By:  Larson (Senate Sponsor - Perry) H.B. No. 720

(In the Senate - Received from the House May 1, 2019; May 10, 2019, read first time and referred to Committee on Water & Rural Affairs; May 15, 2019, reported favorably by the following vote: Yeas 6, Nays 1; May 15, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Creighton       X

Alvarado        X

Johnson         X

Kolkhorst       X

Rodríguez           X

Taylor          X

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Sections 11.023(a)  and (d), Water Code, are amended to read as follows:

(a)  To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2)  to meet downstream instream flow needs or freshwater inflow needs, state water may be appropriated, stored, or diverted for:

(1)  domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2)  agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3)  mining and recovery of minerals;

(4)  hydroelectric power;

(5)  navigation;

(6)  recreation and pleasure;

(7)  public parks; [~~and~~]

(8)  game preserves; and

(9)  recharge into an aquifer underlying this state other than an aquifer described under Subsection (c)  through surface infiltration or an aquifer recharge project as defined by Section 27.201.

(d)  When it is put or allowed to sink into the ground, water appropriated under Subsections (a)(9)  and [~~Subsection~~] (c) [~~of this section~~] loses its character and classification as state water, storm water, or floodwater and is considered percolating groundwater.

SECTION 2.  Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.157 and 11.158 to read as follows:

Sec. 11.157.  WATER FOR USE AS AQUIFER RECHARGE OR IN AN AQUIFER STORAGE AND RECOVERY PROJECT. (a)  Unappropriated water, including storm water and floodwater, may be appropriated for recharge into an aquifer underlying this state, including an aquifer recharge project as defined by Section 27.201. Water appropriated for diversion and a beneficial use may be stored in an aquifer storage and recovery project, as defined by Section 27.151, before the water is recovered for that beneficial use.

(b)  The commission may authorize the appropriation of water under Subsection (a) if the commission determines that:

(1)  the water is not needed under Section 11.147 or 11.1471(a)(2), as applicable, to meet downstream instream flow needs or freshwater inflow needs;

(2)  the appropriation will accomplish a purpose established by Section 11.023; and

(3)  the application for the water right or amendment to the water right complies with Subsection (c).

(c)  A water right or an amendment to a water right authorizing a new appropriation of water for use under Subsection (a):

(1)  must comply with the requirements of Section 11.134;

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

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

(d)  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 under this section, 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.

(e)  An application for a water right or an amendment to a water right under this section is subject to the motion and hearing requirements of this subchapter.

(f)  Not later than the 180th day after the date the commission determines that a water right or an amendment to a water right under this section is administratively complete, the commission shall complete a technical review of the application.

(g)  The commission shall adopt rules providing for the considerations for determining the frequency that the water must be available before it may be appropriated.

Sec. 11.158.  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 that authorizes the storage of water for a beneficial use in a reservoir that has not been constructed may file an application to amend the water right to remove the authorization for storage in a reservoir provided that the water diverted under the right will be stored in an aquifer storage and recovery project authorized under Section 27.153 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)  A holder of a water right authorizing an appropriation of water for storage in a storage reservoir that has lost storage because of sedimentation, as determined by a survey performed 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 from storage by diversion to storage as part of an aquifer storage and recovery project for later retrieval and use as authorized by the original water right in an amount equal to all or part of the amount of water yield lost to sedimentation.

(e)  An application for an amendment to a water right described by Subsection (b) 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 requested change will not cause a negative effect on other water rights holders or the environment that is greater than the effect that the original permit would have had were the permit rights exercised to the full extent of the original permit.

(f)  An application for an amendment to a water right described by Subsection (c) or (d) is subject to the notice and hearing requirements of this chapter.

(g)  If the commission grants an application for an amendment to a water right described by Subsection (c) or (d), 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 requirements established under Section 11.147 or 11.1471.

(h)  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) and the procedures to file and act on an application for an amendment to a water right described by Subsection (c) or (d).

