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REPORT

OF THE

TEXAS HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

A Report to the House of the

64th Texas Legislature

Gibson D. Lewis,

Chairman

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P. O. BOX 2910
AUSTIN, TEXAS 78767

State of Texas
House of Representatives
Austin

January 8, 1974

The Honorable Price Daniel Jr.
Speaker of the House of Representatives

Members, Texas House of Representatives
64th Texas Legislature

Dear Mr. Speaker and Members:

Transmitted herewith is the Report of the Natural Resources Committee which is to be submitted to the 64th Texas Legislature.

Sincerely,

Gibson D. (Gib) Lewis
Chairman

GDL:pc

The Report of the Natural Resources Committee has been approved by the following Committee members: Chairman Gibson D. Lewis, Vice Chairman Henry Sanchez, Representatives Phil Cates, Dean Cobb, Milton Fox, Joe Hanna, John Hoestenbach, Jon Newton, James R. Nowlin, Wayne A. Peveto, and John Wilson.

The following members approved all portions of the report but disapproved Recommendation No. 1; to wit, that the Texas Legislature enact into law the unitization bill (H.B.311) adopted by the House of Representatives in the 63rd Legislature: Representatives Bob Hendricks, Tom Massey, and Richard C. Slack.

The following member approved the report with reservations: Representative Al Korioth.

The following members disapproved the report: Representatives Tom Craddick and Ed R. Watson.

The following members were recorded present not voting: Representatives W. J. Bill Blythe, Jr. and Bill Clayton.

The following members had not voted at the time of publication: Representatives Terry Canales, Samuel W. Hudson, III, Lindsay Rodriguez, and Tom Schieffer.

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REPORT

OF THE

TEXAS HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

INTRODUCTION

At the commencement of the 63rd Legislature, the Honorable Price Daniel, Jr., Speaker of the Texas House of Representatives appointed the House Committee on Natural Resources.

The Committee membership includes twenty-four members, all of whom are members of the House of Representatives. The following Representatives were named to the Committee at the beginning of the 63rd Session: Gibson D. Lewis of Fort Worth, Chairman, Henry Sanchez of Brownsville, Vice Chairman, W. J. Bill Blythe, Jr. of Houston, Terry Canales of Premont, Phil Cates of Lefors, Bill Clayton of Springlake, Dean Cobb of Dumas, Tom Craddick of Midland, Milton E. Fox of Houston, Joe C. Hanna of Breckenridge, Bob Hendricks of McKinney, John Hoestenbach of Odessa, Samuel W. Hudson III of Dallas, Al Korioth of Farmers Branch, Herman Lauhoff of Houston, Tom Massey of San Angelo, Jon Newton of Beeville, James Nowlin of San Antonio, Wayne Peveto of Orange, Lindsay Rodriguez of Hidalgo, Tom Schieffer of Fort Worth, Richard C. Slack of Pecos, Ed R. Watson of Deer Park, and John Wilson of La Grange.

This Report will not attempt to describe the committee's activity during the Regular Session of the 63rd Legislature. All of the Committee's work during the Regular Session was confined to the consideration of legislation then pending before the House of Representatives. Attached as an Addendum (Addendum A) to this Report is a statement of the disposition of the bills which were considered by the Committee during the Regular Session.

This Report will summarize the Committee's activity since the close of the Regular Session. The Committee's work was interrupted by the Constitutional Convention convened in January 1974 and adjourned on July 30, 1974 at midnight. During this period, the Convention required the full attention and energies of the Committee's membership. For the balance of the interim the Committee has remained active.

This Report has three major topics: (I.) Energy; (II.) Conservation and Reclamation; and (III.) Future Considerations. These three topics encompass the general areas of concern with which the committee and related study committees dealt during the interim period.

I. Energy

Within the first two months after the Regular Session, the reality of an energy crisis was still being questioned. Then skyrocketing gasoline prices, higher home and industrial fuel bills, and the curtailment of petroleum production and petroleum exports by Middle Eastern and South American countries provided an affirmative answer.

