverting water, at which time the entity or entities would pay a pro-rata share of the cost of operating and maintaining the reservoir.

The bill also would designate 15 river and stream segments of unique ecological value that were recommended in the 2007 state water plan. Seven of the unique stream segments are in water planning region E and eight are in region H.

Study commission on Region C. The bill would establish a study commission on water supply in the Region C Regional Water Planning Group (which includes Dallas/Fort Worth). The commission would consist of six members, with three appointed by Region C and three appointed by Region D. The commission would:

- review water supply alternatives available to Region C, including existing and proposed reservoirs;
- analyze the socioeconomic effect on the area where Region C's water supply was located;
- determine the ability of water conservation and reuse methods to reduce Region C's water use;
- evaluate mitigation measures taken in connection with proposed new reservoirs;
- consider whether the mitigation burden should be shared by Regions C and D;
- review methods of compensation to affected landowners;
- evaluate the number of surface acres required for the construction of proposed reservoirs; and
- identify the locations of proposed reservoir sites to allow land ownership to be determined.

TWDB would provide staff support to the study commission. No member of the commission could be assisted by anyone associated with engineering work for the proposed Marvin Nichols reservoir.
No later than December 1, 2010, the study commission would deliver a report to the governor, the lieutenant governor, and the speaker of the House reporting its findings and recommendations, including a

recommendation as to whether Marvin Nichols should be designated as a reservoir site.

This section would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

Surcharge on impounded water. The holder of a permit to impound surface water in a reservoir would be required annually to pay a surcharge fee to each political subdivision that assessed ad valorem taxation on property within the reservoir site equal to the amount of tax revenue the political subdivision received from the property at the time the property was received for the reservoir. The surcharge would apply for 10 years after the date the property was acquired for the reservoir.

Construction and operation of reservoirs. A cause of action could not be brought if a political subdivision obtained a title or easement to provide utility service in the site or to allow an owner of property to improve or develop the property.

A cause of action could be brought under certain circumstances. Before bringing a cause of action against a state agency or other political subdivision that had taken an action preventing the construction of a reservoir on a designated reservoir site, a political subdivision would have to file a letter of intent to construct a reservoir on the site affected by the action and offer to pay each owner of real property in the reservoir site an encumbrance. An owner of real property could reject the encumbrance. The payment would have to be paid annually until the property was either acquired for the reservoir or no longer in the reservoir site. The amount would have to be at least 2.5 times the total ad valorem taxes imposed in the preceding tax year.

Property located in a designated reservoir site would remain eligible for a public program for which it previously had been eligible.

The former owner of real property used for agricultural purposes who was acquired for a reservoir could lease the property from the person who acquired the property in order to continue using the property for agricultural purposes until the lease had to be terminated for the construction of the reservoir.

A person proposing to construct a reservoir that was required to mitigate environmental effects would have to mitigate those effects by offering to contract with an owner of real property located outside the reservoir site in order to maintain the property through an easement instead of acquiring the title to the property. The owner of the property could reject such an offer.

Legislative joint interim committee

The bill would establish a legislative joint interim committee consisting of four House members and four Senators, including the chair of the Natural Resources Committee in each chamber, to meet at least annually. The committee would receive information related to the state water planning, including funding of water infrastructure in the state. The committee would issue a report to the governor, lieutenant governor, and speaker of the House reporting its findings and recommendations by December 1, 2008.

Effective date. The bill would take effect September 1, 2007.

SUPPORTERS SAY:

Environmental flows. CSSB 3 would mark an historic step toward protecting the environment by dedicating instream flows for rivers and freshwater inflows for bays and estuaries. Currently, no state law provides designated protection to ensure a minimum of flow in rivers and into bays and estuaries. Instead, priority is given to other uses such as agricultural, commercial, and residential uses. Water rights in several river basins have been over-permitted, and other basins likely will follow suit. CSSB 3 would provide a means to balance agricultural, commercial, and residential needs with important environmental considerations.

While important for the environment, instream flows do more than support fish, aquatic organisms, and wildlife. River flows provide recreation, dilute and disperse treated wastewater, and support commercial activity. Aquatic species need sufficient flows of water to facilitate their life cycles. Coastal wetlands rely upon freshwater flows from rivers to sustain their unique habitats. These bays and estuaries support the economy of the Texas Gulf Coast through the tourism industry and commercial fishing and shrimping. For these reasons and many more, environmental flows are crucial to Texas' economy and quality of life.

In order to determine standards and set-asides for environmental flows, CSSB 3 would establish a consensus-based process relying upon the best available science to determine the amount of flows needed for environmental considerations. The bill would allow input from stakeholders from every group with a substantial interest in water rights and flows, while expert science teams would report the environmental needs of river basins and bays directly to TCEQ. Under this process TCEQ could balance the best available science with the other water needs of Texas' growing population. In this manner, the process would resemble the successful regional water planning process established under SB 1, enacted by the 75th Legislature in 1997. Because water is a vital resource for so many diverse interests, it is important that the environmental flow planning process be as inclusive as practicable.

The planning process established under CSSB 3 would create set-asides in rivers where unappropriated water still existed. The bill would not infringe on the water rights of existing water rights holders. A "reopener" clause would only enable the limited adjustment of water rights that were pending or approved on or after the bill's effective date. The bill would include protections for other beneficial uses in case a drought or emergency situation required diversion of environmental flows for other needs.

The issue of environmental flows is complex, and while CSSB 3 would not finally solve this issue in every river basin in the state, it would establish a robust framework for progress to be made. By strengthening the Texas Water Trust, an important program that serves to retire unused water rights for environmental purposes, the bill would facilitate voluntary conversion of water rights in river basins that are over-appropriated. In addition, the bill would establish market-based methods to allow a permit holder seeking a permit for more water to purchase and convert under-utilized water rights for environmental purposes. Further, the bill would leave open the option to the state of buying back water rights from private water rights holders in the future.

Concerns that CSSB 3 would create a complicated bureaucracy are off base. The different advisory, stakeholder, and science groups established under the bill would be abolished when TCEQ had adopted environmental flow standards in each river basin and bay system. The bill would not create a permanent layer of bureaucracy. While it may seem complicated at first blush, the administrative process established under CSSB 3 vitally

would recognize the importance of consulting with local stakeholders and scientists who possess immediate knowledge about their river basins and bay and estuaries.

CSSB 3 would provide the certainty needed by water supply interests that struggle under the current system. Under current law, TCEQ considers environmental flow needs on a permit-by-permit basis, and agreed-upon environmental flow standards are lacking. Adoption of uniform environmental flow standards and set-asides would help water suppliers plan for the future and account for the needs of their customers.

Water conservation. CSSB 3 would establish and expand several important programs to encourage conservation of water resources in the state. Many of these recommendations were studied and agreed upon by the Water Conservation Implementation Task Force, a diverse group of governmental, commercial, environmental, and public interest entities that met during the interim of the 78th Legislature. The proposals in CSSB 3 would incorporate state-of-the-art industry standards and techniques to realize efficient use of water resources. The bill would recognize the importance of such strategies as private land stewardship and residential conservation measures, while moving cities toward more efficient use of the state's limited water resources.

Water conservation is an increasingly important strategy for addressing the water needs of Texas' growing population and expanding economy. In the 2007 State Water Plan, conservation accounts for nearly 23 percent of the amount necessary to achieve the state's water needs in 2060. Water conservation is the most efficient and cost-effective method for meeting water demands, and such strategies could reduce the need for more costly and ecologically disruptive water supply projects.

The bill would direct TCEQ to establish a statewide water conservation public awareness program to educate Texans about the importance of conserving water resources. This program would be similar to the Department of Transportation's "Don't Mess With Texas" campaign, which so effectively has encouraged Texans not to litter. Research commissioned by TWDB has indicated that Texans are responsive to water conservation appeals when they are well informed about the origin and scarcity of their local water resources. A statewide public awareness program would be a cost effective way to educate Texans across the state about the needs for prudent use of a limited resource.

The requirement that retail public utilities develop a water conservation plan would be an essential strategy to ensure that municipal water conservation goals are achieved. The bill is not prescriptive with respect to specific strategies that a utility would have to use, allowing for flexibility regarding the types of strategies a utility would have to incorporate or the amount of savings a utility would have to realize. The requirement simply would ensure that a utility formally recognized the importance of conservation and developed the vision and capacity to incorporate successful conservation solutions into its planning process.

Reservoir designation. CSSB 3 would follow many of the recommendations in the 2007 state water plan by designating 15 reservoir sites that could be needed to meet the state's water needs in the next half century. The bill would provide state and local water supply interests with the certainty needed to plan for and meet future water needs. Texas' population is expected to more than double by 2060, and water demand will increase while water supplies decline. While conservation, reuse, desalination and other strategies will be important to meet Texas' water needs, those strategies are unlikely to be sufficient. Reservoir construction will be an essential and unavoidable component of the state's water planning future.

The bill would not seize any private property or put any undue restrictions on landowners. The only exception would be that that a landowner could not enter into an agreement with the state or a local government that would result in an activity preventing the construction of a reservoir. Landowners would remain free to engage in virtually any action or make any improvement to property in a designated reservoir site. The bill would incorporate compromise provisions to balance the interests of affected landowners with entities that wish to construct reservoirs.

CSSB 3 would not require the construction of any reservoir, nor does the designation of a reservoir site guarantee that a reservoir would be constructed on the site. The bill simply would provide legislative action in order to keep these sites available for future reservoir construction if it was determined that their construction was necessary. Without designation, the few remaining reservoir sites could be preemptively foreclosed as an option due to the actions of the federal government. For example, the Fastrill reservoir proposal in East Texas, which was included in the 2007 state water plan, negatively was impacted by the designation by the U.S. Fish and Wildlife Service of a National Wildlife Refuge on the Neches

River. CSSB 3 would help preclude similar action and preserve the few remaining potential reservoir sites.

