

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

1 project:

2 (1) must comply with the requirements of Section
3 11.134;

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

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

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

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

21 (f) The commission shall adopt rules providing for:

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

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

27 (3) the method to apply environmental flow standards

1 for infrequently available water.

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

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

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

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

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

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

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

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

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

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

9 (B) a change in the diversion point.

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

14 (1) protect existing water rights; and

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

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

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