

SUBJECT: Ownership rights of groundwater

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Keffer, Ashby, D. Bonnen, Frank, Kacal, Larson, Nevárez,  
Workman

0 nays

3 absent — Burns, T. King, Lucio

WITNESSES: For — Russell Johnson, End Op L.P.; Steve Box, Environmental Stewardship; Jimmy Gaines, Texas Landowners Council; (*Registered, but did not testify*: Marida Favia del Core Borromeo, Exotic Wildlife Association; Judith McGeary, Farm and Ranch Freedom Alliance; Linda Curtis, Independent Texans; Michele Gangnes, League of Independent Voters of Texas; Donnie Dippel, Texas Ag Industries Association; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Patricia Hayes, Texas Association of Groundwater Owners and Producers; Josh Winegarner, Texas Cattle Feeders Association; Billy Howe, Texas Farm Bureau; Ronald Hufford, Texas Forestry Association; Billy Phenix, Texas Land and Mineral Owners Association; Jim Reaves, Texas Nursery and Landscape Association; Denise Gentsch, Texas Seed Trade Association; Joey Park, Texas Wildlife Association)

Against — (*Registered, but did not testify*: John Dupnik, Barton Springs Edwards Aquifer Conservation District; Ty Embrey, Middle Trinity Groundwater Conservation District, Panola County Groundwater Conservation District, Clearwater Underground Water Conservation District; Drew Satterwhite, North Texas Groundwater Conservation District; Ken Kramer, Sierra Club - Lone Star Chapter; Martha Landwehr, Texas Chemical Council; Doug Shaw, Upper Trinity Groundwater Conservation District)

On — Paul Nelson, Lone Star Groundwater Conservation District; Shauna Fitzsimmons, Prairielands Groundwater Conservation District, Lone Star

Groundwater Conservation District, Upper Trinity Groundwater Conservation District, Barton Springs Edwards Conservation District; Brian Sledge, Prairielands Groundwater Conservation District, Upper Trinity Groundwater Conservation District, Lone Star Groundwater Conservation District, Benbrook Water Authority, Barton Springs Edwards Aquifer Conservation District; Jim Conkwright, Prairielands Groundwater Conservation District; Leigh Thompson, Texas Public Policy Foundation

**BACKGROUND:** Under Water Code, sec. 36.002, the Legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

The groundwater ownership and rights entitle the landowner to drill for and produce the groundwater below the surface of real property without causing waste or malicious drainage of other property or negligently causing subsidence but do not entitle a landowner to the right to capture a specific amount of groundwater below the surface of that landowner's land.

In 2012, the Texas Supreme Court ruled in the case of *EAA v. Day McDaniel*. In this case, the Edwards Aquifer Authority (EAA) argued to the Supreme Court that the landowner did not have a constitutionally protected ownership right in the groundwater, and could not maintain a takings claim against the EAA for denial of a permit. In this opinion, the court clarified the ownership right, including language not found in section 36.002. Some observers have noted that adding language recognizing other common law rights the court establishes for groundwater in future litigation would avoid the need to amend section 36.002 repeatedly.

**DIGEST:** CSHB 4112 would amend Water Code, sec. 36.002 by entitling a landowner to have any other right recognized under common law relating to groundwater ownership and rights.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**NOTES:**

The committee substitute differs from the bill as filed by removing language in the original entitling a landowner to have any right recognized under common law and specifically including the right to produce or save a fair share of the groundwater below the surface of the landowner's land.