

By: Rios Ybarra

H.B. No. 4705

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Brush Country Groundwater Conservation District; providing conditional authority to impose a tax and authority to issue bonds.

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

SECTION 1. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter _____ to read as follows:

CHAPTER . BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. . DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means the Brush Country Groundwater Conservation District.

Sec. . NATURE OF DISTRICT. The district is a groundwater conservation district in Jim Hogg, Brooks, and Hidalgo Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. . CONFIRMATION ELECTION REQUIRED. (a) If a majority of the qualified voters voting in the election in each designated area vote to confirm the district, the district is confirmed as to the designated area. If a majority of the qualified voters voting in the election in one or more of the four designated areas vote to

1 confirm the creation of the district, the district is created for
2 the designated areas voting to confirm.

3 (b) The four designated areas referenced in subsection (a)
4 are as follows:

5 (1) All real property within the corporate limits of
6 the City of Falfurrias as of January 1, 2009;

7 (2) All real property in Brooks County outside of the
8 corporate limits of the City of Falfurrias and not located within
9 the Kenedy County Groundwater Conservation District as of January
10 1, 2009 and the part of Hidalgo County described with a metes and
11 bounds description in Section 2 of this Act and which is not located
12 within the Kenedy County Groundwater Conservation District as of
13 January 1, 2009;

14 (3) All real property within the certificated retail
15 water service area of the Jim Hogg County Water Control and
16 Improvement District No. 2 (CCN No. 12744) as of January 1, 2009;
17 and

18 (4) All real property in Jim Hogg County outside of the
19 certificated retail water service area of the Jim Hogg Water
20 Control and Improvement District No. 2 as of January 1, 2009.

21 (c) The offices of the directors who represent an interest
22 in a designated area that does not confirm the district lapse on the
23 date the canvass of the vote failing to confirm the district is
24 recorded.

25 (d) The district may solicit and accept gifts and grants
26 from any private or public source to provide revenue for the
27 district prior to the confirmation election for the district;

1 (e) If the creation of the district is not confirmed by any
2 designated areas at a confirmation election held on or before
3 September 1, 2011:

4 (1) the district is dissolved on September 1, 2011,
5 except that:

6 (A) any debts incurred shall be paid;

7 (B) any assets that remain after the payment of
8 debts shall be transferred in equal amounts to Jim Hogg and Brooks
9 Counties; and

10 (C) the organization of the district shall be
11 maintained until all debts are paid and remaining assets are
12 transferred; and

13 (2) this chapter expires September 1, 2011.

14 Sec. . INITIAL DISTRICT TERRITORY. (a) The district is
15 initially composed of the territory described by Section 2 of the
16 Act creating this chapter.

17 (b) The boundaries described in Section 2 of the Act
18 creating this chapter form a closure. A mistake made in describing
19 the district's boundaries in the legislative process does not
20 affect the district's:

21 (1) organization, existence, or validity;

22 (2) right to issue any type of bond for the purposes
23 for which the district is created or to pay the principal of an
24 interest on a bond;

25 (3) right to impose or collect an assessment or tax; or

26 (4) legality or operation.

27 Sec. . APPLICABILITY OF OTHER GROUNDWATER CONSERVATION

1 DISTRICT LAWS. Except as otherwise provided by this chapter,
2 Chapter 36, Water Code, applies to the district.

3 Sec. . CONSTRUCTION OF CHAPTER. This chapter shall be
4 liberally construed to achieve the legislative intent and purposes
5 of Chapter 36, Water Code. A power granted by Chapter 36, Water
6 Code, or this chapter shall be broadly interpreted to achieve that
7 intent and those purposes.

8 (b) Section 36.121, Water Code, does not apply to the
9 district.

10 Sec. . TEMPORARY DIRECTORS. (a) The temporary board of
11 directors consists of:

12 (1) David Grall, representing the agricultural
13 interests of the designated area of Brooks County outside the
14 corporate limits of the City of Falfurrias and not part of the
15 Kenedy County Groundwater Conservation District as of January 1,
16 2009 and the part of Hidalgo County described in Section 2 of this
17 Act and which is not located within the Kenedy County Groundwater
18 Conservation District as of January 1, 2009;

19 (2) Mauro Garcia, representing the agricultural
20 interests of Brooks County outside the corporate limits of the City
21 of Falfurrias and not part of the Kenedy County Groundwater
22 Conservation District as of January 1, 2009 and the part of Hidalgo
23 County described in Section 2 of this Act and which is not located
24 within the Kenedy County Groundwater Conservation District as of
25 January 1, 2009;

