

AN ACT

relating to the ownership of groundwater below the surface of land,
the right to produce that groundwater, and the management of
groundwater in this state.

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

SECTION 1. Section 36.002, Water Code, is amended to read as
follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

(b) The groundwater ownership and rights described by this section:

(1) entitle the landowner, including a landowner's lessees, heirs, or assigns, to 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, but does not 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; and

(2) do not affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Nothing [The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby

1 ~~recognized, and nothing]~~ in this code shall be construed as
2 granting the authority to deprive [~~depriving~~] or divest a
3 landowner, including a landowner's lessees, heirs, or assigns,
4 [~~divesting the owners or their lessees and assigns~~] of the
5 groundwater ownership and rights described by this section [~~or~~
6 ~~rights, except as those rights may be limited or altered by rules~~
7 ~~promulgated by a district~~].

8 (d) This section does not:

9 (1) prohibit a district from limiting or prohibiting
10 the drilling of a well by a landowner for failure or inability to
11 comply with minimum well spacing or tract size requirements adopted
12 by the district;

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

17 (3) require that a rule adopted by a district allocate
18 to each landowner a proportionate share of available groundwater
19 for production from the aquifer based on the number of acres owned
20 by the landowner [~~A rule promulgated by a district may not~~
21 ~~discriminate between owners of land that is irrigated for~~
22 ~~production and owners of land or their lessees and assigns whose~~
23 ~~land that was irrigated for production is enrolled or participating~~
24 ~~in a federal conservation program~~].

25 (e) This section does not affect the ability to regulate
26 groundwater in any manner authorized under:

27 (1) Chapter 626, Acts of the 73rd Legislature, Regular

1 Session, 1993, for the Edwards Aquifer Authority;

2 (2) Chapter 8801, Special District Local Laws Code,
3 for the Harris-Galveston Subsidence District; and

4 (3) Chapter 8834, Special District Local Laws Code,
5 for the Fort Bend Subsidence District.

6 SECTION 2. Section 36.101, Water Code, is amended by
7 amending Subsection (a) and adding Subsection (a-1) to read as
8 follows:

9 (a) A district may make and enforce rules, including rules
10 limiting groundwater production based on tract size or the spacing
11 of wells, to provide for conserving, preserving, protecting, and
12 recharging of the groundwater or of a groundwater reservoir or its
13 subdivisions in order to control subsidence, prevent degradation of
14 water quality, or prevent waste of groundwater and to carry out the
15 powers and duties provided by this chapter. In adopting a rule
16 under this chapter, a district [~~During the rulemaking process the~~
17 ~~board~~] shall:

18 (1) consider all groundwater uses and needs;

19 (2) [and shall] develop rules that [which] are fair
20 and impartial;

21 (3) consider the groundwater ownership and rights
22 described by Section 36.002;

23 (4) consider the public interest in conservation,
24 preservation, protection, recharging, and prevention of waste of
25 groundwater, and of groundwater reservoirs or their subdivisions,
26 and in controlling subsidence caused by withdrawal of groundwater
27 from those groundwater reservoirs or their subdivisions,

1 consistent with the objectives of Section 59, Article XVI, Texas
2 Constitution;

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

5 (6) [~~and that do~~] not discriminate between land that
6 is irrigated for production and land that was irrigated for
7 production and enrolled or participating in a federal conservation
8 program.

9 (a-1) Any rule of a district that discriminates between land
10 that is irrigated for production and land that was irrigated for
11 production and enrolled or participating in a federal conservation
12 program is void.

13 SECTION 3. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 332 passed the Senate on March 30, 2011, by the following vote: Yeas 28, Nays 3; and that the Senate concurred in House amendments on May 27, 2011, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 332 passed the House, with amendments, on May 24, 2011, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor