

AN ACT

relating to the authority of political subdivisions to exercise the power of eminent domain to acquire rights to water and the assessment of damages in condemnation proceedings initiated for that purpose.

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

SECTION 1. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0121 to read as follows:

Sec. 21.0121. CONDEMNATION TO ACQUIRE WATER RIGHTS.

(a) In addition to the contents prescribed by Section 21.012(b), a condemnation petition filed by a political subdivision of this state for the purpose of acquiring rights to groundwater or surface water must state that the facts to be proven are that the political subdivision has:

(1) prepared a drought contingency plan;

(2) developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable in the political subdivision's jurisdiction;

(3) made a bona fide good faith effort to obtain practicable alternative water supplies to the water rights the political subdivision proposes to condemn;

(4) made a bona fide good faith effort to acquire the rights to the water the political subdivision proposes to condemn

1 by voluntary purchase or lease; and

2 (5) made a showing that the political subdivision
3 needs the water rights to provide for the domestic needs of the
4 political subdivision within the next 10-year period.

5 (b) A court shall deny the right to condemn unless the
6 political subdivision proves to the court that the political
7 subdivision has met the requirements of Subsection (a).

8 SECTION 2. Subchapter C, Chapter 21, Property Code, is
9 amended by adding Section 21.0421 to read as follows:

10 Sec. 21.0421. ASSESSMENT OF DAMAGES: GROUNDWATER RIGHTS.

11 (a) In a condemnation proceeding initiated by a political
12 subdivision under this chapter, the special commissioners or court
13 shall admit evidence relating to the market value of groundwater
14 rights as property apart from the land in addition to the local
15 market value of the real property if:

16 (1) the political subdivision proposes to condemn the
17 fee title of real property; and

18 (2) the special commissioners or court finds, based on
19 evidence submitted at the hearing, that the real property may be
20 used by the political subdivision to develop or use the rights to
21 groundwater for a public purpose.

22 (b) The evidence submitted under Subsection (a) on the
23 market value of the groundwater rights as property apart from the
24 land shall be based on generally accepted appraisal methods and
25 techniques, including the methods of appraisal under Subchapter A,
26 Chapter 23, Tax Code.

27 (c) If the special commissioners or court finds that the

1 real property may be used by the political subdivision to develop or
2 use the rights to groundwater for a public purpose, the special
3 commissioners or court may assess damages to the property owner
4 based on:

5 (1) the local market value of the real property,
6 excluding the value of the groundwater in place, at the time of the
7 hearing; and

8 (2) the market value of the groundwater rights as
9 property apart from the land at the time of the hearing.

10 (d) In assessing damages based on the market value of
11 groundwater rights under Subsection (c)(2), the special
12 commissioners or court shall consider:

13 (1) the amount of groundwater the political
14 subdivision can reasonably be expected to produce from the property
15 on an annual basis;

16 (2) the number of years the political subdivision can
17 reasonably be expected to produce groundwater from the property;

18 (3) the quality of the groundwater;

19 (4) the location of the real property in relation to
20 the political subdivision for conveyance purposes;

21 (5) any potential environmental impact of producing
22 groundwater from the real property;

23 (6) whether or not the real property is located within
24 the boundaries of a political subdivision that can regulate the
25 production of groundwater from the real property;

26 (7) the cost of alternative water supplies to the
27 political subdivision; and

1 (8) any other reasonable factor that affects the
2 market value of a groundwater right.

3 (e) This section does not:

4 (1) authorize groundwater rights appraised separately
5 from the real property under this section to be appraised
6 separately from real property for property tax appraisal purposes;
7 or

8 (2) subject real property condemned for the purpose
9 described by Subsection (a) to an additional tax as provided by
10 Section 23.46 or 23.55, Tax Code.

11 SECTION 3. (a) This Act takes effect September 1, 2003.

12 (b) Section 21.0421, Property Code, as added by this Act,
13 does not affect any litigation pending on the effective date of this
14 Act that relates to the assessment of damages in a condemnation
15 proceeding under Chapter 21, Property Code.

President of the Senate

Speaker of the House

I certify that H.B. No. 803 was passed by the House on April 30, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 803 on May 28, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 803 was passed by the Senate, with amendments, on May 26, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor