

4.0 POLICY CONSIDERATIONS

Subsequent to the adoption of the last State Water Plan in 1992, the TWDB undertook various initiatives to identify policy issues of interest for consideration in the next update of the Plan. Through policy surveys and workshops with internal staff, water interest groups, and the TWDB Board itself, a series of key water policy issues were identified, consolidated, and prioritized for subsequent assessment and documentation. Nearing the end of the updating process for the current State Water Plan, a request was made from the legislative leadership to provide them with information on needed water policy action for the State.

In response, the Texas Water Development Board (TWDB), in conjunction with the Texas Natural Resource Conservation Commission (TNRCC) and Texas Parks and Wildlife Department (TPWD), developed a Water Plan Legislative Summary which addressed both key water project and policy findings. Following a public review period completed during December 1996, the Texas Water Development Board approved this Legislative Summary in January 1997. A legislative working group, comprised of representatives of the legislative leadership with input from the major water agencies and other water interests, developed the summary recommendations into proposed legislation contained chiefly in Senate Bill (SB) 1 of the 75th Texas Legislature. Because of passage of this bill, many critical water policy issues have already been addressed.

While SB1 addressed various issues related to water financing, a separate bill, HB 1802, looked at new sources of funds to provide even more enhanced State financial assistance for various water management activities. While HB 1802 was not passed, an interim study committee was appointed to examine financing and various other water issues and to provide the upcoming 76th Texas Legislature with recommendations on any further action that may be needed.

Because of the significance of this recent action on the Legislative Summary policy recommendations, it was not deemed necessary to develop a traditional, detailed policy section for this update of the Plan. Instead, the focus of this limited policy section will be to review the major policy implications of SB 1 and other enacted legislation, and to review how those actions might affect the water plan analyses contained in this report.

4.1 RECENT LEGISLATIVE ACTION

4.1.1 Senate Bill 1

The following is an overview of SB 1 rather than a complete listing of all of the major components of the legislation. Article 1 provides for state water planning that is centered around regionally prepared water plans. It also establishes a state drought planning framework. It provides that all wholesale and retail water suppliers and irrigation districts shall develop drought contingency plans.

Article 2 provides statutory guidance on issues such as temporary water sales, the authorization to reuse water, and TNRCC review and action on an application for the interbasin transfer of water. It protects water rights being held for demonstrated long-term water supply needs from cancellation for non-use while simplifying other provisions regarding cancellation. It also enhances the role of the Texas Water Bank in facilitating water transactions.

Article 3 establishes administrative penalties for a violation of a water right and related rules or orders, and violation of rules relating to levee construction and maintenance. It raises the amount of a civil penalty for these violations and violations of dam safety rules. It authorizes a watermaster or his deputy to issue a field citation for violations. It allows the TNRCC on an emergency, temporary basis, without notice and hearing, to approve a request for the transfer of water for up to 120 days if there is no feasible, practicable alternative to the transfer.

Article 4 provides that in considering a surface water right application, the TNRCC shall consider effects, if any, on groundwater or groundwater recharge. It authorizes the TWDB to make loans for precipitation enhancement, brush control, repairs of unsafe dams, water projects outside Texas when such use would benefit Texas, and the cost of buying and installing irrigation water-flow meters on public or private property. It streamlines the designation of Priority Groundwater Areas (PGMAs) and creation of groundwater districts in PGMAs. It describes the groundwater districts management plan process and establishes procedures for the TWDB certification of these plans. It provides that the State Auditor shall determine whether a district is actively engaged in implementing its management plan. It allows groundwater districts to permit water transfers out of a district, and to limit transfers under certain conditions.

Article 5 allows the TWDB to use funds in the Agricultural Trust Fund to provide loans to political subdivisions, which in turn may use the loans for their own agricultural water conservation purposes or to provide loans to farmers for water conservation. It creates the Texas Water Development Fund II as a separate fund from the existing Development Fund to consolidate existing TWDB bond authorizations (subject to passage of a constitutional amendment). Additionally, it changes bond fund operating requirements to streamline the operation of the fund, eliminate outdated reserve requirements, reduce the cost of issuing bonds, and free up more funds for loans. The legislation also amends the Agriculture Code, by raising from \$5 million to \$15 million the amount deposited into the Linked Deposit Program used to finance agricultural production in the state. Up to \$10 million may be used for financing water conservation projects.

Article 6 establishes the criteria and conditions under which the TNRCC can decertify an area under the Certificate of Convenience and Necessity (CCN) of a utility service provider and allows greater rate setting flexibility to the Commission. It clarifies TNRCC's authority to order improvements in service, to require noncompliant systems to do business planning to promote more consistent quality service, to require financial assurance and the ability to access that financial assurance to make improvements, and to require systems with inadequate sources of water to obtain an acceptable wholesale supply from a neighboring utility service provider. The legislation expands Safe Drinking Water Act State Revolving Fund eligibility to make it accessible to more public water systems.

Article 7 requires the TWDB to lead a statewide effort, in coordination with other state and Federal agencies and interested parties, in collecting and disseminating water resource-related information. It requires TNRCC to develop new or updated water availability models for all river basins in the state, and to provide such information to water right holders and the regional water planning groups. It creates the Texas Geographical Information Council (TGIC) to provide strategic planning and coordination in the acquisition and use of geographical data and related technologies. It directs the TWDB to develop, maintain, and make available statewide digital base maps commonly needed by multiple state and local agencies.

Article 8 repeals the Wagstaff Act, which allows a city needing municipal water supply to take water, without paying for the water, from another type of water right holder if that right was granted after May 7, 1931. It provides that groundwater district creation acts by the 71st, 72nd, 73rd, or 74th Legislature are repealed 2 years after the bill is effective, unless the district has been confirmed by an election.

4.1.2 Other Enacted Water Legislation

Selected other water-related legislation from the 75th Texas Legislature includes the following:

SJR 17 provides for a constitutional amendment for bond authorization consolidation for Development Fund programs of the Texas Water Development Board. SCR 77 recommends that, if funding for the state participation program or other programs allowing state ownership of facilities is approved, the Allens Creek Reservoir site be ranked as a high priority by the Texas Water Development Board. Under emergency appropriation provisions of SB 886, \$500,000 is to be transferred to the Texas Water Development Board to fund a contract with the Edwards Aquifer Authority. These funds, for the authority's initial operating costs, are to be repaid by August 1999. HB 1190 continues funding for the Clean Rivers Program and makes certain changes to this program. SB 1512 and SB 570 will affect utility service and subdivision regulation in economically distressed areas.

Much of this legislation could support implementation of the State Water Plan. At a minimum, the legislation will affect data gathering and analysis, groundwater management, water facility funding, water service provision, and reservoir site identification.

4.2 IMPACTS OF NEW LEGISLATION ON CURRENT WATER PLAN ASSESSMENTS

For the most part, the planning methods and assumptions used in the current State Water Plan assessments are consistent with the provisions of SB1 and the other new Legislation. However, the implications of some aspects of these new laws will only become more clear with future agency rule-making and program implementation.

In terms of consistency with the new Legislation, the State Water Plan's planning process assumed implementation of conservation and drought management practices and adequate advance planning of regional water supplies. Advanced water conservation practices and con-

sideration of environmental effects were reflected in the planning prior to any identified new interbasin transfers. Impacts upon downstream water rights and the environment were considered and modeled in the identification of any new water supplies from indirect reuse. A more viable "voluntary" water market was used as one of several management tools to meet future water needs. The State Water Plan also assumed that ground-water management would be implemented in potential problem areas and that management needed to address declines in ground-water levels in existing underground water district areas would be implemented.

Current Water Plan analyses contain five areas which may be deficient due to the new SB 1 legislation. First, the provision of junior priority dates for existing water rights associated with new interbasin transfers would act to limit some of the volume of interbasin transfers identified in the Plan. Second, the differential treatment of the future use and discharge of ground-water (as opposed to surface water) may provide slightly more potential to reuse return flows (wastewater) than was reflected in the Plan. Third, the potential for the TNRCC conditioning future water rights permits to stipulate a minimum return flow amount was not considered, which might act to somewhat increase future water supply availability. Fourth, the implications of TNRCC's ability to consider the impacts on groundwater in the granting of a surface water permit is difficult to determine. And fifth, while the State Water Plan process considered existing regional and district management plans, the emphasis of SB1 upon creating and/or enhancing regional and local water management plans may identify new water management policies or project options not reflected in the current State Water Plan.