

1-1 By: Estes S.B. No. 2529  
1-2 (In the Senate - Filed April 15, 2009; April 16, 2009, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 23, 2009, reported favorably, as amended, by the following  
1-5 vote: Yeas 9, Nays 0; April 23, 2009, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Fraser  
1-7 Amend S.B. No. 2529 by striking SECTION 4 of the bill (Introduced  
1-8 version page 6, lines 62-66) and substituting the following:  
1-9 SECTION 4. This Act takes effect September 1, 2009.

1-10 A BILL TO BE ENTITLED  
1-11 AN ACT

1-12 relating to the creation of the Red River Groundwater Conservation  
1-13 District; providing authority to issue bonds; granting the power of  
1-14 eminent domain.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-16 SECTION 1. Subtitle H, Title 6, Special District Local Laws  
1-17 Code, is amended by adding Chapter 8859 to read as follows:

1-18 CHAPTER 8859. RED RIVER GROUNDWATER CONSERVATION DISTRICT

1-19 SUBCHAPTER A. GENERAL PROVISIONS

1-20 Sec. 8859.001. DEFINITIONS. In this chapter:

1-21 (1) "Board" means the board of directors of the  
1-22 district.

1-23 (2) "Director" means a member of the board.

1-24 (3) "District" means the Red River Groundwater  
1-25 Conservation District.

1-26 (4) "Water services district" means a district created  
1-27 under the authority of Section 59, Article XVI, or Section 52,  
1-28 Article III, Texas Constitution, with the authority to provide  
1-29 retail water service in the district.

1-30 (5) "Water supply corporation" means a water supply  
1-31 corporation operating under Chapter 67, Water Code.

1-32 Sec. 8859.002. NATURE OF DISTRICT; FINDINGS. (a) The  
1-33 district is a groundwater conservation district in Grayson and  
1-34 Fannin Counties created under and essential to accomplish the  
1-35 purposes of Section 59, Article XVI, Texas Constitution.

1-36 (b) The district is created to serve a public use and  
1-37 benefit.

1-38 (c) All of the land and other property included within the  
1-39 boundaries of the district will be benefited by the works and  
1-40 projects that are to be accomplished by the district under powers  
1-41 conferred by this chapter and by Chapter 36, Water Code.

1-42 (d) Any fees imposed by the district under this chapter are  
1-43 necessary to pay for the costs of accomplishing the purposes of the  
1-44 district, including the conservation and management of groundwater  
1-45 resources, as provided by this chapter and Section 59, Article XVI,  
1-46 Texas Constitution.

1-47 Sec. 8859.003. INITIAL DISTRICT TERRITORY. The initial  
1-48 boundaries of the district are coextensive with the boundaries of  
1-49 Grayson and Fannin Counties.

1-50 Sec. 8859.004. APPLICABILITY OF OTHER GROUNDWATER  
1-51 CONSERVATION DISTRICT LAW. (a) Except as otherwise provided by  
1-52 this chapter, Chapter 36, Water Code, applies to the district.

1-53 (b) Subchapter B, Chapter 36, Water Code, does not apply to  
1-54 the district.

1-55 Sec. 8859.005. CONSTRUCTION OF CHAPTER. This chapter shall  
1-56 be liberally construed to achieve the legislative intent and  
1-57 purposes of Chapter 36, Water Code. A power granted by Chapter 36,  
1-58 Water Code, or this chapter shall be broadly interpreted to achieve  
1-59 that intent and those purposes.

1-60 [Sections 8859.006-8859.020 reserved for expansion]

1-61 SUBCHAPTER A-1. TEMPORARY PROVISIONS

1-62 Sec. 8859.021. INITIAL DIRECTORS; APPOINTMENT. (a) Not

2-1 later than the 30th day after the effective date of the Act creating  
 2-2 this chapter, the persons designated by Sections 8859.053(a)(1),  
 2-3 (2), (3), and (4) to appoint directors shall appoint initial  
 2-4 directors as prescribed by Section 8859.053 and in writing shall  
 2-5 submit the appointed directors' names to the county judge of Fannin  
 2-6 County. The persons responsible for making nominations for the  
 2-7 appointments under Sections 8859.053(a)(2) and (3) shall submit  
 2-8 initial director nominations to the commissioners court of Fannin  
 2-9 County not later than the 20th day after the effective date of the  
 2-10 Act enacting this chapter.

2-11 (b) Not later than the 30th day after the effective date of  
 2-12 the Act creating this chapter, the county judge of Fannin County  
 2-13 shall set the date, time, and location for a meeting of the  
 2-14 representatives designated under Subsection (d) for the  
 2-15 appointment of initial directors by the entities that Sections  
 2-16 8859.053(a)(5) and (6) authorize to appoint directors.

2-17 (c) The county judge of Fannin County shall give notice of  
 2-18 the meeting required by Subsection (b) not later than the 20th day  
 2-19 before the date of the meeting by:

2-20 (1) providing a notice to the county clerk of Fannin  
 2-21 County for public posting; and

2-22 (2) mailing a notice to the commissioners court of  
 2-23 Grayson County.

2-24 (d) The governing body of each entity described by Sections  
 2-25 8859.053(a)(5) and (6) shall designate a representative to attend  
 2-26 the meeting described by Subsection (b) and to cast the vote on  
 2-27 behalf of the entity. Failure of a governing body to designate a  
 2-28 representative or of a representative to cast a vote does not  
 2-29 invalidate the appointment of the initial directors.

2-30 (e) The county judge of Fannin County shall preside at the  
 2-31 meeting described in Subsection (b) and may require representatives  
 2-32 described by Subsection (d) to provide evidence demonstrating  
 2-33 representation of an appropriate entity and qualification under  
 2-34 Section 8859.053(f). The county judge of Fannin County in writing  
 2-35 shall certify to the board and to the executive director of the  
 2-36 Texas Commission on Environmental Quality the results of the  
 2-37 meeting described in Subsection (b), including:

2-38 (1) the identity of each representative described by  
 2-39 Subsection (d) who attended the meeting; and

2-40 (2) the names and terms of each initial director  
 2-41 appointed.

2-42 (f) If the county judge of Fannin County does not perform  
 2-43 any duty established by this section before the 90th day after the  
 2-44 effective date of the Act creating this chapter, the executive  
 2-45 director of the Texas Commission on Environmental Quality shall  
 2-46 perform that duty as soon as practicable after that date.

2-47 Sec. 8859.022. INITIAL DIRECTORS; TERMS OF OFFICE.

2-48 (a) The following initial directors shall serve from the date of  
 2-49 appointment until August 31, 2011:

2-50 (1) the initial director appointed by the  
 2-51 commissioners court of Fannin County under Section 8859.053(a)(1);

2-52 (2) one initial director appointed by the governing  
 2-53 body of the municipality under Section 8859.053(a)(4); and

2-54 (3) the initial director appointed by the governing  
 2-55 bodies of the municipalities under Section 8859.053(a)(5).

2-56 (b) The following initial directors shall serve from the  
 2-57 date of appointment until August 31, 2013:

2-58 (1) the two initial directors appointed by the  
 2-59 commissioners court of Fannin County under Sections 8859.053(a)(2)  
 2-60 and (3);

2-61 (2) one initial director appointed by the governing  
 2-62 body of the municipality described by Section 8859.053(a)(4); and

2-63 (3) the initial director appointed by the governing  
 2-64 boards described by Section 8859.053(a)(6).

2-65 (c) The governing body of the municipality that appoints  
 2-66 initial directors under Section 8859.053(a)(4) shall indicate in  
 2-67 the submission for each appointment the length of the term for the  
 2-68 appointment as described by Subsection (b).

