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ACT No. 49

Regular Session, 2003

SENATE BILL NO. 99

BY SENATORS CAIN, FONTENOT, HOLLIS, HOYT AND MCPHERSON
AND REPRESENTATIVES BEARD AND DANIEL

AN ACT

To amend and reenact R.S. 36:358(C), R.S. 38:3076(A)(introductory paragraph), and R.S. 49:968(B)(11), to enact R.S. 36:359(K) and 802.18, R.S. 38:3076(A)(24), 3087.136(4), and Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950, comprised of 3097.1 through 3097.6, and to repeal R.S. 36:4(X) and Chapter 13-C of Title 38 of the Louisiana Revised Statutes of 1950, comprised of R.S. 38:3099.1 through 3099.4, relative to ground water resources in the state of Louisiana; to provide for the powers, duties, functions, and responsibilities of the commissioner of conservation relative to ground water management; to create the Ground Water Resources Commission; to provide for the powers, duties, functions, and responsibilities of the commission; to provide for determination of critical ground water areas; to provide for preservation and management of ground water resources in critical ground water areas; to provide for duties of the Sparta Groundwater Conservation District and the Capital Area Groundwater Conservation District; to provide for registration for certain water wells; to provide for the Ground Water Management Task Force; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 36:358(C) is hereby amended and reenacted and R.S.

36:359(K) and 802.18 are hereby enacted to read as follows:

§358. Offices; purposes and functions

* * *

C. The office of conservation, in accordance with law, shall exercise the functions of the state with respect to the regulation, conservation, and use of the natural resources of the state which are not specifically within the jurisdiction of other state departments or agencies. Its functions shall include but not be limited to the conservation of the oil and gas resources of the state and matters pertaining thereto; the promotion and encouragement of exploration, production, and refining efforts for oil, intrastate gas, and other hydrocarbons; the control and allocation of energy supplies and distribution; the lease or construction and operation of intrastate pipeline systems; the implementation and enforcement of any emergency gas shortage allocation plan and the setting of priorities; ~~and~~ regulation of the minimum sale price of intrastate natural gas, and management of ground water resources all in accordance with applicable laws.

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§359. Transfer of agencies and functions to Department of Natural Resources

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R.S. 36:359(K) is all new law.

K. The Ground Water Resources Commission as provided in R.S. 38:3097.1 through 3097.6 shall be placed within the office of conservation, Department of Natural Resources, and shall exercise its powers, duties, functions, and responsibilities as provided in R.S.

36:802.18.

* * *

§802.18. Transfer; Ground Water Resources Commission

R.S. 36:802.18 is all new law.

The Ground Water Resources Commission placed in the office of conservation, Department of Natural Resources, by R.S. 36:359(K) shall exercise and carry out all powers, duties, functions, and responsibilities as provided by R.S. 36:802, except that the commission's powers, duties, functions, and responsibilities are in the nature of policymaking and adjudication. The commission shall continue to exercise all advising powers, duties, functions, and responsibilities provided by law.

Section 2. R.S. 38:3076(A)(introductory paragraph) is hereby amended and reenacted and R.S. 38:3076(A)(24), 3087.136(4), and Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950, comprised of 3097.1 through 3097.6, are hereby enacted to read as follows:

§3076. Powers of the board

A. The board shall ~~have authority~~ **work with the commissioner of conservation in his responsibilities** to do all things necessary to prevent waste of groundwater resources, and to prevent or alleviate damaging or potentially damaging subsidence of the land surface caused by withdrawal of groundwater within the district. ~~The~~ **In conjunction with the commissioner of conservation the** board shall have authority to do, as required, the following:

* * *

R.S. 38:3076(A)(24) is all new law.

(24) To advise and consult with the commissioner of

conservation and the Ground Water Resources Commission on matters that impact water resources within the board's jurisdiction.

* * *

§3087.136. Powers of the board

The board shall conduct a study and survey of the groundwater resources in the district, including but not limited to consideration of what is necessary or advisable to conserve groundwater resources and where appropriate, prevent or alleviate damaging or potentially damaging drawdowns, land surface subsidence and groundwater quality degradation. For this purpose, the board shall hold hearings and may:

* * *

R.S. 38:3087.136(4) is all new law.

(4) Advise and consult with the commissioner of conservation and the Ground Water Resources Commission on matters that impact water resources within the board's jurisdiction.

* * *

CHAPTER 13-A-1. GROUND WATER RESOURCES MANAGEMENT

Chapter 13-A-1 is all new law.

§3097.1. Legislative findings; purpose; effect

R.S. 38:3097.1 is all new law.

A. As the effective management and planning in the utilization of the state's water resources is hereby found and declared to be a matter of public interest, the state must have a comprehensive ground water management program. Said program must take into consideration the requirements, needs, and obligations of all stakeholders of water in the state of Louisiana. The program shall be based on good management practices, sound science, and economics

according to generally accepted principles in those disciplines. It must include as a goal the long-term sustainability of the state's ground water aquifers and preservation of the state's ecological welfare, while considering the economic value thereof to the state's role in interstate commerce and the economic welfare of its citizens. Further, it must provide for the efficient administration in the utilization and management of ground water resources, including the gathering of data related to the state's water resources. Thus, the state's water resources must be protected, conserved, managed, and replenished in an effective manner, with due regard for the foregoing considerations and in the best interest of all the citizens of the state.

B. The legislature hereby recognizes the need for uniformity in the establishment of a comprehensive ground water management program. Therefore, the state shall have exclusive jurisdiction over the management of ground water and this Chapter shall supersede and preempt any rule, regulation, code, statute, or ordinance of any political subdivision or other unit of local government. However, nothing contained in this Chapter shall be construed to deny such local government the authority over siting facilities pursuant to any general land use planning or zoning or to deny soil and water conservation districts powers granted pursuant to R.S. 3:1208.

C. In accordance with the legislative intent provided herein, the statewide ground water resource management program and any rule, regulation, or order of the commissioner shall recognize historic use of ground water resources in the state and may incorporate the use of appropriate incentives to encourage conservation of ground water resources and the appropriate utilization of alternate water supplies

where appropriate. Consistent with the provisions of this Chapter and in consultation with the commissioner, the incentives and provisions of alternate water resources may be provided by the state, or any local subdivision thereof, by virtue of tax incentives, tax credits, and physical projects transporting or providing alternate water resources to existing ground water users and by any private person with an interest in conserving such ground water resources for public use.

§3097.2. Definitions

R.S. 38:3097.2 is all new law.

Unless the context otherwise requires, the following terms shall have the following meanings for purposes of this Chapter:

(1) "Beneficial use" means the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purpose, or any other advantageous purpose.

(2) "Critical ground water area" shall mean an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front, water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impact, or causing serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts.

(3) "Commission" shall mean the Ground Water Resources Commission, established by R.S. 38:3097.4.

(4) "Commissioner" shall mean the commissioner of conservation.

(5) "Domestic well" shall mean a water well used exclusively to supply the household needs of the owner, lessee, or his family. Uses

may include but are not limited to drinking, cooking, washing, sanitary purposes, lawn and garden watering, and caring for pets. Domestic wells shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds.

(6) "Ground water" is water suitable for any beneficial use percolating below the earth's surface which contains fewer than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

(7) "Ground water emergency" shall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

(8) "Historic ground water production" means the average annual production of a ground water well since the calendar year 1995.

(9) "Large volume well" means a well with an exterior casing size of eight inches or greater in diameter, or as defined by rules and regulations promulgated by the commissioner pursuant to the Administrative Procedure Act.

(10) "Person" shall mean any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

(11) "Replacement well" shall mean a well located within one

thousand feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

(12) "Spacing" means the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

(13) "Sustainability" means the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

(14) "User" shall mean any person who is making beneficial use of ground water from a well or wells owned or operated by such person.

(15) "Well" or "water well" shall mean any well drilled or constructed for the principal purpose of producing ground water.

§3097.3. Commissioner of conservation; powers and duties

R.S. 38:3097.3 is all new law.

A. The commissioner, through the office of conservation, is empowered and responsible for the administration of all matters related to the management of the state's ground water resources by providing for the most advantageous use of the resource consistent with the protection, conservation, and replenishment thereof. The commissioner shall perform these functions to the extent such functions are not specifically within the jurisdiction of other state departments or agencies. The commissioner shall seek the advice and consultation of local governmental entities on any actions or decisions which may have

an impact upon those entities or residents within the entities' respective jurisdictions.

B. The commissioner is authorized to employ, assign, and remove personnel, including a deputy, within the Department of Natural Resources, office of conservation, to provide administrative and technical staff functions the commissioner deems necessary to carry out the powers, functions, and duties under this Chapter. Personnel actions shall be in accordance with applicable civil service laws, rules, and regulations, and with the policies and rules of the department, all subject to budgetary control and applicable laws.

C. The commissioner has authority to make, after notice and public hearings in accordance with the Administrative Procedure Act, any reasonable rules, regulations, and orders that are necessary from time to time in the proper administration and enforcement of this Chapter, including rules, regulations, or orders for the following purposes:

(1) Do all things necessary to prevent waste of water resources.

(2) Prevent or alleviate damaging or potentially damaging salt water movement or water level decline, and loss of sustainability in the state's aquifers in accordance with Paragraph (4) of this Subsection.

(3) Prevent subsidence of the land surface caused by the withdrawal of ground water within the state in accordance with Paragraph (4) of this Subsection.

(4)(a) Require registration of all new wells by the owners. Such registration shall at a minimum require the date drilled or the estimated date to be drilled, the name of the driller, the current ownership, and the projected location of the well in latitude, longitude, and depth, and

casing size together with such other information as the commissioner may reasonably require. The commissioner and the Department of Transportation and Development shall cooperate to insure the efficient and effective collection of well data. Registration shall be in the form of a notice of intent to drill submitted to the commissioner at least sixty days prior to drilling the well, except for the following types of wells which shall be registered no later than sixty days after completing the well:

(i) Domestic well.

(ii) Replacement well.

(iii) Drilling rig supply well, used only for the duration of the oil and gas drilling operation at the drilling location where sited for the immediate needs of rig operations.

(iv) Drought relief wells.

(v) All other wells the commissioner exempts for just cause.

(b) Within thirty days of receiving the well registration, the commissioner shall review the submitted information. During the thirty-day review period, the commissioner may either issue an order to the owner placing restrictions on the well or requesting further reasonable information on the well or may take no action. Prior to any order placing a restriction on a well, the commissioner shall determine, on the basis of good management practices and sound science, that such action is necessary to prevent adverse impacts to the sustainability of the aquifer from which the proposed well is to produce. An order placing restrictions on spacing may also be issued to avoid direct adverse impacts to existing wells. Restrictions and requests for information shall be subject to the following:

(i) For large volume wells or wells within a critical ground water area, the commissioner may issue to the owner of such well an order fixing allowable production, spacing, and metering necessary to properly manage the state's ground water resources consistent with R.S. 38:3097.6(B)(3). Before issuing any order placing restrictions on a well outside a critical ground water area, the commissioner shall consider a well owner's efforts to develop alternate water sources.

(ii) For all other wells located outside a critical ground water area, an order issued by the commissioner may only fix spacing of the well.

(iii) If more information is requested, the commissioner shall have an additional thirty days after receiving the additional information for review. The commissioner's request for further information may be appealed to the commission to determine the reasonableness of the request. Such determination shall be made within forty-five days from the date of the appeal.

(5) Determine critical ground water areas in accordance with R.S. 38:3097.6.

(6) Collect data with respect to water wells and water resources.

(7) Continue development of a statewide ground water resource management program that shall include but not be limited to evaluation of the state's water resources including current and projected demands; development of a water use conservation program; study of alternatives to ground water use, such as surface water to include treatment and transmission system, and reclaimed water; incentives for conservation; use of alternative technologies; and education and conservation programs. The plan should stress conservation as the primary

mechanism for the protection of the state's ground water resources.

(8) Develop a contingency plan to respond to a ground water emergency. Such a plan shall provide that ground water needed for human consumption shall have the highest priority. If the commissioner declares a ground water emergency, he shall define the geographical extent of the area included in the emergency by rule or order, may retain personnel or let contracts as necessary with persons who shall operate under his direction to abate the emergency conditions, and may fix the allowable production, spacing, and depth for wells within the area in such a way that the combined production of ground water will not have long-term adverse effects on the aquifer.

(9) Authorize the temporary use of drought relief wells for agricultural use in times of drought upon a determination that sufficient water resources are otherwise not available. The commissioner shall fix the allowable production, spacing, and depth for such wells in the issuance of an emergency order in such a way that the combined production of ground water from such wells will not have long-term adverse effects on the aquifer.

(10) Enter interagency agreements and interstate compacts in order to manage ground water resources. Such interstate compacts shall only be entered upon approval of the House Committee on the Environment and the Senate Committee on Environmental Quality.

D. Any rule or regulation promulgated or any critical ground water area declared by the Ground Water Management Commission pursuant to authority granted by Act No. 446 of the 2001 Regular Session shall remain in effect until July 1, 2004, or until such time as the commissioner promulgates rules pursuant to this Section or reviews

any previously declared critical area.

§3097.4. Ground Water Resources Commission; membership; powers
and responsibilities

R.S. 38:3097.4 is all new law.

A. The Ground Water Resources Commission is hereby created
and shall be composed of the following members:

- (1) The governor or his designee.
- (2) The commissioner of conservation or his designee.
- (3) The commissioner of agriculture and forestry or his
designee.
- (4) The secretary of the Department of Economic Development
or his designee.
- (5) The secretary of the Department of Environmental Quality
or his designee.
- (6) The secretary of the Department of Health and Hospitals or
his designee.
- (7) The secretary of the Department of Wildlife and Fisheries
or his designee.
- (8) The secretary of the Department of Transportation and
Development or his designee.
- (9) The director of the Governor's Office of Coastal Activities
or his designee.
- (10) One member appointed by the governor, who is a geologist
or an engineer with expertise in ground water resource management.
- (11) One member appointed by the governor from a list of four
nominations submitted jointly by the Louisiana Chemical Association,
the Louisiana Mid-Continent Oil & Gas Association, the Louisiana

Association of Business and Industry, and the Louisiana Pulp & Paper Association.

(12) One member appointed by the governor from a list of three names nominated by the Louisiana Farm Bureau.

(13) One member appointed by the governor from a list of three nominations submitted by the Police Jury Association of Louisiana.

(14) One member appointed by the governor from a list of three nominations submitted by the Louisiana Municipal Association.

(15) One member appointed by the governor from a list of three nominations submitted by the Sparta Groundwater Conservation District Board of Commissioners.

(16) One member appointed by the governor from a list of three nominations submitted by the board of commissioners of the Capital Area Groundwater Conservation District.

(17) One member appointed by the governor who resides or works in the geographical area of the state underlain by the Chicot aquifer.

(18) One member appointed by the governor from a list of three nominations submitted by the Louisiana Landowners Association.

(19) One member appointed by the governor from a list of three names submitted by the Louisiana Wildlife Federation, Coalition to Restore Coastal Louisiana, and the League of Women Voters.

B. The appointed members of the commission shall serve four-year terms except for the initial term, in which the governor shall designate the terms of office so that three members shall serve a one-year term, three members shall serve a two-year term, and four members shall serve a three-year term. No appointed member shall

serve more than two consecutive terms. In case of a vacancy, the governor shall appoint a replacement to fill the unexpired term. Appointed members shall not be compensated for their services, except the commissioner may promulgate rules and regulations to provide for travel expenses. Appointed members shall be considered as such, and not elected, for the purposes of R.S. 42:1102 et seq.

C. The governor or his designee shall serve as chairman of the commission. The commission shall meet at least once per quarter, but may meet more often as necessary.

D. The commission shall have the authority to do the following:

(1) Review and approve or reject any orders of the commissioner placing restrictions on wells upon petition by the owner of the affected well or proposed well or any owner of a well in the same aquifer which may be adversely impacted by the well in question. In reviewing such decisions the commissioner shall not serve as a voting member of the commission. The order of the commissioner shall be rejected only if the commission concludes, after a review of the record, that a reasonable factual basis does not exist for the commissioner's decision. Rejected orders shall be returned to the commissioner for reconsideration. An order that has been returned to the commissioner twice shall be considered a final decision and eligible for judicial review pursuant to R.S. 38:3097.5.

(2) Review rules and regulations proposed by the commissioner pursuant to the proper administration and enforcement of this Chapter.

(3) Continue the development, in cooperation with the commissioner, of a statewide ground water resource management program that shall include but not be limited to evaluation of the state's

ground water resources including current and projected demands; development of a water use conservation program; study of alternatives to ground water use, such as surface water to include treatment and transmission system, and reclaimed water; incentives for conservation; use of alternative technologies; and education and conservation programs. The plan should stress conservation as the primary mechanism for the protection of the state's ground water resources. The commission shall also hold public hearings and consult with local governmental entities in the development of this program.

(4) Review the contingency plan developed by the commissioner to respond to a ground water emergency.

(5) The commission may direct the commissioner to promulgate rules and regulations for the appointment or designation of up to five regional bodies based on the general location of major aquifer systems and water sources of the state and composed of local stakeholders who are representative of current users. Such bodies may gather data and provide local input to the commission and the commissioner.

(6) At their discretion, attend all public meetings called by the commissioner pursuant to his power and duties in this Chapter.

§3097.5. Judicial review

R.S. 38:3097.5 is all new law.

A. The owner of the affected well or proposed well or any owner of a well in the same aquifer which may be significantly and adversely impacted by the well at issue may appeal devolutively a final determination by the commissioner only to the Nineteenth Judicial District Court. A petition for review must be filed in the district court within thirty days after notice of the final decision being appealed has

been given. Copies of the petition shall be served upon the commissioner. The district court shall grant the petition for review. The commissioner shall not be required to file an answer to the petition for review.

B. The provisions of R.S. 49:964(C), (D), (F), and (G), including the standard of review, shall apply to petitions for judicial review provided in this Section.

C. Judicial review regarding well restriction orders shall be decided by the court summarily and by preference. In no case shall the date for a final decision on the merits of such review or appeals extend beyond the ninetieth day after receipt by the court of the record for adjudication. The court in its discretion may issue further orders consistent with the Louisiana Code of Civil Procedure to carry out the summary mandate of such reviews or appeals.

§3097.6. Determination of critical ground water area

R.S. 38:3097.6 is all new law.

A. Any owner of a well that is significantly and adversely affected as a result of the movement of a salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer is a critical ground water area. Such application shall contain a statement of facts and supporting evidence substantiating the area may be a critical ground water area as defined in R.S. 30:3097.2(2). On the basis of the application, good management practices and sound science, the commissioner shall either deny the request, in writing, or issue a draft order which describes the proposed boundaries of the critical ground

water area. If the commissioner issues a draft order describing the proposed boundaries of the critical ground water area, the commissioner shall hold at least one public hearing in the locality of the proposed boundaries.

B. After holding hearings, the commissioner shall issue a written decision based on good management practices and scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. If the commissioner has determined that a critical ground water area exists, his decision shall be in the form of an order that shall describe the boundaries of the area which is determined to be a critical ground water area. The order shall also contain a plan to preserve and manage the ground water resources in that area which may include but is not limited to the following:

(1) Educational and conservation programs.

(2) Incentives to reduce ground water use.

(3) Restrictions on the amount of withdrawals by any or all users in the area. If restrictions on withdrawals are imposed, the commissioner shall consider the following:

(a) Ground water needed for human consumption and public health and safety shall have the highest priority.

(b) Uses other than human consumption and public health and safety shall have equal priority.

(c) Historical use.

(d) Ability, including economic ability, of a particular user to relocate to an alternative source of water.

(e) User's conservation efforts and actual reductions in water usage, taking into account historic ground water production.

Section 3. R.S. 49:968(B)(11) is hereby amended and reenacted to read as follows:

§968. Review of agency rules; fees

* * *

B. * * *

(11) The Department of Natural Resources and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources. However, for exercises of the commissioner of conservation’s rule-making authority pursuant to Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950, the department shall submit the report to the House Committee on the Environment and the Senate Committee on Environmental Quality.

* * *

Section 4. R.S. 36:4(X) and Chapter 13-C of Title 38 of the Louisiana Revised Statutes of 1950, comprised of R.S. 38:3099.1 through 3099.4, are hereby repealed in their entirety.

Section 5 is all new law.

Section 5. (A) A comprehensive ground water management program must continue to be developed and implemented. To that end, there is hereby created a Ground Water Management Advisory Task Force with membership as follows:

- (1) A person representing the office of the governor appointed by the governor.
- (2) The president of the Louisiana Senate or his designee.
- (3) The speaker of the Louisiana House of Representatives or his designee.

(4) The chair of the Senate Committee on Natural Resources or his designee.

(5) The chair of the House Committee on Natural Resources or his designee.

(6) The chair of the Senate Committee on Environmental Quality or his designee.

(7) The chair of the House Committee on Environment or his designee.

(8) The Louisiana State Conservationist, USDA Natural Resources Conservation Service or his designee.

(9) The chancellor of the Louisiana State University Agricultural Center or his designee.

(10) The executive director of the state soil and water conservation committee.

(11) The Louisiana district chief, United States Geological Survey, Water Resources Division, or his designee.

(12) The district engineer of the United States Army Corps of Engineers, New Orleans District, or his designee.

(13) The director of the Louisiana Geological Survey or his designee.

(14) The executive director of the Louisiana Wildlife Federation or his designee.

(15) The president of the Louisiana Farm Bureau or his designee.

(16) The president of the Louisiana Chemical Association or his designee.

(17) The executive director of the Coalition to Restore Coastal Louisiana or his designee.

(18) The president of the Louisiana Rice Growers Association or his designee.

(19) The executive director of Louisiana Mid-Continent Oil and Gas Association or his designee.

(20) The president of the Louisiana Catfish Farmers Association or his designee.

(21) One representative of the Louisiana Rural Water Association.

(22) The president of the Cotton Producers Association or his designee.

(23) One representative of the Capital Area Groundwater Conservation District.

(24) One representative of the Sparta Groundwater Conservation District.

(25) The executive director of the Louisiana Forestry Association or his designee.

(26) One representative of the Sabine River Authority.

(27) The president of the American Sugar Cane League or his designee.

(28) One representative of the Red River Compact Commission.

(29) The executive director of the Lake Pontchartrain Foundation or his designee.

(30) The president of the Louisiana Soybean Association or his designee.

(31) The president of the Louisiana Cattlemen Association or his designee.

(32) The executive director of the Barataria-Terrebonne National Estuary Program or his designee.

(33) The president of the Louisiana Crawfish Farmers Association or his designee.

(34) The chairman of the Louisiana Pulp and Paper Association or his

designee.

(35) A representative of the Louisiana Ground Water Association.

(36) A representative of the Louisiana Engineering Society who is a registered engineer with reservoir experience.

(37) The dean of the Southern University College of Agriculture, Family, and Consumer Science or his designee.

(38) A representative from Louisiana State University, Department of Geology.

(39) A representative from Louisiana Tech University, Department of Geology.

(40) A representative from University of Louisiana at Monroe, Department of Geology.

(41) A representative from University of Louisiana at Lafayette, Department of Geology.

(42) A representative of the Association of Public Utilities.

(43) A representative of the Irrigation Association.

(44) A representative of the League of Women Voters.

(45) A representative of the Citizens for a Clean Environment.

(46) A representative of Louisiana Independent Oil and Gas Association.

(47) A representative from the Louisiana State University at Shreveport Watershed Management Initiative.

(48) A representative of the Municipal Water Association.

(49) A representative of the New Orleans Sewerage and Water Board.

(B) The Ground Water Management Advisory Task Force shall assist the commissioner of conservation and the Ground Water Resource Commission in continuing to develop a statewide ground water resource

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management program. Such ground water management program shall include but not be limited to evaluation of the state's ground water resources including current and projected demands on the aquifers of the state; development of a water use conservation program; study of alternatives to ground water use, such as surface water to include treatment and transmission system, and reclaimed water; incentives for conservation; use of alternative technologies; and education and conservation programs. The plan should stress conservation as the primary mechanism for the protection of the state's ground water resources.

(C) The task force shall meet at least once per quarter, or more frequently as necessary. The task force shall report to the commissioner and the commission periodically on the activities and progress of the task force on continuing to develop the comprehensive ground water management program.

Section 6. This Act shall become effective on July 1, 2003; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2003, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

CHAPTER 13-A-1. GROUND WATER RESOURCES MANAGEMENT

§3097.1. Legislative findings; purpose; effect

A. As the effective management and planning in the utilization of the state's water resources is hereby found and declared to be a matter of public interest, the state must have a comprehensive ground water management program. Said program must take into consideration the requirements, needs, and obligations of all stakeholders of water in the state of Louisiana. The program shall be based on good management practices, sound science, and economics according to generally accepted principles in those disciplines. It must include as a goal the long-term sustainability of the state's ground water aquifers and preservation of the state's ecological welfare, while considering the economic value thereof to the state's role in interstate commerce and the economic welfare of its citizens. Further, it must provide for the efficient administration in the utilization and management of ground water resources, including the gathering of data related to the state's water resources. Thus, the state's water resources must be protected, conserved, managed, and replenished in an effective manner, with due regard for the foregoing considerations and in the best interest of all the citizens of the state.

B. The legislature hereby recognizes the need for uniformity in the establishment of a comprehensive ground water management program. Therefore, the state shall have exclusive jurisdiction over the management of ground water and this Chapter shall supersede and preempt any rule, regulation, code, statute, or ordinance of any political subdivision or other unit of local government. However, nothing contained in this Chapter shall be construed to deny such local government the authority over siting facilities pursuant to any general land use planning or zoning or to deny soil and water conservation districts powers granted pursuant to R.S. 3:1208.

C. In accordance with the legislative intent provided herein, the statewide ground water resource management program and any rule, regulation, or order of the commissioner shall recognize historic use of ground water resources in the state and may incorporate the use of appropriate incentives to encourage conservation of ground water resources and the appropriate utilization of alternate water supplies where appropriate. Consistent with the provisions of this Chapter and in consultation with the commissioner, the incentives and provisions of alternate water resources may be provided by the state, or any local subdivision thereof, by virtue of tax incentives, tax credits, and physical projects transporting or providing alternate water resources to existing ground water users and by any private person with an interest in conserving such ground water resources for public use.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.2. Definitions

Unless the context otherwise requires, the following terms shall have the following meanings for purposes of this Chapter:

(1) "Area of ground water concern" shall mean an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front, water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impact, or causing serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts. An area of ground water concern, declared pursuant to R.S. 38:3097.6, shall be designated a critical area of ground water concern when the commissioner finds that sustainability cannot be maintained without withdrawal restrictions.

(2) "Beneficial use" means the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purpose, or any other advantageous purpose.

(3) "Commission" shall mean the Ground Water Resources Commission, established by R.S. 38:3097.4.

(4) "Commissioner" shall mean the commissioner of conservation.

(5) "Domestic well" shall mean a water well used exclusively to supply the household needs of the owner, lessee, or his family. Uses may include but are not limited to drinking, cooking, washing, sanitary purposes, lawn and garden watering, and caring for pets. Domestic wells shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds.

(6) "Ground water" is water suitable for any beneficial use percolating below the earth's surface which contains fewer than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

(7) "Ground water emergency" shall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

(8) "Historic ground water production" means the average annual production of a ground water well since the calendar year 1995.

(9) "Large volume well" means a well with an exterior casing size of eight inches or greater in diameter, or as defined by rules and regulations promulgated by the commissioner pursuant to the Administrative Procedure Act.

(10) "Person" shall mean any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

(11) "Replacement well" shall mean a well located within one thousand feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

(12) "Spacing" means the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

(13) "Sustainability" means the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

(14) "User" shall mean any person who is making beneficial use of ground water from a well or wells owned or operated by such person.

(15) "Well" or "water well" shall mean any well drilled or constructed for the principal purpose

of producing ground water.

Acts 2003, No. 49, §2, eff. July 1, 2003; Acts 2005, No. 225, §1, eff. June 29, 2005.

NOTE: See Acts 2005, No. 225, §2, relative to pending and previous declarations.

§3097.3. Commissioner of conservation; powers and duties

A. The commissioner, through the office of conservation, is empowered and responsible for the administration of all matters related to the management of the state's groundwater resources by providing for the most advantageous use of the resource consistent with the protection, conservation, and replenishment thereof. The commissioner shall perform these functions to the extent such functions are not specifically within the jurisdiction of other state departments or agencies. The commissioner shall seek the advice and consultation of local governmental entities on any actions or decisions which may have an impact upon those entities or residents within the entities' respective jurisdictions.

B. The commissioner is authorized to employ, assign, and remove personnel, including a deputy, within the Department of Natural Resources, office of conservation, to provide administrative and technical staff functions the commissioner deems necessary to carry out the powers, functions, and duties under this Chapter. Personnel actions shall be in accordance with applicable civil service laws, rules, and regulations, and with the policies and rules of the department, all subject to budgetary control and applicable laws.

C. The commissioner has authority to make, after notice and public hearings in accordance with the Administrative Procedure Act, any reasonable rules, regulations, and orders that are necessary from time to time in the proper administration and enforcement of this Chapter, including rules, regulations, or orders for the following purposes:

(1) Do all things necessary to prevent waste of water resources.

(2) Prevent or alleviate damaging or potentially damaging salt water movement or water level decline and loss of sustainability in the state's aquifers in accordance with Paragraph (4) of this Subsection.

(3) Prevent subsidence of the land surface caused by the withdrawal of groundwater within the state in accordance with Paragraph (4) of this Subsection.

(4)(a) Require registration of all new wells by the owners. Such registration shall at a minimum require the date drilled or the estimated date to be drilled, the name of the driller, the current ownership, and the projected location of the well in latitude, longitude, and depth, and casing size together with such other information as the commissioner may reasonably require. Registration shall be in the form of a notice of intent to drill submitted to the commissioner at least sixty days prior to drilling the well, except for the following types of wells which shall be registered no later than sixty days after completing the well:

(i) Domestic well.

(ii) Replacement well.

(iii) Drilling rig supply well, used only for the duration of the oil and gas drilling operation at the drilling location where sited for the immediate needs of rig operations.

(iv) Drought relief wells.

(v) All other wells the commissioner exempts for just cause.

(b) Within thirty days of receiving the well registration, the commissioner shall review the submitted information. During the thirty-day review period, the commissioner may either issue an order to the owner placing restrictions on the well or requesting further reasonable information on the well or may take no action. Prior to any order placing a restriction on a well, the commissioner shall determine, on the basis of good management practices and sound science, that such action is necessary to prevent adverse impacts to the sustainability of the aquifer from which the proposed well is to produce. An order placing restrictions on spacing may also be issued to avoid direct adverse impacts to existing wells. Restrictions and requests for information shall be subject to the following:

(i) For large volume wells or wells within a critical area of groundwater concern, the commissioner may issue to the owner of such well an order fixing allowable production, spacing, and metering necessary to properly manage the state's groundwater resources consistent with R.S. 38:3097.6

(B)(3). Before issuing any order placing restrictions on a well outside a critical area of groundwater concern, the commissioner shall consider a well owner's efforts to develop alternate water sources.

(ii) For all other wells located outside a critical area of groundwater concern, an order issued by the commissioner may only fix spacing of the well.

(iii) If more information is requested, the commissioner shall have an additional thirty days after receiving the additional information for review. The commissioner's request for further information may be appealed to the commission to determine the reasonableness of the request. Such determination shall be made within forty-five days from the date of the appeal.

(5) Determine areas of groundwater concern and designate critical areas of groundwater concern in accordance with R.S. 38:3097.6.

(6) Collect data with respect to water wells and water resources.

(7) Continue development of a statewide groundwater resource management program that shall include but not be limited to evaluation of the state's water resources including current and projected demands; development of a water use conservation program; study of alternatives to groundwater use, such as surface water to include treatment and transmission system, and reclaimed water; incentives for conservation; use of alternative technologies; and education and conservation programs. The plan should stress conservation as the primary mechanism for the protection of the state's groundwater resources.

(8) Develop a contingency plan to respond to a groundwater emergency. Such a plan shall provide that groundwater needed for human consumption shall have the highest priority. If the commissioner declares a groundwater emergency, he shall define the geographical extent of the area included in the emergency by rule or order, may retain personnel or let contracts as necessary with persons who shall operate under his direction to abate the emergency conditions, and may fix the allowable production, spacing, and depth for wells within the area in such a way that the combined production of groundwater will not have long-term adverse effects on the aquifer.

(9) Authorize the temporary use of drought relief wells for agricultural use in times of drought.

(10) Enter interagency agreements and interstate compacts in order to manage groundwater resources. Such interstate compacts shall be entered only upon approval of the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality.

D. Any rule or regulation promulgated or any critical groundwater area declared by the Ground Water Management Commission pursuant to authority granted by Act No. 446 of the 2001 Regular Session shall remain in effect until July 1, 2004, or until such time as the commissioner promulgates rules pursuant to this Section or reviews any previously declared critical area.

E. The commissioner shall not authorize or issue any permit which allows the use or withdrawal of three million gallons or more of groundwater per day from the Chicot aquifer that shall be injected into the subsurface in a parish whose population is more than seventy thousand and less than seventy-five thousand.

F.(1) The commissioner, upon determining that a violation of Chapters 13-A, 13-A-1, or 13-B of this Title or the regulations adopted thereunder has occurred, may impose a civil penalty as provided in this Chapter. Additionally, upon determining that a violation of Chapters 13-A, 13-A-1, or 13-B of this Title or the rules and regulations made pursuant to Chapters 13-A, 13-A-1, or 13-B of this Title has occurred, the commissioner may issue an order requiring compliance. Any such order shall state, with reasonable specificity, the nature of the violation, any cessation of activities or affirmative operations required to achieve compliance, and a time limit within which compliance with the order must be achieved. Noncompliance with any such order to comply shall constitute a violation of Chapters 13-A, 13-A-1, or 13-B of this Title, and the commissioner may impose a civil penalty for such violation. Any person subjected to a civil penalty shall have the right to a public hearing if requested in writing, which

written request shall suspend the imposition of penalty until final action is taken by the commissioner.

(2) The commissioner is hereby authorized to assess civil penalties for each day of violation of the provisions of Chapters 13-A, 13-A-1, or 13-B of this Title as follows:

(a) For violations of rules and regulations promulgated pursuant to R.S. 38:3097.3(C)(4)(a) - failure to register a well no later than sixty days after completion of the well:

- (i) First offense - between zero and fifty dollars.
- (ii) Second offense - between fifty and one hundred dollars.
- (iii) Third and subsequent offense - between one hundred and five hundred dollars.

(b) For violations of rules and regulations promulgated pursuant to R.S. 38:3097.3(C)(4)(a) - failure to submit a notice of intent to drill a well at least sixty days prior to drilling:

- (i) First offense - between zero and two hundred dollars.
- (ii) Second offense - between two hundred and four hundred dollars.
- (iii) Third and subsequent offense - between four hundred and one thousand dollars.

(c) For violations of rules and regulations promulgated pursuant to R.S. 38:3097.3(C)(4)(a) - failure to submit a notice of intent to drill a well prior to drilling:

- (i) First offense - five hundred dollars.
- (ii) Second offense - one thousand dollars.
- (iii) Third and subsequent offense - two thousand five hundred dollars.

