

1-1 By: Cook of Colorado (Senate Sponsor - Armbrister) H.B. No. 3035
1-2 (In the Senate - Received from the House May 19, 2003;
1-3 May 20, 2003, read first time and referred to Committee on Natural
1-4 Resources; May 26, 2003, reported favorably, as amended, by the
1-5 following vote: Yeas 8, Nays 0; May 26, 2003, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Armbrister

1-7 Amend H.B. 3035 as follows:

1-8 On page 4, line 61, strike "a district shall select a method
1-9 under Subsection (a)(2) that is appropriate based on the
1-10 hydrogeological conditions of the aquifer or aquifers in the
1-11 district" and substitute "and selecting an appropriate method under
1-12 Subsection (a)(2), a district shall select the hydrogeological
1-13 conditions of the aquifer or aquifers in the district."

1-14 COMMITTEE AMENDMENT NO. 2 By: Armbrister

1-15 Amend HB 3035 by inserting new SECTIONS 2 through 13 as
1-16 follows and renumbering the remaining sections accordingly:

1-17 SECTION 2. Section 1.03, Chapter 626, Acts of the 73rd
1-18 Legislature, Regular Session, 1993, is amended by adding
1-19 Subdivision (28) to read as follows:

1-20 (28) "Recharge facility" means a dam, reservoir, or
1-21 other recharge project, and associated facilities, structures, or
1-22 works.

1-23 SECTION 3. Section 1.07, Chapter 626, Acts of the 73rd
1-24 Legislature, Regular Session, 1993, is amended to read as follows:

1-25 Sec. 1.07. OWNERSHIP OF UNDERGROUND WATER. The ownership
1-26 and rights of the owner of the land and the owner's lessees and
1-27 assigns, including holders of recorded liens or other security
1-28 interests in the land, in underground water and the contract rights
1-29 of any person who purchases water for the provision of potable water
1-30 to the public or for the resale of potable water to the public for
1-31 any use are recognized. However, action taken pursuant to this Act
1-32 may not be construed as depriving or divesting the owner or the
1-33 owner's lessees and assigns, including holders of recorded liens or
1-34 other security interests in the land, of these ownership rights or
1-35 as impairing the contract rights of any person who purchases water
1-36 for the provision of potable water to the public or for the resale
1-37 of potable water to the public for any use, subject to the rules
1-38 adopted by the authority or a district exercising the powers
1-39 provided by Chapter 36 [~~52~~], Water Code. The legislature intends
1-40 that just compensation be paid if implementation of this article
1-41 causes a taking of private property or the impairment of a contract
1-42 in contravention of the Texas or federal constitution.

1-43 SECTION 4. Subsection (a), Section 1.08, Chapter 626, Acts
1-44 of the 73rd Legislature, Regular Session, 1993, is amended to read
1-45 as follows:

1-46 (a) The authority has all of the powers, rights, and
1-47 privileges necessary to manage, conserve, preserve, and protect the
1-48 aquifer and to increase the recharge of, and prevent the waste or
1-49 pollution of water in, the aquifer. The authority has all of the
1-50 rights, powers, privileges, authority, functions, and duties
1-51 provided by the general law of this state, including Chapters 36,
1-52 49, and [~~50, 51, and 52,~~] Water Code, applicable to an authority
1-53 created under Article XVI, Section 59, of the Texas Constitution.
1-54 This article prevails over any provision of general law that is in
1-55 conflict or inconsistent with this article regarding the area of
1-56 the authority's jurisdiction.

1-57 SECTION 5. Section 1.09, Chapter 626, Acts of the 73rd
1-58 Legislature, Regular Session, 1993, is amended by adding Subsection
1-59 (i) to read as follows:

1-60 (i) To be eligible to be elected or appointed as a voting
1-61 member of the board, a person must have resided continuously in the
1-62 authority single-member election district from which the person

2-1 seeks to be elected or appointed for six months immediately
 2-2 preceding the following date:

2-3 (1) for a candidate for election, the 60th day before
 2-4 the general election date; or

2-5 (2) for a candidate for appointment, the date the
 2-6 appointment is made.

