SUBJECT: Management of groundwater by the Edwards Aquifer Authority

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Puente, Hamilton, Gattis, Creighton, Gallego, Guillen, Hilderbran, Laubenberg, O'Day

0 nays

WITNESSES: For — Alexander Briseño, San Antonio Water System; Jim Gray, City of Alamo Heights; Robert Potts, Edwards Aquifer Authority; (*Registered, but did not testify*: Phil Hardberger, Matthew Polanco, City of San Antonio; Joe Krier and Susie Shields, Greater San Antonio Chamber of Commerce; Doug Miller, Edwards Aquifer Authority; Yesnia Monsour, San Antonio Hispanic Chamber of Commerce)

Against — Daniel Guerrero, City of San Marcos; Ken Kramer, Lone Star Chapter Sierra Club; Tom Taggart, Guadalupe Basin Coalition; Todd Votteler, Guadalupe-Blanco River Authority; Christina Wisdom, Texas Chemical Council; (*Registered, but did not testify*: Chris Hughes, Bob Helton-International Power/Coleto Creek Generating Station; Fred Wills, Alamo Group of the Lone Star Chapter Sierra Club)

On — Vic Hilderbran, City of Uvalde; Jerry James, City of Victoria; Dan Laroe, Jr., Preserve Lake Dunlap Association; Robert Mace, Texas Water Development Board; Bob Keith

BACKGROUND: The Edwards Aquifer is an underground water-bearing geologic formation that stretches from Kyle to Bracketville. The aquifer is the primary water source for more than 1.7 million people, including the population of San Antonio. In 1993, the 73rd Legislature enacted SB 1477 by Armbrister, which established the Edwards Aquifer Authority (EAA) to regulate groundwater use from the aquifer in order to comply with federal endangered species protections. The authority is governed by an elected board of directors.

Currently, permitted withdrawals from the Edwards Aquifer may not exceed 450,000 acre-feet per year. On January 1, 2008, this cap on permitted withdrawals is due to be lowered to 400,000 acre-feet per year.

DIGEST:

CSHB 1292 would make several changes to the regulation of the Edwards Aquifer by the Edwards Aquifer Authority.

**Allowable withdrawals.** Beginning January 1, 2008, the cap on permitted withdrawals from the Edwards Aquifer would be raised to 549,000 acre-feet per year. If the level of the aquifer was equal or greater than 660 feet, rather than 650 feet, above mean sea level as measured at well J-17, the authority could authorize withdrawals from the San Antonio pool, on an uninterruptible basis, of permitted amounts.

**Critical period withdrawal reduction stages.** By January 1, 2008, the EAA would have to adopt a critical period management plan with withdrawal reduction percentages in the following amounts, as applicable to either well levels or spring flows:

TABLE 1 - Withdrawal Reduction Stages for the San Antonio Pool

| Well Level (MSL) | Comal Springs Flow (CFS) | San Marcos Spring Flow (CFS) | Critical Period Stage | Withdrawal Reduction Percentage |
|---|---|---|---|---|
| <660 | N/A | <96 | I | 15% |
| <650 | N/A | <80 | II | 5% |
| <640 | <150 | N/A | III | 10% |
| <630 | <100 | N/A | IV | 10% |

TABLE 2 - Withdrawal Reduction Stages for the Uvalde Pool

| Well Level (MSL) | Critical Period Stage | Withdrawal Reduction Percentage |
|---|---|---|
| N/A | N/A | N/A |
| N/A | II | N/A |
| <845 | III | 15% |
| <842 | IV | 15% |

TABLE 3 - Withdrawal Reduction Stages for the San Marcos Pool

| Well Level (MSL) | Critical Period Stage | Withdrawal Reduction Percentage |
|---|---|---|
| <120 | I | 20% |
| <110 | II | 5% |

| | | |
|---|---|---|
| <96 | III | 5% |
| <80 | IV | 10% |

These provisions would result in a total reduction in withdrawals under a Stage IV critical period of 40 percent under Table 1, 30 percent under Table 2, and 40 percent under Table 3.

"MSL" would mean the elevation in feet above sea level of water in a well. "CFS" would mean cubic feet per second.

After a reduction to a Stage IV reduction level, if the discharge rate at the Comal or San Marcos springs declined by an additional 15 percent, the EAA board could require additional withdrawal reductions. The aggregate permitted withdrawals for the San Antonio pool, the Uvalde pool, and any other pool with an index well could not be reduced to less than 340,000 acre-feet per year. The bill would authorize the EAA to amend the withdrawal reduction criteria of the critical period management plan based on consultation with the U.S. Fish and Wildlife Service.

**Permit retirements.** The bill would eliminate the requirement that the permitted withdrawal requirements be reduced to 400,000 acre-feet per year. Instead, the authority would have to implement a plan to retire the amount of groundwater needed to reach the required reduction level. Seventy-five percent of the cost of permitted withdrawal retirements would be borne by aquifer users, and 25 percent of the cost would be borne by downstream water rights holders.

**Recovery implementation program.** The bill would direct the EAA, the Texas Parks and Wildlife Department, and the Texas Water Development Board to develop a Recovery Implementation Program for federally classified endangered or threatened species that were associated with the aquifer. The program would provide the basis for reevaluation and adjustment of the amount of permitted withdrawals and the withdrawal reduction percentages.

The program would, through cooperation with the U.S. Fish and Wildlife Service, approve a cooperative agreement for the aquifer. The agreement would solicit advice from the Fish and Wildlife Service and all interested stakeholders.

**Recharge facilities.** The EAA would be authorized to build or maintain recharge facilities or contract with a person for those facilities.

The bill would take effect September 1, 2007.

SUPPORTERS SAY:

CSHB 1292 appropriately would balance environmental, residential, and other concerns with respect to the EAA. By allowing a reasonable increase in withdrawals from the aquifer, the bill would prevent ratepayers from having to support a costly buy-down of water rights above the current withdrawal level. To protect environmental considerations, the bill would establish reduction requirements during critical periods of drought when springs were impacted most severely.

Currently, there is an irreconcilable contradiction in the EAA statute that requires a withdrawal limit amount of 400,000 acre-feet beginning in 2008. However, the statute also requires the EAA to respect permits based on historic and irrigation use. Because the permitted amount is more than 100,000 acre-feet over the 2008 level that exists in current law, some accommodation must be made. Without reconciling this discrepancy, the EAA would be responsible for buying down permits at a potential cost of more than $1 billion. CSHB 1292 would respect existing permits while incorporating environmental protections and allow for additional study to determine if the withdrawal amount needed to be adjusted in the future.

The author plans to offer a floor amendment that would adopt a thorough Recovery Implementation Program developed in accordance with U.S. Fish and Wildlife Service practices that would involve an extensive group of stakeholders engaged in the sustainability of the Edwards Aquifer. The Recovery Implementation Program would provide recommendations to the EAA in order to determine the appropriate withdrawal level going forward. This consensus-based process would balance the interests of communities and entities relying on the aquifer for residential, commercial, recreational, and agricultural uses while protecting the delicate environmental balance that sustains threatened species associated with the aquifer.

The floor amendment also would raise the withdrawal limit to 572,000 acre-feet, an amount that would be subject to adjustment through the Recovery Implementation Program. Further, the critical period management procedure would hold down withdrawals when well levels and spring flows were reduced by drought. This would protect the San

Marcos and Comal springs and protected species. Further, history has shown that permitting in itself is an effective method for managing demand, as permit holders become more aware of their allotted amounts. Removing the conflict in current law would provide certainty to permit holders and allow more effective management of demand from the aquifer.

San Antonio is a statewide leader in water conservation, and many other users of the Edwards Aquifer also have invested substantially to reduce their water consumption. These advances would not vanish under CSHB 1292, while Edwards Aquifer users would continue their committed stewardship of their important resource.

The EAA board is an elected body that is accountable to its voters. For this reason, it would be inappropriate to make the recommendations of the Recovery Implementation Program mandatory and binding.

OPPONENTS SAY:

By allowing pumping of the Edwards Aquifer up to the currently permitted amount, CSHB 1292 effectively would eliminate the pumping cap for all practical purposes. This level of pumping on a regular basis likely would be unsustainable over the long term. Although the bill would incorporate important reductions in pumpage during drought periods, it would be better for the aquifer ecologically and hydrologically if a lower level of regular pumping were allowed.

Under current law, the EAA is empowered to raise the 400,000 acre-feet cap if the authority can demonstrate scientifically that doing so would not be environmentally harmful. CSHB 1292 would undermine this consideration, allowing the cap to be raised due to permit considerations rather than scientific considerations. The substantial increase in the withdrawal limit under the bill could put the aquifer on a collision course with the Endangered Species Act, representing a step back in protection of the ecosystem of the Edwards Aquifer and the communities that rely on Edwards Aquifer spring flow.

The current system has been effective as an inducement to entities to repair infrastructure, implement conservation policies, develop efficient agricultural water practices, and diversify water sources. Withdrawals have gone down from a peak of more than 542,000 acre-feet in 1989 to 366,000 acre-feet in 2005. If the withdrawal limit were raised, it is likely that pumping would float up to the limit. The effectiveness of the new

critical period procedures is unknown, and embarking on the plan in the bill would be risky.

OTHER OPPONENTS SAY:

The floor amendment to CSHB 1292 would not include any environmental interests on the stakeholders committee for the Recovery Implementation Program. Because environmental considerations are key to preserving the sustainability of the Edwards Aquifer and the protection of threatened species, environmental interests need to have a chance to participate directly in the recommendations made by the Recovery Implementation Program. In addition, the recommendations made by the Recovery Implementation Program should be binding and participation among stakeholders should be mandatory.

NOTES:

Rep. Puente intends to offer a complete floor substitute for CSHB 1292 similar to the provisions in SB 1341 by Hegar, which passed the Senate by 30-0 on May 4 and has been referred to the House Natural Resources Committee. Among its major provisions, the floor amendment would:

- set the amount of permitted withdrawals from the aquifer at not less than 572,000 acre-feet per year;
- provide for critical period withdrawal reduction stages for the San Antonio pool with four stages based on the index well level or Comal and San Marcos springs flow for a total reduction of up to 40 percent;
- provide for critical period withdrawal reduction stages for the Uvalde pool with four stages based on the index well level for a total reduction of up to 35 percent;
- eliminate permit retirement provisions; and
- require that no fees assessed by the EAA be used for permit retirements.