

SUBJECT: Allowing redesignation of river basins based on scientific evidence

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 5 ayes — Puente, Callegari, Campbell, Geren, Hope
1 nay — Laney
3 absent — Bonnen, Hardcastle, Hilderbran

WITNESSES: For — Martin Rochelle, San Antonio Water System; Gregory Rothe, San Antonio River Authority; W.E. "Bill" West, Jr.; Guadalupe-Blanco River Authority
Against — Jim Blackburn, D.M. O'Connor Ranches and Matagorda Bay Foundation; Milliam Jones, D.M. O'Connor Ranches; Judge Carl R. Griffith, Jr., Jefferson County; Jerry James, City of Victoria
On — Todd Chenoweth, Texas Commission on Environmental Quality; Myron Hess, National Wildlife Foundation; Billy Howe, Texas Farm Bureau; Suzanne Schwartz, Texas Water Development Board

BACKGROUND: Water Code, sec. 11.085, which governs interbasin transfers, requires a person to apply to the Texas Commission on Environmental Quality (TCEQ) before diverting water from one river basin to a different river basin. Upon receiving an application for an interbasin transfer, TCEQ must hold a public hearing, request comment from public officials in the basin of origin, and review the effects of the transfer on factors such as the economies of both basins, existing water rights, water quality, habitat, and bays and estuaries. Under subsec. 11.085(s), a water right transferred out of an originating basin is junior in priority to all water rights granted before the application is filed.
Subsec. 11.085(p) prohibits redesignation of a river basin in order to allow a transfer of water that otherwise would violate provisions governing interbasin transfers.

DIGEST: HB 2915 would allow the Texas Water Development Board (TWDB) to redesignate a river basin based on scientific or hydrologic evidence, whether or not such a redesignation facilitated the transfer or diversion of water.

The bill 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, 2005.

SUPPORTERS SAY: By specifying that TWDB could redesignate river basins when there was a sound hydrologic basis for doing so, HB 2915 would clarify that state law governing interbasin transfers was based upon accurate scientific data. When defining the parameters of a river basin, TWDB bases its determination on the extent to which an area is linked hydrologically. If water in a region flows into a single watershed that empties into the Gulf of Mexico, that watershed is designated as a single river basin. However, years ago the determination was made to classify the Guadalupe and San Antonio river basins separately, even though they are linked hydrologically and join together before reaching the Gulf. The current designation contradicts policy governing river basin classification across the state, and HB 2915 would correct this inconsistency.

Under SB 1 by Brown, enacted in 1997, the Legislature prohibited redesignation of a river basin for purposes of allowing a diversion of water that would otherwise be an interbasin transfer. Given that an application currently is pending that would divert water from the Guadalupe River basin into what currently is the San Antonio River basin, TWDB has interpreted the law to prevent it from redesignating these two basins as one. Without direction from the Legislature, the current designation would continue, even though this designation does not reflect the hydrology of the Guadalupe and San Antonio rivers.

The reason for restricting interbasin transfers is to keep water that originates in one basin in that basin. The proposed transfers of water from the Guadalupe River to Bexar County would be consistent with this goal, as return flows from San Antonio and adjacent cities would end up in back in the San Antonio and Guadalupe rivers before flowing into San Antonio Bay. Without redesignation, the proposed Lower Guadalupe Supply Project (LGSP) would be put in jeopardy, as the transfers planned under this project would be subject to restriction under the junior water rights provision. The Lower Guadalupe Supply Project is an integral part of the

Region L water plan and would provide close to 100,000 acre-feet of water annually needed for future demand in the San Antonio area.

The partners in the LGSP — the Guadalupe-Blanco River Authority, the San Antonio Water System, and the San Antonio River Authority — have demonstrated their commitment to ensuring that diversion would not harm habitat in the Guadalupe River or in San Antonio Bay. For example, the project is conducting an ongoing study to ensure minimal impact upon the whooping cranes in San Antonio Bay. HB 2915 would not allow the LGSP to circumvent any meaningful current requirements. The bill simply would protect the water rights necessary to make the project happen and reconcile this project with the sound science governing river basin designation throughout the rest of the state.

**OPPONENTS
SAY:**

HB 2915 would allow for circumvention of current laws governing interbasin transfers, a pillar of state water policy since the enactment of SB 1. Redesignation of the San Antonio and Guadalupe rivers as one basin would enable diversions from the Guadalupe to go forward without meeting the public hearing and evaluation requirements in current law. The bill would provide an end-run around the reviews, studies, and junior water rights protections established by the Legislature to protect water rights holders and residents in the Guadalupe River basin.

When the Legislature enacted SB 1 in 1997, it included a provision preventing the redesignation of river basins for the purpose of enabling water transfers. When this provision was included, the Guadalupe and San Antonio Rivers were considered distinct basins, as they are now. Separate designation of these basins was a policy decision designed to protect communities and water rights holders along the Guadalupe from diversions to San Antonio.

Although the Guadalupe and San Antonio Rivers technically may be linked hydrologically, there are important reasons to treat them separately. The rivers flow apart from each other for over two hundred miles before joining just ten miles inland from the coast. Return flows from water diverted from the Guadalupe River to Bexar County would flow into the San Antonio River, likely harming water rights holders downstream from the diversion point on the Guadalupe River, threatening the economic and environmental well-being along the miles of river away from San Antonio.

OTHER
OPPONENTS
SAY:

While HB 2915 would address an incongruity in current law, the bill should be amended to protect instream flows in the unified river basin. If HB 2915 is enacted, the LGSP no longer would be subject to the extensive study and reporting requirements under sec. 11.085. Specifying a minimum amount of flow in case of drought could address many of the environmental and other concerns associated with the project. Freshwater flows from the Guadalupe River are vital to the unique ecological balance existing in bays and estuaries along the coast. These flows serve as habitat for the blue crab and endangered whooping crane, and the Legislature should ensure that water development projects on the Guadalupe do nothing to harm the environment.