

1-1 By: Geren (Senate Sponsor - Duncan) H.B. No. 803
1-2 (In the Senate - Received from the House May 1, 2003;
1-3 May 6, 2003, read first time and referred to Committee on
1-4 Jurisprudence; May 20, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 20, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 803 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the authority of political subdivisions to exercise the
1-11 power of eminent domain to acquire rights to water and the
1-12 assessment of damages in condemnation proceedings initiated for
1-13 that purpose.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subchapter B, Chapter 21, Property Code, is
1-16 amended by adding Section 21.0121 to read as follows:

1-17 Sec. 21.0121. CONDEMNATION TO ACQUIRE WATER RIGHTS.

1-18 (a) In addition to the contents prescribed by Section 21.012(b), a
1-19 condemnation petition filed by a political subdivision of this
1-20 state for the purpose of acquiring rights to groundwater or surface
1-21 water must state that the facts to be proven are that the political
1-22 subdivision has:

1-23 (1) prepared a drought contingency plan;

1-24 (2) developed and implemented a water conservation
1-25 plan that will result in the highest practicable levels of water
1-26 conservation and efficiency achievable in the political
1-27 subdivision's jurisdiction;

1-28 (3) made a bona fide good faith effort to obtain
1-29 practicable alternative water supplies to the water rights the
1-30 political subdivision proposes to condemn;

1-31 (4) made a bona fide good faith effort to acquire the
1-32 rights to the water the political subdivision proposes to condemn
1-33 by voluntary purchase or lease; and

1-34 (5) made a showing that the political subdivision
1-35 needs the water rights to provide for the domestic needs of the
1-36 political subdivision within the next 10-year period.

1-37 (b) A court shall deny the right to condemn unless the
1-38 political subdivision proves to the court that the political
1-39 subdivision has met the requirements of Subsection (a).

1-40 SECTION 2. Subchapter C, Chapter 21, Property Code, is
1-41 amended by adding Section 21.0421 to read as follows:

1-42 Sec. 21.0421. ASSESSMENT OF DAMAGES: GROUNDWATER RIGHTS.

1-43 (a) In a condemnation proceeding initiated by a political
1-44 subdivision under this chapter, the special commissioners or court
1-45 shall admit evidence relating to the market value of groundwater
1-46 rights as property apart from the land in addition to the local
1-47 market value of the real property if:

1-48 (1) the political subdivision proposes to condemn the
1-49 fee title of real property; and

1-50 (2) the special commissioners or court finds, based on
1-51 evidence submitted at the hearing, that the real property may be
1-52 used by the political subdivision to develop or use the rights to
1-53 groundwater for a public purpose.

1-54 (b) The evidence submitted under Subsection (a) on the
1-55 market value of the groundwater rights as property apart from the
1-56 land shall be based on generally accepted appraisal methods and
1-57 techniques, including the methods of appraisal under Subchapter A,
1-58 Chapter 23, Tax Code.

1-59 (c) If the special commissioners or court finds that the
1-60 real property may be used by the political subdivision to develop or
1-61 use the rights to groundwater for a public purpose, the special
1-62 commissioners or court may assess damages to the property owner
1-63 based on:

2-1 (1) the local market value of the real property,
2-2 excluding the value of the groundwater in place, at the time of the
2-3 hearing; and

2-4 (2) the market value of the groundwater rights as
2-5 property apart from the land at the time of the hearing.

2-6 (d) In assessing damages based on the market value of
2-7 groundwater rights under Subsection (c)(2), the special
2-8 commissioners or court shall consider:

2-9 (1) the amount of groundwater the political
2-10 subdivision can reasonably be expected to produce from the property
2-11 on an annual basis;

2-12 (2) the number of years the political subdivision can
2-13 reasonably be expected to produce groundwater from the property;

2-14 (3) the quality of the groundwater;

2-15 (4) the location of the real property in relation to
2-16 the political subdivision for conveyance purposes;

2-17 (5) any potential environmental impact of producing
2-18 groundwater from the real property;

2-19 (6) whether or not the real property is located within
2-20 the boundaries of a political subdivision that can regulate the
2-21 production of groundwater from the real property;

2-22 (7) the cost of alternative water supplies to the
2-23 political subdivision; and

2-24 (8) any other reasonable factor that affects the
2-25 market value of a groundwater right.

2-26 (e) This section does not:

2-27 (1) authorize groundwater rights appraised separately
2-28 from the real property under this section to be appraised
2-29 separately from real property for property tax appraisal purposes;
2-30 or

2-31 (2) subject real property condemned for the purpose
2-32 described by Subsection (a) to an additional tax as provided by
2-33 Section 23.46 or 23.55, Tax Code.

2-34 SECTION 3. (a) This Act takes effect September 1, 2003.

2-35 (b) Section 21.0421, Property Code, as added by this Act,
2-36 does not affect any litigation pending on the effective date of this
2-37 Act that relates to the assessment of damages in a condemnation
2-38 proceeding under Chapter 21, Property Code.

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