

By: Perry

S.B. No. 1392

A BILL TO BE ENTITLED

AN ACT

relating to groundwater conservation districts.

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

SECTION 1. Section 36.001, Water Code, is amended by amending Subdivisions (25) and (30) and adding Subdivision (32) to read as follows:

(25) "Modeled available groundwater" means the total amount of water within a common reservoir that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of a common reservoir [~~the groundwater resources~~] in a management area at one or more specified future times.

(32) "Common reservoir" means an aquifer or subdivision of a groundwater reservoir delineated in conjunction with a management area under Section 36.108.

SECTION 2. Section 36.0015(b), Water Code, is amended to read as follows:

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater

1 reservoirs or their subdivisions, consistent with the objectives 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 in order to:

7 (1) protect property rights;

8 (2) [~~r~~] balance the conservation and provide for the  
9 orderly development of groundwater to meet the needs of this state;

10 (3) [~~r and~~] use the best available science;

11 (4) treat each groundwater owner overlying a common  
12 reservoir fairly; and

13 (5) act jointly with other groundwater conservation  
14 districts [~~in the conservation and development of groundwater~~]  
15 through common rules developed, adopted, and promulgated by those  
16 districts [~~a district~~] in accordance with the provisions of this  
17 chapter.

18 SECTION 3. Sections 36.002(a), (b), and (d), Water Code,  
19 are amended to read as follows:

20 (a) A [~~The legislature recognizes that a~~] landowner owns the  
21 groundwater below the surface of the landowner's land as real  
22 property.

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

26 (1) drill for and produce the groundwater below the  
27 surface of real property, subject to Subsection (d), without

1 causing waste or malicious drainage of other property or  
2 negligently causing subsidence; ~~and~~

3 (2) the right to use produced groundwater for a  
4 beneficial use without causing waste; and

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

7 (d) This section does not:

8 (1) prohibit a district from limiting or prohibiting  
9 the drilling of a well by a landowner for failure or inability to  
10 comply with minimum well spacing or tract size requirements or with  
11 production limits based on the amount of land owned by the landowner  
12 adopted 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.

21 SECTION 4. Section 36.020(a), Water Code, is amended to  
22 read as follows:

23 (a) At an election to create a district, the temporary  
24 directors may include a proposition for the issuance of bonds or  
25 notes, the levy of taxes to retire all or part of the bonds or notes,  
26 and the levy of a maintenance tax. The maintenance tax rate may not  
27 exceed 37.5 ~~50~~ cents on each \$100 of assessed valuation.

1 SECTION 5. Section 36.051, Water Code, is amended by adding  
2 Subsection (b-1) to read as follows:

3 (b-1) A representative or employee of the governing body of  
4 a river authority is ineligible for appointment or election as a  
5 director.

6 SECTION 6. Section 36.062, Water Code, is amended to read as  
7 follows:

8 Sec. 36.062. OFFICES AND MEETING PLACES. (a) The board  
9 shall designate from time to time and maintain one or more regular  
10 offices for conducting the business of the district and maintaining  
11 the records of the district. Such offices must be reasonably  
12 accessible to the public and may be located either inside or outside  
13 the district's boundaries as determined in the discretion of the  
14 board.

15 (b) The board shall designate one or more places reasonably  
16 accessible to members of the public who reside in the district  
17 inside or outside the district for conducting the meetings of the  
18 board.

19 SECTION 7. Sections 36.101(a) and (c), Water Code, are  
20 amended to read as follows:

21 (a) A district shall adopt [~~may make~~] and enforce rules,  
22 including rules limiting groundwater production based on tract size  
23 or the spacing of wells, to provide for conserving, preserving,  
24 protecting, and recharging of the groundwater or of a groundwater  
25 reservoir or its subdivisions in order to control subsidence,  
26 prevent degradation of water quality, or prevent waste of  
27 groundwater and to carry out the powers and duties provided by this

1 chapter. In adopting a rule under this chapter, a district shall:

2 (1) [~~consider all groundwater uses and needs,~~  
3 [~~2~~] develop rules that are fair and impartial;  
4 (2) [~~3~~] consider the groundwater ownership and  
5 rights described by Section 36.002;

6 (3) [~~4~~] consider the public interest in  
7 conservation, preservation, protection, recharging, and prevention  
8 of waste of groundwater, and of groundwater reservoirs or their  
9 subdivisions, and in controlling subsidence caused by withdrawal of  
10 groundwater from those groundwater reservoirs or their  
11 subdivisions, consistent with the objectives of Section 59, Article  
12 XVI, Texas Constitution;

13 [~~5~~] consider the goals developed as part of the  
14 district's management plan under Section 36.1071; and

15 (4) [~~6~~] not discriminate based on:  
16 (A) the prior use of groundwater; or  
17 (B) whether the proposed groundwater use is  
18 inside or outside of the district [~~between land that is irrigated  
19 for production and land that was irrigated for production and  
20 enrolled or participating in a federal conservation program~~].

21 (c) The board shall compile its rules and make them  
22 available for use and inspection at each of the district's offices  
23 [~~principal office~~].

24 SECTION 8. Sections 36.1071(e), (f), and (h), Water Code,  
25 are amended to read as follows:

26 (e) In the management plan described under Subsection (a),  
27 the district shall:

1 (1) identify the performance standards and management  
2 objectives under which the district will operate to achieve the  
3 management goals identified under Subsection (a);

4 (2) specify, in as much detail as possible, the  
5 actions, procedures, performance, and avoidance that are or may be  
6 necessary to effect the plan, including specifications and proposed  
7 rules;

8 (3) for each common reservoir designated under Section  
9 36.108, include estimates of the following:

10 (A) modeled available groundwater in the common  
11 reservoir [~~district~~] based on the desired future condition  
12 established under Section 36.108;

13 (B) the amount of groundwater from the common  
14 reservoir being used [~~within the district~~] on an annual basis;

15 (C) the annual amount of recharge from  
16 precipitation, if any, to the groundwater resources of the common  
17 reservoir [~~within the district~~];

18 (D) [~~for each aquifer,~~] the estimated annual  
19 volume of water that discharges from:

20 (i) the common reservoir [~~aquifer~~] to  
21 springs and any surface water bodies, including lakes, streams, and  
22 rivers; and

23 (ii) evaporation or transpiration; and

24 (E) the annual volume of lateral and vertical  
25 flow into and out of each common reservoir and any adjoining common  
26 reservoir [~~the district within each aquifer and between aquifers in~~  
27 ~~the district, if a groundwater availability model is available~~];

1                   ~~[(F) the projected surface water supply in the~~  
2 ~~district according to the most recently adopted state water plan,~~  
3 ~~and~~

4                   ~~[(C) the projected total demand for water in the~~  
5 ~~district according to the most recently adopted state water plan,]~~  
6 and

7                   (4) identify each common reservoir jointly managed by  
8 the district under Section 36.108 ~~[consider the water supply needs~~  
9 ~~and water management strategies included in the adopted state water~~  
10 ~~plan].~~

11                  (f) The district shall adopt rules necessary to implement  
12 the management plan. Prior to the development of the management  
13 plan and its approval under Section 36.1072, the district may not  
14 adopt rules other than rules pertaining to the registration and  
15 interim permitting of new and existing wells and rules governing  
16 spacing and procedure before the district's board; however, the  
17 district may not adopt any rules limiting the production of wells,  
18 except rules requiring that groundwater produced from a well be put  
19 to a nonwasteful, beneficial use. ~~[The district may accept~~  
20 ~~applications for permits under Section 36.113, provided the~~  
21 ~~district does not act on any such application until the district's~~  
22 ~~management plan is approved as provided in Section 36.1072.]~~

23                  (h) In developing its management plan, the district shall  
24 use:

25                   (1) the groundwater availability modeling information  
26 provided by the executive administrator;

27                   (2) ~~[together with]~~ any available site-specific

1 information that has been provided by the district to the executive  
2 administrator for review and comment before being used in the plan;  
3 and

4 (3) the designation of the appropriate common  
5 reservoir within a management area under Section 36.108.

6 SECTION 9. Sections 36.108(c), (d), (d-1), (d-2), (d-3),  
7 and (d-4), Water Code, are amended to read as follows:

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

15 (1) the boundaries of each common reservoir in [~~goals~~  
16 ~~of each management plan and its impact on planning throughout~~] the  
17 management area;

18 (2) the effectiveness of the measures established by  
19 each district's management plan generally in the management area  
20 and specifically for:

21 (A) conserving and protecting groundwater; and

22 (B) preventing waste [~~, and the effectiveness of~~  
23 ~~these measures in the management area generally~~];

24 (3) any other matters that the boards consider  
25 relevant to the protection and conservation of groundwater and the  
26 prevention of waste in the management area; and

27 (4) the degree to which [~~each management plan~~



1 ~~achieves]~~ the desired future conditions in the management area are  
2 being achieved [~~established during the joint planning process~~].

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

10 (1) [~~aquifer uses or conditions within the management~~  
11 ~~area, including conditions that differ substantially from one~~  
12 ~~geographic area to another,~~

13 [~~2~~] the water supply needs and water management  
14 strategies included in the state water plan;

15 (2) [~~3~~] hydrological conditions that affect  
16 groundwater, including for each common reservoir [~~aquifer~~] in the  
17 management area the total estimated recoverable storage as provided  
18 by the executive administrator, and the average annual recharge,  
19 inflows, and discharge;

20 (3) [~~4~~] other environmental impacts, including  
21 impacts on spring flow and other interactions between groundwater  
22 and surface water;

23 (4) [~~5~~] the impact on subsidence;

24 (5) [~~6~~] ~~socioeconomic impacts reasonably expected to~~  
25 ~~occur,~~

26 [~~7~~] the impact on the interests and rights in  
27 private property, including ownership and the rights of management

1 area landowners and their lessees and assigns in groundwater as  
2 recognized under Section 36.002;

3 (6) [~~(8)~~] the feasibility of achieving the desired  
4 future condition and the degree to which any previously adopted  
5 desired future condition is being achieved; and

6 (7) [~~(9)~~] any other information relevant to the  
7 specific desired future conditions.

8 (d-1) After considering and documenting the factors  
9 described by Subsection (d) and other relevant scientific and  
10 hydrogeological data, the districts may establish different  
11 desired future conditions for [+

12 [~~(1)~~] each common reservoir [~~aquifer, subdivision of~~  
13 ~~an aquifer, or geologic strata~~] located in whole or in part within  
14 the boundaries of the management area[+ or

15 [~~(2)~~ each geographic area overlying an aquifer in  
16 whole or in part or subdivision of an aquifer within the boundaries  
17 of the management area].

18 (d-2) The desired future conditions proposed under  
19 Subsection (d) must provide a balance between the highest  
20 practicable level of groundwater production and the conservation,  
21 preservation, protection, recharging, and prevention of waste of  
22 groundwater and control of subsidence in each common reservoir in  
23 the management area. This subsection does not prohibit the  
24 establishment of desired future conditions that provide for the  
25 reasonable long-term management of groundwater resources  
26 consistent with the management goals under Section 36.1071(a). The  
27 desired future conditions proposed under Subsection (d) must be

1 approved by a two-thirds vote of all the district representatives  
2 for distribution to the districts in the management area. A period  
3 of not less than 90 days for public comments begins on the day the  
4 proposed desired future conditions are mailed to the districts.  
5 During the public comment period and after posting notice as  
6 required by Section 36.063, each district shall hold a public  
7 hearing on any proposed desired future conditions relevant to that  
8 district. During the public comment period, the district shall  
9 make available in its office a copy of the proposed desired future  
10 conditions and any supporting materials, such as the documentation  
11 of factors considered under Subsection (d) [~~and groundwater~~  
12 ~~availability model run results~~]. After the public hearing, the  
13 district shall compile for consideration at the next joint planning  
14 meeting a summary of relevant comments received, any suggested  
15 revisions to the proposed desired future conditions, and the basis  
16 for the revisions.

17 (d-3) After the earlier of the date on which all the  
18 districts have submitted their district summaries or the expiration  
19 of the public comment period under Subsection (d-2), the district  
20 representatives shall reconvene to review the reports, consider any  
21 district's suggested revisions to the proposed desired future  
22 conditions, and finally adopt the desired future conditions for the  
23 management area. The desired future conditions must be approved by  
24 [~~adopted as~~] a resolution adopted by a two-thirds vote of all the  
25 district representatives not later than the 60th day after the date  
26 the public comment period expires. Not later than the 120th day  
27 after the expiration of the public comment period, the [~~The~~]

1 district representatives shall produce a desired future conditions  
2 explanatory report for the management area and submit to the  
3 development board and each district in the management area proof  
4 that notice was posted for the joint planning meeting, a copy of the  
5 resolution, and a copy of the explanatory report. The report must:

6 (1) identify each desired future condition and each  
7 common reservoir to which the condition applies;

8 (2) provide the policy and technical justifications  
9 for each desired future condition;

10 (3) include documentation that the factors under  
11 Subsection (d) were considered by the districts and a discussion of  
12 how the adopted desired future conditions impact each factor;

13 (4) list other desired future condition options  
14 considered, if any, and the reasons why those options were not  
15 adopted; and

16 (5) discuss reasons why recommendations made by  
17 advisory committees and relevant public comments received by the  
18 districts were or were not incorporated into the desired future  
19 conditions.

20 (d-4) Not later than 120th day after the date the public  
21 comment period expires, the district shall submit the explanatory  
22 report under Subsection (d-3) to the development board and [As soon  
23 as possible after a district receives the desired future conditions  
24 resolution and explanatory report under Subsection (d-3), the  
25 district shall] adopt the desired future conditions in the  
26 resolution required by Subsection (d-3) and the explanatory report  
27 that apply to the district.

1 SECTION 10. Section 36.1083(e), Water Code, is amended to  
2 read as follows:

3 (e) Not later than the 10th day after receiving a petition  
4 described by Subsection (b), the district shall submit a copy of the  
5 petition to the development board and to each district overlying  
6 any part of the applicable common reservoir. On receipt of the  
7 petition, the development board shall conduct:

8 (1) an administrative review to determine whether the  
9 desired future condition established by the district meets the  
10 criteria in Section 36.108(d); and

11 (2) a study containing scientific and technical  
12 analysis of the desired future condition, including consideration  
13 of:

14 (A) the hydrogeology of the common reservoir,  
15 including the identification and determination of boundaries of  
16 each common reservoir in the management area [~~aquifer~~];

17 (B) the explanatory report provided to the  
18 development board under Section 36.108(d-3);

19 (C) the factors described under Section  
20 36.108(d); and

21 (D) any relevant:

22 (i) groundwater availability models;

23 (ii) published studies;

24 (iii) estimates of total recoverable  
25 storage capacity;

26 (iv) average annual amounts of recharge,  
27 inflows, and discharge of groundwater; or

1 (v) information provided in the petition or  
2 available to the development board.

3 SECTION 11. Section 36.1084(b), Water Code, is amended to  
4 read as follows:

5 (b) The executive administrator shall provide each district  
6 and regional water planning group located wholly or partly in the  
7 management area with the modeled available groundwater in the  
8 management area based upon the desired future conditions adopted by  
9 the districts. The modeled available groundwater must be reported  
10 as the total available groundwater for each common reservoir  
11 identified under Section 36.108.

12 SECTION 12. Sections 36.1085 and 36.1086, Water Code, are  
13 amended to read as follows:

14 Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each  
15 district in the management area shall ensure that its management  
16 plan contains goals and objectives consistent with achieving the  
17 desired future conditions of the relevant common reservoirs  
18 [~~aquifers~~] as adopted during the joint planning process.

