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H.B. No. 3013

A BILL TO BE ENTITLED

AN ACT

relating to the underground storage of water for later retrieval and beneficial use; authorizing the imposition of fees.

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

SECTION 1. Section 11.002, Water Code, is amended by adding Subdivisions (21) and (22) to read as follows:

(21) "Aquifer storage and recovery project" means an undertaking to facilitate the injection of surface water, groundwater, or treated effluent into a suitable aquifer by means of a well for later retrieval and beneficial use from that well or another well.

(22) "Target aquifer" means an aquifer used in an aquifer storage and recovery project.

SECTION 2. The heading to Section 11.153, Water Code, is amended to read as follows:

Sec. 11.153. AQUIFER STORAGE AND RECOVERY PROJECTS [~~FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS~~].

SECTION 3. Sections 11.153(a), (b), (c), and (d), Water Code, are amended to read as follows:

(a) The commission shall expedite [~~investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging~~] the issuance of temporary or term permits for aquifer [~~demonstration projects for the~~] storage and recovery projects [~~of appropriated water for subsequent~~

1 ~~retrieval and beneficial use].~~ The commission by rule shall allow  
2 the use of an existing permit for appropriated water that  
3 authorizes a consumptive use for a project to demonstrate the  
4 feasibility of an aquifer storage and recovery project.

5 (b) A permit described by Subsection (a) must authorize the  
6 use of a sufficient quantity of appropriated water to demonstrate  
7 the feasibility of ~~[be for only the duration of]~~ the aquifer storage  
8 and recovery ~~[pilot]~~ project for the duration of the project to  
9 provide the commission ~~[and]~~ the ~~[board further]~~ opportunity to  
10 evaluate the storage of appropriated water in the target aquifer  
11 ~~[aquifers for subsequent retrieval and beneficial use].~~

12 (c) After ~~[At the conclusion of a pilot project,]~~ a permit  
13 holder has completed the feasibility project described by  
14 Subsection (a), the permit holder may file an appropriate  
15 application for a permit or permit amendment to store appropriated  
16 water in an aquifer storage and recovery project. After  
17 considering the success of the project and the criteria set out in  
18 Section 11.154, the commission shall determine whether to issue a  
19 permit or permit amendment authorizing the continued storage of  
20 appropriated water in the aquifer.

21 (d) The commission shall ~~[only]~~ issue a final order granting  
22 a permit or amendment to a permit authorizing the storage of  
23 appropriated water using an aquifer storage and recovery project  
24 ~~[in aquifers for subsequent beneficial use]~~ where the aquifer  
25 storage and recovery project is ~~[completed pilot projects or~~  
26 ~~historically demonstrated projects have been]~~ shown to be feasible  
27 under the criteria provided in Sections 11.154(c) and (d).

1 SECTION 4. Section 11.154, Water Code, is amended to read as  
2 follows:

3 Sec. 11.154. PERMITS FOR AQUIFER STORAGE AND RECOVERY  
4 PROJECTS [~~TO STORE APPROPRIATED WATER IN AQUIFERS~~]. (a) An  
5 application filed with the commission [~~to undertake a project~~]  
6 under Section 11.153 for a permit or a permit amendment to authorize  
7 the storage of appropriated water in an aquifer storage and  
8 recovery project must include:

9 (1) the information required for an application for a  
10 permit or permit amendment to appropriate state water;

11 (2) all information required for an application for a  
12 permit for a Class V injection well without requiring a separate  
13 hearing or notice; and

14 (3) a map or plat showing the injection facility and  
15 the aquifer in which the water will be stored.

16 (a-1) Subsection (a)(1) does not apply to an application  
17 filed under this section if the application is for an amendment to  
18 an existing permit and:

19 (1) the permit the applicant seeks to amend authorizes  
20 a consumptive use of the appropriated water; and

21 (2) the requested amendment will not change the point  
22 of diversion or the rate of diversion authorized under the permit  
23 the applicant seeks to amend.

24 (b) If the application is for a permit or permit amendment  
25 to store appropriated water in a groundwater reservoir or a  
26 subdivision of a groundwater reservoir, as defined by Chapter 36,  
27 that is under the jurisdiction of a groundwater conservation

1 district:

2 (1) the applicant shall:

3 (A) provide a copy of the application to each  
4 groundwater conservation district that has jurisdiction over the  
5 reservoir or subdivision;

6 (B) register the permit as provided by Subchapter  
7 N, Chapter 36, [cooperate] with each district that has jurisdiction  
8 over the reservoir or subdivision [~~to ensure compliance with the~~  
9 ~~rules of each district]~~; and

10 (C) [~~cooperate with each district that has~~  
11 ~~jurisdiction over the reservoir or subdivision to develop rules~~  
12 ~~regarding the injection, storage, and withdrawal of appropriated~~  
13 ~~water stored in the aquifer, and~~

14 [~~(D)~~] comply with the rules governing the  
15 injection, storage, and withdrawal of appropriated water stored in  
16 the reservoir or subdivision that are adopted by each district that  
17 has jurisdiction over the reservoir or subdivision, including a  
18 rule specifically relating to an aquifer storage and recovery  
19 project; and

20 (2) the commission shall require that the applicant  
21 notify the commission when the applicant has registered the permit  
22 with the district as required by Subdivision (1)(B) [any agreement  
23 ~~the applicant reaches with a district that has jurisdiction over~~  
24 ~~the reservoir or subdivision regarding the terms for the injection,~~  
25 ~~storage, and withdrawal of appropriated water be included as a~~  
26 ~~condition of the permit or permit amendment]~~.

27 (c) Before issuing [~~On receipt of an application for]~~ a

1 permit or an amendment to an existing permit authorizing the  
2 storage of appropriated water in an aquifer storage and recovery  
3 project, the [~~from an applicant with a completed pilot or~~  
4 ~~historically demonstrated project, the commission shall evaluate~~  
5 ~~the success of the project for purposes of issuing a final order~~  
6 ~~granting a permit or permit amendment authorizing the storage of~~  
7 ~~appropriated water incident to a beneficial use. The]~~ commission  
8 shall consider whether:

9 (1) the introduction of water into the target aquifer  
10 will alter the physical, chemical, or biological quality of native  
11 groundwater to a degree that the introduction would:

12 (A) render groundwater produced from the aquifer  
13 harmful or detrimental to people, animals, vegetation, or property;  
14 or

15 (B) require treatment of the groundwater to a  
16 greater extent than the native groundwater requires before being  
17 applied to that beneficial use;

18 (2) the water stored in the target [~~receiving~~] aquifer  
19 can be successfully retrieved [~~harvested~~] from the aquifer for  
20 beneficial use; and

21 (3) reasonable diligence will be used to protect the  
22 water stored in the target [~~receiving~~] aquifer from unauthorized  
23 withdrawals to the extent necessary to maximize the permit holder's  
24 ability to retrieve and beneficially use the stored water without  
25 experiencing unreasonable loss of appropriated water.

26 (d) In making its evaluation under Subsection (c), the  
27 commission may consider all relevant facts, including:

1 (1) the location and depth of the target aquifer in  
2 which the stored water is located;

3 (2) the nature and extent of the surface development  
4 and activity above the stored water;

5 (3) the permit holder's ability to prevent  
6 unauthorized withdrawals by contract or the exercise of the power  
7 of eminent domain;

8 (4) the existence of a groundwater [~~an underground~~  
9 ~~water~~] conservation district or other governmental entity with  
10 jurisdiction over the production of water from the target aquifer  
11 [~~storing the water~~] and the district's ability to adopt rules to  
12 protect [~~stored~~] water stored in the aquifer storage and recovery  
13 project; and

14 (5) the existence of any other political subdivision  
15 or state agency authorized to regulate the drilling of wells into or  
16 the production of water from the target aquifer.

