

AGENDA ITEM N

These bills represent draft legislation that TWCA committees are working on for the upcoming legislative session. They have not yet been approved by TWCA or TWCA's groundwater committee. The TAGD legislative committee has been discussing these drafts and has made suggestions to the drafters in some cases. A revised ASR draft bill will likely be distributed on Monday, August 25th, and we will update this document at that time.

DRAFT BRACKISH BILL

SECTION 1. The legislature finds that the state will benefit from the encouragement of the use of brackish groundwater resources to help supply the water demands of the state.

SECTION 2. Section 16.012(b), Water Code, is amended to read as follows:

(b) The executive administrator shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) determine suitable, cost-effective water supply alternatives on a regional basis, including voluntary means of encouraging aggressive water conservation;

(3) locate land best suited for irrigation;

(4) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

(5) examine and survey reservoir sites;

(6) monitor the effects of fresh water inflows upon the bays and estuaries of Texas;

(7) monitor instream flows;

(8) lead a statewide effort, in coordination with federal, state, and local governments, institutions of higher

education, and other interested parties, to develop a network for collecting and disseminating water resource-related information that is sufficient to support assessment of ambient water conditions statewide;

(9) make recommendations for optimizing the efficiency and effectiveness of water resource data collection and dissemination as necessary to ensure that basic water resource data are maintained and available for Texas; and

(10) study groundwater resources to identify areas suitable for designation as brackish groundwater production zones; and

(11) make basic data and summary information developed under this subsection accessible to state agencies and other interested persons.

SECTION 3. Section 16.012(1), Water Code, is amended to read as follows:

(1) The executive administrator shall obtain or develop groundwater availability models for major and minor aquifers in coordination with groundwater conservation districts and regional water planning groups created under Section 16.053 that overlie the aquifers. Modeling of major aquifers shall be completed not later than October 1, 2004. On completing a

groundwater availability model for an aquifer, the executive administrator shall provide the model to each groundwater conservation district and each regional water planning group created under Section 16.053 overlying that aquifer. If the executive administrator updates a groundwater availability model, the executive administrator shall consider expanding the groundwater availability model to adequately address groundwater contained in designated brackish groundwater zones.

SECTION 4. Section 16.053(e), Water Code, is amended to read as follows:

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant

aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response;
and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of

the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the

region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; ~~and~~

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(J) opportunities for and the benefits of designating local or regional brackish groundwater production zones;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality; and

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands.

SECTION 5. Section 16.060, Water Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) The board shall undertake or participate in research, feasibility and facility planning studies, investigations, and surveys as it considers necessary to further the development of cost-effective water supplies from seawater or groundwater desalination in the state.

(b) The board shall prepare a biennial progress report on the implementation of seawater or groundwater desalination activities in the state and shall submit it to the governor, lieutenant governor, and speaker of the house of representatives not later than December 1 of each even-numbered year. The report shall include:

(1) results of the board's studies and activities

relative to seawater or groundwater desalination during the preceding biennium;

(2) identification and evaluation of research, regulatory, technical, and financial impediments to the implementation of seawater or groundwater desalination projects;

(3) evaluation of the role the state should play in furthering the development of large-scale seawater or groundwater desalination projects in the state; and

(4) the anticipated appropriation from general revenues necessary to continue investigating water desalination activities in the state during the next biennium.

SECTION 6. Section 36.001, Water Code, is amended by adding a new Subdivision (17) to read as follows:

(17) "Brackish groundwater production zone" means a zone designated by a district or the Texas Water Development Board in accordance with Subchapter O.

SECTION 7. Section 36.002(a), Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater,

including brackish groundwater, below the surface of the landowner's land as real property.

SECTION 8. Section 36.1071(a), Water Code, is amended to read as follows:

Sec. 36.1071. MANAGEMENT PLAN. (a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a management plan that addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective
- (8) promoting the development and use of groundwater in brackish groundwater production zones; and

(9) addressing the desired future conditions adopted by the district under Section 36.108.

SECTION 9. Section 36.108, Water Code, is amended by amending Subsections (d), (d-1), and (d-3) to read as follows:

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the impact on existing and potential brackish groundwater production zones;

(9) the feasibility of achieving the desired future condition; and

(10) any other information relevant to the specific desired future conditions.

(d-1) The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; ~~or~~

(2) each geographic area overlying an aquifer in

whole or in part or subdivision of an aquifer within the boundaries of the management area; or

(3) brackish groundwater production zones.

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(1) identify each desired future condition;

(2) provide the policy and technical justifications for each desired future condition;

(3) include documentation that the factors under

Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;

(4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; ~~and~~

(5) discuss, if applicable, how the desired future conditions promote the use of groundwater from brackish groundwater production zones; and

(6) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

SECTION 10. Section 36.1132(b), Water Code, is amended to read as follows:

Sec. 36.1132. PERMITS BASED ON MODELED AVAILABLE GROUNDWATER.

(b) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

(1) the modeled available groundwater determined by the executive administrator;

(2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;

(3) the amount of groundwater authorized under permits previously issued by the district;

(4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; ~~and~~

(5) yearly precipitation and production patterns; and

(6) the extent to which the total volume of water authorized to be produced under permits issued by the district may be increased because of the amount of groundwater production that will occur from within brackish groundwater production zones while still achieving an applicable desired future condition.

SECTION 11. Section 36.402, Water Code, is amended to read as follows:

Sec. 36.402. APPLICABILITY. Except as provided by Section 36.416 and under Subchapter O, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

SECTION 12. Chapter 36, Water Code, is amended to add Subchapter O, as follows:

SUBCHAPTER O. BRACKISH GROUNDWATER PRODUCTION ZONES

Sec. 36.501. APPLICABILITY. (a) Except as provided in subsection (b), a brackish groundwater production zone may be designated in any groundwater reservoir or subdivision of a groundwater reservoir in the state.

(b) No brackish groundwater production zone may be designated in the following:

(1) any area of a groundwater reservoir or subdivision of a groundwater reservoir with average total dissolved solids levels of less than 1,000 milligrams per liter;

(2) any area of a groundwater reservoir or subdivision of a groundwater reservoir with average total dissolved solids levels of more than 1,000 milligrams per liter that is serving as a significant source of water supply for municipal, domestic, or agricultural purposes, other than production from another brackish groundwater production zone, at the time of designation;

(3) any area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority; or

(4) any area within the boundaries of the Barton Springs-Edwards Aquifer Conservation District, the Harris-Galveston Subsidence District, or the Fort Bend Subsidence District.

Sec. 36.502. DESIGNATION OF ZONE BY PETITION. (a) A person with a legally defined interest in groundwater in a district may petition the district to designate a brackish groundwater production zone in a groundwater reservoir or subdivision of a reservoir, or in a specific area of a groundwater reservoir or subdivision of a reservoir.

(b) The district shall designate a zone if the petitioner demonstrates that:

(1) the production of groundwater proposed in the petition will not cause unreasonable negative impacts:

(A) to the quality or quantity of groundwater available for permitted and exempt production in any area of a groundwater reservoir or subdivision of a groundwater reservoir described under Section 36.501(b); or

(B) on the achievement of applicable existing desired future conditions; and

(2) a monitoring plan described under Section

36.504(a)(4) is sufficient to monitor the impacts described under Subdivision (1) of this subsection.

(c) Notwithstanding subsection (b), a district may designate a brackish groundwater production zone if the petitioner demonstrates that, while there are negative impacts described under Subsection (b)(1) or there are existing wells that may be negatively impacted by production from the zone, the mitigation plan, if any, submitted under Section 36.504 as part of the petition will reasonably offset the negative impacts.

(d) A district shall consider the rights of landowners under Section 36.002 in designating a brackish groundwater production zone.

Section 36.503. TECHNICAL GUIDANCE DOCUMENTS DEVELOPED BY BOARD.

The Texas Water Development Board, with input from districts and interested stakeholders, shall develop guidance documents addressing the technical contents of petitions to designate brackish groundwater production zones. The guidance documents shall include a description of the technical information, including hydrogeologic studies, modeling, or other applicable geophysical and geochemical data regarding properties

of the groundwater reservoirs and subdivisions of groundwater reservoirs in the area of a proposed zone and monitoring and reporting protocols, that will be required as part of a petition to make the demonstrations set forth under Section 36.502(b) and (c). The guidance documents shall be used by petitioners in developing petitions and by districts and the Texas Water Development Board in reviewing petitions.

Sec. 36.504. CONTENTS OF A PETITION. A petition for the designation of a brackish groundwater production zone shall include the following:

(1) a description of the location of the proposed zone and the groundwater reservoir or subdivision of a groundwater reservoir in which it will be located, including a map of the area overlying the zone that includes sufficient details to enable a property owner to determine whether his property is located within the associated surface acreage proposed to be included in the zone;

(2) the approximate locations, production rates, depths of well screens, total annual production, and total duration of production of wells to be used for production of groundwater from the zone;

(3) technical information consistent with the

guidance documents developed under Subsection (b) sufficient to make the demonstrations set forth under Section 36.502(b);

(4) a plan for monitoring and reporting on a periodic basis the quality and quantity of groundwater in the proposed zone and adjacent areas of groundwater reservoirs and subdivisions of groundwater reservoirs;

(5) proposed mitigation plans to identify and mitigate impacts to existing well owners, if any, caused by the petitioner's production of groundwater from the zone; and

(6) if applicable, a description of the expected project financing term and estimated duration of the project that will be producing groundwater from the zone.

Sec. 36.505. PROCEDURE FOR DISTRICT REVIEW OF A PETITION.

(a) A petition to designate a brackish groundwater production zone shall be filed with the district in which the zone is proposed to be designated as. A copy of the petition shall be filed with the Texas Water Development Board. Within 10 days after receipt of a petition, the district shall deem the petition administratively complete or provide the petitioner with notice of the deficiencies in the petition.

(b) A district shall hold a hearing on a petition after

receipt of an administratively complete petition. The notice and hearing shall be provided and conducted in the same manner as a rulemaking hearing under Section 36.101, and the district shall require all hearing participants to register as described under Section 36.101(g). The executive administrator may, and at the request of the district or petitioner shall, participate in the hearing and provide technical comments for the benefit of the district, the petitioner, and the public regarding the petition and the designation of the zone in accordance with the provisions of this subchapter.

(c) The district board shall make a final ruling on a petition within 150 days of receipt of an administratively complete petition.

(d) A petition shall be deemed denied, without further action by a district, if the district fails to make a final ruling on the petition in accordance with Section 36.505(c), unless otherwise agreed by the petitioner and district.

Sec. 36.506. DISTRICT ACTION ON PETITION; WHEN FINAL.

(a) A district board may grant, modify, or deny a petition by written order. The order shall include the findings of the district board relevant to the determinations set forth under

Section 36.502(b) and (c) and projected impacts of the proposed groundwater production from within the zone, including any projected impacts to the quality or quantity of groundwater in areas described under Section 36.501(b). The board's order shall include the participant registration information obtained under Section 36.505(b).

(b) A decision by a district on a petition is final and appealable pursuant to Section 36.507 on the date of the district board's written order approving, modifying, or denying the petition. The district shall not require a motion for rehearing on the board action as a prerequisite to filing an appeal under Section 36.507.

Sec. 36.507. APPEAL TO TEXAS WATER DEVELOPMENT BOARD.

(a) Within 30 days after the date of a district board's written order approving, modifying, or denying a petition, or 30 days after the date a petition is deemed denied under Section 36.505(d), the petitioner or any person with a legally defined interest in groundwater in the district who participated in the hearing may appeal the decision of the district board by filing a notice of appeal with the Texas Water Development Board. The person filing the appeal shall provide notice of the filing of

the appeal to the petitioner, the district, and to each person that participated in the hearing as identified in the district's order under Section 36.506(a) or, if the petition was deemed denied and there is no district order, to each person who participated and registered at the hearing as required under Section 36.505(b).

(b) On appeal, the Texas Water Development Board shall review the petition de novo. If the petitioner appeals the district board's modification or denial of the petition, the petitioner shall bear the burden of demonstrating that the petition meets the requirements of this subchapter for the designation of a zone. If a person other than the petitioner appeals the district board's denial of the petition and the petitioner does not appeal, the person shall bear the burden of demonstrating that the petition meets the requirements of this subchapter for the designation of a zone. If a person other than the petitioner appeals the district board's modification or approval of the petition, the person shall bear the burden of demonstrating that the petition as approved does not meet the requirements of this subchapter for the designation of a zone.

(c) An appeal under this section is considered a contested case under Chapter 2001, Government Code. The executive

administrator shall refer an appeal directly to the State Office of Administrative Hearings for a determination of parties and a contested case hearing. The Texas Water Development Board shall issue a final order granting, modifying, or denying the petition and including the information required of a written order under Section 36.506(a).

(d) Any party to an appeal under this section is entitled to judicial review of the Texas Water Development Board's final order under the substantial evidence rule.

Sec. 36.508. PETITION PROCESS FOR BRACKISH GROUNDWATER PRODUCTION ZONE LOCATED IN TWO OR MORE DISTRICTS. (a) A petition by a project developer to designate a brackish groundwater production zone in an area that includes more than one district shall be filed with each district located over the proposed zone in the manner provided by Section 36.502.

(b) The districts described under Subsection (a) shall:

(1) hold a joint hearing on a petition within 90 days of receipt of an administratively complete petition in the manner provided by Section 36.505; or

(2) agree in writing that one district shall hold the hearing on the petition on behalf of all of the districts.

(c) A quorum of the board of directors of each district located over the proposed zone is required for a joint hearing under this section.

(d) The districts located over the proposed zone may enter into a cost-sharing agreement to address any technical, regulatory, or legal issues associated with the petition, including for hydrogeological or legal services.

(e) Each district located over the proposed zone shall provide notice of a hearing as provided by Section 36.505.

(f) The board of directors of each district located over the proposed zone shall make a final decision on the designation of the zone within 75 days of the date of the hearing conducted under Subsection (b), unless the petitioner and each participating district agree in writing on another date. A single written order that meets the requirements of Section 36.506 must be approved by the boards of directors of each district located over the zone in order to designate a zone under this section. The failure of one or more of the districts to approve a single order under this subsection, or the approval and issuance of a single order by each district to approve, modify, or deny a petition under this subsection, may be appealed to the Texas Water Development Board in the manner

described by Section 36.507.

Sec. 36.509. PERMITTING OF WELLS IN A BRACKISH GROUNDWATER PRODUCTION ZONE. (a) An application for a permit for a well in a brackish groundwater production zone shall be consistent with the findings in the written order designating the zone under Section 36.506 or 36.507, as applicable.

(b) The district may impose a reasonable fee under Section 36.205 for processing an application under this section.

(c) A district shall act on an application for a permit for a well in a brackish groundwater production zone within 60 days of receipt of the application. The application shall be processed as an uncontested application under Subchapter M and shall not be subject to a contested case hearing, or may be processed as an application for which a hearing is not required under Section 36.114(b).

(d) Notwithstanding Section 36.113(d), a district shall grant an application for a permit for a well in a brackish groundwater production zone if the application is consistent with the order designating the zone under Section 36.506 or 36.507, as applicable.

(e) A permit issued under this section may be amended

pursuant to an application by the permittee if the permittee demonstrates that the changes to the permit are consistent with the written order designating the zone under Sections 36.506 or 36.507. A permit may be amended by the district pursuant to Section 36.514.

Sec. 36.510. CONTENTS OF A PERMIT IN A BRACKISH GROUNDWATER PRODUCTION ZONE. (a) Permits shall authorize the drilling and production of water at locations, rates, and amounts that are consistent with the written order designating the brackish groundwater production zone.

(b) Permits in a brackish groundwater production zone shall contain a permit term equal to the expected project financing term or estimated duration of production for the project contained in the zone designation, but no more than 30 years.

(c) Permits shall require reasonable monitoring of the zone and adjacent areas of groundwater reservoirs and subdivisions of groundwater reservoirs consistent with the monitoring plan contained in the zone designation.

(d) Permits shall require the filing of drilling logs, and periodic reports of withdrawals, aquifer levels, and other

information from the monitoring plan.

Sec. 36.511. NON-APPLICABILITY OF SECTION 36.122 TO PRODUCTION; EXPORT FEES. (a) The production from a well in a brackish groundwater production zone is not subject to Section 36.122.

(b) Notwithstanding subsection (a), a district may impose a reasonable fee or surcharge under Section 36.122(e) for groundwater produced from a brackish groundwater production zone for use outside of a district's boundaries.

Sec. 36.512. RIGHTS OF LANDOWNER OVER BRACKISH GROUNDWATER PRODUCTION ZONE TO PRODUCE GROUNDWATER. In implementing this subchapter, a district shall consider the rights described under Section 36.002 of [(an owner of land) or (all landowners)] located over a brackish groundwater production zone to drill for or produce groundwater from the zone.

Sec. 36.513. AMENDMENTS TO BRACKISH GROUNDWATER PRODUCTION ZONES. (a) A brackish groundwater production zone designation under this subchapter may only be amended as provided by this section.

(b) A district may initiate an amendment to a brackish groundwater production zone to increase or decrease the rates or amounts of production of groundwater from the zone, to amend the boundaries of the zone, or to change a monitoring or mitigation plan applicable to the zone by providing notice and holding a hearing in the manner set forth under Section 36.505. A district that initiates an amendment to a zone shall bear the burden of proof in making the demonstrations required under Section 36.502 and this section. If the district amendment proposes to decrease the rates or amounts of production of groundwater from the zone, the district must demonstrate that the actual impacts to groundwater resources from production within the zone exceed the projected impacts included in the written order issued under Section 36.506 or 36.507, as applicable, that designated the zone, or that there is a changed desired future condition that is impacted by production from the zone.

(c) A person who holds a permit to produce groundwater from within the zone or any person with a legally defined interest in groundwater in the district may initiate an amendment to a zone to increase or decrease the rates or amounts of production of groundwater from the zone, to amend the

boundaries of the zone, or to change a monitoring or mitigation plan applicable to the zone by filing a petition with the district in the manner prescribed for the original designation of a zone under Section 36.502. The petitioner shall bear the burden of proof in making the demonstrations required under Section 36.502 and this section. If the petition proposes to decrease the rates or amounts of production of groundwater from the zone, the petitioner must demonstrate that the actual impacts to groundwater resources from production within the zone exceed the projected impacts included in the written order issued under Section 36.506 or 36.507, as applicable, that designated the zone, or that there is a changed desired future condition that is impacted by production from the zone.

(d) A person who holds a permit to produce groundwater from within the zone or any person with a legally defined interest in groundwater in the district may appeal the decision of the district board to amend a zone under Subsections (b) or (c) to the Texas Water Development Board in the manner prescribed under Section 36.507.

Sec. 36.514. EFFECT OF ZONE AMENDMENT ON EXISTING WELL PERMITS IN A ZONE. (a) A district may amend a well permit in a

brackish groundwater production zone to change the amount or rate of production, or change the monitoring or mitigation plan, only if the designation of the zone is amended under Section 36.513 or by written agreement between the district and the permit holder. Any amendment to a permit must be consistent with the amendment to the zone and may not reduce the rates or amounts of groundwater produced under the permit to a level lower than necessary to be consistent with the amended zone designation.

(b) A district may not amend an existing permit to produce groundwater from a zone because of a change in a desired future condition established under Section 36.108 that may be affected by production from the zone, even if the zone is amended under Section 36.513. In such instances, the district may reduce production through permit renewal after expiration of the original permit term and only to an amount consistent with achievement of the desired future condition and the applicable effective findings related to the zone designation at the time the permit expires.

(c) During the pendency of an amendment to a brackish groundwater production zone, an existing permit holder may continue to produce groundwater under the terms of the existing

permit until the permit has been amended after a final decision on the amendment to the zone has been issued by the district under Section 36.506, or if the decision of the district is appealed, until a final decision has been issued by the Texas Water Development Board under Section 36.507.

(d) A district may not by rule or an amendment to a rule reduce the amount or rate of groundwater that may be produced under an existing permit to produce groundwater from a zone in a manner that the district would not be authorized to reduce by permit amendment under this section.

Sec. 36.515. MANANAGEMENT OF BRACKISH GROUNDWATER BY A DISTRICT OR THROUGH JOINT PLANNING. (a) Nothing in this subchapter shall be construed to prohibit:

(1) a district, on its own initiative, from managing the groundwater resources as authorized by this chapter in a groundwater reservoir, subdivision of a groundwater reservoir, or area of a groundwater reservoir or subdivision of a groundwater reservoir described by Section 36.501(b); or

(2) the establishment of a desired future condition through the joint planning process described under Section 36.108 for a groundwater reservoir, subdivision of a groundwater

reservoir, or area of a groundwater reservoir or subdivision of a groundwater reservoir described by Section 36.501(b).

