

- SUBJECT:** Revising management of groundwater production
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 10 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, D. Miller, Price
- 0 nays
- 1 absent — Martinez Fischer
- WITNESSES:** For — Dean Robbins, Texas Water Conservation Association; Brian Sledge, numerous groundwater conservation districts; Gregory Ellis; (*Registered, but did not testify:* Luana Buckner, Texas Water Conservation Association and Medina County Groundwater Conservation District; Jim Conkwright, High Plains Underground Water Conservation District No. 1; Mike Barnett, Texas Association of Realtors; Harvey Everheart, Mesa Underground Water Conservation District; Steve Kosub, San Antonio Water System; C.E. Williams, Panhandle Groundwater Conservation District; Monty Winn, Texas Municipal League; John Burke)
- Against — Steve Box, Environmental Stewardship
- On — (*Registered, but did not testify:* Robert Mace, Texas Water Development Board)
- BACKGROUND:** Water Code, sec. 36.108 requires that groundwater conservation districts establish desired future conditions for the relevant aquifers within their groundwater management areas through joint planning. “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, the Texas Water Development Board (TWDB) is required to model that desired future condition and submit the managed available groundwater — which is the 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.

The groundwater conservation districts currently 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.

**DIGEST:**

CSHB 1824 would require a groundwater conservation district to issue permits up to the point that the total volume of both exempt and permitted groundwater production achieved an applicable desired future condition.

The bill would replace the current term “managed available groundwater” with “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.

In issuing permits, the district would be required to manage total groundwater production on a long-term basis to achieve an applicable desired future condition and to consider:

- the modeled available groundwater determined by TWDB;
- TWDB’s estimate of groundwater produced under permitting exemptions;
- the amount of groundwater authorized under existing permits;
- a reasonable estimate of groundwater that is actually produced under permits issued by the district; and
- yearly precipitation and production patterns.

TWDB would have to solicit information from each applicable district when estimating exempt use.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

CSHB 1824 would direct groundwater districts to issue permits based upon the total amount of groundwater production from both exempt and permitted production, a much more realistic approach. Groundwater districts currently are required to issue permits up to the amount of managed available groundwater. For this amount to be truly representative

of how much groundwater can be produced while still achieving the desired future condition, a district cannot consider only how much groundwater is produced under permits issued by the district, but also must take into account exempt groundwater use. However, the current concept of managed available groundwater takes into account only how many permits are issued, while the aquifer is affected by how much water is produced.

Clear guidelines are needed for issuing groundwater permits. Current law ties the permitting decision exclusively to whether the permit will exceed the managed available groundwater. Making such decisions based on this inflexible mandate is not realistic for districts trying to accomplish the purpose of the desired future condition. Permitting decisions need to be based upon the impact the permit will have on the ability of the district to achieve the desired future condition. Therefore, permits issued by a groundwater conservation district should focus on the total amount of production in a district, not just how much groundwater is permitted.

The bill also could relieve some pressure from those seeking to litigate the desired future conditions of an aquifer. Under current law, the establishment of desired future conditions is the only time in the permitting process that the permit cap can be argued. Under CSHB 1824, each individual permit application would be evaluated under specific permitting criteria.

**OPPONENTS  
SAY:**

Under current law, the managed available groundwater is a cap on the amount of water that can be permitted from an aquifer. Changing the concept of managed available groundwater to modeled available groundwater would remove the hard cap on permits. Removing this cap would result in permits exceeding the amount of managed available groundwater the model says can be supported by the aquifer.

Given the process undertaken by TWDB, the groundwater conservation districts, and the groundwater management areas, managed available groundwater is a fairly definable value. Changing that could produce a gray area that could result in continual modification and debate over those volumes, making it more difficult for districts to enforce any meaningful pumping levels and possibly resulting in increased litigation.

OTHER  
OPPONENTS  
SAY:

The permitting criteria set out in CSHB 1824 also should consider the relationship between groundwater and surface water, with special consideration for the impact of groundwater flow into springs and other surface waters as well as the impact on flow in and out of the district between aquifers.

NOTES:

The committee substitute differs from the original by specifying that when a groundwater conservation district was issuing permits, it would be required to manage total groundwater production on a long-term basis. The substitute also included yearly production in addition to yearly precipitation in the factors to be considered in determining the desired future condition.

The companion bill, SB 737 by Hegar, passed the Senate by 31-0 on March 30 and was reported favorably, without amendment, by the House Natural Resources Committee on April 7.