AN ACT

To enact Chapter 9-B of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:961 through 963, relative to the use of surface water; to provide for definitions; to provide for cooperative endeavor agreements to withdraw running surface water; to provide for findings and purpose; to provide for requirements for cooperative endeavor agreements to withdraw running surface water; to provide for the authority of the secretary of the Department of Natural Resources; to provide for legislative intent; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 9-B of Title 30 of the Louisiana Revised Statutes of 1950, comprised of R.S. 30:961 through 963, is hereby enacted to read as follows:

CHAPTER 9-B. SURFACE WATER MANAGEMENT

§961. Cooperative endeavor agreements; withdrawal of surface water; intent

A. As provided by this Chapter and except as otherwise provided by law, a person or entity may enter into a cooperative endeavor agreement to withdraw running surface water as described in this Chapter. The cooperative endeavor agreement shall prohibit the resale of withdrawn running surface water for a price greater than provided for in the agreement; however, a person or entity may receive compensation for the transportation, manufacturing, or processing of withdrawn running surface water. Unless otherwise provided by law, all cooperative endeavor agreements to withdraw running surface water, and any assignment of such agreement, shall be approved by the secretary as provided in this Chapter. No provision contained in this Chapter should be construed as a requirement for any.
person or entity to enter into any cooperative endeavor agreement to withdraw
running surface water. This Chapter shall have no effect on the rights provided for
in Civil Code Articles 657 and 658 or any rights held by riparian owners in
accordance with the laws of this state. It is also the intent of the legislature that
should any portion of this Chapter be found to be unconstitutional that the remaining
parts shall continue in force and effect.

B. No agency or subdivision of the state otherwise authorized to enter into
a cooperative endeavor agreement to withdraw running surface water, or assignment
of such shall do so unless the said agreement is in writing, provides for fair market
value to the state, is in the public interest, and is contained on an uniform form
developed and prescribed by the State Mineral and Energy Board and approved by
the attorney general. Fair market value to the state shall include, but not be limited
to, the economic development, employment, and increased tax revenues created by
the activities associated with the withdrawal of running surface water. No such
cooperaive endeavor agreement to withdraw running surface water shall be valid
unless and until such agreement is approved by the secretary following the
submission of an application for approval, which the secretary shall develop and
 prescribe. The secretary shall conduct the evaluation provided for in Subsection D
of this Section and take action on the application within sixty days of the application
being deemed complete. If the secretary denies the application, the secretary shall
provide written reasons for the denial at the time of the denial.

C. Unless otherwise provided by law, the secretary is authorized to enter into
any cooperative endeavor agreement to withdraw running surface water, provided
that any such agreement complies with the prohibition against gratuitous donation
of state property by ensuring that the state receives fair market value for any water
removed, and the substance of the agreement is contained within a written
cooperative endeavor agreement as provided for in Article VII, Section 14 of the
Constitution of Louisiana.

D. The secretary shall evaluate each application for a cooperative endeavor
agreement to withdraw running surface water and each such cooperative endeavor
that he may enter to ensure that each is in the public interest. The secretary shall ensure the proposed agreement is based on best management practices and sound science, and is consistent with the required balancing of environmental and ecological impacts with the economic and social benefits found in Article IX, Section 1 of the Constitution of Louisiana. In his evaluation, the secretary shall also ensure that all cooperative endeavor agreements to withdraw running surface water, or assignments of such, adequately consider the potential and real effects of such contracted activity on the sustainability of the water body and on navigation. Any assignment of any such cooperative endeavor agreement to withdraw running surface water may be approved by the secretary in the same manner as an agreement as provided in this Section, unless otherwise provided for by law.

E. No cooperative endeavor agreement to withdraw running surface water, or an assignment of such, entered into pursuant to the provisions of this Chapter shall have a term which exceeds two years, however, such two-year terms may be renewed until December 31, 2020. A person or entity who has entered into a cooperative endeavor agreement to withdraw running surface waters or has obtained an assignment of such, may terminate such agreement effective December 31, 2012. In order to be effective, the person or entity seeking to terminate shall provide written notice by certified mail to the secretary at least thirty days prior to termination.

F. The secretary may act to protect the natural resources of the state by reducing any withdrawal of water from the running surface waters of the state otherwise agreed to be withdrawn pursuant to an agreement entered into pursuant to this Chapter, or make other conditions, including the suspension or termination of such withdrawal of water when such an action is required to protect the resource and to maintain sustainability and environmental and ecological balance. If the secretary acts to reduce or suspend the volume of water agreed to be withdrawn, he shall do so in such a manner that the total necessary reductions are proportionally borne by all users of the running surface waters, subject to this Chapter, in the area for which a reduction is required. Prior to approval, the secretary shall ensure that each
contract or agreement or assignment thereof that involved the withdrawal of the
running surface waters of the state provides for the secretary's authority, without
liability for damages, in this regard.

G.(1) The secretary, in deciding whether to approve or require changes in an
application for a cooperative endeavor agreement to withdraw running surface water,
or assignment of such, shall consider the various existing and potential users of the
resource and shall give appropriate consideration and priority to the following users
or uses in the following order of priority:

(a) Human consumption by means of a public water system or a private
water system that provides domestic potable water service.

(b) Agricultural uses that provide sustenance to animals or irrigation to
plants.

(c) Any commercial purpose or other industrial or mining activity.

(2) The secretary shall also consider the impact of any proposed contract,
agreement, assignment, or use on resource planning. By way of illustration but not
limitation, these would include any potential project or use that impacts:

(a) Stream or water flow energy.

(b) Sediment load and distribution.

(c) Navigation.

(d) Aquatic life.

(e) Other vegetation or wildlife.

(3) The management of cooperative endeavor agreements to withdraw
running surface water shall be consistent with the comprehensive master plan for
coastal restoration and protection as approved by the Coastal Protection and
Restoration Authority and the legislature.

H. Approval of an application for a cooperative endeavor agreement to
withdraw running surface water or assignment of such pursuant to this Chapter does
not obviate the need for other permits or authorizations required by law for any
proposed activity.
§962. Definitions

As used in this Chapter, the following words, terms, and phrases have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

(1) "Running surface waters" means the running waters of the state, including the waters of navigable water bodies and state owned lakes.

(2) "Secretary" means the secretary of the Department of Natural Resources, and his designees.

§963. Management by the Department of Natural Resources

A. Except as otherwise provided by law, the Department of Natural Resources shall be the state agency charged with managing and monitoring the implementation of all cooperative endeavor agreements to withdraw running surface water or assignments thereof. The secretary shall have the authority to designate where within his agency the various functions of this Chapter are to be performed, to issue contracts or enter into agreements with other public entities when required in his opinion for the efficient administration of this Chapter, and to establish any necessary policy or promulgate, in accordance with the provisions of the Administrative Procedure Act, any regulations that in his opinion are necessary for the efficient implementation of this Chapter.

B. The secretary may negotiate and enter into a cooperative endeavor agreement to withdraw running surface water under terms which the secretary deems to be most advantageous to the state and which is consistent with the policies and regulations implemented pursuant to this Chapter.

C. Where there exists a governmental entity to manage, preserve, conserve, and protect running surface water that lacks the authority to enter into cooperative endeavor agreements to withdraw running surface water, such entities may provide, by resolution, their recommendations to the secretary of any requested terms of such contracts or agreements entered into by the secretary.

Section 2. It is the express intention of the Legislature of Louisiana that nothing contained herein be interpreted as codifying, confirming, or ratifying; or overruling,
nullifying, or rejecting the statements of law contained in the Memorandum to All State

Surface Water Managers from the State Of Louisiana, Office of the Attorney General, and
the secretary of the Department of Natural Resources dated February 5, 2010, and also in
Attorney General opinions, 08-0176, 09-0028, 09-0066 and 09-0291. But rather, the intent
of the legislature with this enactment is to provide needed interim stewardship of running
surface water, as detailed in HCR No.1 of the 2010 Regular Session of the Legislature. That
resolution requests from the Ground Water Resources Commission, a report to the
legislature by March 1, 2012, with recommendations for changes necessary for optimal,
comprehensive, integrated surface and ground water management policy, so that a thorough,
deliberate, public, legislative evaluation of the issues and concerns may be had before a
permanent state policy is established. The legislature finds that, pending this legislative
process, it is necessary to immediately provide for an appropriate level of management and
availability of the state’s surface water resources in the interim period, and to provide for an
optimal level of protection and use of all the natural resources of the state. In this regard,
the express intention of the legislature is that the provisions of Chapter 9-B of Title 30 of the
Louisiana Revised Statutes of 1950, comprised of R.S. 30:961 through 963, shall be null,
void, and without effect after December 31, 2012.

Section 3. This Act shall become effective upon signature by the governor or, if not
signed by the governor, upon expiration of the time for bills to become law without signature
by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
vetoed by the governor and subsequently approved by the legislature, this Act shall become
effective on the day following such approval.