

By: Puente

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to discrimination by a groundwater conservation district  
3 against landowners whose land is enrolled or participating in a  
4 federal conservation program.

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

6 SECTION 1. Section 36.001, Water Code, is amended by adding  
7 Subdivision (4-a) to read as follows:

8 (4-a) "Federal conservation program" means the  
9 Conservation Reserve Program of the United States Department of  
10 Agriculture, or any successor program.

11 SECTION 2. Section 36.002, Water Code, is amended to read as  
12 follows:

13 Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and  
14 rights of the owners of the land and their lessees and assigns in  
15 groundwater are hereby recognized, and nothing in this code shall  
16 be construed as depriving or divesting the owners or their lessees  
17 and assigns of the ownership or rights, except as those rights may  
18 be limited or altered by rules promulgated by a district. A rule  
19 promulgated by a district may not discriminate between owners of  
20 land that is irrigated for production and owners of land or their  
21 lessees and assigns whose land is enrolled or participating in a  
22 federal conservation program.

23 SECTION 3. Section 36.101(a), Water Code, is amended to  
24 read as follows:

1 (a) A district may make and enforce rules, including rules  
2 limiting groundwater production based on tract size or the spacing  
3 of wells, to provide for conserving, preserving, protecting, and  
4 recharging of the groundwater or of a groundwater reservoir or its  
5 subdivisions in order to control subsidence, prevent degradation of  
6 water quality, or prevent waste of groundwater and to carry out the  
7 powers and duties provided by this chapter. During the rulemaking  
8 process the board shall consider all groundwater uses and needs and  
9 shall develop rules which are fair and impartial and that do not  
10 discriminate between land that is irrigated for production and land  
11 enrolled or participating in a federal conservation program. Any  
12 rule of a district that discriminates between land that is  
13 irrigated for production and land enrolled or participating in a  
14 federal conservation program is void.

15 SECTION 4. Section 36.113, Water Code, is amended by adding  
16 Subsections (h) and (i) to read as follows:

17 (h) In issuing a permit for an existing or historic use, a  
18 district may not discriminate between land that is irrigated for  
19 production and land or wells on land enrolled or participating in a  
20 federal conservation program.

21 (i) A permitting decision by a district is void if:

22 (1) the district makes its decision in violation of  
23 Subsection (h); and

24 (2) the district would have reached a different  
25 decision if the district had treated land or wells on land enrolled  
26 or participating in a federal conservation program the same as land  
27 irrigated for production.

1           SECTION 5. Not later than the 90th day after the effective  
2 date of this Act, the Hudspeth County Underground Water  
3 Conservation District No. 1 shall amend to bring into compliance  
4 with Sections 36.002 and 36.101(a), Water Code, as amended by this  
5 Act, any rule enacted before the effective date of this Act that is  
6 void under Section 36.101(a), Water Code, as amended by this Act.

7           SECTION 6. (a) Except as provided by Section 5 and  
8 Subsection (b) of this section, the changes in law made by this Act  
9 apply only to a rule adopted by a groundwater conservation district  
10 on or after the effective date of this Act or to a permit issued or  
11 an application filed pursuant to a rule adopted on or after the  
12 effective date of this Act.

13           (b) The changes in law made by this Act apply to:

14                   (1) an application filed with the Hudspeth County  
15 Underground Water Conservation District No. 1 that is pending on  
16 the effective date of this Act; or

17                   (2) a permit decision by the Hudspeth County  
18 Underground Water Conservation District No. 1 that is not final on  
19 the effective date of this Act.

20           SECTION 7. This Act takes effect September 1, 2005.