

**Lost Pines GCD
Workshop**
May 19th, 2018
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Affairs

**Historical Overview
Lost Pines Groundwater
Conservation District and The
Evolution of Chapter 36**

**Groundwater issues since the
beginning of time:**

- ▶ Ownership
- ▶ District configuration
- ▶ District Powers and Duties
- ▶ Exemptions

1949 Legislation: Underground Water Conservation Districts

Original Legislation Creating Underground Water Conservation Districts

In 1949 the 51st Texas Legislature authorized creation of underground conservation districts under the authority of Article XVI, Section 59 of the Constitution of Texas and Chapter 3A Title 128 Vernon's Civil Statutes.

Representative, I.B. Holt of Olton, authored House Bill 162. This bill is sometimes referred to as the Texas Groundwater Act, which created groundwater conservation districts in Texas.

In 1951, the first groundwater conservation district in Texas was created, the High Plains Underground Water Conservation District #1.

UNDERGROUND WATER CONSERVATION DISTRICTS Ch. 306

UNDERGROUND WATER CONSERVATION DISTRICTS—
ORGANIZATION—POWERS

CHAPTER 306

H. B. No. 162

An Act amending Chapter 25, Acts of the Regular Session, Thirty-ninth Legislature, 1925, by adding a Section thereto providing for the creation and organization of underground water conservation districts to provide for the conservation, preservation, protection and recharging and the prevention of waste of underground water; prescribing the powers, functions and limitations of such districts; defining terms and prescribing standards to govern the operation of such districts and the adoption, promulgation and enforcement of rules and regulations thereon; recognizing individual ownership of underground water; authorizing the State Board of Water Engineers to designate underground water reservoirs and subdivisions thereof; providing for appeals from orders, rules, regulations and acts hereunder; containing a saving clause; and declaring an emergency.

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

Section 1. That Chapter 25, Acts of the Regular Session of the Thirtieth Legislature of the State of Texas, 1925, be and the same is hereby amended²⁴ by adding thereto Section 3c to provide as follows:

**1971 Legislation:
Chapter 52
Underground Water
Conservation Districts**

CHAPTER 52. UNDERGROUND WATER CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS		Section
Section		
52.006. Applicability to Underground Water Conservation Districts Generally.	52.108. Election to Replace Directors Temporarily Appointed by Commission.	
	52.109. Qualifications for Directors.	
	52.107. Application to Get on Ballot.	
	52.108. Sworn Statement, Bond, and Oath of Office.	
SUBCHAPTER B. CREATION OF DISTRICTS AND MANAGEMENT AREAS GENERALLY		
[Sections 52.027 to 52.030 reserved for expansion]	52.109. Organization of Board.	
52.031. Petition to Create District.	52.110. Vacancies on Board.	
52.032. Notice of Petition and Hearing to Create a District.	52.111. Election.	
	52.112. District Office.	
52.033. Findings.	52.113. Fees of Office; Reimbursement for Expenses.	
[Sections 52.034 to 52.040 reserved for expansion]	52.114. Officers; Quorum.	
52.041. Appointment of Temporary Directors.	52.115. Meetings.	
52.042. Confirmation and Directors' Election.	52.116. Minutes and Records of District.	
52.043. Bond and Tax Proposition.	52.117. Contracts.	
52.044. Inclusion of Municipality.	52.118. General Manager.	
52.045. Confirmation Election in District Including Land in More Than One County.	52.119. Board of Directors.	
[Sections 52.046 to 52.050 reserved for expansion]	52.120. Employees of District.	
	52.120. Employees' Compensation and Terms of Employment.	
SUBCHAPTER C. CREATION OF DISTRICTS IN CRITICAL AREAS	52.121. Employees' Bond.	
	SUBCHAPTER E. POWERS AND DUTIES	