(b) Notwithstanding Subsection (a), a person may petition a district or districts for the designation of a brackish groundwater production zone in the manner prescribed by this subchapter regardless of whether:

(1) a district is already managing all or part of the groundwater resources located in the proposed zone; or

(2) there is a desired future condition adopted for all or part of the groundwater resources located within the proposed zone.

Sec. 36.516. MANAGEMENT OF BRACKISH GROUNDWATER RESOURCES TO PROMOTE USE; EXPLORATION OR PRODUCTION OF HYDROCARBONS.

(a) This subchapter does not affect the exemptions related to hydrocarbon activities as set forth under Section 36.117.

(b) In order to promote the utilization of brackish groundwater resources, a district may establish special rules that are less restrictive administratively or with regard to the amount of groundwater that can be produced from a groundwater reservoir, subdivision of a groundwater reservoir, or area of a groundwater reservoir or subdivision of a groundwater reservoir that contains brackish groundwater than the district's rules are

with respect to the administration, management, and production of non-brackish groundwater resources for any beneficial purpose of use, including use related to activities associated with the drilling, exploration, or production of hydrocarbons.

(c) A district may not adopt rules under this section that are more restrictive on a person producing groundwater for activities related to the drilling, exploration, or production of hydrocarbons than on a person producing groundwater for other purposes of use, but may adopt rules that are less restrictive.

Sec. 36.517. MANDAMUS. A district court in Travis County may issue a writ of mandamus to compel a district to perform the following:

(a) act on a petition for designation of brackish groundwater production zone within the times frames established in Section 36.504; or

(b) issue a permit for well located in a brackish groundwater production zone pursuant to Section 36.508 based on an application that is consistent with the designation of the brackish groundwater production zone.

Sec. 36.518. CONFLICTS WITH OTHER SUBCHAPTERS. If a provision in this subchapter conflicts with a provision of

another subchapter under this chapter, the provision in this subchapter prevails.

SECTION 13. No later than January 1, 2016, the Texas Water Development Board shall adopt rules to implement the changes in law to Chapters 16 and 36, Water Code, as amended by this Act.

SECTION 14. 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, 2015.

DRAFT ASR BILL

A BILL TO BE ENTITLED

AN ACT

relating to aquifer storage and recovery projects.

SECTION 1. Section 11.153, Water Code, is amended to read as follows:

Sec. 11.153. PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. Subject to obtaining any required authorizations for an aquifer storage and recovery project under Chapters 27 and 36, no additional authorization is required under this chapter for the underground storage of appropriated state water for subsequent recovery and beneficial use in a manner that is not otherwise in conflict with the terms of the water right[(a) — ~~The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use.~~

~~(b) — A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.~~

~~(c) — At the conclusion of a pilot project, a permit holder may file an appropriate application for a~~

~~permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.~~

~~(d) The commission shall only issue a final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use where completed pilot projects or historically demonstrated projects have been shown to be feasible under the criteria provided in Sections 11.154(c) and (d).~~

~~(e) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects].~~

SECTION 2. Section 27.002, Water Code, is amended by adding Subdivisions (26) through (28) to read as follows:

(26) "Aquifer storage and recovery project" or "ASR project" means a project involving the injection of surface water or groundwater into a

geologic formation for subsequent recovery and beneficial use.

(27) "ASR injection well" means a well used for the injection of water into a geologic formation in an ASR project.

(28) "ASR recovery well" means a well used for the recovery of water from a geologic formation pursuant to an ASR project.

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

SUBCHAPTER G. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 27.201. JURISDICTION. The commission has exclusive jurisdiction over the regulation and permitting of ASR injection wells.

Sec. 27.202. PERMIT OR GENERAL PERMIT AUTHORIZING USE OF CLASS V INJECTION WELL FOR ASR PROJECT. (a) The commission may issue a permit or a general permit for a Class V injection well for the injection of water into a geologic formation for purposes of an ASR project. In issuing a permit or general permit, the commission shall consider:

(1) whether the injection of the water will comply with standards set forth under the federal Safe Drinking Water Act; and

(2) the extent to which the equivalent volume of water stored in the receiving geologic formation can be successfully recovered from the geologic formation for beneficial use.

(b) The commission by rule shall provide for public notice and comment on a proposed general permit or an application for a permit authorized by this section. Notwithstanding Section 27.018, an application for a permit authorized by this section is not subject to the hearing requirements of Chapter 2001, Government Code.

(c) The commission by rule shall prescribe construction and completion standards and metering requirements for ASR injection wells and ASR recovery wells.

(d) An ASR recovery well that does not also serve as an ASR injection well is not subject to the permitting requirements of this chapter, but must comply with the construction, completion, and metering requirements established by the commission.

Sec. 27.203. REPORTING OF INJECTION AND RECOVERY VOLUMES. A person who holds a permit issued under this chapter shall install a meter on each ASR injection well and ASR recovery well associated with the ASR project and, each calendar month, provide the commission with a written report showing for the previous calendar month:

(1) the volume of water injected for storage; and

(2) the volume of water recovered for beneficial use.

SECTION 4. Section 36.001, Water Code, is amended by adding a new Subdivision (31) to read as follows:

(31) "Aquifer storage and recovery project," "ASR project," "ASR injection well," and "ASR recovery well" have the meanings assigned by Chapter 27.

SECTION 5. Section 36.117, Water Code, is amended by amending Subsection (1) to read as follows:

(1) This chapter applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This chapter does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas, or for the injection of fluids under the jurisdiction of the commission.

SECTION 6. Chapter 36, Water Code, is amended by inserting a new Subchapter N to read as follows:

SUBCHAPTER N. AQUIFER STORAGE AND RECOVERY PROJECTS

Sec. 36.501. REGISTRATION AND REPORTING OF WELLS FOR ASR PROJECTS. (a) A person that holds a permit issued under Section 27.202 for the injection of water into a geologic formation for purposes of an ASR project for subsequent recovery and beneficial use shall:

(1) register the person's ASR injection wells and ASR recovery wells with any district in which the wells are located; and

(2) each calendar month, provide the district with a copy of the written report required to be submitted to the commission under Section 27.203 showing for the previous calendar month:

(A) the volume of water injected for storage; and

(B) the volume of water recovered for beneficial use.

(b) If an ASR project produces groundwater in excess of the volume of water injected for subsequent recovery, the ASR permit holder shall account for and report to the district the volume of groundwater

produced that exceeds the volume of water injected and recovered.

Sec. 36.502. PERMITTING AND SPACING REQUIREMENTS FOR ASR PROJECTS. (a) A district may not require a permit for the drilling, equipping, completion or production of an ASR injection well or an ASR recovery well, except as authorized under this section.

(b) A district may require a permit for production from an ASR recovery well only if, and only to the extent that, the ASR project will be used to produce groundwater in a volume that exceeds the total volume of water injected into a geologic formation in the operation of the ASR project with which the ASR recovery well is associated. A district may not require a permit for the drilling, equipping, or completion of an ASR injection well or an ASR recovery well.

(c) An ASR recovery well that produces groundwater in excess of the volume of water injected into a geologic formation is subject to the production and spacing requirements of a district only to the extent that the production volume exceeds the volume injected in the operation of the ASR project with which the ASR recovery well is associated.

(d) This section may apply to an ASR recovery well that also serves as an ASR injection well, even

though a district has no jurisdiction over the injection activities associated with such a well.

Sec. 36.503. FEE AND SURCHARGE REQUIREMENTS FOR ASR PROJECTS. (a) A district may not establish or assess a production fee under Section 36.205 or a transportation fee or surcharge under Section 36.122 for water produced from an ASR recovery well, except to the extent that the production volume from the ASR project exceeds the volume injected.

(b) A district may assess a well registration fee or other administrative fee under Section 36.205(a) for an ASR recovery well required to be registered under Section 36.501 in the manner that it does for other water wells required to be registered in the district.

Sec. 36.504. ASR PROJECT ACTIVITIES AND DESIRED FUTURE CONDITIONS. Hydrogeologic conditions related to the injection and recovery of water in an ASR project shall not be considered for purposes of this chapter in determining whether a district has achieved an applicable desired future condition for an aquifer, except to the extent that the production volume from the ASR project exceeds the volume injected.

SECTION 6. Sections 11.154 and 11.155, Water Code, are repealed.

SECTION 7. No later than December 31, 2015, the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law to Chapters 11 and 27, Water Code, as amended by this Act. In implementing Section 27.202(a)(1), as added by this Act, the Texas Commission on Environmental Quality shall not adopt or enforce groundwater quality protection standards that are more stringent than applicable federal standards.

SECTION 8. 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, 2015.