

SUBJECT: Revising certain groundwater permitting processes

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 7 ayes — Larson, Metcalf, Farrar, Harris, Lang, Price, Ramos

1 nay — T. King

3 absent — Dominguez, Nevárez, Oliverson

WITNESSES: For — Amber Beard, Cibolo Valley Local Government Corporation; Eddie McCarthy, Fort Stockton Holdings LP; Tom Oney, Lower Colorado River Authority; Steve Kosub, San Antonio Water System; Linda Kaye Rogers; (*Registered, but did not testify*: Heather Harward, Brazos Valley Groundwater Conservation District; Kent Satterwhite, Canadian River Municipal Water Authority; Marmie Edwards, League of Women Voters; C.E. Williams, Panhandle Groundwater Conservation District; Leticia Van de Putte, San Antonio Chamber of Commerce; Jess Heck, SouthWest Water Company; Mia Hutchens, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Marissa Patton, Texas Farm Bureau; CJ Tredway, Texas Oil & Gas Association; Bill Kelberlau; Ronda McCauley)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; James Lee Murphy, League of Independent Voters; Chris Mullins, Save Our Springs Alliance; Esther Martinez and Andrew Wier, Simsboro Aquifer Water Defense Fund; (*Registered, but did not testify*: Angela Smith, Fredericksburg Tea Party; James Gaines, Texas Landowners Council; Rita Beving, Texas Landowners for Eminent Domain; Kathy Denison; Meagan Kennedy)

On — Doug Marousek, Circle D Civic Association; Vanessa Puig-Williams; (*Registered, but did not testify*: Tammy Embrey, City of Corpus Christi; John Dupnik, Texas Water Development Board)

BACKGROUND: Water Code sec. 36.113 directs a groundwater conservation district to

require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A conservation district is authorized to require that any changes in the withdrawal or use of groundwater only occur after the district has first approved an amendment to the permit.

Sec. 36.122 allows a groundwater conservation district to require that a person obtain a permit or an amendment to a permit for the transfer of groundwater out of the district in order to:

- increase the amount of groundwater to be transferred under a continuing arrangement already in effect; or
- transfer groundwater out of the district under a new arrangement.

**DIGEST:**

CSHB 726 would amend permit requirements relating to the export of groundwater out of a groundwater conservation district's borders. The bill would also establish a process for a conservation district to impose a temporary moratorium on the issuance of permits.

**Exporting and operating permits.** Under the bill, a conservation district could not require a separate permit for exporting groundwater for use outside the district, and a district could not deny a permit because the application intended to export it outside the district.

Before granting or denying a permit under Water Code sec. 36.113, a conservation district would have to consider whether the projected effect of the proposed water production would unreasonably affect existing water resources, existing permit holders, or registered well owners.

A district would have to extend the term of a permit for transferring water outside of the district's boundaries that existed on May 27, 2019:

- to a term no shorter than the term of a corresponding water production permit for the water that was to be exported; and
- for each additional term the production permit was renewed or was in effect.

The rules of a conservation district that were in effect on the day an application for a permit or permit amendment was submitted would be the only district rules that would govern the district's decisions to grant or deny the application.

**Water export fees and surcharges.** A groundwater conservation district could impose an export fee or surcharge on the holder of an operating permit for water exported for use outside the district. This fee or surcharge would be determined by methods as described in statute.

A district that imposed an export fee or surcharge on the holder of a permit to export groundwater before the effective date of the bill could continue to impose the fee for the duration of the permit and any renewal of the permit, so long as the holder of the permit was not the same as the person who held the associated operating permit.

**Operating permit moratorium.** A groundwater conservation district could not adopt a moratorium on issuing operating permits or permit amendments unless the district conducted a public hearing and made written findings supporting the moratorium.

The public hearing would have to provide residents of the district and other affected parties the opportunity to be heard. The conservation district would be required to publish notice of the date, time, and place of the hearing in a newspaper in the district by the fourth day before the hearing.

From the fifth day after the notice was published until the district made a final determination on a proposed moratorium on issuing permits, a temporary moratorium would be imposed, and the district could stop issuing permits or permit amendments. By the 12th day after the public hearing, the district would have to make a final determination on whether to impose the moratorium and issue written findings supporting the determination.

A moratorium imposed under the bill would expire after 90 days and could not be extended. A moratorium adopted by a district before September 1, 2019, would expire on November 30, 2019.

**Effective dates.** An administratively complete permit application to export groundwater received by a groundwater conservation district before the effective date of the bill would be governed by the law in effect when the application was completed.

A permit to export groundwater approved by a conservation district before the effective date of the bill would be validated and confirmed in all respects. The bill would not apply to a permit to export groundwater that was subject to litigation that was pending on the effective date of the bill or that resulted in a final judgement that the permit was invalid and that could not be appealed.

The bill would take effect September 1, 2019.

**SUPPORTERS  
SAY:**

CSHB 726 would improve the stability, equitability, and efficiency of groundwater exportation by streamlining the permitting process. Under the bill, producing and exporting groundwater from a groundwater conservation district would no longer require separate permits. This would simplify the permitting process and allow the development of more large-scale groundwater production projects to move forward.

Long-term water planning requires stability in order for necessary, significant investments in infrastructure to be made. This need is reflected in the current maximum export permit term of 30 years. However, production permits may be of any duration and are often as short as one to five years. CSHB 726 would align production permits with export permits to give water utilities the certainty they need in order to make long-term plans and investments to serve their customers.

The bill would ensure water producers and exporters were treated consistently throughout the permitting process. A permit or permit amendment application would have to be considered under the rules in

place at the time the application was submitted, preventing applicants from being subjected to rule changes mid-process.

Permits also would no longer be under the procedural threat of an indefinite moratorium. The bill would limit a groundwater conservation district's moratorium on the issuance of permits to 90 days and require any proposed moratorium be considered at a public meeting, increasing transparency and allowing stakeholders to weigh in on the process.

Moratoriums were never intended to be used as an indirect way of denying an application, but they have been used in this way. Placing limits on the duration of moratoriums is a sensible solution. Longer limits, such as six months or a year, run the risk of exposing proposed projects to increased uncertainty in the market and make it more likely the project would have to be abandoned.

Exempting existing permits from the bill's provisions would negate the benefits of stability for permit-holders and would not resolve the problems districts face in dealing with misaligned exporting and production permits. In addition, districts already have the ability to mitigate against negative effects to an aquifer when they consider whether to issue or renew an operating permit.

OPPONENTS  
SAY:

CSHB 726 would remove the flexibility and discretion necessary for groundwater conservation districts to protect their aquifers in the long term.

When many water export permits were granted, it was understood that at the end of 30 years there would be time to analyze the permits' impact on affected aquifers before the permit was renewed. Extending permits across-the-board would run counter to this understanding and deny the public and conservation districts the ability to correct for any impacts on the aquifer. Current permits should be exempted from this change in the process.

CSHB 726 also would impose overly restrictive limits on moratoriums.

The hard limit of 90 days would not take into account the varying complexities of aquifers. A groundwater conservation district might need more time in order to do its due diligence in studying permits' impact on the life of an aquifer.

The bill also would override the enabling statutes of certain groundwater conservation districts as the statutes relate to the districts' rights to control the exportation of groundwater, conflicting with the will of local voters who had ratified the district.