**1995 Legislation:
Chapter 36
Groundwater Conservation
Districts**

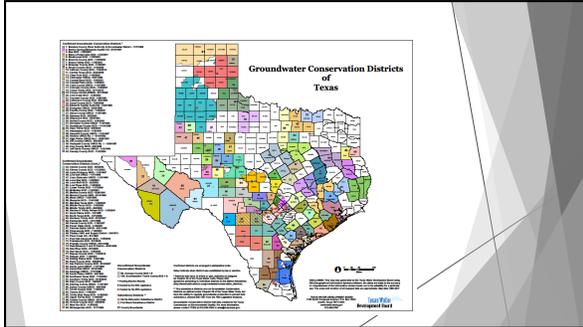
1 CHAPTER 36. GROUNDWATER CONSERVATION DISTRICTS
2 SUBCHAPTER A. GENERAL PROVISIONS
3 Sec. 36.001. DEFINITIONS. In this chapter:
4 (1) "District" means any district or authority created
5 under Article III, Section 52 or Article XVI, Section 59 of the
6 Texas constitution that has the authority to regulate the spacing
7 of water wells, the production from water wells, or both.
8 (2) "Commission" means the Texas Natural Resource
9 Conservation Commission.
10 (3) "Executive director" means the executive director
11 of the commission.
12 (4) "Executive administrator" means the executive
13 administrator of the Texas Water Development Board.
14 (5) "Groundwater" means water percolating below the
15 surface of the earth.

SB 1 Brown

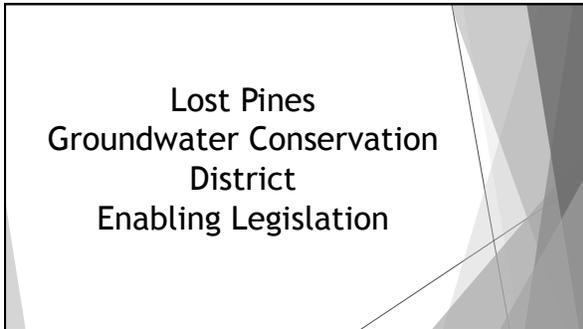
In 1997, the Texas Legislature passed landmark water legislation in Senate Bill 1. SB1 made numerous changes to Chapter 36 of the Water Code with the intent to increase and improve groundwater management. SB1 emphasized that "groundwater conservation districts are the State's preferred method of groundwater management."

HB 1763

In 2005, the Texas Legislature passed HB 1763 (Cook-Duncan) which set up groundwater management areas which districts currently operate under today. HB 1763 authorized the GMA's to develop desired future conditions (DFC's) within the management areas.







HB 2237 76th Regular Session, 1999

By Cook, et al. H.B. No. 2237
76R10705 E

A BILL TO BE ENTITLED

1-1 AN ACT
1-2 relating to the creation, administration, powers, duties,
1-3 operation, and financing of the Lost Pines Groundwater Conservation
1-4 District.
1-5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**
1-6 **SECTION 1. CREATION.** (a) A groundwater conservation
1-7 district, to be known as the Lost Pines Groundwater Conservation
1-8 District, is created in Bastrop and Lee counties subject to a
1-9 confirmation election held as provided by Section 8 of this Act.
1-10 The district is a governmental agency and a body politic and
1-11 corporate.
1-12 (b) The district is created under and is essential to
1-13 accomplish the purposes of Section 59, Article XVI, Texas
1-14 Constitution.

Senate Bill 1911 Brown 76th Regular Session 1999

AN ACT
1-1 relating to the creation, administration, powers, duties,
1-2 operation, and financing of certain groundwater conservation
1-3 districts.
1-4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**
1-5 **SECTION 1. CREATION.** (a) The following groundwater
1-6 conservation districts are created:
1-7 (1) Cow Creek Groundwater Conservation District;
1-8 (2) Brazos Valley Groundwater Conservation District;
1-9 (3) Crossroads Groundwater Conservation District;
1-10 (4) Hays Trinity Groundwater Conservation District;
1-11 (5) Lone Wolf Groundwater Conservation District;
1-12 (6) Lost Pines Groundwater Conservation District;
1-13 (7) McMullen Groundwater Conservation District;
1-14 (8) Middle Pecos Groundwater Conservation District;
1-15 (9) Red Sands Groundwater Conservation District;
1-16 (10) Refugio Groundwater Conservation District;
1-17 (11) Southeast Trinity Groundwater Conservation
1-18 District;
1-19 (12) Texana Groundwater Conservation District; and
1-20 (13) Tri-County Groundwater Conservation District.
1-21 (b) A district created under this section is a governmental
1-22 agency and a body politic and corporate.
1-23 (c) Each district created under this section is created
1-24 under and is essential to accomplish the purposes of Section 59,
2-1 Article XVI, Texas Constitution.

**Ratification of Groundwater Conservation Districts
77th Regular Session 2001**

C.S.B. 3 ratifies the following groundwater conservation districts
created in 1999 by the 76th Legislature:
_Cow Creek Groundwater Conservation District;
_Crossroads Groundwater Conservation District;
_Hays Trinity Groundwater Conservation District;
_Lone Wolf Groundwater Conservation District;
_Lost Pines Groundwater Conservation District;
_McMullen Groundwater Conservation District;
_Middle Pecos Groundwater Conservation District;
_Red Sands Groundwater Conservation District;
_Refugio Groundwater Conservation District;
_Southeast Trinity Groundwater Conservation District;
_Texana Groundwater Conservation District; and
_Tri-County Groundwater Conservation District (SECTIONS 3.0101-3.1209).

HB 2432 Cook-Armbrister 77th Regular Session 2001

AN ACT
 1-2 relating to the ratification of the creation of and to the
 1-3 administration, powers, duties, operation, and financing of the
 1-4 Lost Pines Groundwater Conservation District.
 1-5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-6 SECTION 1. RATIFICATION OF CREATION. The creation by
 1-7 Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999
 1-8 (Senate Bill No. 1911), of the Lost Pines Groundwater Conservation
 1-9 District in Bastrop and Lee counties is ratified as required by
 1-10 Section 15(a) of that Act, subject to approval at a confirmation
 1-11 election under Section 8 of this Act.

Groundwater issues since the beginning of time:

► **Ownership—Case Law**

- Rule of Capture: Your neighbor may take your groundwater with impunity.
- EAA v Day: You have a vested property right in the groundwater beneath your property.
- Bragg v EAA: Regulation of your groundwater may rise to the level of a regulatory taking, but damages are based on the value of the entire parcel, not just the groundwater.

Groundwater issues since the beginning of time:

► **Ownership--Statutes**

- 1949 Statute: Ownership rights “recognized”
- Chapter 52: Ownership rights “recognized”
- Chapter 36 (1995): Ownership rights “recognized”
- Chapter 36 amended by SB 332 (2011): Landowner “entitled” to withdraw groundwater, no specific amount

1949 Statute: Ownership rights “recognized”

⁴D. The ownership and rights of the owner of the land, his lessees and assigns, in underground water are hereby recognized, and nothing in this Section 3c shall be construed as depriving or divesting such owner, his assigns or lessees, of such ownership or rights, subject, however to the rules and regulations promulgated pursuant to this Section 3c.

Chapter 36 (2001): Ownership rights “recognized” except as limited by District Rules

The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as these rights may be limited or altered by rules promulgated by a district.

Chapter 36 amended by SB 332 (2011): Landowner “entitled” to withdraw groundwater, no specific amount

11 (d) The groundwater ownership and rights described by this
12 section:
13 (1) entitle the landowner, including a landowner's
14 lessee, heir, or assign, to drill for and produce the
15 groundwater below the surface of real property, subject to
16 subsection (d), without causing waste or malicious drainage of
17 other property or negligently causing subsidence, but does not
18 entitle a landowner, including a landowner's lessee, heir, or
19 assign, to the right to capture a specific amount of groundwater
20 below the surface of that landowner's land; and
21 (2) do not affect the existence of common law defenses
22 or other defenses to liability under the rule of capture.

Groundwater Ownership—Impact

- ▶ Groundwater conservation districts are subject to Constitutional Takings claims:
 - ▶ by applicant if District denies a permit;
 - ▶ by nearby well owner if District grants a permit;
 - ▶ by other landowners if aquifer levels drop.
- ▶ Driving regulatory methods?
 - ▶ Does vested property ownership require tying permit amounts to surface acreage?

Groundwater issues since the beginning of time:

▶ District configuration

- ▶ 1949 Statute: District must be "coterminous with an underground water reservoir or subdivision thereof"
- ▶ Chapter 52: District must be "coterminous with or inside the boundaries of a management area or a priority groundwater management area" BUT may "may consist of separate bodies of land separated by land not included in the district."
- ▶ Why hasn't that happened?

1949 Statute: District must be "coterminous with an underground water reservoir or subdivision thereof"

"C. No petition for the creation of a District to exercise the powers and functions set forth in Subsection B of this Section 3e shall be considered by a Commissioners Court or the Board, as the case may be, unless the area to be included therein is coterminous with an underground water reservoir or subdivision thereof which theretofore has been defined and designated by the Board as an underground water reservoir or subdivision thereof. Such district, in conforming to a defined reservoir or subdivision, may include all or parts of a county or counties, municipal corporations or other political subdivisions, including but not limited to Water Control and Improvement Districts.

Chapter 52: District must be “coterminous”

(c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a priority groundwater management area.
 (d) A district may consist of separate bodies of land separated by land not included in the district.

Chapter 36: District must be “coterminous” but . . .

* 36.012. Composition of District

(a) A district may include all or part of one or more counties, cities, districts, or other political subdivisions.
 (b) A district may not include territory located in more than one county except on a majority vote of the voters residing within the territory in each county sought to be included in the district at an election called for that purpose.
 (c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a priority groundwater management area.
 (d) A district may consist of separate bodies of land separated by land not included in the district.
 (e) A majority of the voters in a segregated area must approve the creation of the district before that area may be included in the district.

Non-Statutorial Definition of Coterminous

- “Having the same or coincident boundaries”
Merriam-Webster
- “Having the same boundaries or extent in space, time, or meaning” *Oxford Living Dictionaries*
- “Coterminous areas share a border; Exactly the same as something else” *Macmillan Dictionary*

How has Aquifer Management Evolved

- ▶ Of the 100 existing GCD's, a HANDFUL have been created by TCEQ (or a predecessor agency)
- ▶ Almost all GCD's created through legislation:
 - ▶ Legislature sets boundaries
 - ▶ Legislature sets different exemptions
 - ▶ Legislature sets different funding methods and limitations
 - ▶ Legislature sets different Board member selection
 - ▶ Legislature sets permit requirements

Groundwater issues since the beginning of time:

- ▶ District Powers and Duties
 - ▶ Research
 - ▶ Planning
 - ▶ Rulemaking
 - ▶ Permitting
 - ▶ Enforcement

Groundwater issues since the beginning of time:

- ▶ District Powers and Duties—
Permitting
 - ▶ Spacing regulations (Drilling permits)
 - ▶ Production limitations
 - ▶ Export permits
 - ▶ Production fees

"Such Districts shall and are hereby authorized to exercise any one or more of the following powers and functions:
"(1) to formulate, promulgate and enforce rules and regulations for the purpose of conserving, preserving, protecting and recharging the underground water of the underground water reservoir or subdivision thereof;
"(2) to formulate, promulgate and enforce rules and regulations to prevent the waste, as herein defined, of the underground water of the underground water reservoir or subdivision thereof;
"(3) to require permits for the drilling, equipping and completion of wells in the underground water reservoir and to issue such permits subject to such terms and provisions with reference to the drilling, equipping and completion thereof as may be necessary to prevent waste, as herein defined;

"(4) to provide for the spacing of wells producing from the underground water reservoir or subdivision thereof and to regulate the production therefrom so as to minimize as far as practicable the drawdown of the water table or the reduction of the artesian pressure; provided, however, the owner of the land, his heirs, assigns and lessees, shall not be denied a permit to drill a well on his land and produce underground water therefrom subject to rules and regulations promulgated hereunder to prevent waste, as herein defined;
"(7) to cause to be made by registered professional engineers surveys of the underground water of the underground water reservoir or subdivision thereof and of the facilities for the development, production and use of such underground water, to determine the quantity thereof available for production and use and the improvements, developments and recharges needed for such underground water reservoir or subdivision thereof;

"(8) to develop comprehensive plans for the most efficient use of the underground water of the underground water reservoir or subdivision thereof and for the control and prevention of waste of such underground water, which plans shall specify in such detail as may be practicable the acts, procedure, performance and avoidance which are or may be necessary to effect such plans, including specifications thereof; to carry out research projects, develop information and determine limitations, if any, which should be made on the withdrawal of underground water from the underground water reservoir or subdivision thereof; to collect and preserve information regarding the use of such underground water and the practicability of recharge of the underground water subdivision thereof; to publish such plans and information, bring them to the notice and attention of the users of such underground water within the District, and to encourage their adoption and execution;

"(9) to enforce, by injunction, mandatory injunction or other appropriate remedy, in courts of competent jurisdiction, rules and regulations duly adopted and promulgated by such District; provided, that no rule or regulation shall be effective until a brief resume thereof has been published once a week for two consecutive weeks in one or more newspapers to give circulation within the District, and such rule or regulation is to be effective not less than fourteen (14) days after the date of the first publication.

Groundwater issues since the beginning of time:
▶ Exemptions—1949 Statute

1949 Statute—No Authority over Oil and Gas Wells

"(8) nothing in this Section 3c shall be construed as applying to wells drilled, under permits granted by the Railroad Commission, of Texas, for oil, gas, sulphur, brine, or any of them, for core tests, for injection of gas, salt water or other fluid, or for any other purpose;

Exemptions—1949 Statute

"(4) nothing in this Section 8c shall authorize or permit:

"(a) the requiring of a permit for the drilling or producing of a well drilled to supply water for the drilling of any one or more of the wells mentioned in (3) next preceding; **Water supply for O&G**

"(b) the requiring of a permit for the drilling or producing of a well drilled, completed and equipped so that it will not produce in excess of one hundred thousand (100,000) gallons of underground water per day; or **100K gallons per day well capacity**

"(c) the restriction of the production from any well producing underground water to an amount less than one hundred thousand (100,000) gallons of underground water per day; provided, however, the wells mentioned in (a), (b) and (c) above shall be equipped and maintained so as to conform with the rules and regulations, promulgated by any District pursuant to this Section 8c and applicable to the underground water reservoir in which such wells are completed, requiring the installation of casing, pipe and fittings in wells so as to prevent the escape of underground water from one underground water reservoir to any other reservoir not containing underground water and so as to prevent the pollution or harmful alteration of the character of the underground water within any underground water reservoir, as herein defined. **Exempt wells must meet construction standards**

Groundwater issues since the beginning of time:

- ▶ Exemptions
- ▶ Chapter 52 (1971)

§ 52.118. Exceptions: Limitations

(a) The district may not require a permit for the drilling or producing of a well drilled, completed, and equipped so that it will not produce more than 100,000 gallons of underground water a day. (39th Legis., Ch. 52, Sec. 8c, subsec. D(4)(b), as amended.)

(b) The district shall not deny the owner of a tract of land, or his lessee, who has no well capable of producing more than 100,000 gallons a day on the tract, either a permit to drill a well on his land or the privi-

lege to produce underground water from his land, subject to the rules of the district. (39th Legis., Ch. 25, Sec. 3c, subsec. B(4), sen. 2, as amended.)

(c) The district may not restrict the production of any well that produces less than 100,000 gallons a day. (39th Legis., Ch. 25, Sec. 3c, subsec. D(4) (c) (part), as amended.)

(d) Nothing in this chapter applies to wells drilled for oil, gas, sulphur, or brine, or for core tests, or for injection of gas, salt water, or other fluid, or for any other purpose, under permits issued by the Texas Railroad Commission. The district shall not require a permit to drill a well to supply water for drilling any of these wells permitted by the Texas Railroad Commission. When the well ceases to be used for these purposes, it may then be used as an ordinary water well if it meets the spacing and other rules of the district; and its use is subject to the rules of the district. (39th Legis., Ch. 25, Sec. 3c, subsec. D(3), D(4)(a), as amended.)

Groundwater issues since the beginning of time:

► **Exemptions**

- Chapter 52 (1971)
- Chapter 36 (current)

(b) Except as provided by this section, a district shall provide an exemption from the district requirement to obtain a permit for:

(1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:

- (A) located or to be located on a tract of land larger than 10 acres; and
- (B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or

(3) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

(e) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

- (1) the total amount of water withdrawn during the month;
- (2) the quantity of water necessary for mining activities; and
- (3) the quantity of water withdrawn for other purposes.

(f) A district may require compliance with the district's well spacing rules for the drilling of any well except a well exempted under Subsection (b)(3).

(g) A district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.
