

By: Larson

H.B. No. 836

A BILL TO BE ENTITLED

AN ACT

relating to the development of brackish groundwater.

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

SECTION 1. The legislature finds that the state will benefit from the encouragement of the use of brackish groundwater resources to help supply the water demands of the state.

SECTION 2. Section 16.012(b), Water Code, is amended to read as follows:

(b) The executive administrator shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) determine suitable, cost-effective water supply alternatives on a regional basis, including voluntary means of encouraging aggressive water conservation;

(3) locate land best suited for irrigation;

(4) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

(5) examine and survey reservoir sites;

(6) monitor the effects of fresh water inflows upon the bays and estuaries of Texas;

(7) monitor instream flows;

(8) lead a statewide effort, in coordination with federal, state, and local governments, institutions of higher education, and other interested parties, to develop a network for

1 collecting and disseminating water resource-related information
2 that is sufficient to support assessment of ambient water
3 conditions statewide;

4 (9) make recommendations for optimizing the
5 efficiency and effectiveness of water resource data collection and
6 dissemination as necessary to ensure that basic water resource data
7 are maintained and available for Texas; ~~and~~

8 (10) study groundwater resources to identify areas
9 suitable for designation as brackish groundwater production zones;
10 and

11 (11) make basic data and summary information developed
12 under this subsection accessible to state agencies and other
13 interested persons.

14 SECTION 3. Section 16.012, Water Code, is amended by
15 amending Subsection (l) and adding Subsections (o) through (q) to
16 read as follows:

17 (l) The executive administrator shall obtain or develop
18 groundwater availability models for major and minor aquifers in
19 coordination with groundwater conservation districts and regional
20 water planning groups created under Section 16.053 that overlie the
21 aquifers. Modeling of major aquifers shall be completed not later
22 than October 1, 2004. On completing a groundwater availability
23 model for an aquifer, the executive administrator shall provide the
24 model to each groundwater conservation district and each regional
25 water planning group created under Section 16.053 overlying that
26 aquifer. If the executive administrator updates a groundwater
27 availability model, the executive administrator shall consider

1 expanding the groundwater availability model to adequately address
2 groundwater contained in designated brackish groundwater zones.

3 (o) The executive administrator shall obtain or develop a
4 series of regional maps and supporting documentation that
5 delineates areas of groundwater resources as follows:

6 (1) areas of groundwater resources with average total
7 dissolved solid levels greater than 3,000 milligrams per liter
8 that, if subjected to continuous appreciable pumping over a period
9 of 30 years, would not result in unreasonable negative impacts to
10 groundwater resources described by Section 36.501(b); and

11 (2) areas of groundwater resources with average total
12 dissolved solid levels between 1,000 and 3,000 milligrams per liter
13 that, if subjected to continuous appreciable pumping over a period
14 of 30 years, would not result in unreasonable negative impacts to
15 groundwater resources described by Section 36.501(b).

16 (p) The regional maps described under Subsection (o) shall
17 be developed in coordination with groundwater conservation
18 districts and regional water planning groups that overlie the
19 groundwater resources in the area. The regional maps shall be
20 completed not later than October 1, 2019. On completing a regional
21 map and its supporting documentation, the executive administrator
22 shall provide the map to each groundwater conservation district and
23 each regional water planning group in the area of the map.

24 (q) The executive administrator shall conduct a review and
25 submit findings to the 85th Texas Legislature in the board's
26 biennial report required by Section 6.156 regarding existing
27 groundwater availability models developed as required by Section

1 16.012(1) documenting the extent, if any, of brackish groundwater
2 resources included in current models and areas of significant
3 groundwater resources for which no groundwater availability model
4 currently exists.

5 SECTION 4. Section 16.053(e), Water Code, is amended to
6 read as follows:

7 (e) Each regional water planning group shall submit to the
8 development board a regional water plan that:

9 (1) is consistent with the guidance principles for the
10 state water plan adopted by the development board under Section
11 16.051(d);

12 (2) provides information based on data provided or
13 approved by the development board in a format consistent with the
14 guidelines provided by the development board under Subsection (d);

15 (2-a) is consistent with the desired future conditions
16 adopted under Section 36.108 for the relevant aquifers located in
17 the regional water planning area as of the date the board most
18 recently adopted a state water plan under Section 16.051 or, at the
19 option of the regional water planning group, established subsequent
20 to the adoption of the most recent plan;

21 (3) identifies:

