

Item 8 – 88th Legislative Session Update

The Texas Legislature convened January 10, 2023 for the 88th Legislative Session and adjourned May 29th. There will were only a handful of groundwater bills that made it across the finish line. The following bills have passed both houses of the Legislature and have been sent to the Governor to be signed. They include:

HB 3059 by King – Relating to export fee increase

HB 1971 by Ashby – Final decision on permit or permit amendment applications

HB 2443 by Harris – Petition for rulemaking

HB 3278 by Price – Joint planning of DFCs

SB 1746 by Perry – Exemption from the requirement to obtain a permit from a groundwater conservation district for certain temporary water wells

Both HB 3990 (groundwater/surface water studies) and HB 4532 (modeled sustainable groundwater) by Rep. Kacal died after being attached to SB 156 (Perry). SB 156 ran out of time and was not debated on the floor of the House.

Attached is the current Legislative Matrix describing the groundwater bills listed above. Each of the bills will need to be incorporated into the District Rules.

BILL	AUTHOR	STATUS	COMMENTS
HB3059	King	<p>Filed 3/02/23 Ref to HNR 3/14/23 HNR hearing 3/28 Engrossed House 4/18 Ref. to Sen Water 4/20 Sen Water hearing 5/8 Voted of Sen Water with substitute 5/9 (on right) Senate Engrossed 5/18 Sent to Governor 5/30</p> <p>Effective 9/1/23</p>	<p><u>Bills Passed by the 88th Texas Legislature R.S.:</u></p> <p>Relating to fees charged by a groundwater conservation district; authorizing an increase in the rate of a fee.</p> <p>SECTION 1. Section 36.122, Water Code, is amended by amending Subsections (e) and (p) and adding</p> <p>Subsections (e-1), (e-2), and (e-3) to read as follows:</p> <p>(e) <u>Except as provided by Subsection (e-1), the [The] district may impose an export fee or surcharge using one of the following methods:</u></p> <p>(1) a fee negotiated between the district and the exporter;</p> <p>(2) <u>for a tax-based district, a rate not to exceed 20 cents [the equivalent of the district's tax rate per hundred dollars of valuation] for each thousand gallons of water exported from the district [or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation]; or</u></p> <p>(3) <u>for a fee-based district, a rate not to exceed the greater of 20 cents for each thousand gallons or a 50 percent surcharge, in addition to the district's production fee, for water exported from the district.</u></p> <p><u>(e-1) Effective January 1, 2024, the maximum allowable rate a district may impose for an export fee or surcharge under Subsection (e)(2) or (e)(3) increases by three percent each calendar year.</u></p> <p><u>(e-2) A district governed by a special law in regard to an export fee or surcharge on water exported from the district may charge an export fee or surcharge in accordance with that special law or in accordance with Subsections (e) and (e-1).</u></p> <p><u>(e-3) An export fee or surcharge imposed under Subsection (e) or an increase in an imposed export fee or surcharge is not valid unless it is approved by the board after a public hearing.</u></p> <p>(p) <u>Subsections [Subsection] (e), (e-1), and (e-2) do [does] not apply to a district that is collecting an export fee or surcharge on March 1, 2001.</u></p> <p>SECTION 2. Section 36.207, Water Code, is amended to read as follows:</p> <p>Sec. 36.207. USE OF FEES.</p> <p>(a) A district may use funds obtained from administrative, production, or export fees collected under a special law governing the district or this chapter for any purpose consistent with the district's approved management plan, including, without limitation,</p>

			<p>making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies <u>or to maintain the operability of wells significantly affected by groundwater development to allow for the highest practicable level of groundwater production while achieving the desired future conditions established under Section 36.108.</u></p> <p><u>(b) a district may use funds obtained from an increase in an export fee imposed under Section 36.122(e-1) on or after January 1, 2024 only for costs related to assessing and addressing impacts associated with groundwater development, including:</u></p> <p><u>(1) maintaining operability of wells significantly affected by groundwater development;</u></p> <p><u>(2) developing or distributing alternative water supplies;</u></p> <p><u>(3) conducting aquifer monitoring, data collection, and aquifer science.</u></p>
HB1971	Ashby	<p>Filed 2/07/23 Referred to HNR 3/08/23 Voted out of HNR 4/12 Engrossed House 4/26 Ref to Sen Water 5/4 Sen Water hearing 5/12 Voted out of Sen Water and rec for Local Cal. 5/12 Senate Engrossed 5/16 Enrolled 5/18 Sent to Governor 5/22</p> <p>Effective Immediately</p>	<p>SECTION 1. Section 36.053, Water Code, is amended to read as follows: Sec. 36.053. QUORUM. <u>(a) Except as provided by Subsection (b), a [A] majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district.</u></p> <p><u>(b) For the purposes of making a final decision on a permit or permit amendment application by a board composed of 10 or more directors, a concurrence of a majority of the directors eligible to vote is sufficient for taking an action on the application.</u></p> <p>SECTION 2. Section 36.058, Water Code, is amended to read as follows: Sec. 36.058. CONFLICTS OF INTEREST. <u>(a) A director of a district is subject to the provisions of Chapters 171 and 176, Local Government Code, relating to the regulation of conflicts of officers of local governments.</u></p> <p><u>(b) If a director is required to file an affidavit under Section 171.004(a), Local Government Code, the director may not:</u></p> <p><u>(1) attend a closed meeting related to the matter for which the director is required to file the affidavit; and</u></p> <p><u>(2) vote on a matter for which the director is required to file the affidavit unless a majority of the directors are also required to file an affidavit related to a similar interest on the same official action.</u></p>

			<p>SECTION 3. Section 36.409, Water Code, is amended to read as follows: Sec. 36.409. CONTINUANCE. (a) The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404. (b) If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties. (c) <u>A continuance may not exceed the time limit for the issuance of a final decision under Section 36.4165.</u></p> <p>SECTION 4. Section 36.411, Water Code, is amended to read as follows: Sec. 36.411. BOARD ACTION. (a) The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded. (b) <u>The board shall ensure a decision on a permit or permit amendment application is timely rendered in accordance with the provisions set forth in this chapter.</u></p> <p>SECTION 5. The heading to Section 36.412, Water Code, is amended to read as follows: Sec. 36.412. REQUEST FOR REHEARING OR FINDINGS <u>OF FACT</u> AND CONCLUSIONS <u>OF LAW</u>.</p> <p>SECTION 6. Section 36.412, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (b-1), and (f) to read as follows: (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application <u>by making a request in writing to the board.</u> (a-1) <u>A party seeking to appeal a decision by the board must request [by requesting] written findings of fact and conclusions of law not later than the 20th day after the date of the board's decision unless the board issued findings of fact and conclusions of law as part of the final decision.</u> (b) On receipt of a timely written request <u>under Subsection (a-1)</u>, the board shall make written findings <u>of fact</u> and conclusions <u>of law</u> regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings <u>of fact</u> and conclusions <u>of law</u> to the person who requested them, and to each designated party, not later than the 35th day after the date the board receives the request. (b-1) A party to a contested hearing may request a rehearing not later than the 20th day</p>
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HB2443	Harris	<p>Filed 02/17/2023 Ref to HNR 3/13/23 HNR hearing 3/21/23 3/23 Voted out of HNR with Com. Sub. 5/5 Engrossed in House Sen Water hearing 5/12 Voted out of Sen Water and rec for Local Cal. 5/12 Senate Engrossed 5/16 Enrolled 5/22 Sent to the Gov 5/25 Effective 9/1/23</p>	<p>Relating to the authority of certain persons to petition a groundwater conservation district to change certain rules. SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1025 to read as follows: <u>Sec. 36.1025. PETITION TO CHANGE RULES. (a) A person with a real property interest in groundwater may petition the district where the property that gives rise to the real property interest is located to adopt a rule or modify a rule adopted under this chapter.</u> <u>(b) The district by rule shall prescribe the form for a petition submitted under this section and the procedure for the submission, consideration, and disposition of the petition.</u> <u>(c) Not later than the 90th day after the date the district receives the petition, the district shall:</u> <u>(1) deny the petition and provide an explanation for the denial; or</u> <u>(2) engage in rulemaking consistent with the granted petition.</u> <u>(d) Nothing in this section may be construed to create a private cause of action for a decision to accept or deny a petition filed under this section.</u> SECTION 2. Not later than December 1, 2023, a groundwater conservation district shall adopt rules to implement Section 36.1025, Water Code, as added by this Act.</p>
HB3278	Price	<p>Filed 3/02/23 Referred to HNR 3/15/23 HNR hearing on 3/28 Voted out of HNR 4/4 Engrossed House 4/28 Sen Water hearing 5/12 Voted out of Sen Water 5/12 Senate Engrossed 5/16 Enrolled 5/23 Sent to the Gov 5/26 Effective Immediately</p> <p>DFC adoption transparency</p>	<p>Relating to the joint planning of desired future conditions in groundwater management areas. SECTION 1. Section 36.108, Water Code, is amended by amending Subsections (d-2) and (d-3) and adding Subsection (d-2a) to read as follows: (d-2) *** After the close of the public comment period, the district shall compile <u>and submit to the district representatives</u> for consideration at the next joint planning meeting: <u>(1) a summary of relevant comments received;</u> <u>(2) [;] any suggested revisions to the proposed desired future conditions, and the basis for those [the] revisions; and</u> <u>(3) any supporting materials, including new or revised groundwater availability model run results.</u> <u>(d-2a) The information compiled and submitted to the district representatives under Subsection (d-2) must be made available on a generally accessible Internet website maintained on behalf of the management area for not less than 30 days.</u> (d-3) After <u>each [all the districts have submitted their]</u> district <u>has submitted to the district representatives the information required under Subsection (d-2) and made the information available for the required period of time under Subsection (d-2a) [summaries],</u> the</p>

			<p>district representatives shall reconvene <u>for a joint planning meeting</u> to review the <u>information required under Subsection (d-2) [reports]</u>, consider any district's suggested revisions to the proposed desired future conditions, <u>receive public comment</u>, and finally adopt the desired future conditions for the management area. The desired future conditions must be approved by a resolution adopted by a two-thirds vote of all the district representatives not later than January 5, 2022. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:</p> <p style="text-align: center;">***</p> <p>(5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts <u>during the public comment period or at the joint planning meeting were or were not incorporated into the desired future conditions.</u></p>
SB1746	Perry	<p>Filed 3/07/2023 Ref to Sen Water 3/16/23 Sen Water hearing 4/3 Voted out of Com. With Com. Sub Engrossed Senate 4/12 Ref. to HNR 4/18 HNR Hearing 5/9 Voted out of HNR 5/11 House engrossed 5/24 Enrolled 5/26 Sent to the Gov 5/29</p>	<p>Relating to an exemption from the requirement to obtain a permit from a groundwater conservation district for certain temporary water wells.</p> <p>SECTION 1. Sections 36.117(b) and (d), Water Code, are amended to read as follows:</p> <p>(b) Except as provided by this section, a district shall provide an exemption from the district requirement to obtain a permit for:</p> <p style="text-align: center;">***</p> <p><u>(4) drilling a water well for temporary use to supply water for a rig that is actively engaged in drilling a groundwater production well permitted by the district.</u></p> <p>(d) A district may cancel a previously granted exemption and may require an operating permit for or restrict production from a well and assess any appropriate fees if:</p> <p style="text-align: center;">***</p> <p><u>(4) the groundwater withdrawals that were exempted under Subsection (b)(4) are no longer used solely to supply water for a rig that is actively engaged in drilling a groundwater production well permitted by the district.</u></p> <p><u>(d-1) Except as provided by this subsection, an exemption for a well described by Subsection (b)(4) may not exceed 180 days. A district may grant an extension of the exemption until the well is complete.</u></p>

SB1080	Kolkhorst	<p>Enrolled 5/23 Sent to the Gov 5/29</p>	<p>relating to a mitigation program and fees for the Lost Pines Groundwater Conservation District.</p> <p>SECTION 1. Subchapter C, Chapter 8849, Special District Local Laws Code, is amended by adding Section 8849.107 to read as follows:</p> <p><u>Sec. 8849.107. MITIGATION PROGRAM. (a) The district shall, by rule adopted in accordance with Section 36.101, Water Code, establish a mitigation program to address excessive drawdown of an aquifer or subdivision of an aquifer in the district that results in:</u></p> <p style="padding-left: 40px;">(1) <u>the potentiometric surface being below a desired future condition; or</u></p> <p style="padding-left: 40px;">(2) <u>nonproductive wells.</u></p> <p><u>(b) In order 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, a mitigation program established under this section may provide reimbursement for the cost of repairing or replacing wells described by Section 36.117(b)(1), Water Code, to access groundwater below the potentiometric surface of the aquifer or subdivision of an aquifer that is the subject of the program.</u></p> <p><u>(c) The district shall offer to enter into a reciprocal agreement with an adjacent groundwater conservation district or a groundwater conservation district located in Groundwater Management Area 12 to support a jointly managed mitigation program. The district may fund the mitigation program with production fees, export fees, or any other revenue available to the district.</u></p> <p>SECTION 2. Section 8849.151, Special District Local Laws Code, is amended to read as follows:</p> <p>Sec. 8849.151. [PUMPING] FEES. (a) The district may assess <u>production</u> [regulatory pumping] fees <u>under Section 36.205(c), Water Code, and export fees under Section 36.122, Water Code</u> [for water produced in or exported from the district].</p> <p>(b) The <u>production</u> [regulatory pumping] fees the district assesses for water for crop or livestock production or other agricultural uses may not exceed 20 percent of the rate applied to water for municipal uses.</p> <p>(c) <u>Production</u> [Regulatory pumping] fees [based on the amount of water withdrawn from a well] may not exceed:</p> <p style="padding-left: 40px;">(1) \$1 for each acre-foot for water used to irrigate agricultural crops; or</p> <p style="padding-left: 40px;">(2) 17 cents for each thousand gallons for water used for any other purpose.</p> <p>[(d) Combined regulatory pumping fees for production and export of water may not exceed 17 cents for each thousand gallons for water used.]</p> <p>SECTION 3. Mitigation payments and fees assessed before the effective date of this Act are ratified, confirmed, and validated in all respects.</p>
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