SUBJECT: Establishing a permitting process for brackish groundwater production

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Price, Ramos

0 nays

1 absent — Oliverson

WITNESSES: For — Hope Wells, San Antonio Water System; Kyle Frazier, Texas Desalination Association; Stacey Steinbach, Texas Water Conservation Association; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Steve Perry, Chevron USA; Brian Sledge, City of Bryan, Prairielands Groundwater Conservation District; Tammy Embrey, City of Corpus Christi; Christine Wright, City of San Antonio; Dirk Aaron, Clearwater Underground Water Conservation District; Teddy Carter, Devon Energy; Edmond McCarthy, Fort Stockton Holdings; Charles Flatten, Hill Country Alliance; Tom Oney, Lower Colorado River Authority; C.E. Williams, Panhandle Groundwater Conservation District; Deirdre Delisi, San Antonio Chamber of Commerce; Matthew Bentley, San Jose Water Group dba Canyon Lake Water Service Company; Mia Hutchens, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Billy Howe, Texas Farm Bureau; Ryan Paylor, Texas Independent Producers and Royalty Owners Association; Shanna Igo, Texas Municipal League; Dean Robbins, Texas Water Conservation Association; Perry Fowler, Texas Water Infrastructure Network; Joey Park, Texas Wildlife Association; Vanessa Puig-Williams, Trinity Edwards Spring Protection Association; CJ Tredway, Texas Oil and Gas Association)

Against — None

On — Victoria Whitehead, High Plains Underground Water Conservation District No. 1; (*Registered, but did not testify*: John Dupnik, Texas Water

Development Board)

BACKGROUND: Interested parties have noted that the development of brackish groundwater resources could provide a way to meet Texas' future water needs.

DIGEST: CSHB 722 would allow groundwater conservation districts to adopt rules governing permits for the production of brackish groundwater. The bill also would set requirements for permit applications and for brackish groundwater production in those districts.

Rules. The bill would authorize a groundwater conservation district located over a designated brackish groundwater production zone to adopt rules governing the issuance of permits for completing and operating a brackish groundwater well.

If a groundwater conservation district received a petition from a person with a legally defined interest in groundwater in the district, it would have to adopt rules governing permits for brackish groundwater projects within 180 days.

Rules adopted by districts would have to provide greater access to brackish groundwater by simplifying procedures, avoiding permitting delays, and saving expense for permit seekers. Rules could not impair property rights and would have to specify all additional information that would have to be included in a permit application.

Rules adopted for the permitting of brackish groundwater production projects would be required to:

- provide for the processing of an application for a brackish groundwater permit in the same manner as a fresh groundwater permit, except where otherwise directed by the bill;
- permit withdrawals of brackish water from a designated brackish groundwater production zone that were consistent with Water Code regulations;

- establish a minimum term of 30 years for brackish groundwater production permits;
- require the implementation of a monitoring system recommended by the Texas Water Development Board (TWDB) to monitor water levels and water quality in the aquifer or adjacent aquifers in which the designated brackish groundwater production zone was located; and
- protect against subsidence through the monitoring of land elevations in brackish groundwater production zones in the Gulf Coast Aquifer, as defined in the bill.

These rules would apply to permits for brackish water treatment projects, including municipal projects designed to provide a public source of drinking water and electric generation projects to treat brackish groundwater to water quality standards sufficient for the project needs. Groundwater conservation districts could not adopt rules limiting access to groundwater production within a designated brackish groundwater production zone to only these types of projects.

The holder of a permit issued for brackish groundwater production would have to submit annual reports to the groundwater conservation district that included the amount of brackish groundwater that had been withdrawn, the average monthly quality of the water, and aquifer levels for the production zone and any other area for which the permit required monitoring. These reports would be provided to TWDB.

Applications. An application for a brackish groundwater production zone operating permit would have to include:

- the proposed well field design compared to the designated brackish groundwater production zone;
- the requested maximum groundwater withdrawal rate for the proposed project; and
- the number and location of monitoring wells needed to determine the effects of the project on water levels and quality in the aquifer, adjacent aquifers, aquifer subdivisions, or geologic stratum within

the designated production zone.

The application also would have to incorporate a report that included a simulation of the project's effects on water levels and water quality in the aquifer or adjacent aquifers within the production zone. A description of the model used for the simulation, along with sufficient information for a technical reviewer to understand the parameters and assumptions used to develop the model, also would have to be included.

Permit applications would be governed solely by district rules consistent with the bill. When considering an application to extend the term of a permit, districts could use only rules that were in effect at the time the application was submitted.

Application reviews. The groundwater conservation district that received such an application would have to submit it to TWDB, which would conduct a technical review of the application.

A report of that review, including findings regarding the compatibility of the proposed well field design with the brackish groundwater production zone and recommendations for the required monitoring system, would then be submitted to the district. A groundwater conservation district could not schedule a hearing on an application until it received TWDB's technical review report.

Investigations of permits' effects. If a TWDB investigation was requested by the district, TWDB would have 120 days to investigate and issue a report on whether a project's brackish groundwater production was projected to cause significant and unanticipated aquifer level declines, negative effects on an aquifer's quality of water, or subsidence in the Gulf Coast Aquifer.

After a district received this report and gave appropriate notice and hearing, the district could amend the relevant permit to establish a production limit necessary to mitigate any identified negative effects. The district also could approve a mitigation plan to alleviate any negative

effects.

Other provisions. Groundwater conservation districts would have to adopt rules so that the authorized production of brackish groundwater in a district was in addition to the amount of managed available groundwater. Districts would be required, to the extent possible, to issue permits so that the total volume of groundwater and brackish groundwater production in a designated brackish groundwater production zone were equal.

This bill would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would have an estimated negative impact of about $225,000 in general revenue related funds for fiscal 2020-21.