

By: Hegar

S.B. No. 1714

A BILL TO BE ENTITLED

AN ACT

relating to evidence of beneficial use and other matters in connection with the issuance of permits by a groundwater conservation district in accordance with its management plan.

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

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (28-a) to read as follows:

(28-a) "Evidence of beneficial use" means evidence that is material and relevant to a determination of the amount of groundwater that is reasonable for a beneficial use without waste proposed by a permit applicant consistent with generally accepted agriculture or industry standards for the proposed type of use and does not exclude innovations in conservation in agriculture or industry practices. Evidence of beneficial use that satisfies the requirements of Subdivision (9)(C) includes evidence that may be in the form of a:

(A) statutory requirement applicable to an applicant who is a supplier of water to the public to provide continuous and adequate water service consistent with the state water plan; or

(B) contractual obligation applicable to the applicant for the use of the water based on a demonstrated need for the water by an end user.

SECTION 2. Subsection (a), Section 36.1071, Water Code, is

1 amended to read as follows:

2 (a) Following notice and hearing, the district shall, in
3 coordination with surface water management entities on a regional
4 basis, develop a comprehensive management plan which addresses the
5 following management goals, as applicable:

6 (1) providing the most efficient use of groundwater;
7 (2) controlling and preventing waste of groundwater;
8 (3) controlling and preventing subsidence;
9 (4) addressing conjunctive surface water management
10 issues;

11 (5) addressing natural resource issues;

12 (6) addressing drought conditions;

13 (7) addressing conservation, recharge enhancement,
14 rainwater harvesting, precipitation enhancement, or brush control,
15 where appropriate and cost-effective; ~~and~~

16 (8) addressing in a quantitative manner the desired
17 future conditions of the groundwater resources; and

18 (9) addressing the ability of the district's
19 groundwater resources to meet the future water supply needs of the
20 district.

21 SECTION 3. Subsection (g), Section 36.1072, Water Code, is
22 amended to read as follows:

23 (g) In this subsection, "development board" means the Texas
24 Water Development Board. A person with a legally defined interest
25 in groundwater in a district or in the management area in which a
26 district is located or a ~~the~~ regional water planning group
27 located in the management area may file a petition with the

1 development board stating that a conflict requiring resolution may
2 exist between the district's approved management plan developed
3 under Section 36.1071 and the state water plan. If a conflict
4 exists, the development board shall provide technical assistance to
5 and facilitate coordination between the involved person or regional
6 water planning group and the district to resolve the conflict. Not
7 later than the 45th day after the date the person or the regional
8 water planning group files a petition with the development board,
9 if the conflict has not been resolved, the district and the involved
10 person or regional planning group may mediate the conflict. The
11 district and the involved person or regional planning group may
12 seek the assistance of the Center for Public Policy Dispute
13 Resolution at The University of Texas School of Law or an
14 alternative dispute resolution system established under Chapter
15 152, Civil Practice and Remedies Code, in obtaining a qualified
16 impartial third party to mediate the conflict. The cost of the
17 mediation services must be specified in the agreement between the
18 parties and the Center for Public Policy Dispute Resolution or the
19 alternative dispute resolution system. If the district and the
20 involved person or regional planning group cannot resolve the
21 conflict through mediation, the development board shall resolve the
22 conflict not later than the 60th day after the date the mediation is
23 completed. The development board action under this provision may
24 be consolidated, at the option of the board, with related action
25 under Section 16.053(p). If the development board determines that
26 resolution of the conflict requires a revision of the approved
27 groundwater conservation district management plan, the development

1 board shall provide information to the district. The district
2 shall prepare any revisions to the plan based on the information
3 provided by the development board and shall hold, after notice, at
4 least one public hearing at some central location within the
5 district. The district shall consider all public and development
6 board comments, prepare, revise, and adopt its plan, and submit the
7 revised plan to the development board for approval. On the request
8 of the district or the regional water planning group, the
9 development board shall include discussion of the conflict and its
10 resolution in the state water plan that the development board
11 provides to the governor, the lieutenant governor, and the speaker
12 of the house of representatives under Section 16.051(e). If the
13 groundwater conservation district disagrees with the decision of
14 the development board under this subsection, the district may
15 appeal the decision to a district court in Travis County. Costs
16 for the appeal shall be set by the court hearing the appeal. An
17 appeal under this subsection is by trial de novo.

18 SECTION 4. Subsections (f) and (l), Section 36.108, Water
19 Code, are amended to read as follows:

20 (f) A district, regional water planning group dependent on
21 the groundwater resources in the groundwater management area, or
22 person with a legally defined interest in the groundwater within
23 the management area may file a petition with the commission
24 requesting an inquiry if a district or districts refused to join in
25 the planning process or the process failed to result in adequate
26 planning, including the establishment of reasonable future desired
27 conditions of the aquifers, and the petition provides evidence

1 that:

2 (1) a district in the groundwater management area has
3 failed to adopt rules;

4 (2) the rules adopted by a district are not designed to
5 achieve the desired future condition of the groundwater resources
6 in the groundwater management area established during the joint
7 planning process;

8 (3) the groundwater in the management area is not
9 adequately protected by the rules adopted by a district; or

10 (4) the groundwater in the groundwater management area
11 is not adequately protected due to the failure of a district to
12 enforce substantial compliance with its rules.

13 (1) A person with a legally defined interest in the
14 groundwater in the groundwater management area, a district in or
15 adjacent to the groundwater management area, or a regional water
16 planning group [~~for a region~~] in the groundwater management area to
17 meet a water management strategy identified in the adopted regional
18 water plan may file a petition with the development board appealing
19 the approval of the desired future conditions of the groundwater
20 resources established under this section. The petition must
21 provide evidence that the districts did not establish a reasonable
22 desired future condition of the groundwater resources in the
23 groundwater management area.

24 SECTION 5. Section 36.113, Water Code, is amended by adding
25 Subsection (e-1) to read as follows:

26 (e-1) A district may not grant a permit unless the applicant
27 provides evidence of an actual and reasonable beneficial use.

1 SECTION 6. Section 36.122, Water Code, is amended by
2 amending Subsection (f) and adding Subsection (r) to read as
3 follows:

4 (f) In reviewing a proposed transfer of groundwater out of
5 the district, the district shall consider:

6 (1) the availability of water in the district and in
7 the proposed receiving area during the period for which the water
8 supply is requested;

9 (2) the projected effect of the proposed transfer on
10 aquifer conditions, depletion, subsidence, or effects on existing
11 permit holders or other groundwater users within the district; and

12 (3) the approved [~~regional water plan and certified~~]
13 district management plan.

14 (r) A district may not grant a permit that allows the
15 transfer of groundwater outside the district unless the applicant
16 provides evidence of beneficial use as described by Section
17 36.001(28-a).

18 SECTION 7. Subsection (e-1), Section 36.113, Water Code, as
19 added by this Act, and Section 36.122, Water Code, as amended by
20 this Act, apply only to an application for a permit that is
21 submitted to a groundwater conservation district on or after the
22 effective date of this Act. An application submitted before the
23 effective date of this Act is governed by the law in effect on the
24 date the application was submitted, and that law continues in
25 effect for that purpose.

26 SECTION 8. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

S.B. No. 1714

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2009.