

By: Ritter

H.B. No. 1731

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the management of groundwater resources in this state
3 and the rights of landowners in groundwater.

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

5 SECTION 1. FINDINGS AND DECLARATION OF POLICY. The
6 legislature finds that the availability of quality groundwater has
7 been, is, and will continue to be vital to the proliferation of
8 life, the sustainment of communities, and the protection of the
9 public safety and welfare, as well as to the success of agricultural
10 production, economic progress, and other equally compelling public
11 interests. In Chapter 36, Water Code, the legislature has
12 recognized, and continues to preserve, the significant ownership
13 interests that owners of land in this state have in the groundwater
14 resources that can be obtained from below the surface of their
15 properties. The common law focuses on limiting liability for
16 drainage rather than protecting these ownership interests and, in
17 the process, defeats the settled expectations that landowners can
18 reasonably have in the long-term viability of groundwater below
19 their properties. In addition to acknowledging the significant
20 ownership interests that landowners have in the groundwater below
21 their properties, the legislature further recognizes the
22 indefeasible right, borne by Section 59, Article XVI, Texas
23 Constitution, that is possessed by every Texas citizen to the
24 preservation and conservation of groundwater resources underlying

1 the private and public lands of this state. The ownership interests
2 that landowners have in the groundwater below their properties are
3 accordingly subject to reasonable regulation by the state. To
4 balance the often competing demands and interests in available
5 groundwater and to carry out the constitutionally mandated duty
6 placed upon it and entrusted to it by the citizens of this state,
7 the legislature finds that the implementation of long-term aquifer
8 planning and management strategies is essential. In recognition of
9 the diverse characteristics that distinguish the many groundwater
10 aquifers in this state, and in order that this vital resource may
11 best be committed to good stewardship, the legislature finds that
12 the development and implementation of these groundwater management
13 strategies are best accomplished through local control, exercised
14 through groundwater conservation districts. Therefore, the
15 legislature recognizes that all reasonable measures should be taken
16 to prudently manage, preserve, conserve, and protect the
17 groundwater resources that underlie the private and public lands in
18 this state for uses today and in the future.

19 SECTION 2. Section 36.0015, Water Code, is amended to read
20 as follows:

21 Sec. 36.0015. PURPOSE. Groundwater conservation districts
22 may be created under and may act in accordance with this chapter in
23 ~~[In]~~ order to provide for the conservation, preservation,
24 protection, recharging, and prevention of waste of groundwater, and
25 of the many unique groundwater reservoirs and reservoir ~~[or their]~~
26 subdivisions in this state, and to control subsidence caused by
27 withdrawal of water from those groundwater reservoirs or their

1 subdivisions, consistent with the objectives and mandates of
2 Section 59, Article XVI, Texas Constitution[~~, groundwater~~
3 ~~conservation districts may be created as provided by this chapter~~].
4 Groundwater conservation districts created as provided by this
5 chapter are the state's preferred method of groundwater management
6 through rules and management plans developed, adopted, and
7 promulgated by a district in accordance with the provisions of this
8 chapter.

9 SECTION 3. Section 36.002, Water Code, is amended to read as
10 follows:

11 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The ownership
12 and rights of the owners of the land and their lessees and assigns
13 in groundwater are hereby recognized, including the right to seek
14 and attempt to capture groundwater that underlies the surface of
15 the land, and nothing in this code shall be construed as depriving
16 or divesting the owners or their lessees and assigns of the
17 ownership or rights, except as those rights may be limited or
18 altered by rules promulgated by a district acting in accordance
19 with the district's statutory powers and duties.

20 (b) The prudent and effective management of groundwater
21 resources is necessary and beneficial to the welfare of this state
22 and, therefore, serves a compelling public interest. The rights of
23 the citizenry to the preservation and conservation of groundwater
24 resources underlying the public and private lands of this state
25 are, accordingly, hereby recognized and accommodated through the
26 powers delegated pursuant to this chapter.

27 (c) The recognition of rights under Subsection (a) shall not

1 be construed to prohibit the reasonable regulation, preservation,
2 and conservation of groundwater by a district. A district may
3 develop limits on the production of groundwater that affect the
4 availability of permits issued by the district if the limitations
5 are:

6 (1) reasonable and warranted under the district's
7 management plan;

8 (2) consistent with the desired future conditions
9 adopted under Section 36.108;

10 (3) not designed so that the limitations prevent a
11 landowner from accessing a reasonable amount of water for livestock
12 watering or domestic purposes for use on the landowner's property;
13 and

14 (4) implemented in accordance with the authority
15 granted by this chapter or a special law governing a district.

16 (d) A rule promulgated by a district may not discriminate
17 between owners of land that is irrigated for production and owners
18 of land or their lessees and assigns whose land that was irrigated
19 for production is enrolled or participating in a federal
20 conservation program.

21 SECTION 4. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.