A. Energy Crisis Committee

To respond to this critical situation and to determine its impact and possible solutions, Speaker Daniel appointed all seven members of the Energy Crisis Committee from the Natural Resources Committee pursuant to H.S.R. 59. Representative Jon Newton was appointed Chairman and Representative Gibson D. Lewis was appointed Vice-Chairman. Representatives Dean Cobb, Milton Fox, Joe Hanna, Samuel Hudson and Tom Schieffer constituted the remaining membership of the Committee. During the interim, the Natural Resources Committee provided staff assistance to supplement the Energy Crisis Committee's staff. While this Report will not attempt to summarize the activities of the Energy Crisis Committee, a separate, comprehensive report will be filed by that Committee. Those interested in the findings and conclusions of the Energy Crisis Committee are referred to that Committee's report.

B. Rural Energy Crisis Subcommittee

In December of 1973, it became apparent that the fuel shortage was acutely affecting Texas Agriculture. At the request of Speaker Daniel, Chairman Lewis assigned a study of the energy crisis in rural areas to a subcommittee chaired by Representative Joe Hanna. Representative Tom Craddick was appointed Vice-

Chairman. Other members appointed included: Representatives Phil Cates, Bill Clayton, Tom Massey, Wayne Peveto and John Wilson.

This subcommittee received testimony from the Agriculture Commissioner, the Railroad Commission, representatives from the Governor and Lt. Governor, legislators, the Texas Sheep and Goat Raiser's Association, the Texas and Southwestern Cattle Raisers Association, the Texas Farm Bureau, the American Rice Growers Coop. Assn., and ranchers. From the testimony received, the subcommittee determined that many Texas rural residents were not receiving all of the fuel they were entitled to under recently implemented federal regulations governing allocations of middle distillates (including diesel fuel, kerosene, home heating oil, range oil, stove oil and gas oil). The subcommittee further determined that continuing changes in the federal regulations and continuous transfers of energy responsibilities among federal agencies had resulted in confusion among rural wholesale suppliers and wholesale purchasers resulting in the wholesale purchaser's often being denied the fuel they were entitled to receive. As a result, Texas agriculture was imperiled by loss of fuel to operate machinery and to deliver goods and crops.

The subcommittee unanimously agreed that there was a communication problem and that the legal rights of the purchasers and the legal responsibilities of the suppliers needed to be publicized and enforced. Through press releases, the subcommittee disseminated information to rural Texas residents and their suppliers in order to ameliorate this problem. When federal regulations changed in January of 1974, the subcommittee issued further press releases

to advise the wholesale suppliers and purchasers of their legal rights and responsibilities.

The Committee determined that under current federal regulations, rural purchasers are generally entitled, on a monthly basis, to the same allocation of supplies as they received in the corresponding month in 1972. Currently, there are no extensive shortages and those willing to pay increased prices are able to obtain petroleum supplies to satisfy their needs. The state set-aside has served as a buffer against scarcity.

The Committee did not find that the rural energy crisis has been solved. The Committee determined that federal regulations governing the federal mandatory allocation program make it very difficult for a consumer to increase his entitlement over 1972 allocations. If petroleum supplies become more scarce, the inflexibility of the federal regulations limiting entitlements will become very apparent. Three events loom in the near future which may cause shortages of fuel to rural Texans:

(1) a prolonged refinery strike which may commence in January;

(2) an increased number of natural gas curtailments in 1975 together with a colder winter; and

(3) a reimposition of the Arab oil embargo.

Under existing regulations and a scarcity of fuel, rural residents will be prevented from expanding their production and will be forced to absorb ever increasing fuel prices into the economics of their operations.

Recommendation: That the Texas Legislature adopt a resolution urging greater flexibility in the federal regulations prescribing entitlements in the mandatory allocation program.

C. Unitization

Responding to the possibility that the Governor might call a Special Session of the Legislature for consideration of a Unitization Bill, the full Committee on Natural Resources met December 18, 1973 and received testimony on the bill that passed the House of Representatives during the Regular Session of the 63rd Legislature (H.B.311) but failed to pass the Senate.

