

1 AN ACT

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 that was irrigated for production is  
22 enrolled or participating in a 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 that was irrigated for production and enrolled or participating in  
12 a federal conservation program. Any rule of a district that  
13 discriminates between land that is irrigated for production and  
14 land that was irrigated for production and enrolled or  
15 participating in a federal conservation program is void.

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

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

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

24 (1) the district makes its decision in violation of  
25 Subsection (h); and

26 (2) the district would have reached a different  
27 decision if the district had treated land or wells on land that was

1 irrigated for production and enrolled or participating in a federal  
2 conservation program the same as land irrigated for production.

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

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

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

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

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

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

H.B. No. 2423

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2423 was passed by the House on April 26, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2423 on May 26, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2423 on May 29, 2005, by a non-record vote.

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Chief Clerk of the House

H.B. No. 2423

I certify that H.B. No. 2423 was passed by the Senate, with amendments, on May 23, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2423 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor