

By: Estes

S.B. No. 2529

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Red River Groundwater Conservation District; providing authority to issue bonds; granting the power of eminent domain.

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 8859 to read as follows:

CHAPTER 8859. RED RIVER GROUNDWATER CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8859.001. 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 Red River Groundwater Conservation District.

(4) "Water services district" means a district created under the authority of Section 59, Article XVI, or Section 52, Article III, Texas Constitution, with the authority to provide retail water service in the district.

(5) "Water supply corporation" means a water supply corporation operating under Chapter 67, Water Code.

Sec. 8859.002. NATURE OF DISTRICT; FINDINGS. (a) The district is a groundwater conservation district in Grayson and Fannin Counties created under and essential to accomplish the

1 purposes of Section 59, Article XVI, Texas Constitution.

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

4 (c) All of the land and other property included within the
5 boundaries of the district will be benefited by the works and
6 projects that are to be accomplished by the district under powers
7 conferred by this chapter and by Chapter 36, Water Code.

8 (d) Any fees imposed by the district under this chapter are
9 necessary to pay for the costs of accomplishing the purposes of the
10 district, including the conservation and management of groundwater
11 resources, as provided by this chapter and Section 59, Article XVI,
12 Texas Constitution.

13 Sec. 8859.003. INITIAL DISTRICT TERRITORY. The initial
14 boundaries of the district are coextensive with the boundaries of
15 Grayson and Fannin Counties.

16 Sec. 8859.004. APPLICABILITY OF OTHER GROUNDWATER
17 CONSERVATION DISTRICT LAW. (a) Except as otherwise provided by
18 this chapter, Chapter 36, Water Code, applies to the district.

19 (b) Subchapter B, Chapter 36, Water Code, does not apply to
20 the district.

21 Sec. 8859.005. CONSTRUCTION OF CHAPTER. This chapter shall
22 be liberally construed to achieve the legislative intent and
23 purposes of Chapter 36, Water Code. A power granted by Chapter 36,
24 Water Code, or this chapter shall be broadly interpreted to achieve
25 that intent and those purposes.

26 [Sections 8859.006-8859.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8859.021. INITIAL DIRECTORS; APPOINTMENT. (a) Not later than the 30th day after the effective date of the Act creating this chapter, the persons designated by Sections 8859.053(a)(1), (2), (3), and (4) to appoint directors shall appoint initial directors as prescribed by Section 8859.053 and in writing shall submit the appointed directors' names to the county judge of Fannin County. The persons responsible for making nominations for the appointments under Sections 8859.053(a)(2) and (3) shall submit initial director nominations to the commissioners court of Fannin County not later than the 20th day after the effective date of the Act enacting this chapter.

(b) Not later than the 30th day after the effective date of the Act creating this chapter, the county judge of Fannin County shall set the date, time, and location for a meeting of the representatives designated under Subsection (d) for the appointment of initial directors by the entities that Sections 8859.053(a)(5) and (6) authorize to appoint directors.

(c) The county judge of Fannin County shall give notice of the meeting required by Subsection (b) not later than the 20th day before the date of the meeting by:

(1) providing a notice to the county clerk of Fannin County for public posting; and

(2) mailing a notice to the commissioners court of Grayson County.

(d) The governing body of each entity described by Sections 8859.053(a)(5) and (6) shall designate a representative to attend

1 the meeting described by Subsection (b) and to cast the vote on
2 behalf of the entity. Failure of a governing body to designate a
3 representative or of a representative to cast a vote does not
4 invalidate the appointment of the initial directors.

5 (e) The county judge of Fannin County shall preside at the
6 meeting described in Subsection (b) and may require representatives
7 described by Subsection (d) to provide evidence demonstrating
8 representation of an appropriate entity and qualification under
9 Section 8859.053(f). The county judge of Fannin County in writing
10 shall certify to the board and to the executive director of the
11 Texas Commission on Environmental Quality the results of the
12 meeting described in Subsection (b), including:

13 (1) the identity of each representative described by
14 Subsection (d) who attended the meeting; and

15 (2) the names and terms of each initial director
16 appointed.

17 (f) If the county judge of Fannin County does not perform
18 any duty established by this section before the 90th day after the
19 effective date of the Act creating this chapter, the executive
20 director of the Texas Commission on Environmental Quality shall
21 perform that duty as soon as practicable after that date.

22 Sec. 8859.022. INITIAL DIRECTORS; TERMS OF OFFICE.

23 (a) The following initial directors shall serve from the date of
24 appointment until August 31, 2011:

25 (1) the initial director appointed by the
26 commissioners court of Fannin County under Section 8859.053(a)(1);

27 (2) one initial director appointed by the governing

1 body of the municipality under Section 8859.053(a)(4); and

2 (3) the initial director appointed by the governing
3 bodies of the municipalities under Section 8859.053(a)(5).

4 (b) The following initial directors shall serve from the
5 date of appointment until August 31, 2013:

6 (1) the two initial directors appointed by the
7 commissioners court of Fannin County under Sections 8859.053(a)(2)
8 and (3);

9 (2) one initial director appointed by the governing
10 body of the municipality described by Section 8859.053(a)(4); and

11 (3) the initial director appointed by the governing
12 boards described by Section 8859.053(a)(6).

13 (c) The governing body of the municipality that appoints
14 initial directors under Section 8859.053(a)(4) shall indicate in
15 the submission for each appointment the length of the term for the
16 appointment as described by Subsection (b).

17 Sec. 8859.023. INITIAL DIRECTORS; QUALIFICATIONS. (a) To
18 be eligible to serve as an initial director:

19 (1) a person appointed under Section 8859.053(a)(1),
20 (2), or (3) must be a registered voter of Fannin County; and

21 (2) a person appointed under Section 8859.053(a)(4),
22 (5), or (6) must be a registered voter of Grayson County.

23 (b) Each initial director must qualify to serve as a
24 director in the manner provided by Section 36.055, Water Code.

25 Sec. 8859.024. ORGANIZATIONAL MEETING OF INITIAL
26 DIRECTORS. (a) As soon as practicable after all the initial
27 directors have qualified under Section 36.055, Water Code, a

1 majority of the initial directors shall convene the organizational
2 meeting of the district at the Grayson County courthouse or at
3 another location in the district agreeable to a majority of the
4 initial directors.

5 (b) The initial directors shall elect officers of the
6 initial board in accordance with Section 36.054(b), Water Code, at
7 its organizational meeting.

8 Sec. 8859.025. EXPIRATION OF SUBCHAPTER. This subchapter
9 expires December 31, 2013.

10 [Sections 8859.026-8859.050 reserved for expansion]

11 SUBCHAPTER B. BOARD OF DIRECTORS

12 Sec. 8859.051. GOVERNING BODY; TERMS. (a) The district is
13 governed by a board of seven directors appointed as provided by this
14 section.

15 (b) Directors serve staggered four-year terms, with the
16 terms of three or four directors from each appointing county
17 expiring on August 31 of each odd-numbered year.

18 (c) A director serves until the director's successor has
19 qualified to serve.

20 Sec. 8859.052. DIRECTOR ELIGIBILITY; QUALIFICATION.

21 (a) To be eligible to serve as a director:

22 (1) a person appointed under Section 8859.053(a)(1),
23 (2), or (3) must be a registered voter of Fannin County; and

24 (2) a person appointed under Section 8859.053(a)(4),
25 (5), or (6) must be a registered voter of Grayson County.

26 (b) Each director must qualify to serve in the manner
27 provided by Section 36.055, Water Code.

1 (c) A person who qualifies as a director may participate in
2 all votes relating to the business of the district, regardless of
3 any common law doctrine or statutory prohibition related to
4 conflicts of interest or incompatibility.

5 (d) Section 36.058, Water Code, does not apply to a
6 director.

7 Sec. 8859.053. APPOINTMENT OF DIRECTORS. (a) The board
8 consists of seven directors as follows:

9 (1) one director appointed by the commissioners court
10 of Fannin County at the discretion of the commissioners court;

11 (2) one director appointed by the commissioners court
12 of Fannin County selected from a list of nominees submitted to the
13 commissioners court by the governing bodies of the municipalities
14 in Fannin County;

15 (3) one director appointed by the commissioners court
16 of Fannin County selected from a list of nominees submitted to the
17 commissioners court by the water services districts and water
18 supply corporations that provide retail water service to customers
19 in Fannin County, subject to the limitation provided by Subsection
20 (f);

21 (4) two directors appointed by the governing body of
22 the municipality in Grayson County that has the largest annual
23 production of groundwater by volume for the four years preceding
24 the appointment;

25 (5) one director appointed jointly by the governing
26 bodies of the municipalities in Grayson County other than the
27 municipality described by Subdivision (4); and

1 (6) one director appointed jointly by the governing
2 boards of all water services districts and water supply
3 corporations that provide retail water service to customers in
4 Grayson County, subject to the limitation provided by Subsection
5 (f).

6 (b) Directors must be appointed not later than the second
7 Monday in August of each odd-numbered year.

8 (c) Not later than the 60th day before the second Monday in
9 August of each odd-numbered year, the district shall mail written
10 notice to each entity authorized to make an appointment under
11 Subsection (a).

12 (d) The board by rule shall adopt a procedure for the
13 written submission of appointments to the district.

14 (e) An entity that Subsection (a)(2) or (3) authorizes to
15 nominate persons for director shall submit a list of nominees not
16 later than the 30th day before the date the appointment is to be
17 made under this section. If an entity designated by Subsection
18 (a)(2) or (3) does not submit the list before that date, the
19 commissioners court of Fannin County may appoint a director to the
20 position for which the list was not received at the discretion of
21 the commissioners court.

22 (f) A water services district or water supply corporation in
23 Grayson and Fannin Counties may not participate in the appointment
24 of a director unless that district or corporation used groundwater
25 produced from wells located within the district to provide retail
26 water service in the district during the calendar year of the
27 appointment or the calendar year preceding the appointment. The

1 board may require evidence of eligibility to participate.

2 Sec. 8859.054. VACANCIES. If a vacancy occurs on the board,
3 the entity that appointed the director who vacated the office shall
4 appoint a person to fill the vacancy for the unexpired term in the
5 manner provided for the vacant position by Section 8859.053.

6 Sec. 8859.055. COMPENSATION; REIMBURSEMENT.

7 (a) Notwithstanding Sections 36.060(a) and (d), Water Code, a
8 director may not receive compensation for performing the duties of
9 director.

10 (b) A director is entitled to reimbursement of actual
11 expenses reasonably and necessarily incurred while engaging in
12 activities on behalf of the district.

13 (c) A position on the board is not a civil office of
14 emolument for any purpose, including a purpose described in Section
15 40, Article XVI, Texas Constitution.

16 Sec. 8859.056. QUORUM; CONCURRENCE FOR TRANSACTING
17 BUSINESS. (a) A majority of the board membership constitutes a
18 quorum for any meeting and a concurrence of a majority of the board
19 shall be sufficient to transact district business, except as
20 provided by Subsection (b).

21 (b) A concurrence of not fewer than six directors is
22 required for transacting the following district business:

23 (1) establishing or amending a groundwater production
24 fee assessed by the district based on the amount of groundwater
25 authorized by permit to be withdrawn from a well or on the amount of
26 water actually withdrawn from a well;

27 (2) adopting the annual budget of the district; and

1 (3) except as provided by Subsection (c), granting or
2 denying a permit or permit amendment for a well that is intended to
3 produce water within the district which will be transported in any
4 amount for use outside the boundaries of the district.

5 (c) A concurrence of a majority of the board is sufficient
6 to grant or deny a permit or permit amendment submitted by a retail
7 public utility that provides retail water service in the district
8 and intends to:

9 (1) produce water from a well located:

10 (A) within the district; and

11 (B) inside the boundaries or a certificated
12 service area of a retail public utility; and

13 (2) transport the water outside the district, so long
14 as the water is used within the same certificated service area or
15 boundary of the retail public utility.

16 Sec. 8859.057. DECENNIAL REVIEW OF DISTRICT
17 REPRESENTATION. (a) Not later than January 1, 2019, and every 10
18 years following that date, the board shall complete a review of the
19 adequacy of representation of water users on the board based on
20 groundwater production and use within the district.

21 (b) Not later than the 20th day following the date the
22 review is complete, the board shall submit the review described in
23 Subsection (a) and any recommendation the board may have relating
24 to the reapportionment of directors or the representational
25 structure of the board to each member of the house of
26 representatives and each member of the senate whose state
27 legislative district includes territory in the district.

1 [Sections 8859.058-8859.100 reserved for expansion]

2 SUBCHAPTER C. POWERS AND DUTIES

3 Sec. 8859.101. GROUNDWATER CONSERVATION DISTRICT POWERS
4 AND DUTIES. Except as provided by this chapter, the district has
5 the powers and duties provided by the general law of this state,
6 including Chapter 36, Water Code, applicable to groundwater
7 conservation districts created under Section 59, Article XVI, Texas
8 Constitution.

9 Sec. 8859.102. CONTRACTS. The district may enter into a
10 contract with any person, public or private, for any purpose
11 authorized by law.

12 Sec. 8859.103. APPLICABILITY OF DISTRICT RULES REGULATING
13 GROUNDWATER. District rules regulating groundwater adopted under
14 this chapter apply to all persons except as exempted under Section
15 36.117, Water Code, or this chapter.

16 Sec. 8859.104. WELL SPACING RULES; EXEMPTIONS. (a) Except
17 as provided by Subsection (b), the district shall exempt from the
18 well spacing requirements adopted by the district any well that is
19 completed on or before the effective date of those requirements.

20 (b) The district by rule may provide that a well may lose its
21 exemption under this section if the well is modified in a manner
22 that substantially increases the capacity of the well after the
23 effective date of the well spacing requirements adopted by the
24 district.

25 (c) Except as provided by this section and notwithstanding
26 Section 8859.103, the district may require any well or class of
27 wells exempt from permitting under Chapter 36, Water Code, to

1 comply with the well spacing requirements adopted by the district.
2 The district shall apply well spacing requirements uniformly to any
3 well or class of wells based on the size or capacity of the well and
4 without regard to the type of use of the groundwater produced by the
5 well.

6 Sec. 8859.105. REGISTRATION AND REPORTING REQUIREMENTS FOR
7 CERTAIN EXEMPT WELLS. The district may adopt rules that require the
8 owner or operator of a well or class of wells exempt from permitting
9 under Section 36.117, Water Code, to register the well with the
10 district and, except for a well exempt from permitting under
11 Subsection (b)(1) of that section, to report groundwater
12 withdrawals from the well using reasonable and appropriate
13 reporting methods and frequency.

14 Sec. 8859.106. ENFORCEMENT. (a) The district may enforce
15 this chapter in the manner provided by Chapter 36, Water Code. In
16 lieu of a remedy available to the district under Section 36.102,
17 Water Code, or in addition to those remedies, the district may
18 impose a fee in addition to a fee assessed under Section 8859.152 on
19 a person producing groundwater in violation of a rule of the
20 district, including the failure or refusal to comply with any order
21 or rule of the district to reduce or cease groundwater usage. The
22 purpose of a fee authorized under this subsection is to serve as a
23 disincentive to producing groundwater except as authorized by the
24 district.

25 (b) A fee imposed under Subsection (a) may not exceed an
26 amount equal to 10 times the amount of a fee assessed under Section
27 8859.152.

1 [Sections 8859.107-8859.150 reserved for expansion]

2 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

3 Sec. 8859.151. TAXES PROHIBITED. The district may not
4 impose a tax. Sections 36.201-36.204, Water Code, do not apply to
5 the district.

6 Sec. 8859.152. DISTRICT REVENUES. (a) The district by
7 rule, resolution, or order may establish, amend, pledge, encumber,
8 expend the proceeds from, and assess to any person production fees
9 based on the amount of groundwater authorized by permit to be
10 withdrawn from a well or on the amount of water actually withdrawn,
11 to enable the district to fulfill its purposes and regulatory
12 functions as provided by this chapter. The district may use
13 revenues generated by fees it assesses for any lawful purpose.

14 (b) Notwithstanding any provision of general law to the
15 contrary, a fee authorized by Subsection (a) may not exceed:

16 (1) \$1 per acre-foot annually for groundwater used for
17 agricultural purposes; or

18 (2) 30 cents per thousand gallons annually for
19 groundwater used for nonagricultural purposes.

20 (c) Notwithstanding any provision of general law or this
21 chapter to the contrary, the district may assess a production fee
22 under this section for groundwater produced from a well or class of
23 wells exempt from permitting under Section 36.117, Water Code,
24 except for a well exempt from permitting under Subsection (b)(1) of
25 that section. A production fee assessed by the district under this
26 subsection must be based on the amount of groundwater actually
27 withdrawn from the well and may not exceed the amount established by

1 the district for permitted uses under Subsection (b)(2) of this
2 section.

3 (d) Notwithstanding Section 36.1071(f), Water Code, the
4 district by rule, resolution, or order before the adoption of its
5 management plan may:

6 (1) establish, assess, and enforce the collection of
7 production fees under this section; and

8 (2) establish and enforce metering and reporting
9 requirements, except for a well exempt from permitting under
10 Section 36.117(b)(1), Water Code.

11 (e) The district by rule may establish a temporary or
12 permanent discounted fee rate for persons who prepay production
13 fees to the district under this section on or before the dates
14 established by district rule.

15 (f) The district may not assess a fee for transporting water
16 that is produced from a well located inside the district and inside
17 a certificated service area of a retail public utility and
18 transported outside of the district, if the water is used in the
19 same certificated service area of the retail public utility.

20 SECTION 2. The legislature finds that for the purpose of
21 Subdivision (4), Subsection (a), Section 8859.053, Special
22 District Local Laws Code, as added by this Act, the City of Sherman
23 is the municipality in Grayson County with the largest annual
24 production of groundwater by volume for the four years preceding
25 the effective date of this Act.

26 SECTION 3. (a) The legal notice of the intention to
27 introduce this Act, setting forth the general substance of this

1 Act, has been published as provided by law, and the notice and a
2 copy of this Act have been furnished to all persons, agencies,
3 officials, or entities to which they are required to be furnished
4 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
5 Government Code.

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

8 (c) The Texas Commission on Environmental Quality has filed
9 its recommendations relating to this Act with the governor,
10 lieutenant governor, and speaker of the house of representatives
11 within the required time.

12 (d) All requirements of the constitution and laws of this
13 state and the rules and procedures of the legislature with respect
14 to the notice, introduction, and passage of this Act are fulfilled
15 and accomplished.

16 SECTION 4. This Act takes effect September 1, 2009.