(d) For violations of rules and regulations promulgated pursuant to R.S. 38:3097.3(C)(4)(b) - failure to comply with restrictions, terms, or conditions set forth by order of the commissioner:

- (i) First offense - one thousand dollars.
- (ii) Second offense - two thousand five hundred dollars.
- (iii) Third and subsequent offense - five thousand dollars.

(e) For violations of rules and regulations promulgated pursuant to R.S. 38:3097.3(C)(9) - failure to comply with an emergency order authorizing the temporary use of drought relief wells:

- (i) First offense - two hundred dollars.
- (ii) Second offense - four hundred dollars.
- (iii) Third and subsequent offense - one thousand dollars.

(f) For violations of rules and regulations promulgated pursuant to R.S. 38:3097.3(C)(8) - failure to comply with any restrictions, terms, or conditions set forth by the commissioner in response to a groundwater emergency:

- (i) First offense - one thousand dollars.
- (ii) Second offense - two thousand five hundred dollars.
- (iii) Third and subsequent offense - five thousand dollars.

(g) For violations of Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950 for any other violations not otherwise specified in this Paragraph:

- (i) First offense - between zero and two hundred dollars.
- (ii) Second offense - between two hundred and four hundred dollars.
- (iii) Third and subsequent offense - between four hundred and one thousand dollars.

(h) For violations of Chapter 13-A of this Title and not otherwise specified in that Chapter:

- (i) First offense - between one and two hundred dollars.
- (ii) Second offense - between two hundred one and four hundred dollars.
- (iii) Third offense and subsequent offenses - between four hundred one and one thousand

dollars.

(i) For violations of Chapter 13-B of this Title and not otherwise specified in that Chapter:

- (i) First offense - between one hundred and one thousand dollars.
- (ii) Second offense - between one thousand one and two thousand five hundred dollars.

(iii) Third and subsequent offenses - between two thousand five hundred one and five thousand dollars.

Acts 2003, No. 49, §2, eff. July 1, 2003; Acts 2005, No. 225, §1, eff. June 29, 2005; Acts 2006, No. 29, §1; Acts 2008, No. 241, §2; Acts 2008, No. 580, §4; Acts 2008, No. 581, §1; Acts 2009, No. 4, §1; Acts 2009, No. 437, §1, eff. Jan. 1, 2010.

NOTE: See Acts 2005, No. 225, §2, relative to pending and previous declarations.

§3097.5. Judicial review

A. The owner of the affected well or proposed well or any owner of a well in the same aquifer which may be significantly and adversely impacted by the well at issue may appeal devolutively a final determination by the commissioner only to the Nineteenth Judicial District Court. A petition for review must be filed in the district court within thirty days after notice of the final decision being appealed has been given. Copies of the petition shall be served upon the commissioner. The district court shall grant the petition for review. The commissioner shall not be required to file an answer to the petition for review.

B. The provisions of R.S. 49:964(C), (D), (F), and (G), including the standard of review, shall apply to petitions for judicial review provided in this Section.

C. Judicial review regarding well restriction orders shall be decided by the court summarily and by preference. In no case shall the date for a final decision on the merits of such review or appeals extend beyond the ninetieth day after receipt by the court of the record for adjudication. The court in its discretion may issue further orders consistent with the Louisiana Code of Civil Procedure to carry out the summary mandate of such reviews or appeals.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.6. Determination of area of groundwater concern

A. Any owner of a well that is significantly and adversely affected as a result of the movement of a saltwater front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer is an area of groundwater concern. Such application shall contain a statement of facts, and supporting evidence substantiating the area may be an area of groundwater concern as defined in R.S. 38:3097.2. On the basis of the application, good management practices, and sound science, the commissioner shall either deny the request, in writing, or issue a draft order which describes the proposed boundaries of the area of groundwater concern. If the commissioner issues a draft order describing the proposed boundaries of the area, the commissioner shall hold at least one public hearing in the locality of the proposed boundaries. At least thirty days prior to holding the public hearing, the commissioner shall provide copies of the draft order to the House Committee on Natural Resources and Environment and to the Senate Committee on Natural Resources.

B. After holding hearings, the commissioner shall issue a written decision based on good management practices and scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. If the commissioner has determined that an area of ground water concern exists, his decision shall be in the form of an order that shall describe the boundaries of the area which is determined to be an area of ground water concern. The order shall also contain a plan to preserve and manage the ground water resources in that area which may include but is not limited to the following:

(1) Educational and conservation programs.

(2) Incentives to reduce ground water use.

(3) If the commissioner designates an area a critical area of ground water concern, the order may restrict the amount of withdrawals by any or all users in the area. In determining restrictions on withdrawals, the commissioner shall consider the following:

(a) Ground water needed for human consumption and public health and safety shall have the highest priority.

(b) Uses other than human consumption and public health and safety shall have equal priority.

(c) Historical use.

(d) Ability, including economic ability, of a particular user to relocate to an alternative source of water.

(e) User's conservation efforts and actual reductions in water usage, taking into account historic ground water production.

Acts 2003, No. 49, §2, eff. July 1, 2003; Acts 2005, No. 225, §1, eff. June 29, 2005; Acts 2008, No. 580, §4.

NOTE: See Acts 2005, No. 225, §2, relative to pending and previous declarations.