SECTION 3.  Chapter 27, Water Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H.  AQUIFER RECHARGE PROJECTS

Sec. 27.201.  DEFINITIONS. In this subchapter:

(1)  "Aquifer recharge project" means a project involving the intentional recharge of an aquifer by means of an injection well authorized under this chapter or other means of infiltration, including actions designed to:

(A)  reduce declines in the water level of the aquifer;

(B)  supplement the quantity of groundwater available;

(C)  improve water quality in an aquifer;

(D)  improve spring flows and other interactions between groundwater and surface water; or

(E)  mitigate subsidence.

(2)  "Native groundwater" means the groundwater naturally occurring in a geologic formation.

(3)  "Project operator" means a person holding an authorization under this subchapter to undertake an aquifer recharge project.

(4)  "Recharge injection well" means a Class V injection well used for the injection of water into a geologic formation for an aquifer recharge project, including an improved sinkhole or cave connected to an aquifer.

Sec. 27.202.  JURISDICTION. The commission has exclusive jurisdiction over the regulation and permitting of recharge injection wells.

Sec. 27.203.  AUTHORIZATION FOR USE OF CLASS V INJECTION WELLS. (a) The commission may authorize the use of a Class V injection well as a recharge injection well:

(1)  by rule;

(2)  under an individual permit; or

(3)  under a general permit.

(b)  In adopting a rule or issuing a permit under this section, the commission shall consider:

(1)  whether the injection of water will comply with the standards established by the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.);

(2)  the effect of the aquifer recharge project on existing water wells; and

(3)  whether the introduction of water into the receiving geologic formation will alter the physical, chemical, or biological quality of the native groundwater to a degree that would:

(A)  render the groundwater produced from the receiving geologic formation harmful or detrimental to people, animals, vegetation, or property; or

(B)  require an unreasonably higher level of treatment of the groundwater produced from the receiving geologic formation than is necessary for the native groundwater to render the groundwater suitable for beneficial use.

(c)  The commission by rule shall provide for public notice and comment on a proposed general permit authorized under this section. The commission shall require an applicant for an individual permit authorized under this section to provide notice of the application by first class mail to any groundwater conservation district in which the wells associated with the aquifer recharge project will be located and by publishing notice in a newspaper of general circulation in the county in which the wells will be located.

Sec. 27.204.  TECHNICAL STANDARDS. (a) The commission shall adopt technical standards governing the approval of the use of a Class V injection well as a recharge injection well.

(b)  The commission may not adopt or enforce groundwater quality protection standards for the quality of water injected into a recharge injection well that are more stringent than applicable federal standards.

Sec. 27.205.  REPORTING OF INJECTION VOLUMES. (a) A project operator shall install a meter on each recharge injection well associated with the aquifer recharge project.

(b)  Each calendar year, the project operator shall provide to the commission a written or electronic report showing for the preceding calendar year the volume of water injected for recharge.

Sec. 27.206.  REPORTING OF WATER QUALITY DATA. A project operator shall:

(1)  perform water quality testing annually on water to be injected into a geologic formation as part of the aquifer recharge project; and

(2)  provide the results of the testing described by Subdivision (1) in written or electronic form to the commission.

Sec. 27.207.  OTHER LAWS NOT AFFECTED. (a) This subchapter does not affect the ability to regulate an aquifer recharge project as authorized under:

(1)  Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2)  Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Subsidence District;

(3)  Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District;

(4)  Chapter 8802, Special District Local Laws Code, for the Barton Springs-Edwards Aquifer Conservation District; or

(5)  Chapter 8811, Special District Local Laws Code, for the Corpus Christi Aquifer Storage and Recovery Conservation District.

(b)  This subchapter does not affect the authority of the commission regarding:

(1)  recharge projects in certain portions of the Edwards underground reservoir under Sections 11.023(c) and (d);

(2)  injection wells that transect or terminate in certain portions of the Edwards Aquifer under Section 27.0516; or

(3)  aquifer storage and recovery projects under Section 11.155 or Subchapter G of this chapter.

SECTION 4.  Not later than June 1, 2020, the Texas Commission on Environmental Quality shall adopt rules to implement Sections 11.157 and 11.158, Water Code, as added by this Act, and Subchapter H, Chapter 27, Water Code, as added by this Act.

SECTION 5.  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.

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