

CHAPTER 1045

AS AMENDED

AN ACT

relating to the creation, administration, powers, duties, and operations of the Fort Bend Subsidence District; providing for civil penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. PURPOSE AND INTENT. (a) The purpose of this Act is to provide for the regulation of the withdrawal of groundwater within the district created by this Act to prevent subsidence, which contributes to or precipitates flooding, inundation, or overflow of areas within the district, including rising waters resulting from storms or hurricanes.

(b) It is the intent of the legislature that the district created by this Act shall administer and enforce the terms of this Act and shall exercise its rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of this Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Person" includes a corporation, individual, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, or association, and any other legal entity.

(2) "District" means the Fort Bend Subsidence District.

(3) "Board" means the board of directors of the Fort Bend Subsidence District.

(4) "Groundwater" means water existing below the earth's surface within the district, but does not include water produced with oil in the production of oil and gas.

(5) "Well" means a facility, device, or method used to withdraw groundwater.

(6) "Withdraw" means the act of extracting groundwater by pumping or some other method.

(7) "Drill" means drilling, equipping, or completing wells or substantially altering the size of wells or well pumps.

(8) "Subsidence" means the lowering in elevation of the surface of land by the withdrawal of groundwater.

(9) "Commission" means the Texas Commission on Environmental Quality.

(10) "Agricultural crop":

(A) means food or fiber commodities that are grown for resale or commercial purposes and that are to be used for food, clothing, or animal feed; and

(B) includes nursery products and florist items that are in the possession of a nursery grower.

(11) "Beneficial use" means any use that is useful or beneficial to the user, including:

(A) an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or

(B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals.

(12) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(13) "Nursery grower" means a person who grows in any medium more than 50 percent of the nursery products or florist items that the person sells or leases. A person grows a nursery product or florist item if the person cultivates or propagates the product or item by engaging in activities associated with the production or multiplying of stock, including the development of new plants from cuttings, grafts, plugs, or seedlings. The term does not include a person who merely holds or maintains a nursery product or florist item before sale or lease.

(14) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown or kept for, or capable of, propagation and distribution for sale or lease.

(15) "Waste" means:

(A) the withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial use or if the amount used is more than is reasonably required for a beneficial use;

(C) the escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) the pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or other harmful matter admitted from another stratum or from the surface of the ground;

(E) willfully or negligently causing, suffering, or allowing groundwater to escape or flow into a river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto land that does not belong to the owner of the well unless the discharge is authorized by a permit, rule, or order issued by the commission under Chapter 26, Water Code;

(F) the escape of groundwater pumped for irrigation as irrigation tailwater onto land that does not belong to the owner of the well unless the occupant of the land receiving the discharge granted permission for the discharge; or

(G) willfully causing or knowingly permitting the water produced from an artesian well to run off the owner's land or to percolate through the stratum above which the water is found, as prescribed by Section 11.205, Water Code.

SECTION 3. CREATION; FINDING OF BENEFIT AND PUBLIC PURPOSE. (a) Under Article XVI, Section 59, Texas Constitution, a conservation and reclamation district is created to be known as the Fort Bend Subsidence District. The district is a governmental agency, a political subdivision of the state, and a body politic and corporate.

(b) The district is created to serve a public use and benefit.

SECTION 4. BOUNDARIES. The district includes all of the territory within Fort Bend County.

SECTION 4A. NONAPPLICABILITY OF OTHER LAW. (a) Other

laws governing the administration or operation of conservation and reclamation districts created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, including Chapters 36 and 49, Water Code, do not apply to the district.

(b) Notwithstanding Section 36.052, Water Code, this chapter prevails over any other law in conflict or inconsistent with this Act.

SECTION 5. BOARD OF DIRECTORS. (a) The district is governed by a board of 13 directors.

(b) One director from each of the following cities in Fort Bend County shall be appointed by the mayor of the respective city:

- (1) Houston;
- (2) Missouri City;
- (3) Stafford;
- (4) Sugar Land;
- (5) Rosenberg; and
- (6) Richmond.

(c) The Commissioners Court of Fort Bend County shall appoint two directors who represent agricultural interests and live in an unincorporated area, two directors who represent industrial interests, and two directors who represent business interests.

(d) One director shall be appointed by the mayors of the incorporated cities within the county not listed in Subsection (b) of this section.

(f) All directors must be residents of and qualified voters in the district.

(h) Selection of subsequent directors shall be made each January. Not later than the 20th day before the date of the board's January meeting, the district shall mail notice to the persons designated in Subsections (b), (c), and (d) of this section to choose directors.

(i) The terms of office for the initial directors shall be as follows:

- (1) five members chosen under Subsection (b) of this section and four members chosen under Subsection (c) of this section shall serve for terms expiring January 31, 1991; and
- (2) one member chosen under Subsection (b) of this

section, two members chosen under Subsection (c) of this section, and the member chosen under Subsection (d) of this section shall serve for terms expiring January 31, 1990.

(j) Except as provided by Subsection (i) of this section, members of the board shall serve for terms of two years.

(l) Each year at the first meeting after new directors take office, the directors shall select a chairman, a vice-chairman, and a secretary. The chairman, vice-chairman, and secretary shall serve at the pleasure of the board and may be removed and replaced by a majority of the board at any time.

(m) The chairman shall preside over meetings of the board. If the chairman is not present, the vice-chairman shall preside.

(n) Each director is entitled to receive fees of office of not more than \$150 a day for each day the director is engaged in the exercise of the director's duties. The fees of office may not exceed \$9,000 a year. Each director is also entitled to receive reimbursement for actual expenses reasonably and necessarily incurred in the exercise of the director's duties under this Act. To receive fees of office and reimbursement for expenses, each director must file with the district a verified statement that shows the number of days spent in the service of the district and a general description of the duties performed for each day of service.

(o) If a vacancy occurs on the board, the person or persons designated in Subsection (b), (c), or (d) of this section to appoint a director for the position that is vacated shall appoint a director to serve the unexpired term.

(p) Each director shall make the sworn statement and take the oath of office prescribed by the constitution for public officers and shall execute a bond in the amount of \$5,000, payable to the district, conditioned on the faithful performance of the director's duties. The district shall pay for the bond.

(q) A majority of the directors constitute a quorum for transaction of business of the district. An official act of the board is not valid without the affirmative vote of a majority of the directors.

(r) The board shall hold one regular meeting each month at a time set by the board. The board may hold special meetings at the call of the chairman or on the written request of at least

three directors. A meeting of a committee of the board where less than a quorum is present is not subject to Chapter 551, Government Code. The board shall give notice of board meetings as provided by Chapter 551, Government Code. Failure to provide notice of a regular meeting or an insubstantial defect in notice of any meeting does not affect the validity of any action taken at the meeting.

SECTION 6. POWERS AND DUTIES IN GENERAL. (a) The board shall administer this Act as provided by Section 1 of this Act.

(b) Withdrawals of groundwater, including withdrawals of injected water, covered by this Act are subject to reasonable rules, regulations, and orders adopted by the board.

(c) In adopting rules, regulations, and orders, the board shall consider the following factors:

- (1) availability of surface water or alternative water supplies;
- (2) economic impact on persons and the community;
- (3) degree and effect of subsidence on the surface of the land; and
- (4) differing topographical and geophysical characteristics of the land.

(d) The board has all other powers necessary or convenient to carry out its responsibilities and achieve the purpose of this Act, whether the powers are specifically authorized by this Act or implied by this Act or other law.

(e) The board may adopt bylaws and policies as necessary to accomplish its purposes.

(f) The board may purchase materials, supplies, equipment, vehicles, and machinery needed by the district to accomplish its purposes.

- (g) The board shall adopt the following written policies:
- (1) a code of ethics for district directors, officers, and employees, and persons who are engaged in handling investments for the district;
  - (2) a policy relating to travel expenditures;
  - (3) a policy relating to district investments;
  - (4) policies and procedures for selection, monitoring, or review and evaluation of professional services; and
  - (5) policies that ensure a better use of management

information, including the use of:

- (A) budgets to plan and control cost; and
- (B) uniform reporting requirements based on "Audits of State and Local Governmental Units," published by the American Institute of Certified Public Accountants, and "Governmental Accounting and Financial Reporting Standards," published by the Governmental Accounting Standards Board.

SECTION 7. GENERAL MANAGER (a) The board may employ a general manager who shall be the chief administrative officer of the district. The board may delegate to the general manager the authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The duties of the general manager include:

- (1) administration of the orders of the board;
- (2) coordination with state, federal, and local agencies;
- (3) supervision of the development of plans and programs of the district;
- (4) preparation and submission of the annual budget to the board; and
- (5) other duties assigned by the board.

(c) The general manager shall execute a bond in an amount determined by the board payable to the district, conditioned on the faithful performance of his duties. The district shall pay for the bond.

(d) The district may contract with any person to perform the duties of general manager.

(e) The board shall determine the compensation and terms of office and employment for the general manager. The board may discharge the general manager by a vote of a majority of board members.

SECTION 8. EMPLOYEES; BENEFITS. (a) The general manager shall employ personnel necessary for the proper handling of the business and operation of the district and may employ attorneys, bookkeepers, engineers, and other expert and specialized personnel that are considered necessary. The general manager shall determine the compensation to be paid by the district to the employees.

(b) The general manager may discharge employees of the district.

(c) The board shall require an employee who collects, pays, or handles funds of the district to furnish good and sufficient bond, payable to the district, for a sufficient amount to safeguard the district. The bond shall be conditioned on the faithful performance of the employee's duties and on accounting for all funds and property of the district under the employee's control. The district shall pay for the bond.

(d) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(e) The board may establish a public retirement system as provided by Chapter 810, Government Code, or provide for a deferred compensation plan as described by Section 457, Internal Revenue Code of 1986.

(f) The board may include hospitalization and medical benefits for its employees as part of the compensation paid to employees and may adopt or amend any plan or rule as necessary to provide hospitalization and medical benefits.

(g) The board may establish a sick leave pool for employees of the district in the same manner as a sick leave pool for state employees is authorized to be created under Subchapter A, Chapter 661, Government Code.

SECTION 9. DISTRICT OFFICE. The board shall maintain its principal office for conducting the business of the district. The office must be located inside the district.

SECTION 10. MINUTES AND RECORDS OF DISTRICT. The district shall keep a true and complete account of the board's meetings and proceedings and shall preserve the board's minutes, contracts, records, notices, accounts, and receipts in a safe place. The board's minutes, contracts, records, notices, accounts, and receipts are the property of the district and are subject to public inspection.

SECTION 11. SUITS. (a) The district may sue and be sued in the courts of this state in the name of the district by and through the board. If requested by the district, the attorney general shall represent the district in the district and appellate courts of this state and in the courts of the United States. The board, in its sole discretion, may employ attorneys to represent the district in the district and appellate courts

of this state and in the courts of the United States.

(b) The general manager is the agent of the district on whom process, notice, or demand required or permitted by law to be served on the district may be served.

(c) The district is not required to give bond for appeal, injunction, or costs in any suit to which it is a party.

(d) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. The court shall set the amount of the attorney's fees.

SECTION 12. SEAL. The board shall adopt a seal.

SECTION 13. RULES AND REGULATION. (a) After notice and hearing, the board shall adopt and enforce rules and regulations that are designed to expeditiously and effectively accomplish the provisions and purposes of this Act, including rules governing procedure before the board. The board may adopt rules to prevent the waste of water or the degradation of water quality.

(b) The board shall compile its rules and regulations in a book and make the book available for use and inspection at the district's principal office. The district shall provide copies of its rules and regulations on payment of the cost of reproduction.

SECTION 14. HEARINGS. (a) At regular meetings of the board, the board shall set the dates, times, and locations for hearings to be held under this Act.

(b) Not later than the 10th day before the date set for a hearing, other than a hearing on a permit application, the district shall deliver or mail notice of the hearing under this section to each county and municipal government within the district and to each person that the board believes has an interest in the subject matter to be dealt with at the hearing.

(c) Not later than the 10th day before the date set for a hearing, the district shall publish notice of the hearing under this section once in a newspaper of general circulation in each county within the district.

(d) Not later than the 10th day before the date set for a hearing, the district shall post the notice of the hearing under this section at the county courthouse of each county within the district in the place where notices are usually posted.

(e) Any person who desires to appear at a hearing and present testimony, evidence, exhibits, or other information may do so in person, by counsel, or both.

(f) The board may hold hearings at any location within the district.

(g) The board may recess a hearing from day to day.

(h) The board may use hearing examiners to hear any subject set for the hearing, but the board shall make any final decision on the subject. Procedures for use of hearing examiners shall be provided by rule.

SECTION 15. COMPELLING TESTIMONY, SWEARING WITNESSES, AND SUBPOENAS. The board may subpoena a person to testify if the person's testimony is necessary to carry out the powers, duties, and functions of the board under this Act. The board may administer oaths to persons who testify before the board. The board may subpoena documents if the documents are necessary to carry out the powers, duties, and functions of the board under this Act. On application of the board, a district court shall enforce the subpoena in the same manner as a subpoena issued by the court.

SECTION 16. DISTRICT PLAN. (a) The board shall formulate a plan to control and mitigate subsidence within the district. The plan shall accomplish this purpose by the regulation of groundwater withdrawals to maintain sufficient artesian pressure to control and mitigate subsidence.

(b) The plan shall specify, in as much detail as practicable, the acts, procedures, performance, and avoidance that are necessary to carry out the purposes of this Act.

(c) When formulating the plan, the board shall compile and consider:

(1) a list of wells in the district that will be subject to regulation under this Act;

(2) an accurate estimate of groundwater production from all wells or proposed wells in the district;

(3) an accurate estimate of the amount of groundwater that may be produced from each area in the district without causing long-term static water level decline and reduction of artesian pressure that will lead to subsidence within the district;

(4) an accurate estimate of the current and future water needs in the district;

(5) a list of all available sources of water in the district other than groundwater;

(6) the purpose for which the water is currently used and for which it is proposed to be used in the future;

(7) information relating to formulation of a permit system; and

(8) other information necessary to carry out the management of groundwater in the district and to effectively and expeditiously accomplish the purposes of this Act.

(d) The initial plan shall be formulated not later than 12 months after the effective date of this Act.

(e) Not later than the 60th day after the date the initial plan is formulated, the board shall review and adopt the plan.

(f) Before a plan is adopted, the board shall hold a hearing to consider the proposed plan.

(g) After the hearing, the board shall make any changes it considers necessary based on evidence and material presented at the hearing and shall adopt the plan.

(h) The plan adopted under this section may be amended or repealed. A new plan may be adopted in the manner provided in this section for the adoption of the original plan. A plan, once adopted, shall remain in effect until the adoption of a new plan.

SECTION 17. WELL REGISTRATION. The board by rule may require the registration of any well in the district.

SECTION 18. PERMIT REQUIREMENT. (a) The owner of a well located in the district must obtain a permit from the board before:

- (1) drilling, equipping, or completing the well;
- (2) substantially altering the size of the well or a well pump; or
- (3) operating the well.

(b) A well must have a valid permit if it is operational. An owner or operator commits a violation if the owner or operator does not obtain a permit as required by Subsection (a) of this section. A violation occurs on the first day the drilling, alteration, or operation begins. Each day that a violation continues is a separate violation.

(c) A permit issued under this Act is valid for a term of one year from the date it is issued unless a longer or shorter term is specified by the board. The board may issue a permit for a term not to exceed five years in order to aid the district in the effective and expeditious performance of its duties if issuance of the permit does not impair the ability of the district to control and prevent subsidence within the district.

(d) A permit is not a vested right of the permit holder. A permit may be revoked, suspended, modified, or amended after notice and a hearing whenever reasonably necessary to accomplish the purposes of this Act.

(e) Permits may be renewed in the same manner as permits are issued.

(f) To obtain a permit, a person must submit an application and an application fee to the board. The application must state:

- (1) the person's name;
- (2) the person's address;
- (3) the location and wellhead elevation of the well or proposed well;
- (4) the amount of water being produced or proposed to be produced; and
- (5) any other information required by the board as necessary for the board to control and prevent subsidence in the district.

(g) The board shall use the application fee to process applications.

SECTION 19. NOTICE AND HEARING ON PERMIT. (a) The board shall hold a hearing on each application.

(b) Not later than the 10th day before the date set for the hearing, the board shall notify the applicant by regular mail or by certified mail, return receipt requested, of the date, time, and location of the hearing.

(d) The board may consider as many applications for

permits as it considers necessary at a hearing.

SECTION 20. ISSUANCE OF PERMIT. (a) Not later than the 60th day after the date of the hearing, the board shall decide whether or not to issue a permit and shall formulate the terms of the permit, if issued.

(b) In deciding whether or not to issue a permit and in setting the terms of the permit, the board shall consider:

- (1) the purpose of this Act;
- (2) the district plan;
- (3) the quality, quantity, and availability of surface water or alternative water supplies at prices competitive with those charged by suppliers of surface water within the district;
- (4) the economic impact on the applicant of granting or denying the permit or of the terms prescribed by a permit in relation to the effect on subsidence that would result;
- (5) the applicant's compliance with the requirements of this Act or any rule, permit, or other order of the district; and
- (6) any other relevant factors.

(c) The board shall grant a permit to an applicant whenever the board finds on sufficient evidence that:

- (1) there is no other adequate and available substitute or supplemental source of surface water at prices competitive with those charges by suppliers of surface water within the district; and
- (2) compliance with any provision of this Act, or any rule or regulation of the district will result in an arbitrary taking of property or in the practical closing and elimination of any lawful business, occupation, or activity, without sufficient corresponding benefit or advantage to the public.

(d) If the board decides to issue the permit, the permit must state the terms prescribed by the board.

(e) The permit must include the following:

- (1) the name and address of the permittee;
- (2) the location of the well;
- (3) the date the permit begins and the date the permit expires;
- (4) conditions and restrictions placed on the withdrawal of groundwater; and
- (5) any other terms and conditions necessary to control and prevent subsidence.

(f) The board may condition issuance of a permit under this section on the resolution of a prior or continuing violation of this chapter or any rule, permit, or order of the district. The board may require an applicant to pay a civil penalty or settlement amount, or take other necessary action, to resolve a prior or continuing violation.

SECTION 21. PERMIT NOT TRANSFERABLE. A permit issued under this Act is not transferable unless the permittee and new owner notify the district by certified mail, return receipt requested, of the transfer of ownership of the well and provide the name and address of the new owner. On receipt of that information, the district shall issue an amended permit with the new owner of the well as permittee. The remaining terms of the permit shall remain unchanged.

SECTION 22. ANNUAL REPORTS. Before January 31 of each year, each owner of a well who holds a permit under this Act shall submit a report to the board stating the following:

- (1) the person's name;
- (2) the location of the well;
- (3) the total amount of groundwater produced by the well during the immediately preceding 12-month period;
- (4) the total amount of groundwater produced by the well during each separate month of the immediately preceding 12-month period;
- (5) the purpose for which the groundwater was used;

and

- (6) any other information required by the board as necessary for the board to control and prevent subsidence within the district.

SECTION 23. BOARD INVESTIGATION. At least once each year and at any other time that the board considers necessary, the board may have its staff make a complete study of the groundwater situation within the district and determine the water level, rates of withdrawal, amounts of withdrawal, and other information relating to the withdrawal of groundwater that may affect the subsidence of land within the district.

SECTION 24. ANNUAL GROUNDWATER WITHDRAWAL DETERMINATION.  
(a) Before March 31 of each year, the board shall hold a hearing to determine the effects during the preceding calendar year of groundwater withdrawal on the subsidence of land within the district.

- (b) At the hearing, the board shall consider the annual

reports submitted under Section 22 of this Act and the investigation made under Section 23 of this Act in addition to information presented by persons appearing before the board.

(c) After the hearing, the board shall consider all the information presented to it and shall determine the groundwater withdrawal in the district during the preceding calendar year and shall make findings of the effects of groundwater withdrawal during that year on the subsidence of land within the district. A report of the board's findings and determinations shall be made available for examination by any interested person.

(d) The board shall submit the report adopted under Subsection (c) of this section and a copy of the most recent district plan adopted under Section 16 of this Act to the appropriate regional water planning group.

SECTION 25. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the drawdown of the water table and reduction of artesian pressure and to control and prevent subsidence, the board may provide for the spacing of wells and regulate the production of groundwater from wells, taking into consideration any relevant factors, including the economic impact on well owners and the resulting effect on subsidence.

(b) Before issuing any rule, regulation, or order under this section, the board shall set a hearing on the proposed rule, regulation, or order.

(c) The district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic stratum located wholly or partly within the boundaries of the district; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located wholly or partly within the boundaries of the district.

(d) The board may issue an order requiring a person to completely or partially discontinue the use of groundwater by:

(1) acquiring an alternative water supply needed to replace the water supply covered by the order; or

(2) participating in a groundwater reduction plan or other agreement approved by the board as achieving compliance with the district's regulatory requirements.

(e) The board may issue an order or adopt a rule requiring a person to reduce groundwater use by eliminating waste or implementing water conservation measures.

SECTION 26. REQUIRING WATER-METERING DEVICES. The board may require water-metering devices to be placed on wells in the district and may adopt standards for the accuracy, testing, and calibration of the devices.

SECTION 27. ACCESS TO PROPERTY. (a) To carry out technical and other investigations necessary to the implementation of this Act, the board and its agents and employees are entitled to access to all property within the district.

(b) Before entering property for the purposes stated in Subsection (a) of this section, the person seeking access shall give notice to the owner of the property in the manner provided by the rules and regulations of the district and shall present proper credentials.

(c) The board, and its agents and employees who enter private property, shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection.

SECTION 28. MONITORING AND SUPERVISIONS OF DISTRICT. (a) The district may use subsidence compaction monitors, water level observation wells, and other materials and equipment to determine the amount of groundwater that may be produced while allowing the rebound and stabilization of groundwater to a level that will halt subsidence.

(b) The district may use global positioning systems and other geodetic survey methods to monitor land surface elevations and measure subsidence. The district may coordinate monitoring and data collection activities with other entities, including private entities and federal, state, or local governmental entities.

SECTION 29. RESEARCH AND STUDIES. (a) The board may conduct studies and research that it considers necessary to implement this Act. The board may use the services of geologists, hydrologists, licensed professional engineers, licensed professional geoscientists, or other expert personnel to accomplish the purposes of this section.

(b) The district may collect any information that the board determines is necessary to implement this chapter, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater

reservoir.

SECTION 30. COOPERATION WITH AND ASSISTANCE OF OTHER GOVERNMENTAL ENTITIES. The board may cooperate with and request the assistance of the Texas Water Development Board, the commission, the United States Geological Survey, local governments, and other agencies of the United States and the State of Texas in implementing this Act.

SECTION 31. CONTRACTS. The board may enter into contracts with any person to carry out this Act. The district may enter into contracts only in the district's name.

SECTION 32. APPEAL OF DISTRICT ACTIONS TO A DISTRICT COURT. (a) A person who is adversely affected by a rule, regulation, order, or other official action of the board may appeal to a district court in any county in the district. A person may file an appeal only after any administrative appeal to the district is finally resolved.

(b) For the purposes of this section, "a person who is adversely affected" includes a person residing in or owning real property in the district whose residence or real property is subsiding. An appeal under this section must be filed not later than the 45th day after the date any administrative appeal is finally resolved.

(c) On written request of a person who is adversely affected, the board shall make written findings and conclusions with respect to a rule, regulation, order or other official action of the district. Not later than the 35th day after the request was made, the board shall provide a certified copy of the findings and conclusions to the person who made the request.

(d) In appeals taken under this section, the substantial evidence rule, as provided by Subchapter G, Chapter 2001, Government Code, shall be used to determine the legal propriety of a rule, regulation, order, or other action of the board. The burden of proof is on the petitioner, and the challenged rule, order, or other official action of the district is considered prima facie valid.

(e) The district court shall set for trial as expeditiously as possible an appeal brought under this section and may not postpone or continue the suit unless the reasons for postponement or continuance are imperative.

SECTION 34. PERMIT FEE. (a) At the time a permit is issued or renewed, the board shall collect from the permittee a permit fee, established by schedule, based on the term of the permit and the maximum amount of groundwater authorized by the board to be withdrawn annually from the well. The board may also establish a disincentive permit fee to serve as a regulatory tool by creating a disincentive to continued overreliance on groundwater.

(b) The fee schedule shall be determined by the board after a hearing.

(c) The board shall use the funds obtained from permit fees to cover the costs of issuing permits and performing other regulatory functions under this Act, including making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

SECTION 35. GRANTS, PURCHASES, GIFTS, LEASES, ETC. (a) On behalf of the district, the board may:

(1) purchase, lease, own, convey, and dispose of property both inside and outside the district necessary or convenient to the exercise of the powers, duties and functions of the board under this Act;

(2) accept grants, gifts, and devises of property;

(3) construct, purchase, lease, or acquire in some other manner any material or property necessary to carry out this Act; and

(4) accept gifts, grants, loans, or other distributions of money.

(b) The district may make or accept a grant, gratuity, advance, or loan in any form to or from any public source approved by the board, including a governmental entity, and may enter into a contract, agreement, or covenant that the board considers appropriate in connection with a grant, gratuity, advance, or loan.

SECTION 36. WATER CONSERVATION MEASURES. (a) The board may adopt rules requiring the use of water conservation measures to reduce groundwater withdrawals.

(b) The district may cooperate with the commission and a local government to establish water conservation goals, guidelines, and plans to be used in the district.

(c) The district may contract with a local government in the district to provide services needed to meet water conservation requirements established by the commission.

SECTION 37. OPEN OR UNCOVERED WELLS. (a) The district may require the owner or lessee of land on which an open or uncovered well is located to keep the well closed or capped with a covering capable of sustaining weight of at least 400 pounds when the well is not in actual use.

(b) If the owner or lessee fails or refuses to close or cap the well, any person, firm, or corporation employed by the district may enter onto the land and close or cap the well safely and securely.

SECTION 38. SALE AND DISTRIBUTION OF WATER PROHIBITED. The district may not sell or distribute surface water or groundwater for any purpose.