"Unitization" is a method of achieving cooperative development of oil and gas properties. It is, in general, the development and operation of an oil reservoir, gas reservoir, or oil and gas reservoir as a unit and involves the consolidation or merging of all interests in the parcel and the designation of one or more of the parties as unit operator.[1]

At the present time, no one (working interest owner or otherwise) can be compelled to unitize his mineral producing tract against his will, or can be compelled to participate in any secondary recovery programs.[2] However, persons owning or controlling production, leases, royalties, or other interests in separate

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[1] Unitization should not be confused with "pooling" which brings together two or more small, irregularly shaped tracts to form a drill site in order to conform with the spacing and density rules of the Texas Railroad Commission.

[2] Pickens v. Railroad Commission, 387 S.W.2d 35 (Texas--1965)

properties in the same oil, gas, or oil and gas field may voluntarily enter into unitization.[3]

The bill considered by the committee provided a procedure by which the owners of at least seventy-five per cent (75%) of the royalty interests and at least seventy-five per cent (75%) of the working interests could compel the remaining interest owners to unitize the operations of the common reservoir. Testimony was offered claiming the following advantages and disadvantages to such a bill:

Purported Advantages

1. Unitization results in greater production from oil and gas fields:
   (a) Only a small percentage of Texas oil fields are unitized.
   (b) The energy crisis requires that the state optimally develop its natural resources.
2. Under current Texas Law, the overwhelming majority of working interest and royalty interest owners may wish to unitize but are prevented from doing so by small minority owners:
   (a) The Legislature has the obligation to protect the majority as well as the minority.
   (b) Twenty-eight other states have some form of majority consent unitization legislation.
3. Unitization will prolong the life of a field, allowing the implementation of new and better recovery processes that are currently under research.

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3 Article 6008b Texas Revised Civil Statutes.

4. Through unitization, royalty interest owners would receive a great deal more money at no cost. Schools and teachers would receive substantial amounts in state and local schoolboard funds and teacher retirement funds.
5. Local governments would enjoy a broader tax base, stronger economy, and higher employment if unitization were authorized.

Purported Disadvantages

1. Forced unitization results in governmental confiscation of private property.
2. There is no clear and present need for forced unitization. Under the 75% consent requirement, no fields in Texas could be forced to unitize.
3. Voluntary unitization has worked well. Why abandon it?
4. Forced unitization would have a retroactive effect, affecting operations that have been established for years. After forced unitization, an operator or royalty owner could find his income substantially reduced and an operator could find his expenses substantially increased.
5. Portions of reservoirs can be unitized to the detriment of those royalty owners and working interest owners that are frozen out.

No action at the time of the hearing was taken by the Committee on the unitization bill before it.

Recommendation: That the Texas Legislature enact into legislation the unitization bill (H.B.311) adopted by the House

of Representatives in the 63rd Legislature. (See Addendum B)

II. Conservation and Reclamation-
Committee Action and Related Studies

A. Surface Mining Reclamation

With the acknowledged shortage of natural gas and crude petroleum, coal and lignite must now play an important role in the near future as natural resources to be utilized in electric generating plants. Lignite is currently being used in one electric generating plant visited by some of the committee's members in Fairfield, Texas. The employment of lignite and coal as power generating resources will substantially increase surface mining in Texas. If there is no surface restoration after the mining, a great deal of Texas land will be removed from useful production, will lose its aesthetic beauty, and could in certain areas present danger to man and animal kind.

At least fourteen states currently have some form of surface mining legislation. There is a great variance in the provisions of these acts depending, in part, on how extensive surface mining is within a particular state.

It is time for Texas to adopt a law regulating surface mining. Several basic decisions must be made with respect to such a law:

A. Minerals to be regulated. Because surface mining is not as extensive in Texas as in many states, it might be best to commence with regulation of coal and lignite surface mining, including other minerals within the scope of the law by future amendments as necessary.

B. Administrator. The Land Commissioner and the Land Office should probably administer the law.

C. Areas exempted from surface mining. Some areas could be exempted in the law and the Land Commissioner, upon a hearing, could provide for the exemption of other areas.

D. Surface mining permits. A permit for each surface mining operation should be required, with the permit to be issued by the Land Commissioner upon approval of an application. The application should contain a plan of reclamation.

E. Extent of reclamation. Lands that have been surface mined should be returned to original or more valuable condition.

The Speaker of the House, in conjunction with the Lt. Governor, has appointed a Joint Interim Surface Mining Operations Study Committee. Representatives Lewis, Clayton and Cobb of the Natural Resources Committee have been appointed as members of the Committee. The Natural Resources Committee staff has worked on a proposed draft of a Surface Mining Reclamation Act but will defer recommending its submission to any recommendation of the Surface Mining Reclamation Study Committee.

B. Water Resources

On May 31, 1973, the Legislature passed HSR 198, which gave interim committee status and authority to the Water Subcommittee of the 63rd session's Committee on Natural Resources. The members of The Interim Water Study Subcommittee are: Representatives Bill Clayton (Chairman), Tom Massey, Wayne Peveto, Phil Cates, Bob Hendricks, John Hoestenbach and Lindsey Rodrigues.

This interim committee was charged with the responsibility of studying the need for revision of water development and conservation laws and the need for reorganization of any of the statutory provisions found in the Texas Water Code. Vested with this authority, the committee could take testimony, develop research and hold hearings on any aspect of statutorily-related water problems.

The Interim Water Study Committee, which is issuing its own report to the 64th Legislature, received testimony dealing with the problems of different types of water districts and the solutions offered for these problems through the Water Code and other statutory sources. The study committee researched extensively the problems faced by irrigation districts governed under the provisions of Chapter 51 of the Texas Water Code, which provisions are intended primarily for water control and improvement districts. After consideration of several alternatives, the Interim Water Study Committee recommended in its report the removal of irrigation-type districts from Chapter 51 to a new chapter in the Water Code.

The second major area of concern to the Water Study Committee was the development of legislation to deal with the land subsidence problem faced by many areas of the State. The changes recommended by the Interim Water Study Committee with regard to the subsidence problem are encompassed in the interim committee's suggested revision of Chapter 52 of the Water Code.

The third major area of concern to the Interim Water Study Committee was the compilation of references found in sections of

the Water Code which referred to chapter provisions other than the one under consideration. The Committee recommended changing these references to allow the chapters to stand alone as independent sources when used for research purposes.

The Interim Water Study Committee operated as an independent committee and reference herein is intended to provide the researcher with an overview of this important area generally considered to be within the interests of the Natural Resources Committee. For further information one should refer to the report issued to the 64th Legislature by that committee.

C. House Interim Committee on Water Supply and Waste Disposal

The Interim Committee on Water Supply and Waste Disposal in Metropolitan Areas was created by the 63rd Legislature with the passage of HSR 209. The general functions of the Committee as outlined by that Resolution were to study water districts in Texas and to examine the effectiveness of the water district legislation enacted by the 63rd Legislature on the known problems of those districts. In addition, the committee was given the responsibility of discovering any conditions relating to the problems of water districts which required remedies in the form of action or legislation by the next legislature.

The membership of the committee consists of seven Representatives, four of whom serve on the Committee on Natural Resources: Representatives Blythe (Chairman), Clayton (Vice-Chairman), Korioth and Watson.

The Interim Water Supply and Waste Disposal Committee made numerous recommendations in its report to the 64th Legislature dealing generally with the Houston, Dallas and San Antonio

metropolitan areas. The Committee held five public hearings and made recommendations peculiar to each of the areas studied, with a special emphasis placed on municipal utility districts in Houston and subsidence problems of the Houston area. The full report of the Interim Water Supply and Waste Disposal Committee will be submitted to the 64th Legislature.

III. FUTURE CONSIDERATIONS

A. Land Surface Subsidence

The problem of land surface subsidence has fallen under the scrutiny of the Interim Water Study Committee and the House Interim Committee on Water Supply and Waste Disposal. The 64th Legislature will undoubtedly be faced with the subsidence dilemma and at least several of the major proposals set forth to deal with the problem will be presented to the legislature in the form of proposed legislation.

In the 63rd session, HB 935 (SB 643-companion bill) addressed the subsidence problem. After being recommended by the Committee on Natural Resources, HB 935 was passed into law, making several changes in Section 52 of the Water Code to provide for methods of developing plans within underground water conservation districts to prevent waste, provide for recharge and control subsidence. The bill as enacted allowed underground water districts to begin planning to control and prevent subsidence.

The problem of land surface subsidence is most prevelant in the Houston area and in the upper portion of the Texas Coastal Zone. The apparent major cause of subsidence is the withdrawal of ground water and petroleum from an area. Once subsidence has been experienced, its effects are irreversible, with the most serious effects being the loss of land elevation, and to an extent, the actual loss of land. Subsidence may also result in regional changes in the slope of the land affected, which in turn affects drainage patterns by changing not only slope but stream gradients.

Most authorities agree that land surface subsidence will

continue regardless of any decrease in the withdrawal of groundwater or other minerals, with the amount of such future subsidence dependent on the amount of pressure reduction. Subsidence will occur because it is not directly related to the overall volume withdrawn, but instead to the concentration of withdrawal and its effect on artesian conditions.

The subsidence problem will not be solved easily. Several other areas of concern complicate a legislative solution to the subsidence problem, to wit: the restrictive nature of any flood control measures, problems associated with depleted water-bearing aquifers, and the availability of surplus surface water resources.

These considerations all are important when dealing with the subsidence question. Hopefully, the 64th Legislature, and specifically the Natural Resources Committee of the 64th Legislature will be able to resolve all of the potential problems with a single workable solution.

B. Water Resource Planning

The development, growth, and prosperity of the State of Texas, its character, and its future are directly related to the availability and reliability of water supplies. From the prehistoric villages and encampments of the native American peoples and the first tentative settlements by the Spanish and other Anglo-European settlers to the development of ground-water irrigation on the High Plains and the projected water requirements for nuclear power plants and the State's rapidly expanding urban areas, water has been elemental in Texas' history and in its future. The future needs of the State, its people, and non-

Texans who rely on Texas agriculture and industry can only be met if they are anticipated far in advance of their realization and appropriate action is timely taken.

The Texas Water Plan, formulated by the Texas Water Development Board in the late 1960's, with assistance from state and federal agencies and private interests, is, by law, the basic instrument for water resource planning on a state-wide basis. The Texas Water Plan envisioned a multi-faceted approach to the water problems of the state. The plan proposed construction of facilities for the movement of water between those areas of the State where there is a surplus of water (primarily in the eastern part of the State) and those where the projected demand will exceed the supply (the western and southern areas of the State and some urban centers.) In addition to this intra-state redistribution, the Plan also proposed importation of water into the State from the lower reaches of the Mississippi River.

Three systems were proposed for construction to effect these inter-basin transfers: the Eastern System, the Coastal System and the Trans-Texas System. The Eastern System would include storage reservoirs existing and to be built along the Sabine River to store water imported into the State from Louisiana for use throughout the state. The Coastal System would include the construction of transfer facilities in the coastal and southern parts of Texas. A canal from the Sabine River to the Rio Grande Valley would carry water to municipalities and irrigated agriculture of the Valley. Along the route, water would also be made available for municipal uses in Houston, Corpus Christi and other cities and towns, and to supply freshwater inflows into the bays and

estuaries of the Texas coast. The system would also provide water for Bexar County from the Lower Guadalupe and San Antonio River Basins and supply continued and increased irrigation along the Middle Rio Grande and in the Winter Garden area from Amistad Reservoir through a succession of water exchanges.

The third and, in many respects, the most ambitious of the systems would be the Trans-Texas System proposed to carry surplus East Texas water and imported water into the agricultural areas of the Texas High Plains, Eastern New Mexico, and Trans-Pecos regions. With ground water supplies being steadily depleted and the demand for the agricultural products of the State increasing, the need for supplemental water has become acute. The Plan proposed that water from the Trans-Texas Division be available for diversion for use in the Dallas-Fort Worth area, in North Central Texas, and as far as El Paso to alleviate tight water supply situations.

In 1969, a proposal was submitted to the voters of the State of Texas to amend the Constitution to permit the Texas Water Development Board to issue $3.5 billion in bonds for an increase in the Texas Water Development Fund to finance initial design, construction, and operation under the Plan. The proposal was narrowly defeated in a very light vote at the polls. Since that time water resource development in Texas has been concentrated on the short range needs of local and regional areas of the State. Surface water storage and diversion projects undertaken have included some of the works contemplated under the Plan although the use of developed water supply has been of a localized nature. The feasibility and desirability of intra-state transfers and

the importation of water for use in the arid parts of the State have remained the objects of discussion among the people of the State and their leadership. The Governor's Task Force on Water Resource Conservation and Development has reviewed several facets of the Texas Water Plan including importation of water, ground water use, research into estuarine requirements, and desalinization. The Task Force is evaluating water resource planning in Texas in light of the changing world situation in which the State and its people find themselves.

Since the constitutional amendment was submitted to the electorate in 1969, the circumstances surrounding the needs for water and water resource planning in Texas have changed drastically. Increased demands on the agricultural productivity of the State and the nation have caused planners to consider the possibility that we may not be able to afford any diminution of the production capacity of the irrigated farming areas of South and West Texas. Further analyses of the effects of the importation of water into those areas should shed light on the effect of threatened food shortages, the place of food and grain production in world markets, and the consequent advisability of a system such as the Trans-Texas Division for maintaining and increasing agricultural productivity.

Two other factors affecting all facets of contemporary life are also being evaluated to determine their impact on the water requirements of the State: fuel shortages and economic conditions. The Texas Water Development Board's computations in 1968 indicated that the total energy requirement would be 6.9 million kilowatts, or 37% of the total generating capacity of the State at that

time. With electrical generation by fossil fuels becoming increasingly more costly and nuclear power still questionable, the availability and economics of energy required for a project on this scale will have to be studied for feasibility. Also, the economic impact of public spending--estimated in 1967 to total $9 billion for construction of proposed Plan facilities--the impact on employment in the State and the impact upon the local economics of the areas benefited by such a project are to be re-analyzed in the light of present economic conditions.

A final consideration in the continuing process of water resources planning involves basic policy decisions about the extent and character of growth and development in the State. Such growth and development in terms of population, industry, and agricultural production, is conditioned in part by the availability of an adequate water supply. The extent to which the pattern of such growth would be influenced by such a public project would need to be determined. In addition the compatibility of such patterns with other State and local planning would require evaluation.

In addition to the physical aspects of the program, its political and administrative ramifications are substantial. The coordination of governmental entities that would be involved in the transportation of water across Texas and across state lines would require complex legal and institutional negotiation. The alternative possibility of concentrating control and management in one agency would pose problems of bureaucratic growth and non-responsiveness to local problems.

In any event, if the Texas Water Plan, or any other large scale water program is to be financed and implemented in Texas,

objections raised to the Texas Water Plan will have to be considered. The vote in 1969 on the constitutional amendment was too light to be conclusive. However, its analysis suggests attitudes and issues that generated concern with and opposition to the Water Plan and the bonds to finance it. The costs of the Plan facilities were a main concern, coupled with a fear that such expenditures would necessitate an increase in taxes (although repayment of the bonded indebtedness was to come from water sales to users) or would benefit only a small portion of the State's citizens at the expense of others. Some voters in the water surplus areas of East Texas were concerned that sufficient water would not be available to fulfill both their present and future requirements. A perceived lack of consideration for the environmental impact of the Plan was raised as a major issue by environmental groups opposed to the project. Further, some reservation was expressed that the authorization of funding for the transfer facilities was premature in that there was no guarantee that water for import from other States would be available, although the Plan was explicit that no such facilities were to be initiated until an import was assured. Later the U. S. Corps of Engineers and U. S. Bureau of Reclamation reported, on the basis of 1968 agricultural commodity prices and under then existing Federal project evaluation policies, that importing water from the Mississippi to West Texas was not economically feasible.

In implementing any plan, and particularly the Texas Water Plan, local governmental entities would be required to assume responsibility for repayment of costs and some features of facility operation. In many cases, new local or regional entities would

need to be created for this purpose.

Thus, five years after the proposed constitutional amendment was defeated, the Texas Water Plan in Texas remains the guide to water development. The water resource planning underway involves reevaluation, analysis and continual revision of the Plan to meet the rapidly changing demands for water in the State.

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