

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

1 surface infiltration or an aquifer recharge project as defined by
2 Section 27.201.

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

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

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

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

20 (1) the water is not needed under Section 11.147 or
21 11.1471(a)(2), as applicable, to meet downstream instream flow
22 needs or freshwater inflow needs;

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

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

27 (c) A water right or an amendment to a water right

1 authorizing a new appropriation of water for use under Subsection

2 (a):

3 (1) must comply with the requirements of Section

4 11.134;

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

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

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

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

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

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

1 Sec. 11.158. AMENDMENT TO CONVERT USE FROM RESERVOIR
2 STORAGE TO AQUIFER STORAGE AND RECOVERY. (a) In this section,
3 "aquifer storage and recovery project" has the meaning assigned by
4 Section 27.151.

5 (b) A holder of a water right that authorizes the storage of
6 water for a beneficial use in a reservoir that has not been
7 constructed may file an application to amend the water right to
8 remove the authorization for storage in a reservoir provided that
9 the water diverted under the right will be stored in an aquifer
10 storage and recovery project authorized under Section 27.153 for
11 later retrieval and use as authorized by the original water right.

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

18 (d) A holder of a water right authorizing an appropriation
19 of water for storage in a storage reservoir that has lost storage
20 because of sedimentation, as determined by a survey performed by
21 the board, may file an application for an amendment to the water
22 right to change the use or purpose for which the appropriation is to
23 be made from storage by diversion to storage as part of an aquifer
24 storage and recovery project for later retrieval and use as
25 authorized by the original water right in an amount equal to all or
26 part of the amount of water yield lost to sedimentation.

27 (e) An application for an amendment to a water right

1 described by Subsection (b) is exempt from any notice and hearing
2 requirements of a statute, commission rule, or permit condition and
3 may not be referred to the State Office of Administrative Hearings
4 for a contested case hearing if the requested change will not cause
5 a negative effect on other water rights holders or the environment
6 that is greater than the effect that the original permit would have
7 had were the permit rights exercised to the full extent of the
8 original permit.

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

12 (g) If the commission grants an application for an amendment
13 to a water right described by Subsection (c) or (d), the commission
14 shall include in the amendment any special conditions the
15 commission considers necessary to:

16 (1) protect existing water rights; and
17 (2) comply with any applicable requirements
18 established under Section 11.147 or 11.1471.

19 (h) The commission may adopt rules providing an expedited
20 procedure for acting on an application for an amendment to a water
21 right described by Subsection (b) and the procedures to file and act
22 on an application for an amendment to a water right described by
23 Subsection (c) or (d).

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

26 SUBCHAPTER H. AQUIFER RECHARGE PROJECTS

27 Sec. 27.201. DEFINITIONS. In this subchapter:

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

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

7 (B) supplement the quantity of groundwater
8 available;

9 (C) improve water quality in an aquifer;

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

12 (E) mitigate subsidence.

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

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

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

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

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

- 1 (1) by rule;
- 2 (2) under an individual permit; or
- 3 (3) under a general permit.

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

6 (1) whether the injection of water will comply with
7 the standards established by the federal Safe Drinking Water Act
8 (42 U.S.C. Section 300f et seq.);

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

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

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

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

22 (c) The commission by rule shall provide for public notice
23 and comment on a proposed general permit authorized under this
24 section. The commission shall require an applicant for an
25 individual permit authorized under this section to provide notice
26 of the application by first class mail to any groundwater
27 conservation district in which the wells associated with the

1 aquifer recharge project will be located and by publishing notice
2 in a newspaper of general circulation in the county in which the
3 wells will be located.

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

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

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

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

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

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

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

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

27 (1) Chapter 626, Acts of the 73rd Legislature, Regular

1 Session, 1993, for the Edwards Aquifer Authority;

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

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

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

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

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

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

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

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

19 SECTION 4. Not later than June 1, 2020, the Texas Commission
20 on Environmental Quality shall adopt rules to implement Sections
21 11.157 and 11.158, Water Code, as added by this Act, and Subchapter
22 H, Chapter 27, Water Code, as added by this Act.

23 SECTION 5. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 720 was passed by the House on May 1, 2019, by the following vote: Yeas 135, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 720 was passed by the Senate on May 22, 2019, by the following vote: Yeas 25, Nays 6.

Secretary of the Senate

APPROVED: _____

Date

Governor