

AN ACT

relating to the development of brackish groundwater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1015 to read as follows:

Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER PRODUCTION ZONES. (a) In this section:

(1) "Designated brackish groundwater production zone" means an aquifer, subdivision of an aquifer, or geologic stratum designated under Section 16.060(b)(5).

(2) "Development board" means the Texas Water Development Board.

(3) "Gulf Coast Aquifer" means the system of hydrogeologic units that run along the Gulf Coast from the Sabine River to the Rio Grande, including:

(A) the Catahoula confining system, including the Frio Formation, the Anahuac Formation, and the Catahoula Tuff or Sandstone;

(B) the Jasper Aquifer, including the Oakville Sandstone and Fleming Formation;

(C) the Burkeville confining system separating the Jasper Aquifer from the Evangeline Aquifer;

(D) the Evangeline Aquifer, including the Goliad Sand; and

1 (E) the Chicot Aquifer, including the Willis
2 Sand, the Bentley and Montgomery Formations, the Beaumont Clay, and
3 alluvial deposits at the surface.

4 (b) A district located over any part of a designated
5 brackish groundwater production zone may adopt rules to govern the
6 issuance of permits for the completion and operation of a well for
7 the withdrawal of brackish groundwater from a designated brackish
8 groundwater production zone and shall adopt rules described by this
9 subsection if the district receives a petition from a person with a
10 legally defined interest in groundwater in the district. The
11 district must adopt the rules not later than the 180th day after the
12 date the district receives the petition. Rules adopted under this
13 subsection apply only to a permit for a project described by
14 Subsection (c).

15 (c) A person may obtain a permit under rules adopted under
16 this section for the following projects:

17 (1) a municipal project designed to treat brackish
18 groundwater to drinking water standards for the purpose of
19 providing a public source of drinking water; and

20 (2) an electric generation project to treat brackish
21 groundwater to water quality standards sufficient for the project
22 needs.

23 (d) The rules adopted must:

24 (1) provide for processing an application for a
25 brackish groundwater production zone operating permit in the same
26 manner as an application for an operating permit for a fresh
27 groundwater well, except as provided by this section;

1 (2) allow withdrawals and rates of withdrawal of
2 brackish groundwater from a designated brackish groundwater
3 production zone not to exceed and consistent with the withdrawal
4 amounts identified in Section 16.060(e);

5 (3) provide for a minimum term of 30 years for a permit
6 issued for a well that produces brackish groundwater from a
7 designated brackish groundwater production zone;

8 (4) require implementation of a monitoring system
9 recommended by the development board to monitor water levels and
10 water quality in the same or an adjacent aquifer, subdivision of an
11 aquifer, or geologic stratum in which the designated brackish
12 groundwater production zone is located;

13 (5) for a project located in a designated brackish
14 groundwater production zone in the Gulf Coast Aquifer, require
15 reasonable monitoring by the district of land elevations to
16 determine if production from the project is causing or is likely to
17 cause subsidence during the permit term;

18 (6) require from the holder of a permit issued under
19 rules adopted under this section annual reports that must include:

20 (A) the amount of brackish groundwater
21 withdrawn;

22 (B) the average monthly water quality of the
23 brackish groundwater withdrawn and in the monitoring wells; and

24 (C) aquifer levels in both the designated
25 brackish groundwater production zone and in any aquifer,
26 subdivision of an aquifer, or geologic stratum for which the permit
27 requires monitoring; and

1 (7) be consistent with and not impair property rights
2 described by Sections 36.002(a) and (b).

3 (e) An application for a brackish groundwater production
4 zone operating permit must include:

5 (1) the proposed well field design compared to the
6 designated brackish groundwater production zone;

7 (2) the requested maximum groundwater withdrawal rate
8 for the proposed project;

9 (3) the number and location of monitoring wells needed
10 to determine the effects of the proposed project on water levels and
11 water quality in the same or an adjacent aquifer, subdivision of an
12 aquifer, or geologic stratum in which the designated brackish
13 groundwater production zone is located; and

14 (4) a report that includes:

15 (A) a simulation of the projected effects of the
16 proposed production on water levels and water quality in the same or
17 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
18 in which the designated brackish groundwater production zone is
19 located;

20 (B) a description of the model used for the
21 simulation described by Paragraph (A); and

22 (C) sufficient information for a technical
23 reviewer to understand the parameters and assumptions used in the
24 model described by Paragraph (B).

25 (f) The district shall submit the application to the
26 development board and the development board shall conduct a
27 technical review of the application. The development board shall

1 submit a report of the review of the application that includes:

2 (1) findings regarding the compatibility of the
3 proposed well field design with the designated brackish groundwater
4 production zone; and

5 (2) recommendations for the monitoring system
6 described by Subsection (d)(4).

7 (g) The district may not schedule a hearing on the
8 application until the district receives the report from the
9 development board described by Subsection (f).

10 (h) The district shall provide the reports required under
11 Subsection (d)(6) to the development board. Not later than the
12 120th day after the date the development board receives a request
13 from the district, the development board shall investigate and
14 issue a report on whether brackish groundwater production under the
15 project that is the subject of the report from the designated
16 brackish groundwater production zone is projected to cause:

17 (1) significant aquifer level declines in the same or
18 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
19 that were not anticipated by the development board in the
20 designation of the zone;

21 (2) negative effects on quality of water in an
22 aquifer, subdivision of an aquifer, or geologic stratum; or

23 (3) for a project located in a designated brackish
24 groundwater production zone in the Gulf Coast Aquifer, subsidence
25 during the permit term.

26 (i) After receiving from the development board a report
27 issued under Subsection (h) and after notice and hearing subject to

1 Subchapter M, the district may:

2 (1) amend the applicable permit to establish a
3 production limit necessary to mitigate any negative effects
4 identified by the report;

5 (2) approve a mitigation plan that alleviates any
6 negative effects identified by the report; or

7 (3) both amend the permit to establish a production
8 limit and approve a mitigation plan.

9 SECTION 2. Section 36.1132, Water Code, is amended by
10 adding Subsection (d) to read as follows:

11 (d) Production under a permit issued under Section 36.1015
12 to produce brackish groundwater from a designated brackish
13 groundwater production zone is in addition to the amount of
14 groundwater that may be produced based on Subsections (b)(1) and
15 (2). To the extent possible, a district shall issue permits up to
16 the point that the total volume of exempt and permitted groundwater
17 production in a designated brackish groundwater production zone
18 equals the amount of brackish groundwater that may be produced
19 annually to achieve the groundwater availability described by the
20 Texas Water Development Board in its designation of the brackish
21 groundwater production zone under Section 16.060(e).

22 SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 2377 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 0, 3 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2377 on May 26, 2017, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2377 on May 28, 2017, by the following vote: Yeas 144, Nays 3, 2 present, not voting.

Chief Clerk of the House

H.B. No. 2377

I certify that H.B. No. 2377 was passed by the Senate, with amendments, on May 25, 2017, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2377 on May 28, 2017, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor