

1-1 By: Duncan S.B. No. 738
1-2 (In the Senate - Filed February 27, 2003; March 3, 2003,
1-3 read first time and referred to Committee on Natural Resources;
1-4 April 22, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 11, Nays 0; April 22, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 738 By: Duncan

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

1-10 relating to the notice and hearing process for groundwater
1-11 conservation districts.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 36.101, Water Code, is amended by
1-14 amending Subsection (b) and adding Subsections (d), (e), and (f) to
1-15 read as follows:

1-16 (b) After notice and hearing, the board shall adopt and
1-17 enforce rules to implement this chapter, including rules governing
1-18 procedure before the board. [~~Notice in this section shall include~~
1-19 ~~publication of the agenda of the hearing in one or more newspapers~~
1-20 ~~of general circulation in the county or counties in which the~~
1-21 ~~district is located.~~]

1-22 (d) Not later than the 10th day before the date of a
1-23 rulemaking hearing, the general manager or board shall:

1-24 (1) post notice in a place readily accessible to the
1-25 public in the district office;

1-26 (2) provide notice to the county clerk of each county
1-27 in the district; and

1-28 (3) publish notice in one or more newspapers of
1-29 general circulation in the county or counties in which the district
1-30 is located.

1-31 (e) The notice provided under Subsection (d) must include:

1-32 (1) the time, date, and location of the hearing;

1-33 (2) a brief explanation of the subject of the hearing;

1-34 and

1-35 (3) a location at which a copy of the proposed rules
1-36 may be reviewed or copied.

1-37 (f) The presiding officer shall conduct a rulemaking
1-38 hearing in the manner the presiding officer determines to be most
1-39 appropriate to obtain information and testimony relating to the
1-40 proposed rule as conveniently and expeditiously as possible without
1-41 prejudicing the rights of any person at the hearing.

1-42 SECTION 2. Sections 36.113 and 36.114, Water Code, are
1-43 amended to read as follows:

1-44 Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) A
1-45 district shall require permits for the drilling, equipping, or
1-46 completing of wells or for substantially altering the size of wells
1-47 or well pumps. A district may require that a change in the
1-48 withdrawal or use of groundwater under a permit issued by the
1-49 district may not be made unless the district has first approved a
1-50 permit amendment authorizing the change.

1-51 (b) A district shall require that an application for a
1-52 permit or a permit amendment be in writing and sworn to.

1-53 (c) A district may require that the following be included in
1-54 the permit or permit amendment application:

1-55 (1) the name and mailing address of the applicant and
1-56 the owner of the land on which the well will be located;

1-57 (2) if the applicant is other than the owner of the
1-58 property, documentation establishing the applicable authority to
1-59 construct and operate a well for the proposed use;

1-60 (3) a statement of the nature and purpose of the
1-61 proposed use and the amount of water to be used for each purpose;

1-62 (4) a water conservation plan or a declaration that
1-63 the applicant will comply with the district's management plan;

2-1 (5) the location of each well and the estimated rate at
2-2 which water will be withdrawn;

2-3 (6) a water well closure plan or a declaration that the
2-4 applicant will comply with well plugging guidelines and report
2-5 closure to the commission; and

2-6 (7) a drought contingency plan.

2-7 (d) Before granting or denying a permit or permit amendment,
2-8 the district shall consider whether:

2-9 (1) the application conforms to the requirements
2-10 prescribed by this chapter and is accompanied by the prescribed
2-11 fees;

2-12 (2) the proposed use of water unreasonably affects
2-13 existing groundwater and surface water resources or existing permit
2-14 holders;

2-15 (3) the proposed use of water is dedicated to any
2-16 beneficial use;

2-17 (4) the proposed use of water is consistent with the
2-18 district's certified water management plan;

2-19 (5) the applicant has agreed to avoid waste and
2-20 achieve water conservation; and

2-21 (6) the applicant has agreed that reasonable diligence
2-22 will be used to protect groundwater quality and that the applicant
2-23 will follow well plugging guidelines at the time of well closure.

2-24 (e) The district may impose more restrictive permit
2-25 conditions on new permit applications and permit amendment
2-26 applications to increase [increased] use by historic users if the
2-27 limitations:

2-28 (1) apply to all subsequent new permit applications
2-29 and permit amendment applications to increase [increased] use by
2-30 historic users, regardless of type or location of use;

2-31 (2) bear a reasonable relationship to the existing
2-32 district management plan; and

2-33 (3) are reasonably necessary to protect existing use.

