

By: Smithee

H.B. No. 2962

A BILL TO BE ENTITLED

AN ACT

1
2 relating to district hearings and citizen suits for illegally
3 drilling or operating a water well.

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

5 SECTION 1. The heading to Section 36.119, Water Code, is
6 amended to read as follows:

7 Sec. 36.119. ILLEGAL DRILLING AND OPERATION OF WELL;
8 EXPEDITED DISTRICT HEARING; CITIZEN SUIT.

9 SECTION 2. Section 36.119, Water Code, is amended by
10 amending Subsections (a), (b), and (c) and adding Subsections (g)
11 through (k) to read as follows:

12 (a) Drilling or operating a well or wells without a required
13 permit or producing groundwater in violation of a district's rules
14 adopted under Section 36.116(a)(2) [operating a well at a higher
15 rate of production than the rate approved for the well] is declared
16 to be illegal, wasteful per se, and a nuisance.

17 (b) Except as provided by this section, a [A] person who has
18 a right to produce water from land that is [an estate in land]
19 adjacent to the land on which a [the] well or wells are drilled or
20 operated without a required permit or permits or from which
21 groundwater is produced in violation of rules adopted under Section
22 36.116(a)(2) [is located,] or who has a right to produce
23 groundwater from land [a part] that lies within one-half mile of the
24 well or wells, may sue the owner of the well or wells in a court of

1 competent jurisdiction to restrain or enjoin the illegal drilling,
2 [~~or~~] operation, or both. The suit may be brought with or without
3 the joinder of the district.

4 (c) Except as provided by this section, the [~~The~~] aggrieved
5 party may also sue the owner of the well or wells for damages for
6 injuries suffered by reason of the illegal operation or production
7 and for other relief to which the party [~~they~~] may be entitled. In a
8 suit for damages against the owner of the well or wells, the
9 existence [~~or operation~~] of a well or wells drilled without a
10 required permit or the operation of a well or wells in violation of
11 district rules adopted under Section 36.116(a)(2) [~~in violation of~~
12 ~~the rules of the district~~] is prima facie evidence of illegal
13 drainage.

14 (g) Before filing a suit under Subsections (b) and (c), an
15 aggrieved party must file a written complaint with the district
16 having jurisdiction over the well or wells drilled or operated
17 without a required permit or in violation of a district rule. The
18 district shall investigate the complaint and, after notice and
19 hearing and not later than the 90th day after the date the written
20 complaint was received by the district, the district shall
21 determine, based on the evidence presented at the hearing, whether
22 a district rule has been violated.

23 (h) After an investigation and hearing under Subsection
24 (g), if the district determines that a district rule has been
25 violated, the district shall:

26 (1) enforce the rule against the well owner; and

27 (2) not later than two years after the date of the

1 district's determination, ensure that the well owner is operating
2 the well or wells that were the subject of the determination in
3 accordance with district rules adopted under Section 36.116(a)(2)
4 and in accordance with applicable well permits.

5 (i) If an investigation conducted by the district under
6 Subsection (g) provides sufficient evidence that the well or wells
7 are or were operating illegally for two or more years, the aggrieved
8 party may sue the well owner for damages. In a suit for such
9 damages, the court may consider only the two-year period directly
10 preceding the district's determination in calculating damages.

11 (j) If the district fails or refuses to enforce compliance
12 by the well owner with district rules or well permits, the aggrieved
13 party may sue the well owner under this section for both injunctive
14 relief and damages.

15 (k) Notwithstanding Subsections (g) and (h), an aggrieved
16 party may sue a well owner or well driller in a court of competent
17 jurisdiction to restrain or enjoin the drilling, completion, or
18 operation of a well or wells after filing a written complaint with
19 the district under Subsection (g) and without waiting for a
20 district investigation, notice, or hearing.

21 SECTION 3. Section 36.119, Water Code, as amended by this
22 Act, applies only to a complaint or suit filed on or after the
23 effective date of this Act. A complaint or suit filed before the
24 effective date of this Act is governed by the law in effect on the
25 date the complaint or suit was filed, and that law is continued in
26 effect for that purpose.

27 SECTION 4. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2007.