HB 720 is a reprise of legislation that was passed by the House in 2017 but not acted upon by the Senate. Moreover, the language from that 2017 bill was rejected by Senators in the conference committee on that session’s SB 1511 after the House sponsor added the language to SB 1511 on the House floor. Thus, the topic of the legislation is back before the Senate Committee on Water & Rural Affairs. While the language from 2017 has been modified somewhat, the new version of this legislation remains unnecessary, problematic, and quite possibly unworkable in practice. HB 720 could also undermine environmental flows and existing water rights.

HB 720 purports to set up a system that would expedite and encourage the use of aquifer storage & recovery (ASR) projects involving surface water, and some suggestions have been made that such projects could be used to mitigate flooding of the magnitude that many parts of Texas have experienced in recent years. However, the proposed changes and additions to the Water Code in this bill are not needed to allow ASR projects using surface water. That can be done under current law (as in the case of the Kerrville ASR project). Economics and the availability of other water supply options are the factors that most likely have led water developers to shy away from ASR projects using surface water.

Moreover, the idea being touted by some that ASR projects using surface water might mitigate flooding in any substantial way is highly questionable. Such projects might be part of a stormwater management system to address relatively low rainfall events, but the logistical challenges of capturing major volumes of water during high flood events, treating that water to acceptable levels of water quality for injection into aquifers for later recovery and use, and the economics of trying to accomplish these feats make this approach to flood control unworkable and highly unlikely.
Ironically some proponents of this “flood mitigation” concept have claimed that it would be feasible using a series of off-channel water reservoirs to capture and hold the flood waters for later injection into aquifers. ASR is often touted, and with legitimate reason, as a better storage alternative for water than surface water reservoirs because the latter result in loss of water through evaporation that would not occur in underground storage. Using off-channel surface water reservoirs to hold water for aquifer injection reduces that advantage of ASR, even if one could deal with all the logistical and other challenges of trying to manage floods with this approach.

Water attorney Myron Hess, on behalf of the National Wildlife Federation, has prepared and submitted to members of the Senate Water & Rural Affairs Committee a detailed set of comments opposing HB 720, outlining the various ways in which the proposed legislation would complicate existing surface water law, take away existing opportunities for public participation in surface water management decisions, and potentially affect both environmental flows and existing water rights. The Sierra Club endorses those comments and urges the Senate Committee members to consider carefully how HB 720 would negatively affect important aspects of existing surface water law.

At best HB 720 is a piece of legislation that is “not ready for prime time.” If Senators wish to promote the use of ASR as a water supply option - and the Sierra Club agrees that ASR if properly done and if implemented in situations where the conditions are appropriate (such as in El Paso and SAWS) is an appropriate water supply tool - then we believe that the wiser approach is to do a thorough interim study of what - if any - impediments exist to the use of ASR involving surface water, how environmental flows and existing water rights may be protected in the implementation of such projects, and the best ways to use such ASR projects to accomplish conjunctive use of surface water and groundwater. Passing HB 720 as it stands is not likely to advance ASR using surface water. Indeed, this legislation might well undermine such ASR projects by setting up a system that is so complicated and problematic as to be unworkable.

The Sierra Club urges the Senate Water & Rural Affairs Committee NOT to advance HB 720 at this late date in the legislative session. We stand ready to work with the Committee members to continue viable uses of ASR to achieve various water management goals, but we cannot support the approach taken in HB 720.