22 (A) each source of water supply in the regional
23 water planning area, including information supplied by the
24 executive administrator on the amount of modeled available
25 groundwater in accordance with the guidelines provided by the
26 development board under Subsections (d) and (f);

27 (B) factors specific to each source of water

supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section [16.054](#);

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays,

1 estuaries, and arms of the Gulf of Mexico and the effect of plans on
2 navigation;

3 (G) provisions in Section 11.085(k)(1) if
4 interbasin transfers are contemplated;

5 (H) voluntary transfer of water within the region
6 using, but not limited to, regional water banks, sales, leases,
7 options, subordination agreements, and financing agreements; ~~and~~

8 (I) emergency transfer of water under Section
9 11.139, including information on the part of each permit, certified
10 filing, or certificate of adjudication for nonmunicipal use in the
11 region that may be transferred without causing unreasonable damage
12 to the property of the nonmunicipal water rights holder; and

13 (J) opportunities for and the benefits of
14 designating local or regional brackish groundwater production
15 zones;

16 (6) identifies river and stream segments of unique
17 ecological value and sites of unique value for the construction of
18 reservoirs that the regional water planning group recommends for
19 protection under Section 16.051;

20 (7) assesses the impact of the plan on unique river and
21 stream segments identified in Subdivision (6) if the regional water
22 planning group or the legislature determines that a site of unique
23 ecological value exists;

24 (8) describes the impact of proposed water projects on
25 water quality; and

26 (9) includes information on:

27 (A) projected water use and conservation in the

1 regional water planning area; and

2 (B) the implementation of state and regional
3 water plan projects, including water conservation strategies,
4 necessary to meet the state's projected water demands.

5 SECTION 5. Section 16.060, Water Code, is amended by
6 amending Subsections (a) and (b) and adding Subsection (d) to read
7 as follows:

8 (a) The board shall undertake or participate in research,
9 feasibility and facility planning studies, investigations, and
10 surveys as it considers necessary to further the development of
11 cost-effective water supplies from seawater or groundwater
12 desalination in the state.

13 (b) The board shall prepare a biennial progress report on
14 the implementation of seawater or groundwater desalination
15 activities in the state and shall submit it to the governor,
16 lieutenant governor, and speaker of the house of representatives
17 not later than December 1 of each even-numbered year. The report
18 shall include:

19 (1) results of the board's studies and activities
20 relative to seawater or groundwater desalination during the
21 preceding biennium;

22 (2) identification and evaluation of research,
23 regulatory, technical, and financial impediments to the
24 implementation of seawater or groundwater desalination projects;

25 (3) evaluation of the role the state should play in
26 furthering the development of large-scale seawater or groundwater
27 desalination projects in the state; and

(4) the anticipated appropriation from general revenues necessary to continue investigating water desalination activities in the state during the next biennium.

SECTION 6. Section 36.001, Water Code, is amended by adding a new Subdivision (17) to read as follows:

(17) "Brackish groundwater production zone" means a zone designated by a district or the Texas Water Development Board in accordance with Subchapter O.

SECTION 7. Section 36.1071(a), Water Code, is amended to read as follows:

Sec. 36.1071. MANAGEMENT PLAN. (a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a management plan that addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;

(3) controlling and preventing subsidence;

(4) addressing conjunctive surface water management issues;

(5) addressing natural resource issues;

(6) addressing drought conditions;

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

(8) promoting the development and use of groundwater in brackish groundwater production zones; and

(9) addressing the desired future conditions adopted

1 by the district under Section 36.108.

2 SECTION 8. Section 36.108, Water Code, is amended by
3 amending Subsections (d), (d-1), and (d-3) to read as follows:

4 (d) Not later than September 1, 2010, and every five years
5 thereafter, the districts shall consider groundwater availability
6 models and other data or information for the management area and
7 shall propose for adoption desired future conditions for the
8 relevant aquifers within the management area. Before voting on the
9 proposed desired future conditions of the aquifers under Subsection
10 (d-2), the districts shall consider:

11 (1) aquifer uses or conditions within the management
12 area, including conditions that differ substantially from one
13 geographic area to another;

14 (2) the water supply needs and water management
15 strategies included in the state water plan;

16 (3) hydrological conditions, including for each
17 aquifer in the management area the total estimated recoverable
18 storage as provided by the executive administrator, and the average
19 annual recharge, inflows, and discharge;

20 (4) other environmental impacts, including impacts on
21 spring flow and other interactions between groundwater and surface
22 water;

23 (5) the impact on subsidence;

24 (6) socioeconomic impacts reasonably expected to
25 occur;

26 (7) the impact on the interests and rights in private
27 property, including ownership and the rights of management area

landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the impact on existing and potential brackish groundwater production zones;

(9) the feasibility of achieving the desired future condition; and

(10) any other information relevant to the specific desired future conditions.

(d-1) The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; ~~or~~

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area; or

(3) brackish groundwater production zones.

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management

1 area and submit to the development board and each district in the
2 management area proof that notice was posted for the joint planning
3 meeting, a copy of the resolution, and a copy of the explanatory
4 report. The report must:

5 (1) identify each desired future condition;

6 (2) provide the policy and technical justifications
7 for each desired future condition;

8 (3) include documentation that the factors under
9 Subsection (d) were considered by the districts and a discussion of
10 how the adopted desired future conditions impact each factor;

11 (4) list other desired future condition options
12 considered, if any, and the reasons why those options were not
13 adopted; ~~and~~

14 (5) discuss, if applicable, how the desired future
15 conditions promote the use of groundwater from brackish groundwater
16 production zones; and

17 (6) discuss reasons why recommendations made by
18 advisory committees and relevant public comments received by the
19 districts were or were not incorporated into the desired future
20 conditions.

21 SECTION 9. Section 36.1132(b), Water Code, is amended to
22 read as follows:

23 Sec. 36.1132. PERMITS BASED ON MODELED AVAILABLE
24 GROUNDWATER.

25 (b) In issuing permits, the district shall manage total
26 groundwater production on a long-term basis to achieve an
27 applicable desired future condition and consider:

1 (1) the modeled available groundwater determined by
2 the executive administrator;

3 (2) the executive administrator's estimate of the
4 current and projected amount of groundwater produced under
5 exemptions granted by district rules and Section 36.117;

6 (3) the amount of groundwater authorized under permits
7 previously issued by the district;

8 (4) a reasonable estimate of the amount of groundwater
9 that is actually produced under permits issued by the district; ~~and~~

10 (5) yearly precipitation and production patterns; and

11 (6) the extent to which the total volume of water
12 authorized to be produced under permits issued by the district may
13 be increased because of the amount of groundwater production that
14 will occur from within brackish groundwater production zones while
15 still achieving an applicable desired future condition.

16 SECTION 10. Section 36.402, Water Code, is amended to read
17 as follows:

18 Sec. 36.402. APPLICABILITY. Except as provided by Section
19 36.416 and under Subchapter O, this subchapter applies to the
20 notice and hearing process used by a district for permit and permit
21 amendment applications.

22 SECTION 11. Chapter 36, Water Code, is amended to add
23 Subchapter O, as follows:

24 SUBCHAPTER O. BRACKISH GROUNDWATER PRODUCTION ZONES

25 Sec. 36.501. APPLICABILITY. (a) Except as provided in
26 subsection (b), a brackish groundwater production zone may be
27 designated in any groundwater reservoir or subdivision of a

groundwater reservoir in the state.

(b) No brackish groundwater production zone may be designated in the following:

(1) any area of a groundwater reservoir or subdivision of a groundwater reservoir with average total dissolved solids levels of 1,000 milligrams per liter or less, at the time of submission of an administratively complete petition under Section 36.502;

(2) any area of a groundwater reservoir or subdivision of a groundwater reservoir with average total dissolved solids levels of more than 1,000 milligrams per liter that is serving as a significant source of water supply for municipal, domestic, or agricultural purposes, other than production from another brackish groundwater production zone, at the time of submission of an administratively complete petition under Section 36.502;

(3) any area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority; or

(4) any area within the boundaries of the Barton Springs-Edwards Aquifer Conservation District, the Harris-Galveston Subsidence District, or the Fort Bend Subsidence District.

(c) The average total dissolved solids levels provided in Subsection (b)(1) and (2) shall be determined by:

(1) using the methodologies included in the guidance documents developed by the Texas Water Development Board under Section 36.503; or

(2) a process agreed to in writing by the petitioner

1 and the district in which the project is located.

2 Sec. 36.502. DESIGNATION OF ZONE BY PETITION. (a) A person
3 with a legally defined interest in the groundwater to be included
4 in a brackish groundwater production zone may petition the district
5 to designate a brackish groundwater production zone in a
6 groundwater reservoir or subdivision of a reservoir, or in a
7 specific area of a groundwater reservoir or subdivision of a
8 reservoir.

9 (b) The district shall designate a zone if the petitioner
10 demonstrates that:

11 (1) the production of groundwater proposed in the
12 petition will not cause unreasonable negative impacts:

13 (A) to the quality or quantity of groundwater
14 available for permitted and exempt production in any area of a
15 groundwater reservoir or subdivision of a groundwater reservoir
16 described under Section 36.501(b);

17 (B) to existing wells or well systems; or

18 (C) on the achievement of applicable existing
19 desired future conditions; and

20 (2) a monitoring plan described under Section
21 36.504(a)(4) is sufficient to monitor the impacts described under
22 Subdivision (1) of this subsection.

23 (c) Notwithstanding subsection (b), a district may
24 designate a brackish groundwater production zone if the petitioner
25 demonstrates that, while there are unreasonable negative impacts
26 described under Subsection (b)(1) or there are existing wells that
27 may be unreasonably negatively impacted by production from the

1 zone, the mitigation plan, if any, submitted under Section 36.504
2 as part of the petition will reasonably offset the impacts.

3 (d) A brackish groundwater production zone designation
4 created under this subsection shall be consistent with the rights
5 recognized under Section 36.002.

6 Section 36.503. TECHNICAL GUIDANCE DOCUMENTS DEVELOPED BY
7 BOARD. The Texas Water Development Board, with input from
8 districts and interested stakeholders, shall develop guidance
9 documents addressing the technical contents of petitions to
10 designate brackish groundwater production zones. The guidance
11 documents shall include a description of the technical
12 information, including hydrogeologic studies, modeling, or other
13 applicable geophysical and geochemical data regarding properties
14 of the groundwater reservoirs and subdivisions of groundwater
15 reservoirs in the area of a proposed zone, and monitoring and
16 reporting protocols that will be required as part of a petition to
17 make the demonstrations set forth under Section 36.502(b) and (c),
18 and guidance on how to determine average total dissolved solids
19 levels in an area of a groundwater reservoir or subdivision of a
20 groundwater reservoir. The guidance documents shall be used by
21 petitioners in developing petitions and by districts and the Texas
22 Water Development Board in reviewing petitions.

23 Sec. 36.504. CONTENTS OF A PETITION. A petition for the
24 designation of a brackish groundwater production zone shall include
25 the following:

26 (1) a description of:

27 (A) the location of the area overlying the zone

1 and a map that includes sufficient details to enable a property
2 owner to determine whether his property is located within the
3 associated surface acreage proposed to be included in the zone
4 based on:

5 (1) a metes and bounds survey certified by a
6 licensed state land surveyor or a registered professional land
7 surveyor;

8 (2) the Texas State Plane Coordinate
9 System; or

10 (3) verifiable landmarks, including a road,
11 creek, or railroad line;

12 (B) the groundwater reservoir or subdivision of a
13 groundwater reservoir in which the zone will be located; and

14 (C) the petitioner's rights to produce
15 groundwater in the zone;

16 (2) the approximate locations, production rates,
17 depths of well screens, total annual production, and total duration
18 of production of wells to be used for production of groundwater
19 from the zone;

20 (3) technical information consistent with the
21 guidance documents developed under Subsection (b) sufficient to
22 make the demonstrations set forth under Section 36.502(b),
23 including the scope and degree of impact, due to projected
24 production, on areas of groundwater reservoirs and subdivisions of
25 groundwater reservoirs locate inside and outside the zone described
26 under Section 36.501(b);

27 (4) a plan for monitoring and reporting on a periodic

1 basis the quality and quantity of groundwater in the proposed zone
2 and adjacent areas of groundwater reservoirs and subdivisions of
3 groundwater reservoirs described under Section 36.501(b);

4 (5) proposed mitigation plans to identify and mitigate
5 impacts to existing well owners, if any, caused by the petitioner's
6 production of groundwater from the zone; and

7 (6) if applicable, a description of the expected
8 project financing term and estimated duration of the project that
9 will be producing groundwater from the zone.

10 Sec. 36.505. PROCEDURE FOR DISTRICT REVIEW OF A PETITION.

11 (a) A petition to designate a brackish groundwater production zone
12 shall be filed with the district with jurisdiction over the
13 groundwater reservoir or subdivision of a groundwater reservoir
14 proposed to be designated as a brackish groundwater production
15 zone. A copy of the petition shall be filed with the Texas Water
16 Development Board. Within 45 days after receipt of a petition, the
17 district shall deem the petition administratively complete,
18 provide the petitioner with notice of the deficiencies in the
19 petition, or provide the petitioner with notice that the petition
20 shall be considered for direct referral to the Texas Water
21 Development Board.

22 (b) A district shall hold a hearing on a petition or on a
23 request to directly refer the petition to the Texas Water
24 Development Board. The notice and hearing shall be provided and
25 conducted in the same manner as a rulemaking hearing under Section
26 36.101, and the district shall require all hearing participants to
27 register as described under Section 36.101(g). The executive

1 administrator may, and at the request of the district or petitioner
2 shall, participate in the hearing and provide technical comments
3 for the benefit of the district, the petitioner, and the public
4 regarding the petition and the designation of the zone in
5 accordance with the provisions of this subchapter.

6 (c) The district board shall make a final ruling on a
7 petition within 150 days of receipt of an administratively complete
8 petition.

9 (d) A petition shall be deemed denied, without further
10 action by a district, if the district fails to directly refer the
11 petition to the Texas Water Development Board or make a final ruling
12 on the petition in accordance with Section 36.505(c), unless
13 otherwise agreed by the petitioner and district.

14 Sec. 36.506. DISTRICT ACTION ON PETITION; WHEN FINAL. (a) A
15 district board may grant, modify, deny or directly refer a petition
16 to the Texas Water Development Board by written order. Unless the
17 written order directly refers the petition to the Texas Water
18 Development Board, the order shall include the findings of the
19 district board relevant to the determinations set forth under
20 Section 36.502(b) and (c) and projected impacts of the proposed
21 groundwater production from within the zone, including any
22 projected impacts to the quality or quantity of groundwater in
23 areas described under Section 36.501(b). Unless the written order
24 directly refers the petition to the Texas Water Development Board,
25 the board's order shall describe how the zone designation is
26 consistent with the rights recognized in Section 36.002 or whether
27 the zone designation does not impact the rights recognized in

1 Section 36.002, and shall include the participant registration
2 information obtained under Section 36.505(b).

3 (b) A decision by a district on a petition is final and
4 appealable pursuant to Section 36.507 on the date of the district
5 board's written order approving, modifying, or denying the
6 petition. The district shall not require a motion for rehearing on
7 the board action as a prerequisite to filing an appeal under Section
8 36.507. A decision by a district on a petition that directly refers
9 the petition to the Texas Water Development Board is final on the
10 date of the district's written order, and the decision to directly
11 refer the petition is not appealable.

12 Sec. 36.507. APPEAL OR DIRECT REFERRAL TO TEXAS WATER
13 DEVELOPMENT BOARD. (a) Within 30 days after the date of a district
14 board's written order approving, modifying, denying or directly
15 referring a petition, or 30 days after the date a petition is deemed
16 denied under Section 36.505(d), the petitioner or any person with a
17 legally defined interest in groundwater in the district who
18 participated in the hearing may appeal the decision of the district
19 board by filing a notice of appeal along with a copy of the petition
20 as reviewed by the district board with the Texas Water Development
21 Board.

22 (b) If a district enters an order directly referring a
23 petition, the petitioner shall file the petition with the Texas
24 Water Development Board. The executive administrator shall
25 promptly review the petition and, within 30 days after receipt of a
26 petition, the executive administrator shall declare the petition
27 administratively complete, or provide the petitioner with notice of

1 the deficiencies in the petition.

2 (c) The person filing the appeal, or the petitioner, in the
3 case of direct referral, shall provide notice of the Texas Water
4 Development Board's review of the petition by appeal or direct
5 referral to the petitioner, if the district, and to each person that
6 participated in the hearing as identified in the district's order
7 under Section 36.506(a) or, if the petition was deemed denied and
8 there is no district order, to each person who participated and
9 registered at the hearing as required under Section 36.505(b).

10 (d) The Texas Water Development Board shall review the
11 petition de novo. On direct referral, or on an appeal by the
12 petitioner of the district board's modification or denial of the
13 petition, the petitioner shall bear the burden of demonstrating
14 that the petition meets the requirements of this subchapter for the
15 designation of a zone. If a person other than the petitioner appeals
16 the district board's denial of the petition and the petitioner does
17 not appeal, the person shall bear the burden of demonstrating that
18 the petition meets the requirements of this subchapter for the
19 designation of a zone. If a person other than the petitioner
20 appeals the district board's modification or approval of the
21 petition, the person shall bear the burden of demonstrating that
22 the petition as approved does not meet the requirements of this
23 subchapter for the designation of a zone.

