

1-1 By: Puente (Senate Sponsor - Armbrister) H.B. No. 2423  
1-2 (In the Senate - Received from the House April 27, 2005;  
1-3 April 29, 2005, read first time and referred to Committee on  
1-4 Natural Resources; May 20, 2005, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 6,  
1-6 Nays 0; May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2423 By: Armbrister

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

1-10 relating to the consideration of historic or existing use in the  
1-11 regulation of pumping and discrimination by a groundwater  
1-12 conservation district against landowners whose land is enrolled or  
1-13 participating in a federal conservation program.

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

1-15 SECTION 1. Section 36.001, Water Code, is amended by adding  
1-16 Subdivision (4-a) to read as follows:

1-17 (4-a) "Federal conservation program" means the  
1-18 Conservation Reserve Program of the United States Department of  
1-19 Agriculture, or any successor program.

1-20 SECTION 2. Section 36.002, Water Code, is amended to read as  
1-21 follows:

1-22 Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and  
1-23 rights of the owners of the land and their lessees and assigns in  
1-24 groundwater are hereby recognized, and nothing in this code shall  
1-25 be construed as depriving or divesting the owners or their lessees  
1-26 and assigns of the ownership or rights, except as those rights may  
1-27 be limited or altered by rules promulgated by a district. A rule  
1-28 promulgated by a district may not discriminate between owners of  
1-29 land that is irrigated for production and owners of land or their  
1-30 lessees and assigns whose land that was irrigated for production is  
1-31 enrolled or participating in a federal conservation program.

1-32 SECTION 3. Section 36.113, Water Code, is amended by  
1-33 amending Subsections (a), (c), (e), and (f) and adding Subsections  
1-34 (h) through (l) to read as follows:

1-35 (a) A district shall require permits for ~~[the]~~ drilling,  
1-36 equipping, ~~[or]~~ completing, or operating ~~[of]~~ wells or for  
1-37 substantially altering the size of wells or well pumps.

1-38 (c) A district may require that the following be included in  
1-39 the permit application:

1-40 (1) the name and mailing address of the applicant and  
1-41 the owner of the land on which the well will be located;

1-42 (2) if the applicant is other than the owner of the  
1-43 property, documentation establishing the applicable authority to  
1-44 construct and operate a well for the proposed purpose of use;

1-45 (3) a statement of the nature and purpose of the  
1-46 proposed use and the amount of water to be used for each purpose;

1-47 (4) a water conservation plan or a declaration that  
1-48 the applicant will comply with the district's management plan;

1-49 (5) the location of each well and the estimated rate at  
1-50 which water will be withdrawn;

1-51 (6) a water well closure plan or a declaration that the  
1-52 applicant will comply with well plugging guidelines and report  
1-53 closure to the commission; and

1-54 (7) a drought contingency plan.

1-55 (e) The district may impose more restrictive permit  
1-56 conditions on new permit applications and increased use by historic  
1-57 or existing users if the limitations:

1-58 (1) apply to all subsequent new permit applications  
1-59 and increased use by historic or existing users, regardless of type  
1-60 or location of use;

1-61 (2) bear a reasonable relationship to the existing  
1-62 district management plan; and

1-63 (3) are reasonably necessary to protect existing use.

2-1 (f) Permits may be issued subject to the rules promulgated  
 2-2 by the district and subject to terms and provisions with reference  
 2-3 to the drilling, equipping, completion, operating, or alteration of  
 2-4 wells or pumps that may be necessary to prevent waste and achieve  
 2-5 water conservation, minimize as far as practicable the drawdown of  
 2-6 the water table or the reduction of artesian pressure, lessen  
 2-7 interference between wells, or control and prevent subsidence.

2-8 (h) A district shall provide that a change in the purpose  
 2-9 and place of use under a permit that was granted for historic or  
 2-10 existing use may not be made without a permit amendment. The  
 2-11 district shall grant a permit amendment changing the purpose and  
 2-12 place of use on application of the holder of a permit that was  
 2-13 granted for historic or existing use, and the rules that apply to  
 2-14 the operation of a well under any other permit issued by the  
 2-15 district not based on historic or existing use apply to the  
 2-16 operation of the well under the amended permit.

2-17 (i) A district that authorizes a permit for historic or  
 2-18 existing use shall issue that type of permit based on evidence of  
 2-19 the maximum amount of water beneficially used without waste during  
 2-20 any one year before the district was created, or before the rules of  
 2-21 the district were adopted or notice of such proposed rules was  
 2-22 published and only for the purpose and amount beneficially used  
 2-23 without waste in that year.

2-24 (j) In issuing a permit for an existing or historic use, a  
 2-25 district may not discriminate between land that is irrigated for  
 2-26 production and land or wells on land that was irrigated for  
 2-27 production and enrolled or participating in a federal conservation  
 2-28 program.

2-29 (k) A permitting decision by a district is void if:  
 2-30 (1) the district makes its decision in violation of  
 2-31 Subsection (j); and  
 2-32 (2) the district would have reached a different  
 2-33 decision if the district had treated land or wells on land that was  
 2-34 irrigated for production and enrolled or participating in a federal  
 2-35 conservation program the same as land irrigated for production.

2-36 (l) On the application of an affected owner of land or the  
 2-37 owner's lessee or assigns, the district shall reconsider a decision  
 2-38 that is void under Subsection (k) and base its decision on the equal  
 2-39 treatment of land or wells on land that was irrigated for production  
 2-40 and enrolled or participating in a federal conservation program and  
 2-41 land that is irrigated for production. Not later than the 90th day  
 2-42 after the date the district receives an application under this  
 2-43 subsection, the district shall render its decision and notify the  
 2-44 applicant of its decision.

2-45 SECTION 4. Subsection (b), Section 36.116, Water Code, is  
 2-46 amended to read as follows:

2-47 (b) In promulgating any rules limiting groundwater  
 2-48 production, the district may preserve historic or existing use  
 2-49 before the effective date of the rules to the maximum extent  
 2-50 practicable consistent with the district's comprehensive  
 2-51 management plan under Section 36.1071 and as provided by Section  
 2-52 36.113.

2-53 SECTION 5. (a) Except in any district located in a single  
 2-54 county whose boundaries were expanded, but are not coextensive with  
 2-55 the county in which the district is located, by an Act of the Texas  
 2-56 Legislature in a regular session on or after 2003, the changes in  
 2-57 law made under this legislation do not apply to:

2-58 (1) an application or permit issued on the basis of an  
 2-59 application filed before March 1, 2005;

2-60 (2) a renewal or amendment of a permit issued on the  
 2-61 basis of an application filed before March 1, 2005;

2-62 (3) a permit issued under rules in effect as of March  
 2-63 1, 2005;

2-64 (4) a renewal or amendment to a permit issued under  
 2-65 rules in effect as of March 1, 2005; or

2-66 (5) rules of groundwater conservation districts that  
 2-67 were adopted prior to March 1, 2005.

2-68 (b) Subsection (a) of this section does not limit the  
 2-69 ability of a groundwater conservation district to adopt procedural

3-1 rules governing notice, hearing, rulemaking, or permit processing  
3-2 in accordance with any law finally passed by the 79th Legislature,  
3-3 Regular Session, 2005, that governs notice, hearing, rulemaking, or  
3-4 permit processing procedures of groundwater conservation  
3-5 districts, if the procedural rules adopted do not conflict with a  
3-6 substantive district rule that existed on March 1, 2005.  
3-7 SECTION 6. This Act takes effect September 1, 2005.

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