19 Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT  
20 AREA. Districts located within the same management areas or in  
21 adjacent management areas may contract to jointly conduct studies  
22 or research, or to construct projects, under terms and conditions  
23 that the districts consider beneficial. These joint efforts may  
24 include studies of groundwater availability and quality, aquifer  
25 modeling, aquifer monitoring, and the interaction of groundwater  
26 and surface water; educational programs; the purchase and sharing  
27 of equipment; and the implementation of projects to make

1 groundwater available, including aquifer recharge, brush control,  
2 weather modification, desalination, regionalization, and treatment  
3 or conveyance facilities. The districts may contract under their  
4 existing authorizations including those of Chapter 791, Government  
5 Code, if their contracting authority is not limited by Sections  
6 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

7 SECTION 13. Section 36.113(d), Water Code, is amended to  
8 read as follows:

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

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

16 (2) for each water well, the proposed spacing of the  
17 wells conforms to the district's rules regulating the spacing of  
18 wells under Section 36.116;

19 (3) the proposed use of water unreasonably affects  
20 existing groundwater and surface water resources or existing permit  
21 holders;

22 (4) [~~3~~] the proposed annual production of the well  
23 conforms to the district's rules regulating the groundwater  
24 production of wells under Section 36.116;

25 (5) the proposed use of water is dedicated to any  
26 beneficial use;

27 (6) [~~4~~] ~~the proposed use of water is consistent with~~

1 ~~the district's approved management plan;~~

2           ~~(5)~~ if the well will be located in the Hill Country  
3 Priority Groundwater Management Area, the proposed use of water  
4 from the well is wholly or partly to provide water to a pond, lake,  
5 or reservoir to enhance the appearance of the landscape;

6           (7) ~~(6)~~ the applicant has agreed to avoid waste and  
7 achieve water conservation; and

8           (8) ~~(7)~~ the applicant has agreed that reasonable  
9 diligence will be used to protect groundwater quality and that the  
10 applicant will follow well plugging guidelines at the time of well  
11 closure.

12           SECTION 14. Section 36.1131(b), Water Code, is amended to  
13 read as follows:

14           (b) The permit may include:

15               (1) the name and address of the person to whom the  
16 permit is issued;

17               (2) the location of the well;

18               (3) the date the permit is to expire if no well is  
19 drilled;

20               (4) a statement of the purpose for which the well is to  
21 be used;

22               (5) a requirement that the water withdrawn under the  
23 permit be put to beneficial use at all times;

24               (6) the location of the use of the water from the well;

25               (7) a water well closure plan or a declaration that the  
26 applicant will comply with well plugging guidelines and report  
27 closure to the commission;



1 (8) the conditions and restrictions[~~, if any,~~] placed  
2 by district rules adopted under Section 36.116 on the rate and  
3 amount of withdrawal;

4 (9) any conservation-oriented methods of drilling and  
5 operating prescribed by the district;

6 (10) a drought contingency plan prescribed by the  
7 district; and

8 (11) other terms and conditions as provided by Section  
9 36.113.

10 SECTION 15. The heading to Section 36.1132, Water Code, is  
11 amended to read as follows:

12 Sec. 36.1132. DISTRICT MANAGEMENT TO ACHIEVE DESIRED FUTURE  
13 CONDITIONS [~~PERMITS BASED ON MODELED AVAILABLE GROUNDWATER~~].

14 SECTION 16. Section 36.1132, Water Code, is amended by  
15 amending Subsections (b) and (c) and adding Subsections (b-1) and  
16 (d) to read as follows:

17 (b) In issuing permits, each [~~the~~] district overlying a  
18 common reservoir shall jointly manage [~~total~~] groundwater  
19 production on a long-term basis to achieve an applicable desired  
20 future condition by [~~and consider~~]:

21 (1) adopting common rules on the spacing of water  
22 wells and groundwater production as provided by Section 36.116;

23 (2) considering the modeled available groundwater  
24 determined by the executive administrator;

25 (3) monitoring groundwater conditions, including  
26 groundwater levels, in each common reservoir with a desired future  
27 condition in the district and, at least every two years, providing

1 the collected monitoring data to other districts overlying the  
2 common reservoir;

3 (4) preparing a report on the degree to which the  
4 desired future conditions are being achieved in the one-year period  
5 after the collection of monitoring data from a common reservoir and  
6 the relevant desired future conditions; and

7 (5) participating in a joint groundwater management  
8 hearing if the report prepared under Subsection (b)(4) indicates  
9 the desired future conditions are not being achieved.

10 (b-1) The joint groundwater management hearing held under  
11 Subsection (b)(5) must include a public comment period on the  
12 desired future conditions. During the joint groundwater management  
13 hearing, the districts shall consider:

14 (1) [~~(2)~~] the executive administrator's estimate of  
15 the current and projected amount of groundwater produced in the  
16 common reservoir under exemptions granted by district rules and  
17 Section 36.117;

18 (2) [~~(3)~~] the amount of groundwater authorized under  
19 permits previously issued by the districts overlying the common  
20 reservoir [~~district~~];

21 (3) the potential use of groundwater in the common  
22 reservoir;

23 (4) an [~~a reasonable~~] estimate of the amount of  
24 groundwater that is actually produced from the common reservoir  
25 under permits issued by the districts [~~district~~]; and

26 (5) yearly precipitation and production patterns.

27 (c) In developing the estimate of exempt use under

1 Subsection (b-1)(1) [~~(b)(2)~~], the executive administrator shall  
2 solicit information from each applicable district overlying the  
3 common reservoir.

4 (d) Not later than the first anniversary of the date of the  
5 readoption of a desired future condition that is not being  
6 achieved, the applicable districts shall adopt new common rules  
7 under Section 36.116. The new rules shall immediately apply to all  
8 new permit applications submitted to a district. The districts  
9 shall adopt rules indicating when all existing permits must comply  
10 with the new rules to achieve the desired future condition.

11 SECTION 17. Sections 36.114(a) and (h), Water Code, are  
12 amended to read as follows:

13 (a) The district by rule shall require [~~determine each~~  
14 ~~activity regulated by the district for which~~] a permit or permit  
15 amendment for:

16 (1) drilling a new or replacement well;

17 (2) increasing the instantaneous peak production rate  
18 of a well or well system permit;

19 (3) increasing the authorized annual production  
20 volume of a well or well system permit; and

21 (4) changing the designated use of water produced  
22 under an existing well or well system permit [~~is required~~].

23 (h) The district shall determine if an application is  
24 administratively complete not later than the 30th day after the  
25 date the district receives the application. An administratively  
26 complete application requires information set forth in accordance  
27 with Sections 36.113 and 36.1131.

1 SECTION 18. Sections 36.116(a), (b), (d), and (e), Water  
2 Code, are amended to read as follows:

3 (a) In order to minimize as far as practicable the drawdown  
4 of the water table or the reduction of artesian pressure, to control  
5 subsidence, to prevent interference between wells, to prevent  
6 degradation of water quality, or to prevent waste, a district by  
7 rule may regulate:

8 (1) the spacing of water wells by:

9 (A) requiring all water wells to be spaced a  
10 certain distance from property lines or adjoining wells; or

11 (B) requiring wells with a certain production  
12 capacity, pump size, or other characteristic related to the  
13 construction or operation of and production from a well to be spaced  
14 a certain distance from property lines or adjoining wells; [~~or~~

15 ~~[(C) imposing spacing requirements adopted by~~  
16 ~~the board,]~~ and

17 (2) the production of groundwater by:

18 (A) setting production limits on wells;

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

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

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

27 (E) managed depletion; or

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

3 (b) In promulgating any rules limiting groundwater  
4 production, a ~~[the]~~ district shall maintain well spacing or  
5 groundwater production allocation ~~[may preserve historic or]~~  
6 existing ~~[use]~~ before the effective date of the rules to the maximum  
7 extent practicable ~~[consistent with the district's management plan~~  
8 ~~under Section 36.1071 and as provided by Section 36.113]~~.

9 (d) For proper ~~[better]~~ management of the groundwater  
10 resources located in a common reservoir, each district overlying a  
11 common reservoir that is under joint management under Section  
12 36.108 shall adopt common rules for regulation of groundwater  
13 production ~~[district or if a district determines that conditions in~~  
14 ~~or use of an aquifer differ substantially from one geographic area~~  
15 ~~of the district to another, the district may adopt different rules~~  
16 ~~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  
26 on the hydrogeological conditions of the aquifer or aquifers in the  
27 district~~, and~~

1           ~~[(2) may limit the amount of water produced based on~~  
2 ~~contiguous surface acreage].~~

3           SECTION 19. Sections 36.122(a), (g), (h), (i), and (q),  
4 Water Code, are amended to read as follows:

5           (a) The right to export groundwater is of equal dignity with  
6 the right to produce groundwater. If an application for a permit or  
7 an amendment to a permit under Section 36.113 proposes the transfer  
8 of groundwater outside of a district's boundaries, the district may  
9 not impose more restrictive permit conditions on persons who will  
10 transfer groundwater than the permit conditions the district  
11 imposes on persons who will use groundwater in the district ~~[also~~  
12 ~~consider the provisions of this section in determining whether to~~  
13 ~~grant or deny the permit or permit amendment].~~

14           (g) The district may not deny a permit based on the fact that  
15 the applicant seeks to transfer groundwater outside of the district  
16 ~~[but may limit a permit issued under this section if conditions in~~  
17 ~~Subsection (f) warrant the limitation, subject to Subsection (c)].~~

18           (h) In addition to conditions provided by Section 36.1131,  
19 the permit shall specify:

20                 (1) the maximum amount of water that may be  
21 transferred out of the district; and

22                 (2) the period for which the water may be transferred.

23           (i) The period specified by Subsection (h)(2) shall be~~+~~

24                 ~~[(1) at least three years if construction of a~~  
25 ~~conveyance system has not been initiated prior to the issuance of~~  
26 ~~the permit, or~~

27                 ~~[(2)]~~ at least 30 years unless the applicant requests

1 a shorter period [~~if construction of a conveyance system has been~~  
2 ~~initiated prior to the issuance of the permit~~].

3 (q) In applying this section, a district must be fair,  
4 impartial, and nondiscriminatory between the transfer of  
5 groundwater outside of the district's boundaries and the use of  
6 groundwater in the district.

7 SECTION 20. Section 36.201(b), Water Code, is amended to  
8 read as follows:

9 (b) The board may annually levy taxes to pay the maintenance  
10 and operating expenses of the district at a rate not to exceed 37.5  
11 ~~[50]~~ cents on each \$100 of assessed valuation.

12 SECTION 21. Section 36.205(f), Water Code, is amended to  
13 read as follows:

14 (f) A district [~~, including a district described under~~  
15 ~~Subsection (d),~~] may assess a production fee under Subsection (c)  
16 and an export fee under Subsection (g), if applicable, for any water  
17 produced under an exemption under Section 36.117 if that water is  
18 subsequently sold to another person.

19 SECTION 22. Section 36.207, Water Code, is amended to read  
20 as follows:

21 Sec. 36.207. USE OF FEES. (a) A district may use funds  
22 obtained from administrative or [~~]~~ production [~~, or export~~] fees  
23 collected under a special law governing the district or this  
24 chapter for any purpose consistent with the district's approved  
25 management plan, including, without limitation, making grants,  
26 loans, or contractual payments to achieve, facilitate, or expedite  
27 reductions in groundwater pumping or the development or

1 distribution of alternative water supplies.

2 (b) A district may use funds obtained from export fees  
3 collected under a special law governing the district or this  
4 chapter only to:

5 (1) enhance aquifer monitoring, modeling, and data  
6 collection and to enhance research on the advancement of the  
7 scientific understanding of a district's groundwater resources; or

8 (2) issue payments to existing permit holders in the  
9 district.

10 (c) If a district issues payments to existing permit holders  
11 under Subsection (b)(2), the district shall by rule determine the  
12 amount of a payment to a permit holder based on a pro rata share of:

13 (1) the acreage of the permit holder's tract of land on  
14 which the permit holder's well is located; or

15 (2) the drainable volume of groundwater in the aquifer  
16 under the permit holder's tract of land.

17 SECTION 23. Sections 36.4051(a) and (d), Water Code, are  
18 amended to read as follows:

19 (a) The board may take action on any uncontested application  
20 at a properly noticed public meeting held at any time after the  
21 public hearing at which the application is scheduled to be heard.

