

OPPOSE LEGISLATION TO UNDERMINE PROTECTION OF PUBLIC WATERS (4/28)

In Texas, surface water – the water in our rivers and streams – is owned by the people of the state (hence the term “state water”). Riparian landowners – those whose land is bisected by or adjacent to rivers and streams – may use state water for domestic and livestock purposes. Others – agricultural producers, industries, municipal water utilities, for example – may seek a permit from the Texas Commission on Environmental Quality (TCEQ) to use state water.

Some of these “water rights” permits may be issued for a limited term, but most permits are issued “in perpetuity” – in other words, forever. Much of the surface water in most of our rivers and streams has already been allocated through these permits, and – with few exceptions – permits issued before 1985 had no conditions to protect the environment. As a result, in many instances decisions about granting a new surface water right are becoming much more complex and may have profound effects on current water rights holders, area landowners, water quality, fish and wildlife habitat, and recreational water users.

Therefore, applications for new water rights permits need close scrutiny and a thorough vetting of all significant issues. One opportunity to do that is through a “contested case.” Affected persons may request that TCEQ refer a permit to the State Office of Administrative Hearings (SOAH) for a contested case after TCEQ has completed its technical review and issued a draft permit. If the request is granted, the case will be heard by an administrative law judge (ALJ), who will make a proposal for decision by TCEQ on whether or not to grant the permit

But bills introduced in this legislative session at the behest of water development interests are aimed at “fast tracking” new water right permits to the detriment of public scrutiny. The two bills of most concern are HB 3742 by Rep Dade Phelan and SB 225 by Senator Van Taylor.

Although not identical bills as filed, both pieces of legislation would do the following:

- Narrow the range of issues that may be considered in a contested case on a surface water rights permit, making it difficult if not impossible to consider important new issues uncovered during the contested case before a permit decision is made
- Limit the parties allowed to participate in a contested case to only those persons who requested such a contested case in advance of referral to SOAH, even if an affected person did not receive proper notice early enough to make that request within the allotted time and/or did not find out about the permit until the case had been referred
- Direct TCEQ to set the time frame for the contested case and usually limit the case to no more than 270 days from the preliminary hearing to the ALJ’s proposal for decision

Texasans potentially affected by the granting of a new water rights permit need to be able to participate effectively in a contested case about permitting additional water withdrawals from that stream. HB 3742 & SB 225 would undermine their ability to do so. HB 3742 has been favorably reported from House Natural Resources Committee, and SB 225 may be voted on in the Senate Committee on Agriculture, Water, and Rural Affairs on Monday, May 1. Please contact all House members in opposition to HB 3742 and all Senators in opposition to SB 225.