2-34 (f) Permits and permit amendments may be issued subject to
2-35 the rules promulgated by the district and subject to terms and
2-36 provisions with reference to the drilling, equipping, completion,
2-37 ~~[or]~~ alteration, or operation of, or production of groundwater
2-38 from, ~~[or]~~ wells or pumps that may be necessary to prevent waste and
2-39 achieve water conservation, minimize as far as practicable the
2-40 drawdown of the water table or the reduction of artesian pressure,
2-41 lessen interference between wells, or control and prevent
2-42 subsidence.

2-43 ~~[(g) A district may require that changes in the withdrawal~~
2-44 ~~and use of groundwater under a permit not be made without the prior~~
2-45 ~~approval of a permit amendment issued by the district.]~~

2-46 Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND
2-47 HEARING. (a) The district by rule shall determine each activity
2-48 regulated by the district for which a permit or permit amendment is
2-49 required.

2-50 (b) For each activity for which the district determines a
2-51 permit or permit amendment is required under Subsection (a), the
2-52 district by rule shall determine whether a hearing on the permit or
2-53 permit amendment application is required.

2-54 (c) For all applications for which a hearing is not required
2-55 under Subsection (b), the board shall act on the application at a
2-56 meeting, as defined by Section 551.001(4), Government Code, unless
2-57 the board by rule has delegated to the general manager the authority
2-58 to act on the application.

2-59 (d) The district shall promptly consider and act on each
2-60 administratively complete application for a permit or permit
2-61 amendment as provided by Subsection (c) or Subchapter M.

2-62 (e) If, within 60 [30] days after the date an [the]
2-63 administratively complete application is submitted, the [an]
2-64 application has not been acted on or set for a hearing on a specific
2-65 date, the applicant may petition the district court of the county
2-66 where the land is located for a writ of mandamus to compel the
2-67 district to act on the application or set a date for a hearing on the
2-68 application, as appropriate.

2-69 (f) For applications requiring a hearing, the initial [A]

3-1 hearing shall be held within 35 days after the setting of the date,
3-2 and the district shall act on the application within 60 [35] days
3-3 after the date [of] the final hearing on the application is
3-4 concluded.

3-5 (g) The district may by rule set a time when an application
3-6 will expire if the information requested in the application is not
3-7 provided to the district.

3-8 (h) An administratively complete application requires
3-9 information set forth in accordance with Sections 36.113 and
3-10 36.1131.

3-11 SECTION 3. Subchapter L, Chapter 36, Water Code, is amended
3-12 by adding Section 36.3705 to read as follows:

3-13 Sec. 36.3705. DEFINITION. In this subchapter, "applicant"
3-14 means a newly confirmed district applying for a loan from the loan
3-15 fund.

3-16 SECTION 4. Chapter 36, Water Code, is amended by adding
3-17 Subchapter M to read as follows:

3-18 SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT APPLICATIONS;
3-19 NOTICE AND HEARING PROCESS

3-20 Sec. 36.401. DEFINITION. In this subchapter, "applicant"
3-21 means a person who is applying for a permit or a permit amendment.

3-22 Sec. 36.402. APPLICABILITY. Except as provided by Section
3-23 36.415, this subchapter applies to the notice and hearing process
3-24 used by a district for permit and permit amendment applications.

3-25 Sec. 36.403. SCHEDULING OF HEARING. (a) The general
3-26 manager or board shall schedule a hearing on permit or permit
3-27 amendment applications received by the district as necessary, as
3-28 provided by Section 36.114.

3-29 (b) The general manager or board may schedule more than one
3-30 application for consideration at a hearing.

3-31 (c) A hearing must be held at the district office or regular
3-32 meeting location of the board unless the board provides for
3-33 hearings to be held at a different location.

3-34 (d) A hearing may be held in conjunction with a regularly
3-35 scheduled board meeting.

3-36 Sec. 36.404. NOTICE. (a) The general manager or board
3-37 shall give notice of each hearing on an application for a permit or
3-38 permit amendment.

3-39 (b) The notice must include:

3-40 (1) the name of the applicant;

3-41 (2) the address or approximate location of the well or
3-42 proposed well;

3-43 (3) for a permit amendment hearing, a brief
3-44 explanation of the proposed amendment;

3-45 (4) the time, date, and location of the hearing; and

3-46 (5) any other information the general manager or board
3-47 considers relevant and appropriate.

3-48 (c) Not later than the 10th day before the date of a hearing,
3-49 the general manager or board shall:

3-50 (1) post notice in a place readily accessible to the
3-51 public in the district office;

3-52 (2) provide notice to the county clerk of each county
3-53 in the district; and

3-54 (3) provide notice by regular mail to:

3-55 (A) the applicant; and

3-56 (B) any other person entitled to receive notice
3-57 under the rules of the district.

3-58 Sec. 36.405. HEARING REGISTRATION. The district may
3-59 require each person who attends a hearing to submit a hearing
3-60 registration form stating:

3-61 (1) the person's name;

3-62 (2) the person's address;

3-63 (3) whom the person represents, if the person is not
3-64 there in the person's individual capacity; and

3-65 (4) whether the person wishes to testify.

3-66 Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be
3-67 conducted by:

3-68 (1) a quorum of the board; or

3-69 (2) an individual to whom the board has delegated in

4-1 writing the responsibility to preside as a hearings examiner over
 4-2 the hearing or matters related to the hearing.

4-3 (b) The board president or the hearings examiner shall serve
 4-4 as the presiding officer at the hearing.

4-5 (c) The presiding officer shall:

4-6 (1) convene the hearing at the time and place
 4-7 specified in the notice;

4-8 (2) set any necessary additional hearing dates;

4-9 (3) establish the order for presentation of evidence;

4-10 (4) administer oaths to all persons presenting
 4-11 testimony;

4-12 (5) examine persons presenting testimony;

4-13 (6) ensure that information and testimony are
 4-14 introduced as conveniently and expeditiously as possible without
 4-15 prejudicing the rights of any party; and

4-16 (7) prescribe reasonable time limits for testimony and
 4-17 the presentation of evidence.

4-18 (d) Any interested person, including the general manager or
 4-19 a district employee, may testify or present evidence at the
 4-20 hearing, unless:

4-21 (1) the district by rule limits testimony or the
 4-22 presentation of evidence to persons that the district determines to
 4-23 be affected by the subject matter of the hearing; or

4-24 (2) the presiding officer, under authority granted to
 4-25 the presiding officer by district rule, limits testimony or the
 4-26 presentation of evidence to persons who, in the presiding officer's
 4-27 determination, are affected by the subject matter of the hearing.

4-28 (e) The presiding officer may allow testimony to be
 4-29 submitted in writing and may require that written testimony be
 4-30 sworn to.

4-31 (f) The presiding officer may allow a person who testifies
 4-32 at the hearing to supplement the testimony given at the hearing by
 4-33 filing additional written materials with the board or hearings
 4-34 examiner not later than the 10th day after the date of the hearing
 4-35 if no decision has been made by the board.

4-36 (g) Notwithstanding any other provision of this section, if
 4-37 authorized by the rules of the district, the presiding officer, at
 4-38 the discretion of the presiding officer, may issue an order at any
 4-39 time before board action under Section 36.411 that:

4-40 (1) refers parties to a contested application hearing
 4-41 to an alternative dispute resolution procedure on any matter at
 4-42 issue in the hearing;

4-43 (2) determines how the costs of the procedure shall be
 4-44 apportioned among the parties; and

4-45 (3) appoints an impartial third party as provided by
 4-46 Section 2009.053, Government Code, to facilitate that procedure.

4-47 Sec. 36.407. EVIDENCE. (a) The presiding officer shall
 4-48 admit evidence if it is relevant to an issue at the hearing.

4-49 (b) The presiding officer may exclude evidence that is
 4-50 irrelevant, immaterial, or unduly repetitious.

4-51 Sec. 36.408. RECORDING. The presiding officer shall
 4-52 prepare and keep a record of each hearing in the form of minutes,
 4-53 audio or video recording, court reporter transcription, or the
 4-54 report described by Section 36.410. If a hearing is transcribed at
 4-55 the request of a party to the hearing, the presiding officer may
 4-56 assess the costs associated with producing the transcript to one or
 4-57 more parties.

4-58 Sec. 36.409. CONTINUANCE. The presiding officer may
 4-59 continue a hearing from time to time and from place to place without
 4-60 providing notice under Section 36.404. If the presiding officer
 4-61 continues a hearing without announcing at the hearing the time,
 4-62 date, and location of the continued hearing, the presiding officer
 4-63 must provide notice of the continued hearing by regular mail to
 4-64 persons who submitted a hearing registration form under Section
 4-65 36.405.

4-66 Sec. 36.410. REPORT. (a) The presiding officer shall
 4-67 submit a report to the board not later than the 30th day after the
 4-68 date a hearing is concluded, unless the hearing was conducted by a
 4-69 quorum of the board. If the hearing was conducted by a quorum of the

5-1 board, the presiding officer shall determine at the presiding
5-2 officer's discretion whether to prepare and submit a report to the
5-3 board under this section.

5-4 (b) The report must include:

5-5 (1) a summary of the subject matter of the hearing;
5-6 (2) a summary of the evidence or public comments
5-7 received; and

5-8 (3) the presiding officer's recommendations for board
5-9 action on the subject matter of the hearing.

5-10 (c) A person who participated in the hearing may:

5-11 (1) submit a written request to review a copy of the
5-12 report; and

5-13 (2) submit to the board written exceptions to the
5-14 report.

5-15 (d) The presiding officer or general manager shall mail a
5-16 copy of the report to each person who requests to review the report
5-17 under Subsection (c).

5-18 Sec. 36.411. BOARD ACTION. The board shall act on a permit
5-19 or permit amendment application not later than the 60th day after
5-20 the date the final hearing on the application is concluded.

5-21 Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) An
5-22 applicant may appeal a decision of the board on a permit or permit
5-23 amendment application by requesting a rehearing before the board
5-24 not later than the 20th day after the date of the board's decision.

5-25 (b) A request for rehearing must be filed in the district
5-26 office and must state the grounds for the request.

5-27 (c) If the board grants a request for rehearing, the board
5-28 shall schedule the rehearing not later than the 45th day after the
5-29 date the request is granted.

5-30 (d) The failure of the board to grant or deny a request for
5-31 rehearing before the 91st day after the date the request is
5-32 submitted constitutes a denial of the request.

5-33 Sec. 36.413. DECISION; WHEN FINAL. A decision by the board
5-34 on a permit or permit amendment application is final:

5-35 (1) if a request for rehearing is not filed on time, on
5-36 the expiration of the period for filing a request for rehearing; or

5-37 (2) if a request for rehearing is filed on time, on the
5-38 date:

5-39 (A) the board denies the request for rehearing;

5-40 (B) the board renders a decision after rehearing;

5-41 or

5-42 (C) the request for rehearing is denied by
5-43 operation of law.

5-44 Sec. 36.414. ADDITIONAL PROCEDURES. A district by rule
5-45 shall adopt procedural rules to implement this subchapter and may
5-46 adopt notice and hearing procedures in addition to those provided
5-47 by this subchapter.

5-48 Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF
5-49 ADMINISTRATIVE HEARINGS. This subchapter does not apply to a
5-50 hearing conducted by the State Office of Administrative Hearings
5-51 under Section 2003.021(b)(4), Government Code. If a district
5-52 contracts with the State Office of Administrative Hearings to
5-53 conduct a hearing, the hearing shall be conducted as provided by
5-54 Subchapters C, D, and F, Chapter 2001, Government Code.

5-55 Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. A district by
5-56 rule may develop and use alternative dispute resolution procedures
5-57 in the manner provided for governmental bodies under Chapter 2009,
5-58 Government Code.

5-59 Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT
5-60 CODE. Except as provided by Section 36.415, Chapter 2001,
5-61 Government Code, does not apply to a hearing under this chapter.

5-62 SECTION 5. Subdivision (17), Section 36.001, Water Code, is
5-63 repealed.

5-64 SECTION 6. The change in law made by this Act applies only
5-65 to a permit or permit amendment application hearing or a rulemaking
5-66 hearing held by a groundwater conservation district on or after the
5-67 effective date of this Act. A permit or permit amendment
5-68 application hearing or a rulemaking hearing held by a groundwater
5-69 conservation district before the effective date of this Act is

6-1 governed by the law in effect at the time the hearing is held, and
6-2 the former law is continued in effect for that purpose.

6-3 SECTION 7. This Act takes effect September 1, 2003.

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