SUBJECT: Desired future conditions of groundwater resources

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: (A*fter recommitted*)
7 ayes — Ritter, T. King, Beck, Creighton, Larson, Lucio, D. Miller

0 nays

4 absent — Hopson, Keffer, Martinez Fischer, Price

WITNESSES: For — Steve Box, Environmental Stewardship; Steve Kosub, San Antonio Water System; Dean Robbins, Texas Water Conservation Association; Brian Sledge, numerous groundwater conservation districts; (*Registered, but did not testify:* Mike Barnett, Texas Association of Realtors; John Burke; Harvey Everheart, Mesa Underground Water Conservation District; Billy Howe, Texas Farm Bureau; Luana Buckner, Texas Water Conservation Association and Medina County Groundwater Conservation District; Jim Conkwright, High Plains Underground Water Conservation District No. 1; C.E. Williams, Panhandle Groundwater Conservation District)

Against — (*Registered, but did not testify:* Jimmy Gaines, Texas Landowners Council)

On — (*Registered, but did not testify:* Robert Mace, Texas Water Development Board)

BACKGROUND: Texas Water Code, sec. 36.108, requires that groundwater conservation districts establish desired future conditions (DFCs) for the relevant aquifers within their groundwater management areas through joint planning and to submit those conditions to the Texas Water Development Board (TWDB). "Desired future conditions" are the desired, quantified condition of groundwater resources, such as water levels, water quality, spring flows, or volumes, at a specified time or times in the future or in the water planning horizon.

Under the Water Code, after a desired future condition is established for an aquifer, TWDB is required to model that desired future condition and

submit the managed available groundwater, or amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer, back to the districts for water use permitting decisions and to the regional water planning groups for use in their water supply plans.

Currently, the groundwater conservation districts are required to issue permits up to the point that the groundwater permitted equals the managed available groundwater. In general, groundwater used for the exploration of oil and gas, as well as domestic and livestock use, is exempted from the permitting process and not statutorily factored into the managed available groundwater.

The joint planning process allows districts to coordinate planned groundwater pumping, using data and models from TWDB and other sources, to gauge effects on groundwater levels aquifer-wide and avoid adverse effects to the aquifer. Districts within each groundwater management area were required to adopt DFCs for each relevant aquifer in the groundwater management area by September 1, 2010.

Both TWDB and the Texas Commission on Environmental Quality (TCEQ) have petition processes related to desired future conditions – TWDB for the reasonableness of a DFC and TCEQ for other elements, mostly related to the implementation, of the DFC.

DIGEST:

CSHB 1547 would change the current definition of "managed available groundwater" to one for "modeled available groundwater." Modeled available groundwater would mean the amount of water that TWDB determined could be produced on an average annual basis to achieve a desired future condition.

The bill also would change the current definition of "total aquifer storage" to "total estimated recoverable storage." Total estimated recoverable storage would mean the total calculated volume of groundwater that an aquifer was capable of producing.

The bill would define "desired future condition" to mean a quantitative description of the desired condition of the groundwater resources in a groundwater management area at a specified time in the future.

Establishment of DFCs. CSHB 1547 would amend the Water Code by providing that the DFCs established would have to be for a period consistent with the regional water planning cycles of the State Water Plan. It also would add factors for districts to consider when establishing the DFCs of the aquifers, including:

- aquifer uses or conditions within the management area, including uses or conditions that differ substantially from one geographic area to another;
- the water supply needs and water management strategies included in the State Water Plan;
- whether the desired future conditions were physically possible;
- socioeconomic impacts reasonably expected;
- environmental impacts, including spring flow and other interactions between groundwater and surface water;
- the impact on the interest and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater;
- hydrological conditions, including the total estimated recoverable storage, recharge, inflows, and discharge;
- the impact on subsidence; and
- any other information relevant to the specific DFC.

The districts would have to provide a written explanation of their determination of each consideration.

Balancing test. The established DFCs would have to provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharge, and prevention of waste of groundwater and control of subsidence in the management area.

This would not prohibit the establishment of DFCs that provided for the reasonable long-term management of groundwater resources consistent with the management goals.

The districts would be able to establish different DFCs for each aquifer within the boundaries of the management area or each geographic area overlying an aquifer within the boundaries of the management area.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 1547 would incorporate and build on existing TWDB rules by defining "desired future conditions," would clarify DFCs for regional water planning, and would specify factors to be considered by groundwater conservation districts in determining DFCs.

It is critical that there be a meaningful process of checks and balances in the establishment of DFCs and in determining what is reasonable. The bill would require that the established DFCs provide a balance between the highest practicable level of groundwater production and the conservation of the resource. This was consensus language agreed to by stakeholders when developing the language of the bill.

While some express concerns that in the balancing test, the term "highest practicable level" of groundwater production was not defined and would be difficult to prove, similar language on "highest practicable level" is now in surface water law on water conservation that governs applying for an interbasin transfer. However, in surface water law, there is nothing against which to balance the "highest practicable level," which leaves it open-ended. That would not be a problem under CSHB 1547 because conservation, preservation, protection, recharge, and prevention of waste of groundwater and control of subsidence in the management area would be balanced against the highest practicable level of groundwater production.

OPPONENTS SAY:

Under CSHB 1547, the proposed DFCs would have to provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharge, and prevention of waste of groundwater and control of subsidence in the management area. While the balancing test is an important tool, the term "highest practicable level" of groundwater production would not be defined. This would make it difficult to prove that the highest practicable level of groundwater production was achieved when adopting a DFC.

NOTES:

CSHB 1547 contains provisions similar to those in HB 2166 by Price, on factors to be considered and the balancing test in establishing DFCs. HB 2166 was reported favorably, as substituted, by the House Natural Resources Committee on May 6. Similar provisions also are found in the

Texas Water Development Board Sunset bill, HB 3530 by Ritter and SB 660 by Hinojosa. HB 3530 was reported favorably, as substituted, by the House Natural Resources Committee on April 12. SB 660 passed the Senate by 30-1 (Uresti) on April 20 was reported favorably, as substituted, by the House Natural Resources Committee on May 4.

CSHB 1547 also contains provisions similar to those in SB737 by Hegar, enacted by the 82nd Legislature and signed by the governor on April 29, on the definition of "modeled available groundwater."

HB 1547 originally was reported favorably, as substituted, by the House Natural Resources Committee on March 24. After being recommitted to committee on April 27, it again was reported favorably, as substituted, on April 28.