

1-1 By: Hegar S.B. No. 1714
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 30, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 10, Nays 0; April 30, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1714 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to evidence of beneficial use and other matters in
1-11 connection with the issuance of permits by a groundwater
1-12 conservation district in accordance with its management plan.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 36.001, Water Code, is amended by adding
1-15 Subdivision (28-a) to read as follows:

1-16 (28-a) "Evidence of beneficial use" means evidence
1-17 that is material and relevant to a determination of the amount of
1-18 groundwater that is reasonable for a beneficial use without waste
1-19 proposed by a permit applicant consistent with generally accepted
1-20 agriculture or industry standards for the proposed type of use and
1-21 does not exclude innovations in agriculture or industry practices.
1-22 Evidence of beneficial use that satisfies the requirements of
1-23 Subdivision (9)(C) includes evidence that may be in the form of a:

1-24 (A) statutory requirement applicable to an
1-25 applicant who is a supplier of water to the public to provide
1-26 continuous and adequate water service consistent with the state
1-27 water plan; or

1-28 (B) contractual obligation applicable to the
1-29 applicant for the use of the water based on a demonstrated need for
1-30 the water by an end user.

1-31 SECTION 2. Subsection (a), Section 36.1071, Water Code, is
1-32 amended to read as follows:

1-33 (a) Following notice and hearing, the district shall, in
1-34 coordination with surface water management entities on a regional
1-35 basis, develop a comprehensive management plan which addresses the
1-36 following management goals, as applicable:

1-37 (1) providing the most efficient use of groundwater;
1-38 (2) controlling and preventing waste of groundwater;
1-39 (3) controlling and preventing subsidence;
1-40 (4) addressing conjunctive surface water management
1-41 issues;

1-42 (5) addressing natural resource issues;
1-43 (6) addressing drought conditions;
1-44 (7) addressing conservation, recharge enhancement,
1-45 rainwater harvesting, precipitation enhancement, or brush control,
1-46 where appropriate and cost-effective; ~~and~~

1-47 (8) addressing in a quantitative manner the desired
1-48 future conditions of the groundwater resources; and

1-49 (9) addressing the ability of the district's
1-50 groundwater resources to meet the future water supply needs of the
1-51 district and this state as established in the adopted state water
1-52 plan, including any water management strategy dependent on use of
1-53 the district's groundwater resources.

1-54 SECTION 3. Subsection (g), Section 36.1072, Water Code, is
1-55 amended to read as follows:

1-56 (g) In this subsection, "development board" means the Texas
1-57 Water Development Board. A person with a legally defined interest
1-58 in groundwater in a district or in the management area in which a
1-59 district is located or a ~~the~~ regional water planning group
1-60 dependent on a district's groundwater resources to meet a water
1-61 management strategy identified in the adopted state water plan may
1-62 file a petition with the development board stating that a conflict
1-63 requiring resolution may exist between the district's approved

2-1 management plan developed under Section 36.1071 and the state water
 2-2 plan. If a conflict exists, the development board shall provide
 2-3 technical assistance to and facilitate coordination between the
 2-4 involved person or regional water planning group and the district
 2-5 to resolve the conflict. Not later than the 45th day after the date
 2-6 the person or the regional water planning group files a petition
 2-7 with the development board, if the conflict has not been resolved,
 2-8 the district and the involved person or regional planning group may
 2-9 mediate the conflict. The district and the involved person or
 2-10 regional planning group may seek the assistance of the Center for
 2-11 Public Policy Dispute Resolution at The University of Texas School
 2-12 of Law or an alternative dispute resolution system established
 2-13 under Chapter 152, Civil Practice and Remedies Code, in obtaining a
 2-14 qualified impartial third party to mediate the conflict. The cost
 2-15 of the mediation services must be specified in the agreement
 2-16 between the parties and the Center for Public Policy Dispute
 2-17 Resolution or the alternative dispute resolution system. If the
 2-18 district and the involved person or regional planning group cannot
 2-19 resolve the conflict through mediation, the development board shall
 2-20 resolve the conflict not later than the 60th day after the date the
 2-21 mediation is completed. The development board action under this
 2-22 provision may be consolidated, at the option of the board, with
 2-23 related action under Section 16.053(p). If the development board
 2-24 determines that resolution of the conflict requires a revision of
 2-25 the approved groundwater conservation district management plan,
 2-26 the development board shall provide information to the
 2-27 district. The district shall prepare any revisions to the plan
 2-28 based on the information provided by the development board and
 2-29 shall hold, after notice, at least one public hearing at some
 2-30 central location within the district. The district shall consider
 2-31 all public and development board comments, prepare, revise, and
 2-32 adopt its plan, and submit the revised plan to the development board
 2-33 for approval. On the request of the district or the regional water
 2-34 planning group, the development board shall include discussion of
 2-35 the conflict and its resolution in the state water plan that the
 2-36 development board provides to the governor, the lieutenant
 2-37 governor, and the speaker of the house of representatives under
 2-38 Section 16.051(e). If the groundwater conservation district
 2-39 disagrees with the decision of the development board under this
 2-40 subsection, the district may appeal the decision to a district
 2-41 court in Travis County. Costs for the appeal shall be set by the
 2-42 court hearing the appeal. An appeal under this subsection is by
 2-43 trial de novo.

2-44 SECTION 4. Subsections (c), (f), and (l), Section 36.108,
 2-45 Water Code, are amended to read as follows:

2-46 (c) The presiding officer, or the presiding officer's
 2-47 designee, of each district located in whole or in part in the
 2-48 management area shall meet at least annually to conduct joint
 2-49 planning with the other districts in the management area and to
 2-50 review the management plans and accomplishments for the management
 2-51 area. In reviewing the management plans, the districts shall
 2-52 consider:

2-53 (1) the goals of each management plan and its impact on
 2-54 planning throughout the management area and this state as
 2-55 established by the adopted state water plan;

2-56 (2) the effectiveness of the measures established by
 2-57 each management plan for conserving and protecting groundwater and
 2-58 preventing waste, and the effectiveness of these measures in the
 2-59 management area generally;

2-60 (3) any other matters that the boards consider
 2-61 relevant to the protection and conservation of groundwater and the
 2-62 prevention of waste in the management area; and

2-63 (4) the degree to which each management plan achieves
 2-64 the desired future conditions established during the joint planning
 2-65 process.

2-66 (f) A district, regional water planning group dependent on
 2-67 the groundwater resources in the groundwater management area to
 2-68 meet a water management strategy identified in the adopted state
 2-69 water plan, or person with a legally defined interest in the

3-1 groundwater within the management area may file a petition with the
 3-2 commission requesting an inquiry if a district or districts refused
 3-3 to join in the planning process or the process failed to result in
 3-4 adequate planning, including the establishment of reasonable
 3-5 future desired conditions of the aquifers, and the petition
 3-6 provides evidence that:

3-7 (1) a district in the groundwater management area has
 3-8 failed to adopt rules;

3-9 (2) the rules adopted by a district are not designed to
 3-10 achieve the desired future condition of the groundwater resources
 3-11 in the groundwater management area established during the joint
 3-12 planning process;

3-13 (3) the groundwater in the management area is not
 3-14 adequately protected by the rules adopted by a district; or

3-15 (4) the groundwater in the groundwater management area
 3-16 is not adequately protected due to the failure of a district to
 3-17 enforce substantial compliance with its rules.

3-18 (1) A person with a legally defined interest in the
 3-19 groundwater in the groundwater management area, a district in or
 3-20 adjacent to the groundwater management area, or a regional water
 3-21 planning group dependent on the groundwater resources [for a
 3-22 region] in the groundwater management area to meet a water
 3-23 management strategy identified in the adopted state water plan may
 3-24 file a petition with the development board appealing the approval
 3-25 of the desired future conditions of the groundwater resources
 3-26 established under this section. The petition must provide
 3-27 evidence that the districts did not establish a reasonable desired
 3-28 future condition of the groundwater resources in the groundwater
 3-29 management area.

3-30 SECTION 5. Section 36.113, Water Code, is amended by adding
 3-31 Subsection (e-1) to read as follows:

3-32 (e-1) A district may not grant a permit unless the applicant
 3-33 provides evidence of beneficial use.

3-34 SECTION 6. Subchapter D, Chapter 36, Water Code, is amended
 3-35 by adding Section 36.1133 to read as follows:

3-36 Sec. 36.1133. PREPRODUCTION PERMITS. (a) A district may
 3-37 adopt rules to authorize the issuance of a preproduction permit to
 3-38 an applicant if the applicant has met the requirements for a
 3-39 production permit but is unable to provide documentation of a need
 3-40 to supply water for a purpose included in an approved regional water
 3-41 plan.

3-42 (b) The term of a preproduction permit issued under this
 3-43 section must be five years.

3-44 (c) If, before the expiration of a preproduction permit, the
 3-45 holder of the permit provides to the district that issued the permit
 3-46 a copy of a water supply contract or other documentation of an
 3-47 obligation to supply water for a purpose included in an approved
 3-48 regional water plan, the district shall convert the preproduction
 3-49 permit to a production permit for that purpose and for the amount of
 3-50 production authorized by the preproduction permit.

3-51 SECTION 7. Section 36.122, Water Code, is amended by
 3-52 amending Subsection (f) and adding Subsection (r) to read as
 3-53 follows:

3-54 (f) In reviewing a proposed transfer of groundwater out of
 3-55 the district, the district shall consider:

3-56 (1) the availability of water in the district and in
 3-57 the proposed receiving area during the period for which the water
 3-58 supply is requested;

3-59 (2) the projected effect of the proposed transfer on
 3-60 aquifer conditions, depletion, subsidence, or effects on existing
 3-61 permit holders or other groundwater users within the district; and

3-62 (3) the approved ~~[regional water plan and certified]~~
 3-63 district management plan.

3-64 (r) A district may not grant a permit that allows the
 3-65 transfer of groundwater outside the district for municipal use
 3-66 unless the municipal use is established by a contractual obligation
 3-67 described by Section 36.001(28-a)(B).

3-68 SECTION 8. Subsection (e-1), Section 36.113, and Section
 3-69 36.1133, Water Code, as added by this Act, and Section 36.122, Water

4-1 Code, as amended by this Act, apply only to an application for a
4-2 permit that is submitted to a groundwater conservation district on
4-3 or after the effective date of this Act. An application submitted
4-4 before the effective date of this Act is governed by the law in
4-5 effect on the date the application was submitted, and that law
4-6 continues in effect for that purpose.

4-7 SECTION 9. This Act takes effect immediately if it receives
4-8 a vote of two-thirds of all the members elected to each house, as
4-9 provided by Section 39, Article III, Texas Constitution. If this
4-10 Act does not receive the vote necessary for immediate effect, this
4-11 Act takes effect September 1, 2009.

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