17 (e) A permit or a permit amendment that authorizes the  
18 storage of [~~to store~~] appropriated water in a groundwater reservoir  
19 or subdivision, as defined by Chapter 36, shall provide as a  
20 condition to the permit or permit amendment that the permit holder  
21 shall:

22 (1) register the permit holder's injection and  
23 recovery wells that are used in connection with an aquifer storage  
24 and recovery project with a groundwater conservation district that  
25 has jurisdiction over the reservoir or subdivision, if any; and

26 (2) comply with the reporting requirements  
27 established under Subchapter N, Chapter 36 [~~each calendar month,~~

1 ~~provide the district, if any, with a written report showing for the~~  
2 ~~previous calendar month:~~

3 ~~[(A) the amount of water injected for storage,~~  
4 ~~and~~

5 ~~[(B) the amount of water recaptured for use].~~

6 SECTION 5. The heading to Section 11.155, Water Code, is  
7 amended to read as follows:

8 Sec. 11.155. AQUIFER STORAGE AND RECOVERY [~~PILOT~~] PROJECT  
9 REPORTS.

10 SECTION 6. Section 11.155, Water Code, is amended by  
11 amending Subsection (b) and adding Subsection (b-1) to read as  
12 follows:

13 (b) The board, as part of the state and regional water  
14 planning process, shall conduct [~~make—other~~] studies,  
15 investigations, and surveys of the aquifers in the state, including  
16 target aquifers, as it considers necessary to determine the  
17 feasibility of recommending the occurrence, quantity, quality, and  
18 availability of other aquifers in which water may be stored and  
19 subsequently retrieved for beneficial use. [~~The board shall~~  
20 ~~undertake the studies, investigations, and surveys in the following~~  
21 ~~order of priority:~~

22 ~~[(1) the aquifers described in Section 11.153(a),~~

23 ~~[(2) areas designated by the commission as "priority~~  
24 ~~groundwater management areas" under Section 35.008, and~~

25 ~~[(3) other areas of the state in a priority to be~~  
26 ~~determined by the board's ranking of where the greatest need~~  
27 ~~exists.]~~

1       (b-1) The board shall contract with a Texas nonprofit entity  
2 to study aquifers and develop data to better understand the  
3 chemical composition and storage potential of the aquifers. The  
4 entity should exhibit an established record of managing complex,  
5 multi-institutional research projects in Texas.

6       SECTION 7. Section 26.001, Water Code, is amended by adding  
7 Subdivisions (27) and (28) to read as follows:

8       (27) "Aquifer storage and recovery project" means an  
9 undertaking to facilitate the injection of surface water,  
10 groundwater, or treated effluent into a suitable aquifer by means  
11 of a well for later retrieval for beneficial use from that well or  
12 another well.

13       (28) "Target aquifer" means an aquifer used in an  
14 aquifer storage and recovery project.

15       SECTION 8. Sections 26.0271(b) and (c), Water Code, are  
16 amended to read as follows:

17       (b) In any permit or amendment to a permit issued under this  
18 chapter, at the request of the applicant the commission may  
19 authorize a wastewater treatment facility to contribute treated  
20 domestic wastewater produced by the facility as reclaimed water to  
21 a reuse water system, or for storage in an aquifer storage and  
22 recovery project, if the commission has approved the use of  
23 reclaimed water from the wastewater treatment facility.

24       (c) In any permit or amendment to a permit issued under this  
25 chapter, at the request of the applicant the commission shall  
26 authorize, subject to any required approval by the United States  
27 Environmental Protection Agency, a wastewater treatment facility

1 to:

2 (1) contribute reclaimed water into a reuse water  
3 system operated by the agency; ~~and~~

4 (2) discharge reclaimed water contributed to a reuse  
5 water system at any outfall for which a discharge from the reuse  
6 water system is authorized in any permit issued for any wastewater  
7 treatment facility operated by the agency; or

8 (3) inject the reclaimed water for storage in an  
9 aquifer storage and recovery project.

10 SECTION 9. Section 26.029(a), Water Code, is amended to  
11 read as follows:

12 (a) In each permit, the commission shall prescribe the  
13 conditions on which it is issued, including:

14 (1) the duration of the permit;

15 (2) the location of the point of discharge of the  
16 waste;

17 (3) the maximum quantity of waste that may be  
18 discharged under the permit at any time and from time to time;

19 (4) the character and quality of waste that may be  
20 discharged under the permit; ~~and~~

21 (5) any monitoring and reporting requirements  
22 prescribed by the commission for the permittee; and

23 (6) the target aquifer into which the treated effluent  
24 may be injected as a contribution to an aquifer storage and recovery  
25 project.

26 SECTION 10. Chapter 36, Water Code, is amended by adding  
27 Subchapter N to read as follows:

1           SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

2           Sec. 36.451. DEFINITIONS. In this subchapter:

3           (1) "Aquifer storage and recovery project" means an  
4 undertaking to facilitate the injection of surface water,  
5 groundwater, or treated effluent into a suitable aquifer by means  
6 of a well for later retrieval and beneficial use from that well or  
7 another well.

8           (2) "Target aquifer" means an aquifer used in an  
9 aquifer storage and recovery project.

10          Sec. 36.452. AQUIFER STORAGE AND RECOVERY PROJECT WELLS.

11          (a) A well that is constructed and operated as part of an aquifer  
12 storage and recovery project is subject to the permitting  
13 requirements established under Section 11.154.

14          (b) A well that is constructed and operated as part of an  
15 aquifer storage and recovery project is not subject to:

16                  (1) permitting by a district; or

17                  (2) rules adopted by a district relating to spacing,  
18 setback, or production limits.

19          Sec. 36.453. REGISTRATION OF WELLS. (a) A well that is  
20 constructed and operated as part of an aquifer storage and recovery  
21 project must be registered with the district.

22          (b) The registration application shall include:

23                  (1) the longitude and latitude coordinates of the  
24 well;

25                  (2) the depth at which the deepest point of the well is  
26 located and the aquifer, groundwater reservoir, or aquifer  
27 subdivision into which the well penetrates;

1           (3) a designation of the well as a well for injection,  
2 recovery, or injection and recovery;

3           (4) a copy of the commission's Class V injection well  
4 authorization, if applicable;

5           (5) a copy of an authorization, if required, to use the  
6 surface and subsurface of the property to construct and operate an  
7 aquifer storage and recovery project, including a deed, lease, or  
8 easement;

9           (6) evidence that each well associated with the  
10 aquifer storage and recovery project is metered; and

11           (7) a copy of the following, as applicable:

12                   (A) a permit authorizing the use of the water to  
13 be injected into a storage well, if use of that water requires a  
14 permit;

15                   (B) a permit for use of unappropriated water from  
16 the commission; or

17                   (C) a production and operating permit issued by a  
18 district other than the district in which the well is registered.

19           (c) A district shall register a well that is the subject of  
20 an application that meets the requirements of Subsection (b).

21           Sec. 36.454. PROTECTION OF RIGHTS TO STORED WATER. (a)  
22 Except as provided by Subsection (b), a district shall adopt rules  
23 to protect water stored in an aquifer storage and recovery project  
24 to the greatest extent practicable.

25           (b) The district is not required to adopt rules to prohibit  
26 the withdrawal of water stored in an aquifer storage and recovery  
27 project by the holder of a permit issued by a district from a well

1 located outside of the area described in the aquifer storage and  
2 recovery project well registration.

3 (c) Nothing in this subchapter may be construed as  
4 authorizing the production of groundwater from an aquifer,  
5 groundwater reservoir, or subdivision of an aquifer within the  
6 jurisdiction of a district without a permit issued under this  
7 chapter.

8 (d) In considering an application for a permit for  
9 production from a highly productive aquifer, as determined by  
10 district rule, for purposes of storing the water produced in an  
11 aquifer storage and recovery project, a district shall consider:

12 (1) the benefits of storing the water in the aquifer  
13 storage and recovery project; and

14 (2) the ability of the more productive contributing  
15 aquifer to recover and replace the water stored in the target  
16 aquifer.

17 Sec. 36.455. REPORTS. (a) A person operating an aquifer  
18 storage and recovery project shall meter the volume of water  
19 injected and recovered from each well associated with the project  
20 at the wellhead and file a monthly report with the district in which  
21 each well is located. The report must contain the following  
22 information:

23 (1) the amount of water injected for storage in each  
24 well located in the district and the source of the injected water;  
25 and

26 (2) the amount of water recovered from each well  
27 located in the district.

1        (b) The report required by Subsection (a) must be filed not  
2 later than the 20th day of each month.

3        (c) A person operating an aquifer storage and recovery  
4 project shall file an annual report with the district in which each  
5 well associated with the project is located. The report must  
6 contain the following information:

7            (1) the cumulative amount of water in storage in the  
8 project; and

9            (2) a map showing the areal extent of the underground  
10 movement of the stored water as of the end of the year in which the  
11 report is prepared.

12        (d) The report required by Subsection (c) must be filed not  
13 later than January 20 of each year.

14        (e) If water is injected into a well for storage in one  
15 district and later recovered from a well located in a different  
16 district, the reports required under this section shall be provided  
17 to each district in which a well associated with the project is  
18 located.

19        Sec. 36.456. FEES. (a) Except as provided by Subsections  
20 (b) and (c), a district may not assess against an aquifer storage  
21 and recovery project a fee, assessment, or tax.

22        (b) A district may require:

23            (1) the payment of a fee of \$100 for each well related  
24 to an aquifer storage and recovery project that is registered as  
25 provided by Section 36.453, payable at the time the well is  
26 registered with the district, except as provided by Subsection (c);  
27 and

1           (2) the payment of an annual fee not to exceed \$5 per  
2 acre-foot of water injected in an aquifer storage and recovery  
3 project during the preceding year, which must be submitted with the  
4 annual report required under Section 36.455(c).

5           (c) The fees collected by a district:

6           (1) under Subsection (b)(1) may not exceed \$10,000 for  
7 a single aquifer storage and recovery project and may only be used  
8 to compensate the district for the cost of conducting field  
9 inspections to verify:

10           (A) the location of wells associated with an  
11 aquifer storage and recovery project; and

12           (B) the installation of meters on each well  
13 associated with an aquifer storage and recovery project; and

14           (2) under Subsection (b)(2) must be deposited into a  
15 mitigation account and may be used by the district only to  
16 compensate a person who meets the requirements prescribed by  
17 Subsection (d).

18           (d) A district may pay money from a mitigation account to a  
19 person in an amount equal to the costs incurred by the person to  
20 repair, rehabilitate, or replace a well if the person presents  
21 evidence to the district's board of directors that demonstrates to  
22 a reasonable degree of certainty that the operation of the aquifer  
23 storage and recovery project resulted in damage to the person's  
24 well.

25           (e) A district's payment of money under Subsection (d) may  
26 not be construed as an admission of liability by an aquifer storage  
27 and recovery project.

1       Sec. 36.457. STORAGE AND RECOVERY. (a) Water in an aquifer  
2 storage and recovery project may be stored in and recovered from  
3 multiple aquifers, provided that the storage and recovery is  
4 accomplished using injection and recovery wells completed in the  
5 affected aquifer. Individual injection and recovery wells may be  
6 completed only in a single aquifer to prevent cross-contamination  
7 of aquifers.

8       (b) Water stored in an aquifer storage and recovery project  
9 is not subject to production limits, cutbacks, or other action by  
10 the district to reduce production.

11       Sec. 36.458. REGULATION BY DISTRICT. An aquifer storage  
12 and recovery project, and the water stored in a project, is not  
13 subject to any provision or requirement of this chapter related to  
14 the desired future conditions or modeled available groundwater  
15 adopted by the district or the applicable groundwater management  
16 area.

17       Sec. 36.459. ADMINISTRATION; MODEL RULES; EXEMPTION. (a)  
18 The executive administrator shall develop for adoption by the Texas  
19 Water Development Board or any successor agency model rules for the  
20 administration of aquifer storage and recovery projects for  
21 groundwater districts not later than December 31, 2013. The model  
22 rules, once adopted, are applicable to all groundwater districts in  
23 the state and must be adopted by each groundwater district on or  
24 before the 60th day following the date of adoption by the Texas  
25 Water Development Board.

26       (b) Notwithstanding Subsection (a), a district that before  
27 September 1, 2012, adopted rules regulating aquifer storage and

1 recovery projects is not required to adopt the model rules, and, to  
2 the extent of any conflict with the model rules or with any  
3 provision of this chapter related to those projects, the district's  
4 rules prevail.

5 Sec. 36.460. WASTEWATER USAGE. Under a permit issued under  
6 Chapter 26, treated wastewater effluent may be stored in an aquifer  
7 storage and recovery project.

8 Sec. 36.461. STATE FUNDING. An aquifer storage and  
9 recovery project is eligible for state funding in the form of loans  
10 and grants from any available fund or revenue source used to fund  
11 projects included in the state water plan if the project is included  
12 in the plan.

13 SECTION 11. Sections 11.153(e) and 11.155(a), Water Code,  
14 are repealed.

15 SECTION 12. This Act takes effect September 1, 2013.