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Conservation Groups Hail Senate Passage of Senate Bill 3

Sierra Club & Others Call for House Action

Three of the state's major conservation organizations – National Wildlife Federation, Environmental Defense, and the Lone Star Chapter of the Sierra Club - hailed last week's Senate passage of omnibus water legislation – Senate Bill 3 (SB 3). In particular, the groups praised the bill's provisions designed to establish a new process for ensuring sufficient water for fish and wildlife.

“Senate Bill 3 incorporates an historic compromise in efforts to move the state forward in protecting critically important river flows and freshwater inflows,” said Myron Hess, manager of the Texas water programs for the National Wildlife Federation. “Both water supply interests and the environmental community joined together to recommend the environmental flow provisions in SB 3 in a joint recognition of the need to maintain the fish and wildlife heritage of Texas while also meeting essential human water needs.”

“We urge the Texas House to act favorably on these proposed environmental flow provisions,” added Ken Kramer, Director of

the Lone Star Chapter of the Sierra Club. “If enacted, SB 3 will put into place a process that could ensure the continued health and productivity of such major coastal resources as Galveston Bay and Matagorda Bay as well as the vitality of river systems throughout Texas. We know there will be a lot of work to do to implement this process successfully, but this is a big step in the right direction.”

Recognition of the Need to Protect Environmental Flows

There is increased recognition of the importance of protecting environmental flows in Texas' rivers. Sixteen coastal communities-places that would be particularly affected if the flows issue is not adequately addressed-have passed resolutions asking the Legislature to

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take action on environmental flows this session.

Nine counties-including Galveston, Jefferson, Aransas and Matagorda counties-and six cities passed similar resolutions on environmental flows. The resolutions do not endorse any particular legislative approach.

Water Conservation Provisions

SB 3, sponsored by Senator Ken Armbrister, also contains provisions addressing water conservation and groundwater management. "The conservation provisions in SB 3 reflect the broad consensus that water conservation is one of the best ways of meeting the state's water needs," said Sierra Club spokesperson Kramer. He was a member of a water conservation task force created by the Legislature last session.

Kramer said the water conservation provisions in Senate Bill 3 include many of the recommendations made by the task force, which had broad stakeholder representation. These recommendations include the creation of a statewide public awareness program on water, the extension of water conservation planning requirements to a large number of retail water suppliers, protection from water rights cancellation for water that is conserved, preference in state financial assistance for water projects for those entities who have good track records on conservation or are seeking funding for conservation, and more effective monitoring of the implementation of

water conservation measures.

Groundwater Provisions

The SB 3 provisions on groundwater generally conform to some of the basic tenets on this issue that several environmental organizations support: principles that lead to a system whereby there is more cooperation among single-county groundwater conservation districts that manage parts of the same aquifer and the use of sound science in making groundwater management decisions. The bill calls for the establishment of Groundwater Management Advisory Councils for different aquifers while preserving flexibility and local control by groundwater districts to ensure that there is continuing public support for such districts.

SB 3, as it passed the Senate, would make some significant changes in current groundwater law through provisions for a state groundwater district to cover areas where no local district manages an aquifer and a concept of protecting shallow wells from the impact of high capacity groundwater wells.

Edwards Aquifer Provisions

SB 3 attempts to address in Article 5 of the bill the difficult issue of management of the Edwards Aquifer and protection of springflows for species protection and downstream river flows. The Sierra Club is urging that – if the Edwards Aquifer issue is covered in the final version of SB 3 – the final language must support the concept that

*see SB 3, page 6***HB 2833/SB 1647***continued from page 3*

amount of impervious cover on a specific building site or on a development site overall allows more water to sink into the ground (and underground water supplies) and reduces rainfall runoff that may cause downstream flooding and contamination of creeks.

Both House Bill 2833 and Senate Bill 1647 would require any local government seeking to limit impervious cover or regulate lot size or building size on land under development to pay the owners of that land for what the owners might claim to be a reduction in property values resulting from those requirements. There are many problems with this approach, not the least of which is that it is probably impossible to determine what, IF ANY, change in property value results from such requirements. Indeed in numerous instances property values have gone up in developing areas as these requirements are imposed, making the areas more attractive to potential buyers because of the open space, vegetation, and wildlife that is maintained.

The MAJOR problem with the legislation, however, is that basically it is intended to STOP cities and other local governments from requiring impervious cover limitations and similar regulations to protect water quality. By making the potential price tag so high for local governments to try to establish these requirements in developing areas, the hidden motive here is NOT to "compensate" landowners but rather to persuade local governments to abandon this approach to water quality protection.

Then, real estate developers will have free reign to overdevelop their properties, get some fast bucks, and leave local governments and taxpayers to contend with polluted water and the costs of cleanups. Meanwhile downstream property owners will find their property values LOWERED as a result of more flooding from upstream.

Action Needed

The Lone Star Chapter of the Sierra Club, joined by a number of other groups, is urging Texas citizens to contact their respective state senator and representative in opposition to these two pieces of legislation. If HB 2833 passes the House and goes to the Senate, then all of the action will be focused on that bill number. If HB 2833 fails on the House floor, then there may be an attempt to move SB 1647 through the Senate and get it over to the House for one more try at passing the legislation. Communications to legislators using both bill numbers is advisable.



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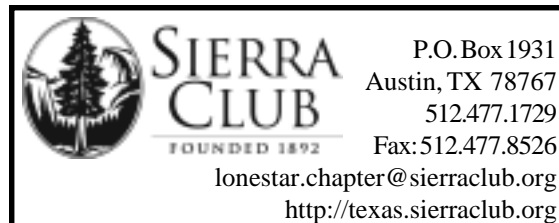
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management decisions must be based on the best scientific data available and that any critical period management program created in legislation or as a result of legislation be designed to respond quickly and effectively to aquifer and springflow conditions.

The Club is concerned about language in the Senate version of the bill that effectively lifts the “cap” on pumping from the Edwards Aquifer without any demonstration that this is scientifically defensible. As of yet there is not a consensus among Edwards Aquifer stakeholders about language in SB 3 on the Edwards issues. Therefore, it is not clear what the final outcome on this issue will be in the context of SB 3.

Demise of the Water Fee


Provisions for financing for water resources projects and activities were dropped from SB 3 during the Senate committee process. “We are disappointed by the demise of the fee




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provisions,” said Mary Kelly, senior attorney for Environmental Defense. “A modest portion of those fees could have been used by the state water trust to lease or buy water rights for environmental needs in rivers where the surface water is fully allocated. We hope these funding issues can be addressed over the interim. In the meantime we urge the Legislature to appropriate adequate funds from other sources to begin implementing the environmental flows provisions in SB 3.”

Overall Assessment

“This comprehensive bill addresses some very difficult issues the state will be facing now and in the future as our population and water demand grow and we commend the willingness of Senator Armbrister and the Lieutenant Governor David Dewhurst to tackle these critical topics,” said Kelly of Environmental Defense. House Natural Resources Committee is expected to conduct a hearing on SB 3 on May 9. 

Working Together

The Texas Water Conservation Association (TWCA) which represents Texas water supply interests - and the three largest conservation groups working the Legislature on water issues - Sierra Club, National Wildlife Federation, and Environmental Defense - have joined forces to support Article I of SB 3, a responsible compromise to protect environmental flows. The organizations have issued a joint position statement in support of Article I and are circulation that statement to Texas House Members. 

Texas: Dumping Ground for the Nation’s Radioactive Wastes?
Sierra Club Fighting Waste Profiteers on Several Fronts

Politically well-connected Waste Control Specialists (WCS) is continuing its relentless waste profiteering efforts to turn Andrews County, Texas into the dumping ground for the nation’s radioactive wastes. The Sierra Club and others are fighting these efforts.

Waste Control License Amendment

First, in February, the Texas Department of State Health Services (the State Health Department) approved *a so-called minor* amendment to Waste Control Specialists’

license to process and store radioactive uranium materials. The expressed purpose of this minor amendment is to bring to Texas 3500 truckloads of cold war-era weapons processing waste from Fernald, Ohio. Both the Sierra Club and Public Citizen are challenging that amendment.

Health Department Criticized by NRC

Ironically, weeks later a federal agency, at

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Water Quality Protections Under Attack in Legislature

HB 2833 and SB 1647 Would Undermine Local Control

The Texas Legislature is considering legislation that would undermine the ability of cities and other local governments to regulate development and protect water quality. HB 2833 (sponsor: Rep. Robby Cook) and SB 1647 (sponsor: Sen. Todd Staples) are the bills that would restrict local efforts.

HB 2833 is set again for debate on the House floor this coming Monday, May 9 after having been called on “points of order” on the floor on two previous occasions and sent back through the committee process. SB 1647, as of this writing, is still pending in the Senate Natural Resources Committee.

Impacts on Local Governments

A number of Texas cities, and in some instances Texas counties, regulate land development through programs and requirements that are aimed at preventing flooding and protecting water quality from runoff of pollutants during rainstorms. One of the ways in which this is done is by limiting the amount of “impervious cover” on property being developed.

Impervious cover refers to such things as pavement (parking lots, driveways) or rooftops of buildings that prevent infiltration of water into the soil when it is raining. Limiting the

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Radioactive Wastes

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the Nuclear Regulatory Commission (NRC) was announcing that the State Health Department's Bureau of Radiation Control was under "heightened scrutiny" for basic failures in its oversight role – untimely inspections, lack of staff in key positions, etc.

Nevertheless NRC is likely to grant WCS' requests to have hundreds of million of pounds of power plant debris from Connecticut and Massachusetts declared special nuclear waste "exempt" from normal radioactive disposal requirements. Why? If declared exempt, WCS could potentially bring these wastes into its hazardous waste landfill, just next door to the storage site amended by the State Health Department, which is itself near the proposed low-level radioactive waste disposal site.

On the Legislative Front: SB 1667

Legislatively, the biggest news has been the effort by Senator Robert Duncan to transfer authority over uranium byproduct material such as the Fernald waste from the State Health Department to the Texas Commission on Environmental Quality (TCEQ), establish rules for clean-up of existing mining sites, and tax any radioactive waste brought to Texas (the tax would be 10 percent of gross receipts). On May 4, the full Senate passed **SB 1667** and the issue now goes over to the House.

The Lone Star Chapter of the Sierra Club agreed with Senator Duncan that Texas is better served by having low-level radioactive waste disposal and uranium byproduct material

disposal overseen by one agency, rather than two, and agree that TCEQ is the proper agency to deal with that issue. The Club expressed concern, however, that in the rush to tax waste and generate dollars, regulators and legislators will not see the dangers inherent in vast imports of radioactive waste.

What's Needed Legislatively

As a more broad-based solution to the radioactive waste dilemma facing Texas, the Sierra Club proposed two amendments to SB 1667 to Senator Duncan: one to **close the compact loophole** to keep waste imports to a minimum and one to **create a 15-member joint interim committee** along with an advisory scientific committee to study the radioactive issue further and make recommendations for the 2007 legislative session on how Texas should address the huge volume of wastes that WCS wants to bring into the state.

Senator Duncan, however, did not want to open up his legislation to take a broader look at waste or to limit waste imports to only those states in the compact. His aim was merely to transfer authority and to tax the wastes. Senator Eliot Shapleigh, long a champion of taking a very slow and careful approach to radioactive waste imports, offered both amendments on the floor, but his eloquent words failed to sway enough senators to win the votes on those amendments.

Senator Duncan again said he felt that

discussion was ended with the decision in 2003 to allow a private operator to import all the waste it wanted, and his legislation was not the place to reopen the debate. The 18-8 votes against the two Shapleigh amendments (four senators were absent) fell fairly predictably along party lines, with Victoria-area Democrat Senator Ken Armbrister voting with Senator Duncan, and Dallas-area Senator Jane Nelson voting with Shapleigh. In addition, working with Senator Eddie Lucio, Sierra Club was able to tone down some language in the bill that would have allowed in-situ uranium mines to expand production with a simple authorization from TCEQ with no public input or opportunity for a contested case hearing. This amendment was meant to help Kleberg County's URI. The "compromise" language accepted by Senator Duncan did not fully accomplish the purpose, however, and this issue is one of several uranium mining issues that Sierra Club is monitoring.

House Legislation

In the House, separate legislation to close the compact loophole and create a joint interim committee have been introduced. However, the close the compact loophole by Rep. Mike Villarreal has not yet received a hearing in the House Environmental Regulation Committee and probably will not get one. Representative Pete Gallego's legislation – HCR 85 (establishing a study committee) did receive a hearing in the House Energy Resources Committee in April and representatives of

League of Women Voters, Sierra Club, Public Citizen and concerned citizens did express their support and rationale for creating such a committee. Whether Andrews' own state representative, Committee Chairman "Buddy" West, will let HCR 85 out of committee is anyone's guess, but Sierra Club does expect there to be an opportunity to bring up these issues whenever Senator Duncan's legislation is considered in committee or on the House floor.

Ongoing Commitment

In the meantime, Sierra Club will continue to use every political and legal means to bring attention to the impending conversion of Texas into the nation's nuclear waste site and try to stop the radioactive onslaught on Texas. Sierra Club members and other citizens living in counties adjacent to Andrews County are encouraged to participate in the hearing process. Other Texas residents are encouraged to let House Energy Resources Committee members know we need to have a joint interim study on this issue before we lose all opportunities to protect future generations from a radioactive waste legacy created for the sake of one company's profits.

CRCS