2-7 SECTION 6. Section 1.11, Chapter 626, Acts of the 73rd
 2-8 Legislature, Regular Session, 1993, is amended by amending
 2-9 Subsection (f) and adding Subsection (h) to read as follows:

2-10 (f) The authority may contract with a person who uses water
 2-11 from the aquifer for the authority or that person to own, finance,
 2-12 design, construct, operate, or [own, finance, and] maintain
 2-13 recharge [water supply] facilities. [Management fees or special
 2-14 fees may not be used for purchasing or operating these facilities.
 2-15 For the purpose of this subsection, "water supply facility"
 2-16 includes a dam, reservoir, treatment facility, transmission
 2-17 facility, or recharge project.]

2-18 (h) Notwithstanding any other provision of law, the
 2-19 authority has no duty, responsibility, or authority relating to the
 2-20 protection of water quality. The commission is the agency of the
 2-21 state with responsibility and authority relating to the protection
 2-22 of water quality within the boundaries of the authority.

2-23 SECTION 7. Subsections (b) and (c), Section 1.14, Chapter
 2-24 626, Acts of the 73rd Legislature, Regular Session, 1993, are
 2-25 amended to read as follows:

2-26 (b) Except as provided by Subsections (d), (f), and (h) of
 2-27 this section and Section 1.26 of this article, beginning January 1,
 2-28 2008 ~~[for the period ending December 31, 2007]~~, the amount of
 2-29 permitted withdrawals from the aquifer under regular permits may
 2-30 not exceed 450,000 acre-feet of water for each calendar year.

2-31 (c) Except as provided by Subsections (d), (f), and (h) of
 2-32 this section and Section 1.26 of this article, beginning January 1,
 2-33 2010 ~~[for the period beginning January 1, 2008]~~, the amount of
 2-34 permitted withdrawals from the aquifer under regular permits may
 2-35 not exceed 400,000 acre-feet of water for each calendar year.

2-36 SECTION 8. Section 1.16, Chapter 626, Acts of the 73rd
 2-37 Legislature, Regular Session, 1993, is amended by adding Subsection
 2-38 (i) to read as follows:

2-39 (i) The authority shall process as administratively
 2-40 complete all declarations of historical use received by the
 2-41 authority on or before February 16, 1997, and shall consider any
 2-42 such declaration as timely filed.

2-43 SECTION 9. Section 1.21, Chapter 626, Acts of the 73rd
 2-44 Legislature, Regular Session, 1993, is amended by amending
 2-45 Subsection (c) and adding Subsections (d) and (e) to read as
 2-46 follows:

2-47 (c) If, before [on or after] January 1, 2008, the aggregate
 2-48 [overall] volume of water authorized to be withdrawn from the
 2-49 aquifer under regular permits is greater than 450,000 [400,000]
 2-50 acre-feet a year or greater than the adjusted amount determined
 2-51 under Subsection (d) of Section 1.14 of this article, not later than
 2-52 October 1, 2007, the board shall issue an order to be effective on
 2-53 January 1, 2008, proportionately adjusting the [maximum]
 2-54 authorized withdrawal amount of each regular permit [shall be
 2-55 immediately reduced by an equal percentage] as is necessary to
 2-56 reduce aggregate authorized withdrawals under regular permits
 2-57 [overall maximum demand] to 450,000 [400,000] acre-feet a year or
 2-58 the adjusted amount, as appropriate. [The amount reduced may be
 2-59 restored, in whole or in part, as other appropriate measures are
 2-60 implemented that maintain overall demand at or below the
 2-61 appropriate amount.]

2-62 (d) If, before January 1, 2010, the aggregate volume of
 2-63 water authorized to be withdrawn from the aquifer under regular
 2-64 permits is greater than 400,000 acre-feet a year or greater than the
 2-65 adjusted amount determined under Subsection (d) of Section 1.14 of
 2-66 this article, the board, not later than October 1, 2009, shall issue
 2-67 an order to be effective January 1, 2010, proportionally adjusting
 2-68 the authorized withdrawal amount of each regular permit as is
 2-69 necessary to reduce aggregate authorized withdrawals under regular

3-1 permits to 400,000 acre-feet a year or the adjusted amount, as
 3-2 appropriate.

3-3 (e) Proportional adjustments under this section and for
 3-4 purposes of satisfying the requirements of Section 1.14 of this
 3-5 article and this section shall be applied on the same terms and
 3-6 conditions to all permits issued under Section 1.16 of this
 3-7 article.

3-8 SECTION 10. Subsection (b), Section 1.28, Chapter 626, Acts
 3-9 of the 73rd Legislature, Regular Session, 1993, is amended to read
 3-10 as follows:

3-11 (b) The authority may issue revenue bonds to finance:

3-12 (1) the purchase of land;

3-13 (2) ~~the~~ the purchase, construction, or installation
 3-14 of facilities or equipment, including recharge dams and associated
 3-15 facilities, structures, or works; or

3-16 (3) the retirement of permits under Sections 1.21 and
 3-17 1.22 of this article. ~~[The authority may not allow for any person~~
 3-18 ~~to construct, acquire, or own facilities for transporting~~
 3-19 ~~groundwater out of Uvalde County or Medina County.]~~

3-20 SECTION 11. Article 1, Chapter 626, Acts of the 73rd
 3-21 Legislature, Regular Session, 1993, is amended by adding Section
 3-22 1.331 to read as follows:

3-23 Sec. 1.331. EXEMPTION FOR FEDERAL FACILITIES; TRANSFER OF
 3-24 OWNERSHIP OF APPLICATION. (a) Federal facilities, which are
 3-25 immune from regulation under the doctrine of sovereign immunity,
 3-26 are exempt from the requirements of this article and any rules
 3-27 adopted under this article.

3-28 (b) A person may obtain an initial regular permit based on
 3-29 an application voluntarily filed by a federal facility if, before
 3-30 September 1, 2003, the authority approves the transfer of ownership
 3-31 of the application for an initial regular permit from the federal
 3-32 facility to the person seeking the permit. If, after the date a
 3-33 transfer is approved by the authority, groundwater subject to the
 3-34 transfer continues to be withdrawn by the federal facility making
 3-35 the transfer, the authority shall condition the authorized
 3-36 withdrawal amount of the transferee's interim authorization or
 3-37 initial regular permit on the reduction in the amount equal to the
 3-38 federal facility withdrawals.

3-39 SECTION 12. Subsection (c), Section 1.34, Chapter 626, Acts
 3-40 of the 73rd Legislature, Regular Session, 1933, is amended to read
 3-41 as follows:

3-42 (c) Subject to the rules of the authority, a [A] permit
 3-43 holder may transfer a regular permit or interim authorization
 3-44 [lease permitted water rights, but a holder of a permit for
 3-45 irrigation use may not lease more than 50 percent of the irrigation
 3-46 rights initially permitted. The user's remaining irrigation water
 3-47 rights must be used in accordance with the original permit and must
 3-48 pass with transfer of the irrigated land]. Fifty percent of the
 3-49 groundwater withdrawal amount initially permitted for irrigation
 3-50 may be used only for irrigation.

3-51 SECTION 13. Section 1.35, Chapter 626, Acts of the 73rd
 3-52 Legislature, Regular Session, 1993, is amended by adding Subsection
 3-53 (f) to read as follows:

3-54 (f) A person who transfers a permit or interim authorization
 3-55 to withdraw groundwater from the San Antonio pool to a well that
 3-56 draws from the Uvalde pool may not transport groundwater withdrawn
 3-57 under the transferred permit or interim authorization out of the
 3-58 county in which the well that draws from the Uvalde pool is located.

3-59 COMMITTEE AMENDMENT NO. 3

By: Armbrister

3-60 Amend H.B. 3035 (Committee Printing) as follows:

3-61 (1) Insert a new SECTION of the bill to read as follows:

3-62 SECTION _____. Section 36.101, Water Code, is amended by
 3-63 adding Subsection (d) to read as follows:

3-64 (d) The commission has principal and exclusive authority as
 3-65 to the control, regulation, or abatement of nonpoint source
 3-66 pollution of water or other regulation of water quality in terms of
 3-67 limiting a landowner's ability to develop or use that land in the

4-1 jurisdiction of any water district or authority with regional
4-2 management and regulatory authority over groundwater withdrawals
4-3 within all or part of at least five counties.

4-4 (2) Insert a new SECTION of the bill to read as follows:

4-5 SECTION _____. This section supersedes any other provision
4-6 of this Act to the extent of any conflict. Section 36.101(d), Water
4-7 Code, as added by this Act, supersedes any other applicable law or
4-8 action taken under that law to the extent of any conflict. Any rule
4-9 or order of an applicable district or authority purporting to
4-10 regulate water quality as described by the change in law made by
4-11 this Act to Section 36.101, Water Code, may not be enforced
4-12 regardless of whether the adoption date of the rule or order is
4-13 before, on, or after the effective date of this Act.

4-14 A BILL TO BE ENTITLED
4-15 AN ACT

4-16 relating to the power of groundwater conservation districts to
4-17 regulate the spacing of water wells and the production of
4-18 groundwater.

4-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4-20 SECTION 1. Section 36.116, Water Code, as amended by
4-21 Chapters 966 and 1164, Acts of the 77th Legislature, Regular
4-22 Session, 2001, is reenacted and amended to read as follows:

4-23 Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In
4-24 order to minimize as far as practicable the drawdown of the water
4-25 table or the reduction of artesian pressure, to control subsidence,
4-26 to prevent interference between wells, to prevent degradation of
4-27 water quality, or to prevent waste, a district by rule may regulate:

4-28 (1) the spacing of water wells by:

4-29 (A) requiring all water wells to be spaced a
4-30 certain distance from property lines or adjoining wells;

4-31 (B) requiring wells with a certain production
4-32 capacity, pump size, or other characteristic related to the
4-33 construction or operation of and production from a well to be spaced
4-34 a certain distance from property lines or adjoining wells; or

4-35 (C) imposing spacing requirements adopted by the
4-36 board; and

4-37 (2) the production of groundwater by:

4-38 (A) setting production limits on wells;

4-39 (B) limiting the amount of water produced based
4-40 on acreage or tract size;

4-41 (C) limiting the amount of water that may be
4-42 produced from a defined number of acres assigned to an authorized
4-43 well site;

4-44 (D) limiting the maximum amount of water that may
4-45 be produced on the basis of acre-feet per acre or gallons per minute
4-46 per well site per acre; [~~or~~]

4-47 (E) limiting the amount of water produced based
4-48 on contiguous acreage; or

4-49 (F) any combination of the methods listed above
4-50 in Paragraphs (A) through (E) [~~(D)~~].

4-51 (b) In promulgating any rules limiting groundwater
4-52 production, the district may preserve historic use before the
4-53 effective date of the rules to the maximum extent practicable
4-54 consistent with the district's comprehensive management plan under
4-55 Section 36.1071.

4-56 (c) In regulating the production of groundwater based on
4-57 tract size or acreage, a district may consider the service needs or
4-58 service area of a retail water utility. For the purposes of this
4-59 subsection, "retail water utility" shall have the meaning provided
4-60 at Section 13.002.

4-61 (d) In regulating the production of groundwater, a district
4-62 shall select a method under Subsection (a)(2) that is appropriate
4-63 based on the hydrogeological conditions of the aquifer or aquifers
4-64 in the district.

4-65 SECTION 2. To the extent of any conflict, this Act prevails
4-66 over another Act of the 78th Legislature, Regular Session, 2003,
4-67 relating to nonsubstantive additions to and corrections in enacted

5-1 codes.

5-2 SECTION 3. This Act takes effect September 1, 2003.

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