CSSB 3 would hold off on designating the controversial Marvin Nichols reservoir in Northeast Texas. Instead, the bill would establish a study commission on Region C to examine whether the Marvin Nichols reservoir truly was necessary or whether the Dallas/Fort Worth region could meet its water needs through other strategies, such as conservation. Given the large potential size of the proposed Marvin Nichols reservoir and the disruption its construction would cause landowners, businesses, and the environment of the region, it would be appropriate to designate this site only after determining that the reservoir absolutely was necessary. Further, the bill would not designate the Fastrill reservoir, a site affected by the U.S. Fish and Wildlife Service's designation of the Neches River National Wildlife Refuge.

OPPONENTS SAY:

Environmental flows. CSSB 3 would establish an unnecessarily complicated tangle of bureaucracy. The bill would create two new statewide committees as well as stakeholder and science boards in every river basin and bay system in the state. Recommendations made by these four groups would have to work their way up to TCEQ, which would make the final determination on environmental flow standards and set-asides. Aside from the elected officials on the environmental flows advisory board, the majority of members on these policymaking bodies would not be accountable to the voters. These bodies would be granted excessive influence, a serious concern since the bill would contemplate seizing water rights for what could be marginally important purposes. Such important and binding determinations should not be delegated by the Legislature to TCEQ.

Water conservation. CSSB 3 would place unfunded mandates on local governments that would have to comply with the bill's extensive water conservation requirements. For example, water utilities would have to develop and abide by water conservation plans, and municipalities would have to regulate more extensively residential irrigation facilities and installers. It would be inappropriate for the state to mandate these requirements without providing the funds to implement them.

Reservoir designation. CSSB 3 needlessly would cloud the title of landowners within a designated reservoir site, because the threat of a future reservoir negatively would affect their property value. Supporters of

reservoir designation point out that many of these reservoirs may never be built. However, the cloud would remain on the title to property in a designated site from the moment the bill was enacted. It would be unfair to make this designation without providing immediate funds to offset the loss in value that landowners would see. Without such compensation, the state in effect would be taking private property rights without compensation.

Reservoir construction is an arcane, environmentally destructive, and wasteful strategy that should not be used to address the state's water supply needs. Reservoirs do not "create" water but actually contribute to water loss due to evaporation. Given the looming threat of global warming, it is likely that evaporation of water stored in reservoirs will become an even greater problem. Reservoir creation severely can harm both downstream and upstream wildlife and ecosystems, in addition to the area flooded to create the reservoir. Lawmakers should not ratify this outmoded water development strategy and instead should focus on other strategies to meet Texas' water needs, including conservation, reuse, desalination, improved marketing of existing water resources, and aquifer storage and recovery.

OTHER OPPONENTS SAY:

Environmental flows. CSSB 3 would not go far enough in protecting environmental flows. The bill would provide no remedy for the many basins in which all available water has been permitted. In addition, the provision enabling diversion of environmental flows during an emergency is problematic. When a drought strikes — precisely the time that instream flows are so crucial to river and bay ecosystems — environmental flow set-asides would be available for diversion to other uses. The only reasonable method for reliably protecting environmental flows would be to buy back more senior water rights from private interests and keep those flows in the river. If the Legislature fails to appropriate funds for this purpose, it is unlikely that CSSB 3 substantially would benefit river basins that are most desperately in need of a base level of flows.

Rather than allowing for a limited reopener of pending and future water rights, CSSB 3 should institute a moratorium on new water rights while the process established under this bill takes place. By the time TCEQ adopts environmental flow standards in each river basin, the commission might not have enough room to meet the standards under the allowable 12.5 percent adjustment for new permits and amendments under the bill.

Reservoir designation. CSSB 3 should designate all 19 reservoir sites recommended in the 2007 state water plan, including the Marvin Nichols site. The Marvin Nichols reservoir is a vitally important project that would enable the continued growth of the Dallas/Fort Worth region, a major economic driver in the state's economy. Delaying designation of this site would enable environmentalists and other opponents of the proposal to mobilize opposition and actions that forever could forestall the creation of the reservoir.

NOTES:

According to the LBB, CSSB 3 would have a negative fiscal impact of $4.1 million in fiscal 2008-09.

Among the differences between the Senate-passed version of SB 3 and the House committee substitute, the bill as passed by the Senate would have designated 19 unique reservoir sites, including the Marvin Nichols and Fastrill reservoirs.

Certain provisions of SB 3 relating to environmental flows were included in HB 3 by Puente, which passed the House by 142-1 on March 1 and was reported favorably by the Senate Natural Resources Committee on April 30. Certain provisions of SB 3 relating to water conservation were included in HB 4 by Puente, which passed the House by 130-1 on May 1 and has been referred to the Senate Natural Resources Committee.