24 (e) The Texas Water Development Board's review of a petition
25 under this section is considered a contested case under Chapter
26 2001, Government Code. The executive administrator shall refer an
27 appeal directly to the State Office of Administrative Hearings for

1 a determination of parties and a contested case hearing. The Texas
2 Water Development Board shall issue a final order granting,
3 modifying, or denying the petition and including the information
4 required of a written order under Section 36.506(a).

5 (f) Any party to a review under this section is entitled to
6 judicial review of the Texas Water Development Board's final order
7 under the substantial evidence rule.

8 Sec. 36.508. PETITION PROCESS FOR BRACKISH GROUNDWATER
9 PRODUCTION ZONE LOCATED IN TWO OR MORE DISTRICTS. (a) A petition to
10 designate a brackish groundwater production zone in an area that
11 includes more than one district shall be filed with each district
12 located over the proposed zone in the manner provided by Section
13 36.502.

14 (b) The districts described under Subsection (a) shall:

15 (1) hold a joint hearing on a petition within 90 days
16 of receipt of an administratively complete petition in the manner
17 provided by Section 36.505;

18 (2) agree in writing that one district shall hold the
19 hearing on the petition on behalf of all of the districts; or

20 (3) directly refer a petition to the Texas Water
21 Development Board if at least one district adopts a written order
22 directly referring the petition.

23 (c) A quorum of the board of directors of each district
24 located over the proposed zone is required for a joint hearing under
25 this section.

26 (d) The districts located over the proposed zone may enter
27 into a cost-sharing agreement to address any technical,

regulatory, legal, administrative or other issues associated with the petition.

(e) Each district located over the proposed zone shall provide notice of a hearing as provided by Section 36.505. If a district is holding a district board meeting at which a district board will consider a direct referral of a petition to the Texas Water Development Board, the district shall provide written notice of the district board meeting to all other districts located over the proposed zone and the Texas Water Development Board.

(f) The board of directors of each district located over the proposed zone shall make a final decision on the designation of the zone within 75 days of the date of the hearing conducted under Subsection (b), unless the petitioner and each participating district agree in writing on another date. A single written order that meets the requirements of Section 36.506 must be approved by the board of directors of each district located over the zone in order to designate a zone under this section. The failure of one or more of the districts to approve a single order under this subsection, or the approval and issuance of a single order by each district to approve, modify, or deny a petition under this subsection, may be appealed to the Texas Water Development Board in the manner described by Section 36.507.

Sec. 36.509. PERMITTING OF WELLS IN A BRACKISH GROUNDWATER PRODUCTION ZONE. (a) Except as specifically provided under this subchapter or otherwise provided in the zone designation order, a district may adopt rules regulating the drilling, equipping, completion, and spacing of wells, production of groundwater, or

1 otherwise managing the groundwater resources located in a brackish
2 groundwater production zone in any manner authorized under this
3 chapter; provided, however, that such rules must not be in conflict
4 with the findings of the order designating the zone. However, any
5 rules related to well spacing for wells in the zone or limiting the
6 rates or amounts of groundwater production from the zone are:

7 (1) not applicable to a permit applicant that was the
8 petitioner for the designation of the zone unless the rules related
9 to well spacing or production were in effect at the time of the
10 designation of the zone; and

11 (2) not applicable to a permit applicant that was not
12 the petitioner for the designation of the zone unless the rules
13 related to well spacing or production were in effect at the time of
14 receipt of the administratively complete permit application by such
15 permit applicant.

16 (b) An application for a permit for a well in a brackish
17 groundwater production zone shall be consistent with the findings
18 in the written order designating the zone under Section 36.506 or
19 36.507, as applicable, and the rules of the district as described
20 under Subsection (a).

21 (c) The district may impose a reasonable fee under Section
22 36.205 for processing an application under this section.

23 (d) A district shall act on an application for a permit for
24 a well in a brackish groundwater production zone within 60 days of
25 receipt of the application, or as otherwise agreed by the district
26 and the petitioner. The application shall be processed as an
27 uncontested application under Subchapter M and shall not be subject

1 to a contested case hearing, or may be processed as an application
2 for which a hearing is not required under Section 36.114(b).

3 (e) Notwithstanding Section 36.113(d), a district shall
4 grant an application for a permit for a well in a brackish
5 groundwater production zone if the application is consistent with
6 the order designating the zone under Section 36.506 or 36.507, as
7 applicable, and the rules of the district as described under
8 Subsection (a).

9 (f) A permit issued under this section may be amended
10 pursuant to an application by the permittee if the permittee
11 demonstrates that the changes to the permit are consistent with the
12 written order designating the zone under Sections 36.506 or 36.507.
13 A permit may be amended by the district pursuant to Section 36.514.

14 Sec. 36.510. CONTENTS OF A PERMIT IN A BRACKISH GROUNDWATER
15 PRODUCTION ZONE. (a) Permits shall authorize the drilling and
16 production of water at locations, rates, and amounts that are
17 consistent with the written order designating the brackish
18 groundwater production zone, and the rules of the district as
19 described under Section 36.509(a).

20 (b) Permits in a brackish groundwater production zone shall
21 contain a permit term equal to the expected project financing term
22 or estimated duration of production for the project contained in
23 the zone designation, but no more than 30 years.

24 (c) Permits may require reasonable monitoring of the zone
25 and adjacent areas of groundwater reservoirs and subdivisions of
26 groundwater reservoirs consistent with the monitoring plan
27 contained in the zone designation.

1 (d) Permits may require the filing of drilling logs, and
2 periodic reports of withdrawals, aquifer levels, and other
3 information from the monitoring plan.

4 Sec. 36.511. NON-APPLICABILITY OF SECTION 36.122 TO
5 PRODUCTION; EXPORT FEES. (a) The production from a well in a
6 brackish groundwater production zone is not subject to Section
7 36.122.

8 (b) Notwithstanding subsection (a), a district may impose a
9 reasonable fee or surcharge under Section 36.122(e) for groundwater
10 produced from a brackish groundwater production zone for use
11 outside of a district's boundaries.

12 Sec. 36.512. RIGHTS OF LANDOWNER OVER BRACKISH GROUNDWATER
13 PRODUCTION ZONE TO PRODUCE GROUNDWATER. In implementing this
14 subchapter, a district's actions shall be consistent with the
15 rights recognized under Section 36.002.

16 Sec. 36.513. AMENDMENTS TO BRACKISH GROUNDWATER PRODUCTION
17 ZONES. (a) A brackish groundwater production zone designation
18 under this subchapter may only be amended as provided by this
19 section.

20 (b) A district may initiate an amendment to a brackish
21 groundwater production zone to increase or decrease the rates or
22 amounts of production of groundwater from the zone, to amend the
23 boundaries of the zone, or to change a monitoring or mitigation plan
24 applicable to the zone by providing notice and holding a hearing in
25 the manner set forth under Section 36.505. A district that
26 initiates an amendment to a zone shall bear the burden of proof in
27 making the demonstrations required under Section 36.502 and this

1 section. If the district amendment proposes to decrease the rates
2 or amounts of production of groundwater from the zone, the district
3 must demonstrate that the actual impacts to groundwater resources
4 from production within the zone exceed the projected impacts
5 included in the written order issued under Section 36.506 or
6 36.507, as applicable, that designated the zone, or that there is a
7 changed desired future condition that is impacted by production
8 from the zone.

9 (c) A person who holds a permit to produce groundwater from
10 within the zone or any person with a legally defined interest in
11 groundwater in the district may initiate an amendment to a zone to
12 increase or decrease the rates or amounts of production of
13 groundwater from the zone, to amend the boundaries of the zone, or
14 to change a monitoring or mitigation plan applicable to the zone by
15 filing a petition with the district in the manner prescribed for
16 the original designation of a zone under Section 36.502. The
17 petitioner shall bear the burden of proof in making the
18 demonstrations required under Section 36.502 and this section. If
19 the petition proposes to decrease the rates or amounts of
20 production of groundwater from the zone, the petitioner must
21 demonstrate that the actual impacts to groundwater resources from
22 production within the zone exceed the projected impacts included
23 in the written order issued under Section 36.506 or 36.507, as
24 applicable, that designated the zone, or that there is a changed
25 desired future condition that is impacted by production from the
26 zone.

27 (d) A person who holds a permit to produce groundwater from

within the zone or any person with a legally defined interest in groundwater in the district may appeal the decision of the district board to amend a zone under Subsections (b) or (c) to the Texas Water Development Board in the manner prescribed under Section 36.507.

Sec. 36.514. EFFECT OF ZONE AMENDMENT ON EXISTING WELL PERMITS IN A ZONE. (a) A district may amend a well permit in a brackish groundwater production zone to change the amount or rate of production, or change the monitoring or mitigation plan, only if the designation of the zone is amended under Section 36.513 or by written agreement between the district and the permit holder. Any amendment to a permit must be consistent with the amendment to the zone and may not reduce the rates or amounts of groundwater produced under the permit to a level lower than necessary to be consistent with the amended zone designation.

(b) A district may not amend an existing permit to produce groundwater from a zone because of a change in a desired future condition established under Section 36.108 that may be affected by production from the zone, even if the zone is amended under Section 36.513. In such instances, the district may reduce production through permit renewal after expiration of the original permit term and only to an amount consistent with achievement of the desired future condition and the applicable effective findings related to the zone designation at the time the permit expires.

(c) A district may not amend an existing permit to produce groundwater from a zone during the term of the permit because of an amendment to increase or decrease the size of a zone, or to

1 undesignate a previously designated zone.

2 (d) During the pendency of an amendment to a brackish
3 groundwater production zone, an existing permit holder may continue
4 to produce groundwater under the terms of the existing permit until
5 the permit has been amended after a final decision on the amendment
6 to the zone has been issued by the district under Section 36.506,
7 or if the decision of the district is appealed, until a final
8 decision has been issued by the Texas Water Development Board under
9 Section 36.507.

10 (e) A district may not by rule or an amendment to a rule
11 reduce the amount or rate of groundwater that may be produced under
12 an existing permit to produce groundwater from a zone in a manner
13 that the district would not be authorized to reduce by permit
14 amendment under this section.

15 Sec. 36.515. MANAGEMENT OF BRACKISH GROUNDWATER BY A
16 DISTRICT OR THROUGH JOINT PLANNING. (a) Nothing in this subchapter
17 shall be construed to prohibit:

18 (1) a district, on its own initiative, from managing
19 the groundwater resources as authorized by this chapter in a
20 groundwater reservoir, subdivision of a groundwater reservoir, or
21 area of a groundwater reservoir or subdivision of a groundwater
22 reservoir described by Section 36.501(b); or

23 (2) the establishment of a desired future condition
24 through the joint planning process described under Section 36.108
25 for a groundwater reservoir, subdivision of a groundwater
26 reservoir, or area of a groundwater reservoir or subdivision of a
27 groundwater reservoir described by Section 36.501(b).

1 (b) Notwithstanding Subsection (a), a person may petition a
2 district or districts for the designation of a brackish groundwater
3 production zone in the manner prescribed by this subchapter
4 regardless of whether:

5 (1) a district is already managing all or part of the
6 groundwater resources located in the proposed zone; or

7 (2) there is a desired future condition adopted for
8 all or part of the groundwater resources located within the
9 proposed zone.

10 Sec. 36.516. MANAGEMENT OF BRACKISH GROUNDWATER RESOURCES
11 TO PROMOTE USE; EXPLORATION OR PRODUCTION OF HYDROCARBONS. (a)
12 This subchapter does not affect the exemptions related to
13 hydrocarbon activities as set forth under Section 36.117.

14 (b) In order to promote the utilization of brackish
15 groundwater resources, a district may establish special rules that
16 are less restrictive administratively or with regard to the amount
17 of groundwater that can be produced from a groundwater reservoir,
18 subdivision of a groundwater reservoir, or area of a groundwater
19 reservoir or subdivision of a groundwater reservoir that contains
20 brackish groundwater than the district's rules are with respect to
21 the administration, management, and production of non-brackish
22 groundwater resources for any beneficial purpose of use, including
23 use related to activities associated with the drilling,
24 exploration, or production of hydrocarbons.

25 (c) A district may not adopt rules under this section that
26 are more restrictive on a person producing groundwater for
27 activities related to the drilling, exploration, or production of

1 hydrocarbons than on a person producing groundwater for other
2 purposes of use, but may adopt rules that are less restrictive.

3 Sec. 36.517. MANDAMUS. A district court in in a court of
4 competent jurisdiction in any county in which the district or any
5 part of the district is located may issue a writ of mandamus to
6 compel a district to perform the following:

7 (a) act on a petition for designation of a brackish
8 groundwater production zone within the times frames established in
9 Section 36.504; or

10 (b) issue a permit for a well located in a brackish
11 groundwater production zone pursuant to Section 36.508 based on an
12 application that is consistent with the designation of the
13 brackish groundwater production zone and the rules of the district
14 as described under Section 36.509(a).

15 Sec. 36.518. CONFLICTS WITH OTHER SUBCHAPTERS. If a
16 provision in this subchapter conflicts with a provision of another
17 subchapter under this chapter, the provision in this subchapter
18 prevails.

19 SECTION 12. No later than January 1, 2016, the Texas Water
20 Development Board shall adopt rules to implement the changes in law
21 to Chapters 16 and 36, Water Code, as amended by this Act.

22 SECTION 13. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2015.