86R5540 SLB-F

By:  Larson H.B. No. 720

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 (b) and adding Subsections (d), (e), and (f) to read as follows:

(b)  A water right holder or a person who has contracted for the use of water under a contract that does not prohibit the use of the water in an aquifer storage and recovery project may undertake an aquifer storage and recovery project and subsequently retrieve and use the water under the existing water right without obtaining any additional authorization under this chapter for the project. A person described by this subsection undertaking an aquifer storage and recovery project must:

(1)  obtain any required authorizations under Subchapter G, Chapter 27, and Subchapter N, Chapter 36; and

(2)  comply with the terms of the applicable water right.

(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 comply with the requirements of Section 11.134;

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

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

(4)  may authorize the diversion and use of unappropriated flows in a watercourse or stream that would otherwise flow into the Gulf of Mexico.

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

(f)  The commission shall adopt rules providing for:

(1)  an expedited procedure for acting on an application for a water right or an amendment to a water right under this section;

(2)  the considerations for determining the frequency that the water must be available before it may be appropriated; and

(3)  the method to apply environmental flow standards for infrequently available water.

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

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

(b)  A holder of a water right authorizing an appropriation of water for storage in a storage reservoir that has not been constructed or that has lost storage because of sedimentation, as determined by a survey performed or accepted by the board, may file an application for an amendment to the water right to change the use or purpose for which the appropriation is to be made to storage in an aquifer as part of an aquifer storage and recovery project for later retrieval and use as authorized by the original water right.

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

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

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

(A)  an increase in the amount of water that may be diverted, the rate of diversion, or the amount of total storage; or

(B)  a change in the diversion point; and

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

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

(B)  a change in the diversion point.

(e)  If the commission grants an application for an amendment to a water right described by Subsection (d)(2), the commission shall include in the amendment any special conditions the commission considers necessary to:

(1)  protect existing water rights; and

(2)  comply with any applicable environmental flow standards established under Section 11.1471 if the change results in a negative effect on the environment.

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

SECTION 3.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.