

By: Burns

H.B. No. 3028

A BILL TO BE ENTITLED

AN ACT

relating to groundwater ownership and rights.

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

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (32) to read as follows:

(32) "Fair share" means a reasonable quantification, based on the best available science, of the amount of groundwater in place beneath each tract of land overlying an aquifer, subdivision of an aquifer, or geologic formation that may be produced:

(A) under the applicable desired future conditions adopted under Section 36.108;

(B) under the operating and hydrogeological conditions of the area; and

(C) without resulting in the confiscation by uncompensated drainage of the fair share of groundwater in place under other tracts of land.

SECTION 2. Sections 36.002(b), (b-1), (c), and (d), Water Code, are amended to read as follows:

(b) The groundwater ownership and rights recognized ~~described~~ by this section entitle the landowner, including a landowner's lessees, heirs, or assigns, to:

(1) drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or

negligently causing subsidence; ~~and~~

(2) be afforded a fair share of groundwater when the right to drill a well and produce groundwater is regulated under this chapter; and

(3) have any other right recognized under common law.

(b-1) The groundwater ownership and rights recognized ~~described~~ by this section do not:

(1) entitle a landowner, including a landowner's lessees, heirs, or assigns, to the ~~right to capture a~~ specific amount of groundwater below the surface of that landowner's land; or

(2) affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Nothing in this code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights recognized ~~described~~ by this section.

(d) This section does not:

(1) prohibit a district from adopting or enforcing rules authorized under this chapter for a public purpose consistent with Section 59, Article XVI, Texas Constitution ~~limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district~~; or

(2) ~~affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing~~

1 ~~a district, or~~

2           ~~[(3)]~~ require that a rule adopted by a district  
3 allocate to each landowner a proportionate share of available  
4 groundwater for production from the aquifer based on the number of  
5 acres owned by the landowner.

6           SECTION 3. Section 36.066(g), Water Code, is amended to  
7 read as follows:

8           (g) If the district prevails in any suit other than a suit in  
9 which it voluntarily intervenes or in which it challenges the  
10 validity of a law, rule, or order under the Texas Constitution, the  
11 district may seek and the court may ~~shall~~ grant, in the interests  
12 of justice and as provided by Subsection (h), in the same action,  
13 recovery for attorney's fees, costs for expert witnesses, and other  
14 costs incurred by the district before the court. The amount of the  
15 attorney's fees shall be fixed by the court.

16           SECTION 4. Section 36.101(a), Water Code, is amended to  
17 read as follows:

18           (a) A district may make and enforce rules, including rules  
19 limiting groundwater production based on tract size or the spacing  
20 of wells, to provide for conserving, preserving, protecting, and  
21 recharging of the groundwater or of a groundwater reservoir or its  
22 subdivisions in order to control subsidence, prevent degradation of  
23 water quality, or prevent waste of groundwater and to carry out the  
24 powers and duties provided by this chapter. In adopting a rule  
25 under this chapter, a district ~~shall~~:

26               (1) shall consider all groundwater uses and needs;

27               (2) shall develop rules that are fair and impartial;

1           (3) shall protect [~~consider~~] the groundwater  
2 ownership and rights recognized [~~described~~] by Section 36.002;

3           (4) may not restrict the exercise of a person's  
4 groundwater ownership and rights unless it is necessary  
5 for [~~consider~~] the public interest in conservation, preservation,  
6 protection, recharging, and prevention of waste of groundwater, and  
7 of groundwater reservoirs or their subdivisions, and in controlling  
8 subsidence caused by withdrawal of groundwater from those  
9 groundwater reservoirs or their subdivisions, consistent with the  
10 objectives of Section 59, Article XVI, Texas Constitution;

11           (5) shall consider the goals developed as part of the  
12 district's management plan under Section 36.1071; and

13           (6) may not discriminate between land that is  
14 irrigated for production and land that was irrigated for production  
15 and enrolled or participating in a federal conservation program.

16       SECTION 5. Section 36.1071(a), Water Code, is amended to  
17 read as follows:

18       (a) Following notice and hearing, the district shall, in  
19 coordination with surface water management entities on a regional  
20 basis, develop a management plan that addresses the following  
21 management goals, as applicable:

- 22           (1) providing the most efficient use of groundwater;  
23           (2) controlling and preventing waste of groundwater;  
24           (3) controlling and preventing subsidence;  
25           (4) addressing conjunctive surface water management  
26 issues;  
27           (5) addressing natural resource issues;

(6) addressing drought conditions;

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; ~~and~~

(8) addressing the desired future conditions adopted by the district under Section 36.108; and

(9) protecting the groundwater ownership and rights recognized by Section 36.002.

SECTION 6. The heading to Section 36.108, Water Code, is amended to read as follows:

Sec. 36.108. ESTABLISHING DESIRED FUTURE CONDITIONS ~~[JOINT PLANNING]~~ IN MANAGEMENT AREA.

SECTION 7. Sections 36.108(c), (d), and (d-2), Water Code, are amended to read as follows:

(c) The district representatives shall meet at least annually to ~~[conduct joint planning with the other districts in the management area and to]~~ review the management plans, the accomplishments of the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each district's management plan for protecting private property rights, conserving and protecting groundwater, and preventing waste, and the effectiveness of these measures in the management area generally;

1           (3) any other matters that the boards consider  
2 relevant to the protection of private property rights, protection  
3 and conservation of groundwater, and the prevention of waste in the  
4 management area; and

5           (4) the degree to which each management plan achieves  
6 the desired future conditions adopted under Subsection (d-4)  
7 ~~[established during the joint planning process]~~.

8           (d) Not later than September 1, 2010, and every five years  
9 thereafter, the districts shall consider groundwater availability  
10 models and other data or information for the management area and  
11 shall propose for adoption desired future conditions for the  
12 relevant aquifers within the management area. Before voting on the  
13 proposed desired future conditions of the aquifers under Subsection  
14 (d-2), the districts shall consider:

15           (1) aquifer uses or conditions within the management  
16 area, including conditions that differ substantially from one  
17 geographic area to another;

18           (2) the water supply needs and water management  
19 strategies included in the state water plan;

20           (3) hydrological conditions, including for each  
21 aquifer in the management area the total estimated recoverable  
22 storage as provided by the executive administrator, and the average  
23 annual recharge, inflows, and discharge;

24           (4) other environmental impacts, including impacts on  
25 spring flow and other interactions between groundwater and surface  
26 water;

27           (5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized by ~~[under]~~ Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions.

(d-2) The desired future conditions proposed and approved under this section ~~[Subsection (d)]~~ must allow ~~[provide a balance between]~~ the highest practicable level of groundwater production of the total estimated recoverable storage that is consistent with the groundwater ownership and rights recognized by Section 36.002, ~~[and]~~ the reasonable conservation, preservation, protection, recharging, and prevention of waste of groundwater, and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and

1 after posting notice as required by Section 36.063, each district  
2 shall hold a public hearing on any proposed desired future  
3 conditions relevant to that district. During the public comment  
4 period, the district shall make available in its office a copy of  
5 the proposed desired future conditions and any supporting  
6 materials, such as the documentation of factors considered under  
7 Subsection (d) and groundwater availability model run results.  
8 After the public hearing, the district shall compile for  
9 consideration at the next joint planning meeting a summary of  
10 relevant comments received, any suggested revisions to the proposed  
11 desired future conditions, and the basis for the revisions.

12 SECTION 8. Sections 36.113(c), (d), (e), (f), and (h),  
13 Water Code, are amended to read as follows:

14 (c) A district may require that the following be included in  
15 the permit or permit amendment application:

16 (1) the name and mailing address of the applicant and  
17 the owner of the land on which the well will be located;

18 (2) if the applicant is other than the owner of the  
19 property, documentation establishing the applicable authority to  
20 construct and operate a well for the proposed use;

21 (3) a statement of the nature and purpose of the  
22 proposed use and the amount of water to be used for each purpose;

23 (4) a water conservation plan or a declaration that  
24 the applicant will comply with the district's management plan;

25 (5) the location of each well and the estimated rate at  
26 which water will be withdrawn;

27 (6) a water well closure plan or a declaration that the



applicant will comply with well plugging guidelines and report closure to the commission; ~~and~~

(7) a drought contingency plan; and

(8) documentation of the applicant's ownership interest in the proposed groundwater production that demonstrates:

(A) the application is consistent with the applicant's fair share; and

(B) the applicant's production of groundwater will not result in the confiscation by uncompensated drainage of another person's fair share.

(d) This subsection does not apply to the renewal of an operating permit issued under Section 36.1145. Before granting or denying a permit, or a permit amendment issued in accordance with Section 36.1146, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects the groundwater ownership and rights recognized by Section 36.002 or existing groundwater and surface water resources ~~[or existing permit holders]~~;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's approved management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water

1 from the well is wholly or partly to provide water to a pond, lake,  
2 or reservoir to enhance the appearance of the landscape;

3 (6) the applicant has agreed to avoid waste and  
4 achieve water conservation; and

5 (7) the applicant has agreed that reasonable diligence  
6 will be used to protect groundwater quality and that the applicant  
7 will follow well plugging guidelines at the time of well closure.

8 (e) The district may impose more restrictive permit  
9 conditions on new permit applications and permit amendment  
10 applications to increase use by historic users if the limitations:

11 (1) apply to all subsequent new permit applications  
12 and permit amendment applications to increase use by historic  
13 users, regardless of type or location of use;

14 (2) bear a reasonable relationship to the existing  
15 district management plan; ~~and~~

16 (3) are reasonably necessary to protect existing use;  
17 and

18 (4) are consistent with the groundwater ownership and  
19 rights recognized by Section 36.002 and with Section 59, Article  
20 XVI, Texas Constitution.

21 (f) This subsection does not apply to the renewal of an  
22 operating permit issued under Section 36.1145. Permits, and permit  
23 amendments issued in accordance with Section 36.1146, may be issued  
24 subject to the rules promulgated by the district and subject to  
25 terms and provisions with reference to the drilling, equipping,  
26 completion, alteration, or operation of, or production of  
27 groundwater from, wells or pumps that may be necessary to:

1           (1) protect the groundwater ownership and rights  
2 recognized by Section 36.002;

3           (2) prevent waste and achieve water conservation;

4           (3) [T] minimize as far as practicable the drawdown of  
5 the water table or the reduction of artesian pressure;

6           (4) [T] lessen interference between wells; [T] or

7           (5) control and prevent subsidence.

8           (h) In issuing a permit for an existing or historic use, a  
9 district may not:

10           (1) discriminate between land that is irrigated for  
11 production and land or wells on land that was irrigated for  
12 production and enrolled or participating in a federal conservation  
13 program; or

14           (2) issue a permit that will result in the  
15 confiscation by uncompensated drainage of another person's fair  
16 share.

17           SECTION 9. Section 36.116, Water Code, is amended to read as  
18 follows:

19           Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In  
20 order to protect the groundwater ownership and rights recognized by  
21 Section 36.002, to minimize as far as practicable the drawdown of  
22 the water table or the reduction of artesian pressure, to control  
23 subsidence, to prevent interference between wells, to prevent  
24 degradation of water quality, or to prevent waste, a district by  
25 rule may regulate:

26           (1) the spacing of water wells by:

27               (A) requiring all water wells to be spaced a

1 certain distance from property lines or adjoining wells;

2 (B) requiring wells with a certain production  
3 capacity, pump size, or other characteristic related to the  
4 construction or operation of and production from a well to be spaced  
5 a certain distance from property lines or adjoining wells; or

6 (C) imposing spacing requirements adopted by the  
7 board; and

8 (2) the production of groundwater by:

9 (A) setting production limits on wells;

10 (B) limiting the amount of water produced based  
11 on acreage or tract size;

12 (C) limiting the amount of water that may be  
13 produced from a defined number of acres assigned to an authorized  
14 well site;

15 (D) limiting the maximum amount of water that may  
16 be produced on the basis of acre-feet per acre or gallons per minute  
17 per well site per acre;

18 (E) managed depletion; or

19 (F) any combination of the methods listed above  
20 in Paragraphs (A) through (E).

21 (b) In promulgating any rules limiting groundwater  
22 production, the district:

23 (1) may preserve historic or existing use before the  
24 effective date of the rules to the maximum extent practicable  
25 consistent with the groundwater ownership and rights recognized by  
26 Section 36.002, Section 59, Article XVI, Texas Constitution, and  
27 the district's management plan under Section 36.1071 and as

1 provided by Section [36.113](#); and

2 (2) may adopt a rule only if the district finds that  
3 the rule is consistent with the public interest.

4 (c) In regulating the production of groundwater based on  
5 tract size or acreage, a district may consider the service needs or  
6 service area of a retail public utility in a manner consistent with  
7 and without resulting in the confiscation by uncompensated drainage  
8 of the groundwater ownership and rights recognized by Section  
9 [36.002](#). For the purposes of this subsection, "retail public  
10 utility" has ~~[shall have]~~ the meaning provided by Section [13.002](#).

11 (d) For the protection of the groundwater ownership and  
12 rights recognized by Section [36.002](#) and better management of the  
13 groundwater resources located in a district or if a district  
14 determines that conditions in or use of an aquifer differ  
15 substantially from one geographic area of the district to another,  
16 the district may adopt different rules for:

17 (1) each aquifer, subdivision of an aquifer, or  
18 geologic strata located in whole or in part within the boundaries of  
19 the district; or

20 (2) each geographic area overlying an aquifer or  
21 subdivision of an aquifer located in whole or in part within the  
22 boundaries of the district.

23 (e) In regulating the production of groundwater under  
24 Subsection (a)(2), a district:

25 (1) shall select a method that is appropriate based on  
26 the protection of the groundwater ownership and rights recognized  
27 by Section [36.002](#) and hydrogeological conditions of the aquifer or

1   aquifers in the district; and

2                   (2)   may limit the amount of water produced based on  
3   contiguous surface acreage.

4           (f) A rule adopted under this section must afford each  
5 person who has an ownership interest in the groundwater within the  
6 boundaries of the district a fair share of the groundwater as  
7 recognized by Section 36.002.

8           SECTION 10. Subchapter D, Chapter 36, Water Code, is  
9   amended by adding Section 36.1161 to read as follows:

10          Sec. 36.1161. PETITION FOR RULEMAKING. (a) A person who  
11 has an ownership interest in groundwater may petition a district  
12 with authority to regulate the groundwater to adopt rules under  
13 Section 36.116(d).

14          (b) The petitioner has the burden of proof that the rules  
15 are necessary to protect the groundwater ownership and rights  
16 recognized by Section 36.002 or to achieve a purpose of this chapter  
17 because conditions in or use of an aquifer, subdivision of an  
18 aquifer, or geologic strata differ substantially from:

19                  (1) another aquifer, subdivision of an aquifer, or  
20 geologic strata;

21                  (2) any aquifer, subdivision of an aquifer, or  
22 geologic strata not currently included in an established desired  
23 future condition, as of January 1, 2013; or

24                  (3) one geographic area of the district to another.

25          (c) A district shall require the petitioner to provide  
26 written notice to each person with an ownership interest in  
27 groundwater that would be affected by the rules requested in the

1 petition.

2       (d) A district may request technical assistance regarding  
3 the technical merits of the petition from the Texas Water  
4 Development Board. The Texas Water Development Board shall provide  
5 a written technical response not later than the 60th day after the  
6 date the Texas Water Development Board receives a written request  
7 for assistance by the district under this subsection.

8       (e) A district shall hold a hearing to consider a petition  
9 submitted under this section in the manner provided by Section  
10 36.101. A district is not required to provide notice required by  
11 Sections 36.101(d)(1) through (4).

12       (f) A board may grant, modify, or deny a petition by written  
13 order. The order must include the findings of the board relevant to  
14 the evidence provided by the petitioner under Subsection (b).

15       (g) A person affected by and dissatisfied with a rule  
16 adopted under this section is entitled to file a suit against the  
17 district or its directors under Section 36.251.

18       SECTION 11. Section 36.117(a), Water Code, is amended to  
19 read as follows:

20       (a) A district by rule may provide an exemption from the  
21 district's requirement to obtain any permit required by this  
22 chapter or the district's rules if the exemption is consistent with  
23 the groundwater ownership and rights recognized by Section 36.002.

24       SECTION 12. The changes in law made by this Act apply only  
25 to an application for a permit or a permit amendment that is  
26 received by a groundwater conservation district on or after the  
27 effective date of this Act. An application for a permit or permit

1 amendment that is received before the effective date of this Act is  
2 governed by the law in effect on the date the application is  
3 received, and that law is continued in effect for that purpose.

4       SECTION 13. The changes in law made by this Act apply only  
5 to a rule of a groundwater conservation district that is adopted on  
6 or after the effective date of this Act. A rule adopted before the  
7 effective date of this Act is subject to the law in effect on the  
8 date the rule took effect, and that law is continued in effect for  
9 that purpose.

10       SECTION 14. This Act takes effect September 1, 2017.