26 (3) Richard Jones, representing the agricultural
27 interests of Jim Hogg County outside of the certificated retail

1 water service area of the Jim Hogg County Water Control and
2 Improvement District No. 2 (CCN No. 12744) as of January 1, 2009;

3 (4) Mario Martinez, representing the agricultural
4 interests of Jim Hogg County outside of the certificated retail
5 water service area of the Jim Hogg County Water Control and
6 Improvement District No. 2 (CCN No. 12744) as of January 1, 2009;

7 (5) Robert Scott, representing the municipal
8 interests of Brooks County within the corporate limits of the City
9 of Falfurrias as of January 1, 2009;

10 (6) Israel Hinojosa, representing the interests of Jim
11 Hogg County within the certificated retail water service area of
12 the Jim Hogg County Water Control and Improvement District No. 2
13 (CCN No. 12744) as of January 1, 2009;

14 (7) William P. Goranson, representing the industrial
15 and mining interests of Jim Hogg and Brooks Counties.

16 (b) If there is a vacancy on the temporary board of
17 directors of the district, the remaining temporary directors shall
18 appoint a person to fill the vacancy in a manner that meets the
19 representational requirements of this section.

20 (c) Temporary directors serve until the earlier of:

21 (1) the time the temporary directors become initial
22 permanent directors under Section .00; or

23 (2) the date this chapter expires under Section .

24 Sec. . ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS.

25 (a) As soon as practicable after all the temporary directors have
26 qualified under Section 36.055, Water Code, a majority of the
27 temporary directors shall convene the organizational meeting of the

1 district at a location within the district agreeable to a majority
2 of the temporary directors. If an agreement on location cannot be
3 reached, the organizational meeting shall be at the Brooks County
4 Courthouse.

5 Sec. . CONFIRMATION ELECTION. (a) The temporary
6 directors shall hold an election to confirm the creation of the
7 district and the imposition of a maintenance tax.

8 (b) Section 41.001(a), Election Code, does not apply to an
9 election held as provided by this section.

10 (c) Except as provided by this section, an election under
11 this section must be conducted as provided by Sections 36.017(b),
12 (c), and (e)-(i), Water Code, and the Election Code.

13 (d) The ballot for the election must be printed to provide
14 for voting for or against the proposition: "The creation of the
15 Brush Country Groundwater Conservation District and the levy of a
16 maintenance tax at a rate not to exceed three cents (\$0.03) for each
17 \$100 of assessed valuation."

18 (e) If a majority of the votes cast at the election in all of
19 the designated areas are not in favor of the creation of the
20 district, the temporary directors may call a subsequent
21 confirmation election.

22 (f) The district may not impose a maintenance tax unless the
23 tax is confirmed under this section.

24 (g) If creation of the district is confirmed at an election
25 held under Section in one or more designated areas, the temporary
26 directors who represent designated areas which confirmed the
27 creation of the district become the initial permanent directors of

1 the district.

2 Sec. . APPOINTMENT OF DIRECTORS. (a) At least 60 days
3 before the expiration of the initial terms of the initial permanent
4 directors, the Brooks and Jim Hogg Counties Commissioners Courts
5 shall reappoint the existing directors or appoint new directors in
6 a manner which is consistent with the requirements of this section.

7 (b) the Brooks County Commissioners Court shall reappoint
8 or appoint three directors to represent the director positions
9 described in Section . (a)(1); (a)(2); and (a)(5).

10 (c) The Jim Hogg County Commissioners Court shall reappoint
11 or appoint three directors to represent the director positions
12 described in Section (a)(3); (a)(4); and (a)(6).

13 (d) The Jim Hogg County Commissioners Court and the Brooks
14 County Commissioners Court shall jointly reappoint or appoint one
15 director to represent the director position described in
16 Section (a)(7).

17 (e) A director is not disqualified from service because the
18 director is an employee, manager, director, or officer of a
19 groundwater producer that is or may be regulated by the district.

20 (f) If the creation of the district is confirmed at a
21 confirmation election under Section . of this Act in one or more
22 of the designated areas, the directors appointed from the
23 designated areas whose voters did not confirm the establishment of
24 the district are not eligible to serve as directors of the district
25 as of the date of the canvass of the vote confirming the district.

26 Sec. . EXPIRATION OF SUBCHAPTER. This subchapter expires
27 September 1, 2013.

1 SUBCHAPTER B. BOARD OF DIRECTORS

2 Sec. . Except as otherwise provided by this chapter,
3 directors serve staggered four-year terms, with three directors'
4 terms expiring June 1 of each even-numbered year.

5 (b) The initial permanent directors shall draw lots to
6 determine which directors serve a term expiring June 1 of the first
7 even-numbered year after the confirmation election and which
8 directors serve a term expiring June 1 of the next even-numbered
9 year.

10 (c) A director may serve an unlimited number of consecutive
11 terms.

12 (d) If a vacancy occurs on the board of directors, the
13 remaining directors shall appoint a person to fill the vacancy in a
14 manner that meets the representational requirements of Section .

15 Sec. . FEES OF OFFICE; REIMBURSEMENT. (a)
16 Notwithstanding Sections 36.060(a) and (d), Water Code, a director
17 may not receive fees of office for performing the duties of
18 director.

19 (b) A director is entitled to receive reimbursement of
20 actual expenses reasonably and necessarily incurred while engaging
21 in activities on behalf of the district in accordance with Sections
22 36.060(b) and (c), Water Code.

23 Sec . QUALIFICATIONS; GROUNDWATER PRODUCER. (a) A
24 person is not disqualified from serving as a director if that person
25 is an employee, manager, director, or officer of a groundwater
26 producer that is or may be regulated by the district.

1 SUBCHAPTER C. POWERS AND DUTIES

2 Sec. . GENERAL POWERS. Except as otherwise provided by
3 this chapter, the district has the powers and duties provided by the
4 general law of this state, including Chapter 36, Water Code, and
5 Section 59, Article XVI, Texas Constitution, applicable to
6 groundwater conservation districts.

7 Sec. . CONTRACTS. The district may enter into a contract
8 with any person, public or private, for any purpose authorized by
9 law.

10 Sec. . EXEMPTIONS. (a) In this section:

11 (1) "Domestic use" means the use of groundwater by an
12 individual or a household to support domestic activities, including
13 the use of groundwater for drinking, washing, or culinary purposes;
14 for irrigating a lawn or a family garden or orchard; for watering
15 domestic animals; and for water recreation, including aquatic and
16 wildlife enjoyment. Domestic use does not include the use of water
17 to support an activity for which consideration is given or received
18 or for which the product of the activity is sold. Domestic use does
19 not include use by or for a public water system.

20 (2) "Livestock use" means the use of groundwater for the
21 open-range watering of livestock, exotic livestock, game animals,
22 or fur-bearing animals. For purposes of this definition, the terms
23 "livestock" and "exotic livestock" have the meanings assigned by
24 Sections 1.003 and 142.001, Agriculture Code, respectively, and the
25 terms "game animal" and "fur-bearing animal" have the meanings
26 assigned by Sections 63.001 and 71.001, Parks and Wildlife Code,
27 respectively. Livestock use does not include use by or for a public

1 water system.

2 (b) Section 36.117, Water Code, applies to the district.

3 Sec. . IMPACT OF TRANSFER. (a) If the district finds
4 that a transfer of groundwater out of the district negatively
5 impacts any of the considerations described by Section 36.122(f),
6 Water Code, the district may impose additional requirements or
7 limitations on the permit that are designed to minimize those
8 impacts.

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

11 (c) The district may impose a fee or surcharge as an export
12 fee. The rate restrictions under Section 36.122(e), Water Code, do
13 not apply to a fee or surcharge imposed under this subsection.

14 Sec. . APPLICABILITY OF DISTRICT REGULATIONS. (a)
15 Groundwater regulation under this chapter applies to all persons
16 except as exempted under Section 36.117, Water Code, or this
17 chapter.

18 Sec. . NO EMINENT DOMAIN POWER. (a) The district may not
19 exercise the power of eminent domain.

20 Sec. . LANDOWNERS' RIGHTS. (a) The rights of landowners
21 and their lessees and assigns in groundwater in the district are
22 recognized. Nothing in this Act shall be construed to deprive or
23 divest the owners or their lessees and assigns of their rights,
24 subject to district rules.

25 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

26 Sec. . REVENUE. To pay the maintenance and operating
27 costs of the district and to pay any bonds or notes issued by the

1 district, the district may:

2 (1) impose an ad valorem tax through the levy of the
3 maintenance tax authorized by Section . at a rate not to exceed
4 three cents (\$0.03) on each \$100 of assessed valuation of taxable
5 property; or

6 (2) solicit and accept grants from any private or public
7 source.

8 SECTION 2. The initial boundaries of the Brush Country
9 Groundwater Conservation District are as follows:

10 (a) all real property within the boundaries of Jim Hogg
11 County, Texas;

12 (b) all real property in Brooks County save and except all
13 of those portions of Brooks County that as of January 1, 2009, are
14 located within the Kenedy County Groundwater Conservation
15 District; and

16 (c) all real property in Hidalgo County contained in the
17 following described area and which is not located within the Kenedy
18 County Groundwater Conservation District as of January 1, 2009:

19 10,953.38 acres of land, more or less, out of Guadalupe
20 Sanchez Grant, Abstract 481, Brooks County, Texas, also known as
21 the "La Rucia Grant", and any adjoining surveys, the said 10,953.38
22 acres being more particularly described as follows:

23 COMMENCING at a Stone marking the southwest corner of the
24 Juan Garza Diaz Grant, Abstract 192, Brooks County, Texas, and
25 Abstract 82, in Hidalgo County, Texas, being also an inner corner of
26 the Argyle McAllen 8827.00 acre-tract as described in that certain
27 Oil, Gas and Mineral Lease executed by Argyle McAllen in favor of

1 Shell Oil Company, dated January 10, 1958, and recorded in Volume
2 210, Page 342, of the Oil and Gas Records of said County;

3 THENCE North $01^{\circ} 15' 50''$ East with the east line of the said
4 "La Rucia Grant" and with a fence, a distance of 322.2 varas to a
5 fence corner marking the south-east corner and BEGINNING POINT of
6 the herein described tract;

7 THENCE in a westerly direction with the said fence, being
8 also the north line of the said McAllen 8827.00-acre tract and with
9 the north line of the Argyle McAllen 23,597.00 acre tract as
10 described in the Oil, Gas and Mineral lease executed by Argyle
11 McAllen in favor of Shell Oil Company, dated September 5, 1947, and
12 recorded in Volume 74, page 112, of the Oil and Gas Records of
13 Hidalgo County, Texas; thence with said line the following courses
14 and distances: North $85^{\circ} 06' 40''$ West, 3538.3 varas; North $84^{\circ} 39'$
15 $20''$ West, 2104.4 varas; and North $81^{\circ} 32' 50''$ West, 725.3 varas to a
16 southeast corner of the J. C. McGill, Jr., et al 640-acre tract,
17 being a part of a 38,644.1-acre tract, being also a point on the
18 east line of the Texas-Mexico R. R. Survey No. 189, Abstract 157;

19 THENCE North $00^{\circ} 55'$ East with the said fence and the east
20 lines of the said Tex-Mex R. R. Survey No. 189, the Tex-Mex R. R.
21 Survey No. 190, Abstract 785, and the Tex-Mex R. R. Survey No. 191,
22 Abstract 158, a total distance of 5076.5 varas to a point for
23 corner, from which a Mesquite Marked "X" bears South $61^{\circ} 45'$ East
24 74.0 varas;

25 THENCE, North $00^{\circ} 54'$ East with the said fence and with the
26 east line of the Jose Antonio Morales Garcia and Apolinario Morales
27 Garcia Grant, known as the "San Antonio Grant", Abstract 214,

1 Brooks County, Abstract 578, Hidalgo County, and Abstract 103 in
2 Starr County, a distance of 4280.8 varas to the fence corner, the
3 southwest corner of the Louella Jones Borglum 7036.01-acre tract
4 (called 8576.50 acres);

5 THENCE, South 89° 40' East with the south fence and with the
6 south line of the said Borglum 7036.01 acre tract a distance of
7 6202.3 varas to a fence corner marking the southeast corner of the
8 same, being also a point on the west line of the Juan Garza Diaz
9 Grant, also known as the "Vargas Grant", Abstract 192, in Brooks
10 County, and Abstract 82, in Hidalgo County, Texas;

11 THENCE South 00° 04' West with the said fence and the west line
12 of the said "Vargas Grant", a distance of 9924.7 varas to the PLACE
13 OF BEGINNING and containing 10,953.38 acres of land, more or less.

14 SECTION 3. (a) The legal notice of the intention to
15 introduce this Act, setting forth the general substance of this
16 Act, has been published as provided by law, and the notice and a
17 copy of this Act have been furnished to all persons, agencies,
18 officials, or entities to which they are required to be furnished
19 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
20 Government Code.

21 (b) The governor has submitted the notice and Act to the
22 Texas Commission on Environmental Quality.

23 (c) The Texas Commission on Environmental Quality has filed
24 __. B. __ within the required time.

25 (d) All requirements of the constitution and laws of this
26 state and the rules and procedures of the legislature with respect
27 to the notice, introduction, and passage of this Act are fulfilled

1 and accomplished.

2 SECTION 4. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2009.