

By: Frank

H.B. No. 3413

A BILL TO BE ENTITLED

AN ACT

relating to a general permit to convey water using the bed and banks of a natural stream channel; authorizing a fee.

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

SECTION 1. Subchapter B, Chapter 11, Water Code, is amended by adding Section 11.0425 to read as follows:

Sec. 11.0425. GENERAL PERMIT TO CONVEY WATER USING NATURAL STREAM CHANNELS. (a) In this section:

(1) "Developed water" means groundwater, surface water, desalinated water, or other water that would not naturally be found in the natural stream channel used to convey the water. The term does not include water imported from a source located in the United Mexican States, unless the water is covered by a treaty between the United States of America and the United Mexican States or a related minute order.

(2) "Natural stream channel" means the bed and banks of a river, natural stream, or watercourse in this state, including a lake, reservoir, or impoundment located along the river, stream, or watercourse.

(b) The commission may issue a general permit to authorize a person to use a natural stream channel to convey developed water for use in this state.

(c) A general permit issued under this section:

(1) may:

1           (A) include conditions based on the  
2 characteristics of different sources of developed water or natural  
3 stream channels; and

4           (B) either:

5                 (i) provide for commencement of conveyance  
6 of developed water through a natural stream channel on the filing of  
7 a complete and accurate notice of intent to operate under the  
8 general permit; or

9                 (ii) specify a period or date following  
10 receipt of the complete and accurate notice of intent to operate  
11 under the general permit for commencement of conveyance of  
12 developed water through a natural stream channel, on the condition  
13 that the executive director has not notified the person that the  
14 person is not authorized under the general permit before the 61st  
15 day after the date the notice of intent is received;

16           (2) may not unduly discriminate between similarly  
17 situated sources of developed water or natural stream channels; and

18           (3) must:

19                 (A) specify a deadline and required information  
20 for submitting a notice of intent to use the permit; and

21                 (B) include conditions that:

22                         (i) allow for the diversion of only the  
23 amount of developed water conveyed by the natural stream channel,  
24 less carriage losses due to seepage, evaporation, and transpiration  
25 of aquatic or riparian vegetation;

26                         (ii) protect existing water rights,  
27 including a right under a permit, certified filing, or certificate

1 of adjudication, related to the affected section of the natural  
2 stream channel;

3 (iii) prevent unreasonable effects on fish,  
4 wildlife, instream beneficial uses, and freshwater inflows to bays  
5 and estuaries;

6 (iv) require the development and  
7 implementation of an accounting plan to ensure compliance with the  
8 permit;

9 (v) prevent significant impact to the  
10 quality of water in the natural stream channel used to convey the  
11 developed water;

12 (vi) protect existing uses of water; and

13 (vii) promote the efficient use of water.

14 (d) Conditions adopted under Subsection (c)(3)(B)(vi) or  
15 (vii) may not allow for the developed water to cause a degradation  
16 in the water quality of the affected natural stream channel segment  
17 to the extent that the water quality classification of the natural  
18 stream channel segment would be lowered.

19 (e) The commission shall publish notice and provide for  
20 public comment on a proposed general permit in the manner described  
21 by Section 26.040.

22 (f) The commission shall adopt rules to provide for a  
23 consolidated permit proceeding for a single applicant for both an  
24 authorization under Chapter 26 and the use of a general permit under  
25 this section.

26 (g) The commission may issue a general permit under this  
27 section for a term not to exceed 30 years. After notice and comment

1 as provided by Section 26.040, a general permit may be amended,  
2 revoked, or canceled by the commission or renewed by the commission  
3 for an additional term not to exceed 30 years each. A general permit  
4 remains in effect until amended, revoked, or canceled by the  
5 commission or, unless renewed by the commission, until expired. If  
6 the commission proposes to renew an unexpired general permit, that  
7 general permit remains in effect until the date on which the  
8 commission takes final action on the proposed renewal.

9 (h) The commission, through a renewal or amendment process  
10 for a general permit, may add or delete permit requirements or  
11 limitations. The commission shall provide a reasonable time to  
12 allow a person covered by the general permit to make the changes  
13 necessary to comply with the additional requirements.

14 (i) A person intending to convey developed water in a  
15 natural stream channel must file written notice to the commission  
16 of intent to use a general permit issued under this section, in  
17 accordance with the general permit or rules adopted by the  
18 commission.

19 (j) The commission, after hearing, shall deny or suspend a  
20 person's authority to convey developed water under a general permit  
21 if the commission determines that the person's compliance history  
22 is classified as unsatisfactory according to commission standards  
23 under Sections 5.753 and 5.754 and rules adopted and procedures  
24 developed under those sections. A hearing under this subsection is  
25 not subject to Chapter 2001, Government Code.

26 (k) Developed water conveyed under a general permit issued  
27 under this section is not subject to appropriation.

1       (l) The commission shall include developed water conveyed  
2 under a permit issued under this section in the water availability  
3 model for the river basin in which the natural stream channel is  
4 located as subject to the ownership of the person acting under the  
5 permit.

6       (m) The commission may impose a reasonable and necessary fee  
7 on a person covered by a general permit.

8       (n) The issuance, amendment, renewal, suspension,  
9 revocation, or cancellation of a general permit or of authority to  
10 convey developed water under a general permit is not subject to  
11 Subchapters C-F, Chapter 2001, Government Code.

12       (o) This section does not grant any person the right to  
13 store water in a lake, reservoir, or other impoundment without the  
14 permission of the owner of the lake, reservoir, or other  
15 impoundment.

16       SECTION 2. Section 11.0425, Water Code, as added by this  
17 Act, applies only to a conveyance of water made on or after the  
18 effective date of this Act. A conveyance of water made before that  
19 date is governed by the law in effect on the date the conveyance was  
20 made, and that law is continued in effect for that purpose.

21       SECTION 3. (a) As soon as practicable, the Texas Commission  
22 on Environmental Quality shall adopt rules to implement Section  
23 11.0425, Water Code, as added by this Act.

24       (b) A person may not convey water as described by Section  
25 11.0425, Water Code, as added by this Act, until rules adopted under  
26 Subsection (a) of this section take effect.

27       SECTION 4. This Act takes effect September 1, 2015.