

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 747
By: Watson
Natural Resources
4/26/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Barton Springs-Edwards Aquifer Conservation District (district) authorized production fees are statutorily capped at 17 cents per thousand gallons of water. This is inexpensive when compared to surface water and undermines efforts to promote conjunctive use between groundwater and surface water.

Conjunctive use protects and preserves groundwater and surface water availability in times of drought by using both sources during non-drought times and switching to surface water during drought. The statutory cap of 17 cents per thousand gallons substantially impedes the district from encouraging effective conjunctive use and voluntary groundwater conservation because it is inexpensive, despite the lack of available in the Edwards Aquifer.

To protect existing permittees from increased groundwater demands on the aquifer, the district currently issues only conditional production permits allowing for production depending on groundwater availability during times of drought. The district's historic permits (issued prior to September 9, 2004) generally consume all available Edwards groundwater. New groundwater users seeking conditional production permits recognize as a condition to acquiring their permits that, during times of drought, water may not be available for them.

C.S.S.B. 747 increases production fees on all conditional permits and materially amended permits at their next renewal date to not more than the greater of 38 cents per thousand gallons or the raw surface water cost of other wholesale suppliers serving customers in the district. Also, existing historic permittees with no material amendments are grandfathered by this bill. The bill also addresses restrictions on groundwater production during periods of drought and extreme drought.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.205(d), Water Code, as follows:

(d) Deletes existing text prohibiting the Barton Springs-Edwards Aquifer Conservation District (district) from charging production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose. Deletes existing text authorizing the district to assess a water use fee against a specific municipality in an amount not to exceed 60 percent of the total funding of the district received from water use fees assessed against that municipality and other nonexempt users in the district.

SECTION 2. Amends Subchapter C, Chapter 8802, Special District Local Laws Code, by adding Section 8802.1045, as follows:

Sec. 8802.1045. AMOUNT OF ANNUAL PRODUCTION FEE. (a) Prohibits the board of directors of the district (board) from charging an annual production fee of more than \$1 per acre-foot for water permitted for agricultural use or 17 cents per thousand gallons for water permitted for any other purposes, except as provided by this section.

(b) Authorizes the board to charge an annual production fee, for a permit first issued after September 1, 2007, or a permit first issued after September 9, 2004, and renewed after September 1, 2007, for the amount of water permitted under a permit as issued or renewed if the water is permitted for any purpose other than agricultural use, of not more than the greater of 38 cents per thousand gallons, or the raw surface water cost of other wholesale suppliers serving customers in the district.

(c) Authorizes the board to charge an annual production fee, for a permit that is materially amended after September 1, 2007, for only the additional amount of water authorized by the material amendment if the water is permitted for any purpose other than the agricultural use, of not more than the greater of 38 cents per thousand gallons, or the raw surface water cost of other wholesale suppliers serving customers in the district.

(d) Prohibits the board from charging an annual production fee for a permit first issued on or before September 9, 2004, that is renewed without material amendment after September 1, 2007, of more than 17 cents per thousand gallons for the amount of water permitted under the permit as renewed if the water is permitted for any purpose other than agricultural use.

(e) Authorizes the board to adopt a differential rate structure for the nonagricultural production fees by this section to promote alternatives to the exclusive use of groundwater resources.

(f) Provides that an amendment under this section is an amendment to a permit that increases the amount of water permitted by more than 10 percent in one fiscal year or by more than 25 percent in any three-year period. Provides that a renewal on or after September 1, 2007, of a permit that was issued on or before September 9, 2004, is considered to be a material amendment, for the purposes of this section, if the permit as renewed increases the amount of water permitted by an amount that exceeds the limits specified by this subsection.

SECTION 3. Amends Section 8802.105, Special District Local Laws Code, as follows:

Sec. 8802.105. CERTAIN WATER USE FEES PERMITTED. (a) Creates this subsection from existing text. Increases the maximum percentage that may be used in calculating the amount the water use fee that the board may charge the City of Austin, from 40 to 60 of the total funding the district expects to receive for the next fiscal year, rather than received, from water use fees assessed against Austin and other nonexempt users in the year.

(b) Requires that, for the purpose of computing water use fees under this section, the district estimate the amount of permitted pumpage (pumpage) for the next fiscal year by considering various factors, including certain growth rates, the amount of pumpage, historical pumpage, and any pending applications for pumpage. Requires the district to use the estimated amount of pumpage and its water use fee rate to compute the water use fee to be assessed against the City of Austin for the district's next fiscal year. Requires the district to compute the water use fee assessed against the City of Austin at a rate of 17 cents per thousand gallons for the total amount of water permitted for any nonagricultural purpose, regardless of the rate actually imposed on or remitted by the permittee.

SECTION 4. Amends Subchapter C, Chapter 8802, Special District Local Laws Code, by adding Section 8802.109, as follows:

Sec. 8802.109. RESTRICTIONS ON PRODUCTION DURING DROUGHT. (a) Authorizes the district, during the period declared by the district to be a drought and only as specified in the district's approved management plan, to restrict or prohibit groundwater production as provided by this section.

(b) Authorizes the district to restrict groundwater production on an equivalent, pro-rata basis for permits first issued on or before September 9, 2004, including permits renewed after September 1, 2007.

(c) Authorizes the district, to protect the conditions of the aquifer, to restrict or prohibit groundwater production for permits first issued after September 9, 2004, and for permits first issued on or before September 9, 2004, and amended after September 9, 2004, for any additional amount of water authorized by the amendment.

Sec. 8802.110. RESTRICTIONS ON PRODUCTION DURING EXTREME DROUGHT. (a) Authorizes the district, during a period declared by the district to be an extreme drought, to maintain groundwater production necessary to sustain human consumption and protect the public's health, safety, and welfare, to impose greater restrictions on groundwater production for industrial, commercial, or nonagricultural irrigation permits than the district imposes on permits for other uses.

(b) Authorizes the district to restrict withdrawals for an industrial, commercial, or nonagricultural irrigation permit first issued on or before September 9, 2004, by an amount not to exceed 40 percent of the amount permitted on or before September 9, 2004, retaining at least 60 percent of the total authorized pumpage, if an alternative water supply for at least 10 percent of the amount permitted is available and in place during the extreme drought and any restriction imposed by the district under Sections 8802.109(b) and (c) remains in effect.

(c) Authorizes the district to impose greater restrictions, including complete curtailment, for industrial, commercial, or nonagricultural irrigation permits first issued on or before September 9, 2004, for the additional amount of water authorized by the amendment than the district imposes on similarly situated permittees for other uses.

SECTION 5. Provides that the legislature finds that the Barton Springs-Edwards Aquifer Conservation District benefits the sustainable use of groundwater by promoting, through fee and permitting mechanisms, alternatives to the exclusive use of groundwater resources, including the conjunctive use of groundwater and surface water resources.

SECTION 6. Effective date: September 1, 2007.