

AN ACT

relating to the development of brackish groundwater.

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

SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1015 to read as follows:

Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER PRODUCTION ZONES. (a) In this section:

(1) "Designated brackish groundwater production zone" means an aquifer, subdivision of an aquifer, or geologic stratum designated under Section 16.060(b)(5).

(2) "Development board" means the Texas Water Development Board.

(3) "Gulf Coast Aquifer" means the system of hydrogeologic units that run along the Gulf Coast from the Sabine River to the Rio Grande, including:

(A) the Catahoula confining system, including the Frio Formation, the Anahuac Formation, and the Catahoula Tuff or Sandstone;

(B) the Jasper Aquifer, including the Oakville Sandstone and Fleming Formation;

(C) the Burkeville confining system separating the Jasper Aquifer from the Evangeline Aquifer;

(D) the Evangeline Aquifer, including the Goliad Sand; and

1 (E) the Chicot Aquifer, including the Willis
2 Sand, the Bentley Formation, the Montgomery Formation, the Beaumont
3 Clay, and alluvial deposits at the surface.

4 (b) The requirements of this section do not apply to a
5 district that:

6 (1) overlies the Dockum Aquifer; and

7 (2) includes wholly or partly 10 or more counties.

8 (c) A district located over any part of a designated
9 brackish groundwater production zone may adopt rules to govern the
10 issuance of permits under this section for the completion and
11 operation of a well for the withdrawal of brackish groundwater from
12 a designated brackish groundwater production zone and shall adopt
13 rules described by this subsection if the district receives a
14 petition from a person with a legally defined interest in
15 groundwater in the district. The district must adopt the rules not
16 later than the 180th day after the date the district receives the
17 petition. Rules adopted under this subsection apply only to a
18 permit for a project described by Subsection (d).

19 (d) A person may obtain a permit under rules adopted under
20 this section for projects including:

21 (1) a municipal project designed to treat brackish
22 groundwater to drinking water standards for the purpose of
23 providing a public source of drinking water; and

24 (2) an electric generation project to treat brackish
25 groundwater to water quality standards sufficient for the project
26 needs.

27 (e) The rules adopted under this section must:

1 (1) provide for processing an application for a
2 brackish groundwater production zone operating permit in the same
3 manner as an application for an operating permit for a fresh
4 groundwater well, except as provided by this section;

5 (2) allow withdrawals and rates of withdrawal of
6 brackish groundwater from a designated brackish groundwater
7 production zone not to exceed and consistent with the withdrawal
8 amounts identified in Section 16.060(e);

9 (3) provide for a minimum term of 30 years for a permit
10 issued for a well that produces brackish groundwater from a
11 designated brackish groundwater production zone;

12 (4) require implementation of a monitoring system
13 recommended by the development board to monitor water levels and
14 water quality in the same or an adjacent aquifer, subdivision of an
15 aquifer, or geologic stratum in which the designated brackish
16 groundwater production zone is located;

17 (5) for a project located in a designated brackish
18 groundwater production zone in the Gulf Coast Aquifer, require
19 reasonable monitoring by the district of land elevations to
20 determine if production from the project is causing or is likely to
21 cause subsidence during the permit term;

22 (6) require from the holder of a permit issued under
23 rules adopted under this section annual reports that must include:

24 (A) the amount of brackish groundwater
25 withdrawn;

26 (B) the average monthly water quality of the
27 brackish groundwater withdrawn and in the monitoring wells; and

1 (C) aquifer levels in both the designated
2 brackish groundwater production zone and in any aquifer,
3 subdivision of an aquifer, or geologic stratum for which the permit
4 requires monitoring;

5 (7) provide greater access to brackish groundwater by
6 simplifying procedure, avoiding delay in permitting, saving
7 expense for the permit seeker, and providing flexibility to permit
8 applicants and the district;

9 (8) be consistent with and not impair property rights
10 described by Sections 36.002(a) and (b); and

11 (9) specify all additional information that must be
12 included in an application.

13 (f) Additional information required under Subsection (e)(9)
14 must be reasonably related to an issue the district is authorized to
15 consider.

16 (g) An application for a brackish groundwater production
17 zone operating permit must include:

18 (1) the proposed well field design compared to the
19 designated brackish groundwater production zone;

20 (2) the requested maximum groundwater withdrawal rate
21 for the proposed project;

22 (3) the number and location of monitoring wells needed
23 to determine the effects of the proposed project on water levels and
24 water quality in the same or an adjacent aquifer, subdivision of an
25 aquifer, or geologic stratum in which the designated brackish
26 groundwater production zone is located; and

27 (4) a report that includes:

1 (A) a simulation of the projected effects of the
2 proposed production on water levels and water quality in the same or
3 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
4 in which the designated brackish groundwater production zone is
5 located;

6 (B) a description of the model used for the
7 simulation described by Paragraph (A); and

8 (C) sufficient information for a technical
9 reviewer to understand the parameters and assumptions used in the
10 model described by Paragraph (B).

11 (h) The district shall submit the application to the
12 development board and the development board shall conduct a
13 technical review of the application. The development board shall
14 submit a report of the review of the application that includes:

15 (1) findings regarding the compatibility of the
16 proposed well field design with the designated brackish groundwater
17 production zone; and

18 (2) recommendations for the monitoring system
19 described by Subsection (e)(4).

20 (i) The district may not schedule a hearing on the
21 application until the district receives the report from the
22 development board described by Subsection (h).

23 (j) The district shall provide the reports required under
24 Subsection (e)(6) to the development board. Not later than the
25 120th day after the date the development board receives a request
26 from the district, the development board shall investigate and
27 issue a report on whether brackish groundwater production under the

1 project that is the subject of the report from the designated
2 brackish groundwater production zone is projected to cause:

3 (1) significant aquifer level declines in the same or
4 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
5 that were not anticipated by the development board in the
6 designation of the zone;

7 (2) negative effects on quality of water in an
8 aquifer, subdivision of an aquifer, or geologic stratum; or

9 (3) for a project located in a designated brackish
10 groundwater production zone in the Gulf Coast Aquifer, subsidence
11 during the permit term.

12 (k) After receiving from the development board a report
13 issued under Subsection (j) and after notice and hearing subject to
14 Subchapter M, the district may:

15 (1) amend the applicable permit to establish a
16 production limit necessary to mitigate any negative effects
17 identified by the report;

18 (2) approve a mitigation plan that alleviates any
19 negative effects identified by the report; or

20 (3) both amend the permit to establish a production
21 limit and approve a mitigation plan.

22 (l) Rules adopted under this section must provide that the
23 production authorized from a designated brackish groundwater
24 production zone is in addition to the amount of managed available
25 groundwater provided under Section 36.108. To the extent possible,
26 a district shall issue permits up to the point that the total volume
27 of exempt and permitted groundwater production in a designated

1 brackish groundwater production zone equals the amount of brackish
2 groundwater that may be produced annually to achieve the
3 groundwater availability described by the development board in its
4 designation of the brackish groundwater production zone under
5 Section 16.060(e).

6 (m) A district may not adopt rules limiting access to the
7 production of groundwater within a designated brackish groundwater
8 production zone to only those projects described by Subsection (d).

9 (n) The district may grant or deny an application to extend
10 a term under this section only using rules that were in effect at
11 the time the application was submitted.

12 (o) An application for a permit under this section is
13 governed solely by district rules consistent with this section.

14 SECTION 2. The Texas Water Development Board is required to
15 implement a provision of this Act only if the legislature
16 appropriates money specifically for that purpose. If the
17 legislature does not appropriate money specifically for that
18 purpose, the board may, but is not required to, implement a
19 provision of this Act using other appropriations available for that
20 purpose.

21 SECTION 3. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 722 was passed by the House on April 18, 2019, by the following vote: Yeas 134, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 722 on May 24, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 722 on May 26, 2019, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 722

I certify that H.B. No. 722 was passed by the Senate, with amendments, on May 22, 2019, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 722 on May 26, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor