Interbasin Transfers
Trials & Tribulations
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Whiskey is for drinking
and
Water is for fighting
Interbasin Transfer

• Interbasin transfers- since first uses of water in State
  – Certified filings
  – Coastal areas

• Over 100 authorized transfers in the state
  – Some permitted
  – Some adjudicated
  – After 50’s drought
• **San Antonio v Texas Water Commission (1965)**
  – Prohibit transfer only if such transfer would impair existing water rights
  – Commission perform a balancing process
    • Look at future benefits and detriments expected to result from transfer
    • “Prejudice” only if benefits for diversion outweighed by detriments to originating basin
Interbasin Transfer

• Section 11.085, Texas Water Code, amended in 1997 by SB 1
• Application must include:
  – Contract price
  – Description of proposed uses and users
  – Cost of diverting, conveying, distributing, supplying and treating the water
  – Project effect on user rates and fees for each class of ratepayer
• TCEQ shall conduct public comment meetings in basin of origin and receiving basin.
• TCEQ shall notify:
  – All water right holders in the basin of origin
  – Each county judge in the basin of origin
Interbasin Transfer

- Each mayor of a city > 1000 population in the basin of origin
- All groundwater conservation districts in the basin of origin
- Each state legislator in both basin.

- **TCEQ shall publish notice twice in newspapers of general circulation in both basins.**

- **Commission shall:**
  - Request review and comment from each County Judge in basin of origin
  - Give consideration to such review and comments prior to making a decision
Interbasin Transfers

- **Commission shall weigh the effects of the proposed transfer:**
  - Need for water
  - Availability of feasible and practicable alternative supplies
  - Amount and purpose of use in receiving basin
  - Proposed methods and efforts to avoid waste and implement water conservation and drought contingency measures
  - Proposed methods and efforts to put the water to beneficial use
  - Projected economic impacts to occur in each basin
Interbasin Transfer

- Projected impacts on existing water rights, instream uses, water quality, aquatic and riparian habitat and bays and estuaries
  - Based on historic use of water right
- Proposed mitigation or compensation
- Continued need to use water for the purposes under the existing water right
- Any other information submitted by the applicant

**Commission may grant in whole or in part only:**

- If the detriments to the basin of origin are less than the benefits to the receiving basin; and
- Applicant has prepared a DCP and developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.
Interbasin Transfer

• Transfer can not be for a term greater than the contract term.
• Each County Judge may provide input on the appropriate level of compensation or mitigation.
• Portion of water right used for IBT is junior in priority to water rights granted before the transfer.
• Municipality in basin of origin may be an automatic party to the hearing.
Interbasin Transfer

• Exceptions
  – Transfers of 3000 afy or less
  – Emergency transfers
  – Transfers to adjoining coastal basins
  – Transfers from a basin to a county, city or city’s retail service area that straddles a basin
Interbasin Transfers

• Region K’s IBT Policy Statement
  – Cooperative regional water solution shall benefit both regions
  – Region K’s water shortages shall be substantially reduced if there is an exchange with another region
  – Proposed IBTs shall have minimal detrimental water quality, environmental, social, economic and cultural impacts
  – Exports shall provide for improvement of lake recreation and tourism in this basin
  – Each region shall determine its own water management strategies to meet its own needs
  – Solutions shall consider alternatives to resolve conflicts over groundwater availability
Interbasin Transfer

- Any export of water would not be guaranteed on a permanent basis
- Any export of water shall make maximum use of flood or excess flows below Austin, only after in-basin demands are met in the lower basin. Supporting technical reviews included in the draft permit to support this principle shall be reviewed by Region K to assure consistency with the planning process.
- Any export of surface water shall comply with the LCRA IBT water transfer policy
  - HB 1437 (1999) - No net loss
  - HB 1629 (2001) - LCRA-SAWS Water Project
Interbasin Transfer

• LCRA-SAWS Water Project
  – Use of excess flows
  – Ag Water Conservation & supplemental groundwater
  – Amend existing downstream run-of-river water rights
    • Junior rights issues
    • Historic uses
  – Highland Lakes water
    • Junior rights issues
    • Historic uses
Permitting in Texas

• Permitting Process
• Water Availability
  – WAM
  – Municipal/Industrial standard- firm yield
  – Irrigation standard- 75/75 rule
  – Term vs perpetual
• Water Conservation/Drought Contingency Plans
Permitting in Texas

• Assess effects on existing instream uses and water quality
  – Include special conditions, if necessary

• Projects >5000afy- assess the effects, if any, on the issuance of a permit on fish and wildlife habitats
  – May require mitigation of adverse impacts

• Assess effects on groundwater or groundwater recharge
Permitting in Texas

- The commission shall grant the application only if:
  (1) filed a completed application and paid the required fees;
  (2) unappropriated water is available in the source of supply;
  (3) the proposed appropriation:
    (A) is intended for a beneficial use;
    (B) does not impair existing water rights or vested riparian rights;
    (C) is not detrimental to the public welfare;
    (D) considers the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and
    (E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and
  (4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation.