

By: Larson

H.B. No. 228

A BILL TO BE ENTITLED

AN ACT

relating to appropriations of water for use in aquifer storage and recovery projects.

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

SECTION 1. Section 11.153, Water Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) The [~~This section does not preclude the~~] commission may consider [~~from considering~~] an aquifer storage and recovery project to be a component of a project permitted under this chapter that is not required to be based on the continuous availability of historic, normal stream flow.

(d) An aquifer storage and recovery project may involve the use of water derived from multiple sources, including a new appropriation of water. Except as provided by Subsection (e), a water right or an amendment to a water right authorizing a new appropriation of water for use in an aquifer storage and recovery project:

(1) must include any special conditions the commission considers necessary to implement this section;

(2) may be for water that is not continuously available;

(3) may authorize the diversion and use of excess flows in a watercourse or stream that would otherwise flow into the

1 Gulf of Mexico; and

2 (4) may not interfere with or negatively affect:

3 (A) existing water rights in the same river basin
4 as the diversion point for the new appropriation; or

5 (B) applicable environmental flow standards
6 adopted under Section 11.1471.

7 (e) Before approving an application for a water right or an
8 amendment to a water right for a new appropriation of water in the
9 Rio Grande basin for an aquifer storage and recovery project, the
10 commission shall consider the water accounting requirements for any
11 international water sharing treaty, minutes, and agreement
12 applicable to the Rio Grande basin and the effect of the project on
13 the allocation of water by the Rio Grande watermaster in the middle
14 and lower Rio Grande. The commission may not authorize a new
15 appropriation of water that would result in a violation of a treaty
16 or court decision.

17 (f) The commission may adopt rules providing an expedited
18 procedure for acting on an application for a water right or an
19 amendment to a water right under this section.

20 SECTION 2. Subchapter D, Chapter 11, Water Code, is amended
21 by adding Section 11.156 to read as follows:

22 Sec. 11.156. AMENDMENT TO CONVERT USE FROM RESERVOIR
23 STORAGE TO AQUIFER STORAGE AND RECOVERY. (a) In this section,
24 "aquifer storage and recovery project" has the meaning assigned by
25 Section 27.151.

26 (b) A holder of a water right authorizing an appropriation
27 of water for storage in a storage reservoir that has not been

1 constructed may file an application for an amendment to the water
2 right to change the use or purpose for which the appropriation is to
3 be made to storage in an aquifer as part of an aquifer storage and
4 recovery project.

5 (c) An application for an amendment to a water right
6 described by Subsection (b) may request an increase in the amount of
7 water that may be diverted or the rate of diversion on the basis of
8 an evaporation credit that takes into account the amount of water
9 that would have evaporated if the storage reservoir had been
10 constructed.

11 (d) An application for an amendment to a water right
12 described by Subsection (b):

13 (1) is exempt from any notice and hearing requirements
14 of a statute, commission rule, or permit condition and may not be
15 referred to the State Office of Administrative Hearings for a
16 contested case hearing if the application does not request:

17 (A) an increase in the amount of water that may be
18 diverted or the rate of diversion; or

19 (B) a change in the diversion point; and

20 (2) is subject to the notice and hearing requirements
21 of this chapter if the application requests:

22 (A) an increase in the amount of water that may be
23 diverted or the rate of diversion, including an increase on the
24 basis of an evaporation credit; or

25 (B) a change in the diversion point.

26 (e) If the commission grants an application for an amendment
27 to a water right described by Subsection (d)(2), the commission

1 shall include in the amendment any special conditions the
2 commission considers necessary to:

3 (1) protect existing water rights; and

4 (2) comply with any applicable environmental flow
5 standards established under Section 11.1471.

6 (f) The commission may adopt rules providing an expedited
7 procedure for acting on an application for an amendment to a water
8 right described by Subsection (b).

9 SECTION 3. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect December 1, 2017.