

By: Zaffirini

S.B. No. 1959

A BILL TO BE ENTITLED

AN ACT

relating to damage to an aquifer by projects for storage of appropriated water.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.156 to read as follows:

Sec. 11.156. DAMAGE TO AQUIFERS. A holder of a permit issued by the commission to undertake a project under Section 11.153 of this Subchapter, damages an aquifer, if the project alters the physical, chemical, or biological quality of native groundwater or the physical, chemical, or biological characteristics of the aquifer to a degree that:

(a) renders groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property;

(b) requires treatment of the groundwater to a greater extent than the native groundwater requires before being applied to that beneficial use;

(c) introduces non-naturally occurring chlorine, pollutants, or constituents;

(c) alters the normal pH balance of the groundwater;

(d) causes surrounding well users to lower a pump, produce water at lower production rates, replace pump motors, or deepen wells; or

(e) causes the decline of artesian pressure to the

1 surrounding users, or a downward trend in water levels within the
2 Aquifer.

3 SECTION 2. Subchapter D, Chapter 11, Water code, is amended
4 by adding Section 11.156 to read as follows:

5 Sec. 11.157 NOTICE. Any surrounding well user may give
6 written notice to the holder of a permit issued by the commission to
7 undertake a project under Section 11.153 of this Subchapter, of the
8 possible damage to the aquifer.

9 SECTION 3. Subchapter D, Chapter 11, Water Code, is amended
10 by adding Section 11.158 to read as follows:

11 Sec. 11.158. TESTING OF DAMAGED AQUIFERS. A holder of a
12 permit issued by the commission to undertake a project under
13 Section 11.153 of this Subchapter, after receiving notice from a
14 surrounding well user that the project alters the physical,
15 chemical, or biological quality of native groundwater or the
16 physical, chemical, or biological characteristics, or causes a
17 downward trend in water levels, of the aquifer to a degree provided
18 for in Section 11.156, Subsections (a-e) of this Subchapter, shall:

19 (a) notify the commission;

20 (b) test every permit holder's registered injection
21 and recovery wells, and the wells of parties providing a notice
22 under Section 11.157, by the use of tracers and dyes to verify the
23 flows and effects of the project on surrounding well users;

24 (c) conduct the tests required under Subsection (a)(2)
25 of this Section at the permit holder's maximum operation conditions
26 during injection for storage and recapture for use; and

27 (d) conduct the tests required under Subsection (a)(2)

1 of this Section for a period of three consecutive weeks. The
2 results of these tests shall be maintained as public information
3 and the performance of the tests may be overseen by representatives
4 of the parties providing notice under Section 11.157 if the parties
5 providing the notice are the owners or operators of public drinking
6 water supply wells.

7 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended
8 by adding Section 11.159 to read as follows:

9 Sec. 11.159. FINDINGS. (a) On finding that a holder of a
10 permit issued by the commission to undertake a project under
11 Section 11.153 of this Subchapter has damaged the aquifer as
12 indicated in Section 11.156 of this Subchapter, the permit holder
13 shall:

14 (1) immediately terminate the project;

15 (2) commence all necessary steps to mitigate, reverse
16 and restore the aquifer; and

17 (3) incur all costs of mitigating, reversing and
18 restoring the aquifer.

19 (b) On finding that a holder of a permit issued by the
20 commission to undertake a project under Section 11.153 of this
21 Subchapter, fails to comply with Subsection (a) of this Section,
22 any of the surrounding well users may bring a cause of action in any
23 district court in the county in which all or part of the wells are
24 located.

25 (c) A holder of a permit issued by the commission to
26 undertake a project under Section 11.153 of this Subchapter, who
27 fails to comply with Subsection (a) of this section, is liable to

1 any surrounding well user who brings a cause of action pursuant to
2 Subsection (b) of this Section, for:

3 (1) actual damages caused by the failure to comply
4 with Subsection (a) of this Section, including the cost of
5 obtaining alternate water supply sources or the cost of
6 construction and operation of treatment systems to remove the
7 chemical or biological characteristics resulting in the damage to
8 the aquifer under Section 11.156 of this Subchapter by a permit
9 holder under Section 11.153;

10 (2) court Costs;

11 (3) plaintiffs' reasonable attorney's fees; and

12 (4) injunctive relief;

13 (d) Sovereign immunity against suit and liability of a
14 political subdivision of this State is specifically and expressly
15 waived with respect to a suit brought by any party under this
16 section.

17 SECTION 5. EFFECTIVE DATE. This Act takes effect
18 immediately if it receives a vote of two-thirds of all members
19 elected to each house, as provided by Section 39, Article III, Texas
20 Constitution. If this Act does not receive the vote necessary for
21 immediate effect, this Act takes effect September 1, 2007.