

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 Conservation
9 Reserve Program of the United States Department of Agriculture, or
10 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), (i), and (j) 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 (j) On the application of an affected owner of land or the
2 owner's lessee or assigns, the district shall reconsider a decision
3 that is void under Subsection (i) and base its decision on the equal
4 treatment of land or wells on land enrolled or participating in a
5 federal conservation program and land that is irrigated for
6 production. Not later than the 90th day after the date the district
7 receives an application under this subsection, the district shall
8 render its decision and notify the applicant of its decision.

9 SECTION 5. Not later than the 90th day after the effective
10 date of this Act, a groundwater conservation district shall amend
11 to bring into compliance with Sections 36.002 and 36.101(a), Water
12 Code, as amended by this Act, any rule enacted before the effective
13 date of this Act that is void under Section 36.101(a), Water Code,
14 as amended by this Act.

15 SECTION 6. This Act takes effect September 1, 2005.