SECTION 39. EXCLUSIONS. This Act does not apply to:

- (1) wells regulated under Chapter 27, Water Code;
- (2) shallow wells producing water solely to prevent hazardous sand boils, dewater surface construction sites, or relieve hydrostatic uplift on permanent structures and not used to provide water for human consumption, agricultural use, manufacturing or industrial use, or water injection;
- (3) shallow wells producing water solely for groundwater quality analysis and for monitoring migration of subsurface contaminants or pollution and not used to provide water for human consumption, agricultural use, manufacturing or industrial uses, or water injection;
- (4) shallow wells producing water solely for recovery of contamination or pollution and not used to provide water for human consumption, agricultural use, manufacturing or industrial use, or water injection;
- (5) wells with a casing that has an inside diameter of five inches or less that serve only a single-family dwelling.

SECTION 40. DISBURSEMENT OF FUNDS. The district's money may be disbursed by:

- (1) check, draft, order, or other instruments, signed by the person or persons authorized to do so by the board's bylaws or by resolution of the board; or
- (2) electronic funds transfer.

SECTION 41. ACCOUNTS AND INDEPENDENT AUDIT; BUDGET. (a)

The district shall keep a complete system of accounts and shall have its affairs audited each year by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability. The district shall pay for the audit.

(b) The board shall keep one copy of the audit at the district office, open to inspection by any interested person during normal office hours.

(c) The fiscal year of the district is the calendar year.

(d) The board shall adopt an annual budget containing a complete financial statement. The board may amend the annual budget.

SECTION 42. DEPOSITORY BANKS; INVESTMENTS. (a) The board shall designate one or more banks within the district to serve as depository for district money. All district money shall be deposited in a depository bank. This subsection does not limit the power of the board to place a portion of the district's money on time deposit or to purchase certificates of deposit or other authorized investments.

(c) To the extent that money in a depository bank or a trustee bank is not invested or insured by the Federal Deposit Insurance Corporation, the money shall be secured in the manner provided by Chapter 2257, Government Code.

(d) Before designating a depository bank, the board shall issue a notice stating the time and place the board will meet for that purpose and shall invite banks in the district to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board.

(e) The board shall consider the management and condition of the banks that apply and shall designate as depositories the bank or banks that offer the most favorable terms and conditions for handling of the funds of the district and that the board finds have proper management and are in condition to warrant handling of district funds.

(f) Membership on the board of an officer or director of a bank does not disqualify the bank from being designated as depository.

(g) If no applications are received before the meeting,

the board shall designate a bank or banks within or outside the district on terms and conditions it finds advantageous to the district.

(h) District money may be invested and reinvested in accordance with Chapter 2256, Government Code.

(i) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest district money and provide for money to be withdrawn from the appropriate district accounts for investments on terms that the board considers advisable.

SECTION 43. PENALTIES. (a) If a person has violated, is violating, or is threatening to violate a provision of this Act or a rule, regulation, permit, or other order of the district, the district may bring a civil action in a district court within the district for:

(1) an injunction to restrain the person from continuing the violation or the threat of violation;

(2) the assessment and recovery of a civil penalty of:

(A) not less than \$50 nor more than \$5,000 for each violation and for each day of violation if the person is not a political subdivision or an agency of a political subdivision; or

(B) if the person is a political subdivision or an agency of a political subdivision, an amount equal to the greater of:

(i) 120 percent of the sum of the fees assessed against the person and the amount the person would have paid to an alternative water supplier; or

(ii) \$5,000 for each violation and for each day of a continuing violation; or

(3) both injunctive relief and civil penalty.

(b) At the request of the board, or the general manager if authorized by the board, the attorney general shall institute and conduct an action against any person in the name of the district for injunctive relief or to recover a civil penalty, or both. However, the district in its sole discretion may employ attorneys of its choice to institute the action.

(c) The district is not required to post bond or other security with the court.

(d) On application for injunctive relief and a finding that a person is violating or threatening to violate any

provision of this Act or any rule, permit, or other order of the district, the district court shall grant any injunctive relief the facts may warrant.

(e) In a suit to recover a civil penalty or a suit for injunctive relief and a civil penalty, if the court finds that a person has violated or is violating a provision of this Act or a rule, permit, or order of the district, the court shall assess a civil penalty in the amount provided by this section.