22 The board may issue a written order to[+]

23 [~~(1)~~] grant [~~the application,~~

24 [~~(2) grant the application with special conditions,~~]

25 or

26 [~~(3)~~] deny the application.

27 (d) An applicant may, not later than the 20th day after the



1 date the board issues an order granting the application, demand a  
2 contested case hearing [~~if the order:~~

3 [~~(1) includes special conditions that were not part of~~  
4 ~~the application as finally submitted, or~~

5 [~~(2) grants a maximum amount of groundwater production~~  
6 ~~that is less than the amount requested in the application].~~

7 SECTION 24. Section [8810.103](#)(b), Special District Local  
8 Laws Code, is amended to read as follows:

9 (b) Sections [36.122](#)(e) and [~~36.122~~(c), ~~(e)~~,] (i)[~~, and~~  
10 ~~(j)~~], Water Code, do not apply to a requirement or limitation  
11 imposed under this section.

12 SECTION 25. Section [8824.101](#), Special District Local Laws  
13 Code, is amended to read as follows:

14 Sec. 8824.101. RESTRICTIONS ON GENERAL POWERS. Section  
15 [~~Sections~~] [36.103](#) [~~and 36.104~~], Water Code, does [~~do~~] not apply to  
16 the district.

17 SECTION 26. Section [8852.104](#)(c), Special District Local  
18 Laws Code, is amended to read as follows:

19 (c) Section 36.122(i) [~~Sections 36.122~~(c), ~~(i)~~, and ~~(j)~~],  
20 Water Code, does [~~do~~] not apply to a requirement or limitation  
21 imposed under this section.

22 SECTION 27. Section [11002.112](#), Special District Local Laws  
23 Code, is amended to read as follows:

24 Sec. 11002.112. GROUNDWATER REGULATION. [~~Section 36.121,~~  
25 ~~Water Code, does not apply to a groundwater well owned or used by~~  
26 ~~the district within the boundaries of the Brewster County~~  
27 ~~Groundwater Conservation District.] The rules of the Brewster~~

1 County Groundwater Conservation District govern a groundwater well  
2 owned or used by the district within the Brewster County  
3 Groundwater Conservation District.

4 SECTION 28. The following provisions of the Special  
5 District Local Laws Code are repealed:

- 6 (1) Section 8837.006(b);
- 7 (2) Section 8851.103;
- 8 (3) Section 8852.108;
- 9 (4) Section 8867.102; and
- 10 (5) Section 8876.005(b).

11 SECTION 29. The following provisions of the Water Code are  
12 repealed:

- 13 (1) Section 36.001(29);
- 14 (2) Section 36.001(31), as added by Chapter 415 (H.B.  
15 2767), Acts of the 84th Legislature, Regular Session, 2015;
- 16 (3) Section 36.002(b-1);
- 17 (4) Sections 36.0151(f) and (g);
- 18 (5) Section 36.101(a-1);
- 19 (6) Section 36.104;
- 20 (7) Section 36.1072(g);
- 21 (8) Section 36.108(d-5);
- 22 (9) Sections 36.113(f), (h), and (i);
- 23 (10) Section 36.121;
- 24 (11) Sections 36.122(b), (c), (j), (m), and (n); and
- 25 (12) Section 36.205(d).

26 SECTION 30. As soon as practicable after the effective date  
27 of this Act, each groundwater conservation district shall adopt

1 rules as necessary to implement the changes in law made by this Act.

2       SECTION 31. The changes in law made by this Act apply only  
3 to an application for a permit or a permit amendment that is  
4 received by a groundwater conservation district on or after the  
5 effective date of this Act. An application for a permit or permit  
6 amendment that is received before the effective date of this Act is  
7 governed by the law in effect on the date the application is  
8 received, and that law is continued in effect for that purpose.

9       SECTION 32. The changes in law made by this Act apply only  
10 to a suit involving a groundwater conservation district that is  
11 filed on or after the effective date of this Act. A suit filed  
12 before the effective date of this Act is subject to the law in  
13 effect on the date the suit is filed, and that law is continued in  
14 effect for that purpose.

15       SECTION 33. This Act takes effect September 1, 2017.