

Amend CSSB 738 (committee printing) as follows:

(1) In SECTION 2 of the bill, in the introductory language (page 1, line 42), strike "and 36.114, Water Code, are" and substitute ", Water Code, is".

(2) In SECTION 2 of the bill, in amended Section 36.113, Water Code (page 2, lines 43-45), strike stricken Subsection (g) and substitute the following:

(g) In implementing Subsection (e) or Section 36.116(b), a district may require an existing or historic user to prove the maximum annual amount of groundwater that the user applied to a beneficial use during a reasonable period established by the district that ends on or before the date on which the district publishes notice or adopts rules protecting existing or historic users under Subsection (e) or Section 36.116(b) [A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district].

(h) In implementing Subsection (g), a district may:

(1) for a user who produced groundwater only within the final year of the period established under Subsection (g), issue a permit for existing or historic use based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use;

(2) for use based on agricultural irrigation, issue a permit based on:

(A) the maximum annual amount of groundwater actually used during the period established under Subsection (g);
or

(B) the acreage irrigated during the period established under Subsection (g); or

(3) for an electric utility, a power generation company, or retail electric provider as defined by Section 31.002, Utilities Code, issue a permit based on:

(A) the amount actually used as computed under and for the period established under Subsection (g) or Subdivision (1) of this subsection; or

(B) an amount necessary to annually provide sufficient groundwater for cooling, boiler make-up, and potable purposes for use at an existing or planned power generation facility using land or the right to produce groundwater from land that was acquired by the electric utility, power generation company, or retail electric provider before May 1, 2003, to supply water to power generation facilities that on that date existed or were planned for future construction.

(i) An annual report of groundwater use previously submitted to a state agency is admissible as evidence of existing or historic use under Subsection (g) or (h).

(3) In SECTION 2 of the bill, between amended Sections 36.113 and 36.114, Water Code (page 2, between lines 45 and 46), insert the following appropriately numbered SECTIONS and renumber subsequent SECTIONS accordingly:

SECTION _____. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1132 to read as follows:

Sec. 36.1132. DEFINED HISTORIC USE PERIODS FOR CERTAIN DISTRICTS. (a) This section applies only to a groundwater conservation district created under Section 59, Article XVI, Texas Constitution, that:

(1) is, at least in part, adjacent to an international border;

(2) has within its boundaries a part of an aquifer that is regulated under Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993; and

(3) is not regulated under Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

(b) In implementing Section 36.113(e) or 36.116(b), and notwithstanding the periods described under Sections 36.113(g)(1) and (2), a district may institute a process requiring an existing or historic user to prove the maximum annual amount of groundwater that the user applied to a beneficial use during the period from:

(1) June 1, 1972, to December 31, 1991; or

(2) January 1, 1992, to January 7, 2003.

(c) In implementing Subsection (b), for a user who produced groundwater only within the final year of the period established

under Subsection (b)(2), a district shall issue a permit for existing or historic use based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use.

(d) If a district limits or reduces total permitted production within its boundaries in a manner consistent with its certified groundwater district management plan under Section 36.1072, the district shall limit or reduce the amount of permitted production of groundwater through proportionate reductions that will apply equally among classes of users in the following order, with all limitations or reductions that can be made in one class being made in that class before proceeding with limitations or reductions in the next subsequent class:

(1) new users, except as provided by Subdivision (2);

(2) the class of users described by Subsections (b)(1) and (c), or any new user who was issued a permit by the district on or before May 1, 2003, for the amount recognized in the permit; and

(3) the class of users described by Subsection (b)(2).

SECTION _____. Section 36.114, Water Code, is amended to read as follows:

(4) Between SECTIONS 5 and 6 of the bill (page 5, between lines 63 and 64), insert the following appropriately numbered SECTION and renumber subsequent SECTIONS accordingly:

SECTION _____. (a) The legislature finds that:

(1) groundwater conservation districts have existing statutory authority to protect existing or historic use under Sections 36.113(e) and 36.116(b), Water Code;

(2) in implementing Sections 36.113(e) and 36.116(b), Water Code, it is important that groundwater conservation districts, in the conservation and management of groundwater, adopt precise rules regarding existing or historic use of groundwater, and that those rules may include definite time periods during which existing or historic use must be proven; and

(3) it will benefit the state and its citizens to set express statutory guidelines that clarify the ability of groundwater conservation districts to define and identify existing or historic use periods.

(b) The changes in law made by this Act do not:

(1) limit the express or implied powers that groundwater conservation districts had before the effective date of this Act to implement Sections 36.113(e) and 36.116(b), Water Code, using reasonable time periods during which existing or historic use must be proven by a permit applicant; or

(2) invalidate rules lawfully adopted by a groundwater conservation district before the effective date of this Act that use those reasonable time periods.

(c) A district to which Section 36.1132, Water Code, as added by this Act, applies may require a well that was previously exempted by district rule from the permitting procedures of the district but that is not exempt under Section 36.117(b), Water Code, and is no longer exempted by district rule, as of the effective date of this Act, to comply with the permitting procedures and rules of the district, as amended. This subsection does not apply to the requirement to obtain a permit to drill, equip, or complete a well that was drilled, equipped, or completed under an exemption by district rule before the date of repeal of the exemption; however, this subsection does apply to the production of groundwater from or operation of such a well.