2-69 Sec. 8859.023. INITIAL DIRECTORS; QUALIFICATIONS. (a) To

3-1 be eligible to serve as an initial director:  
3-2 (1) a person appointed under Section 8859.053(a)(1),  
3-3 (2), or (3) must be a registered voter of Fannin County; and  
3-4 (2) a person appointed under Section 8859.053(a)(4),  
3-5 (5), or (6) must be a registered voter of Grayson County.  
3-6 (b) Each initial director must qualify to serve as a  
3-7 director in the manner provided by Section 36.055, Water Code.  
3-8 Sec. 8859.024. ORGANIZATIONAL MEETING OF INITIAL  
3-9 DIRECTORS. (a) As soon as practicable after all the initial  
3-10 directors have qualified under Section 36.055, Water Code, a  
3-11 majority of the initial directors shall convene the organizational  
3-12 meeting of the district at the Grayson County courthouse or at  
3-13 another location in the district agreeable to a majority of the  
3-14 initial directors.  
3-15 (b) The initial directors shall elect officers of the  
3-16 initial board in accordance with Section 36.054(b), Water Code, at  
3-17 its organizational meeting.  
3-18 Sec. 8859.025. EXPIRATION OF SUBCHAPTER. This subchapter  
3-19 expires December 31, 2013.  
3-20 [Sections 8859.026-8859.050 reserved for expansion]  
3-21 SUBCHAPTER B. BOARD OF DIRECTORS  
3-22 Sec. 8859.051. GOVERNING BODY; TERMS. (a) The district is  
3-23 governed by a board of seven directors appointed as provided by this  
3-24 section.  
3-25 (b) Directors serve staggered four-year terms, with the  
3-26 terms of three or four directors from each appointing county  
3-27 expiring on August 31 of each odd-numbered year.  
3-28 (c) A director serves until the director's successor has  
3-29 qualified to serve.  
3-30 Sec. 8859.052. DIRECTOR ELIGIBILITY; QUALIFICATION.  
3-31 (a) To be eligible to serve as a director:  
3-32 (1) a person appointed under Section 8859.053(a)(1),  
3-33 (2), or (3) must be a registered voter of Fannin County; and  
3-34 (2) a person appointed under Section 8859.053(a)(4),  
3-35 (5), or (6) must be a registered voter of Grayson County.  
3-36 (b) Each director must qualify to serve in the manner  
3-37 provided by Section 36.055, Water Code.  
3-38 (c) A person who qualifies as a director may participate in  
3-39 all votes relating to the business of the district, regardless of  
3-40 any common law doctrine or statutory prohibition related to  
3-41 conflicts of interest or incompatibility.  
3-42 (d) Section 36.058, Water Code, does not apply to a  
3-43 director.  
3-44 Sec. 8859.053. APPOINTMENT OF DIRECTORS. (a) The board  
3-45 consists of seven directors as follows:  
3-46 (1) one director appointed by the commissioners court  
3-47 of Fannin County at the discretion of the commissioners court;  
3-48 (2) one director appointed by the commissioners court  
3-49 of Fannin County selected from a list of nominees submitted to the  
3-50 commissioners court by the governing bodies of the municipalities  
3-51 in Fannin County;  
3-52 (3) one director appointed by the commissioners court  
3-53 of Fannin County selected from a list of nominees submitted to the  
3-54 commissioners court by the water services districts and water  
3-55 supply corporations that provide retail water service to customers  
3-56 in Fannin County, subject to the limitation provided by Subsection  
3-57 (f);  
3-58 (4) two directors appointed by the governing body of  
3-59 the municipality in Grayson County that has the largest annual  
3-60 production of groundwater by volume for the four years preceding  
3-61 the appointment;  
3-62 (5) one director appointed jointly by the governing  
3-63 bodies of the municipalities in Grayson County other than the  
3-64 municipality described by Subdivision (4); and  
3-65 (6) one director appointed jointly by the governing  
3-66 boards of all water services districts and water supply  
3-67 corporations that provide retail water service to customers in  
3-68 Grayson County, subject to the limitation provided by Subsection  
3-69 (f).

4-1 (b) Directors must be appointed not later than the second  
4-2 Monday in August of each odd-numbered year.

4-3 (c) Not later than the 60th day before the second Monday in  
4-4 August of each odd-numbered year, the district shall mail written  
4-5 notice to each entity authorized to make an appointment under  
4-6 Subsection (a).

4-7 (d) The board by rule shall adopt a procedure for the  
4-8 written submission of appointments to the district.

4-9 (e) An entity that Subsection (a)(2) or (3) authorizes to  
4-10 nominate persons for director shall submit a list of nominees not  
4-11 later than the 30th day before the date the appointment is to be  
4-12 made under this section. If an entity designated by Subsection  
4-13 (a)(2) or (3) does not submit the list before that date, the  
4-14 commissioners court of Fannin County may appoint a director to the  
4-15 position for which the list was not received at the discretion of  
4-16 the commissioners court.

4-17 (f) A water services district or water supply corporation in  
4-18 Grayson and Fannin Counties may not participate in the appointment  
4-19 of a director unless that district or corporation used groundwater  
4-20 produced from wells located within the district to provide retail  
4-21 water service in the district during the calendar year of the  
4-22 appointment or the calendar year preceding the appointment. The  
4-23 board may require evidence of eligibility to participate.

4-24 Sec. 8859.054. VACANCIES. If a vacancy occurs on the board,  
4-25 the entity that appointed the director who vacated the office shall  
4-26 appoint a person to fill the vacancy for the unexpired term in the  
4-27 manner provided for the vacant position by Section 8859.053.

4-28 Sec. 8859.055. COMPENSATION; REIMBURSEMENT.

4-29 (a) Notwithstanding Sections 36.060(a) and (d), Water Code, a  
4-30 director may not receive compensation for performing the duties of  
4-31 director.

4-32 (b) A director is entitled to reimbursement of actual  
4-33 expenses reasonably and necessarily incurred while engaging in  
4-34 activities on behalf of the district.

4-35 (c) A position on the board is not a civil office of  
4-36 emolument for any purpose, including a purpose described in Section  
4-37 40, Article XVI, Texas Constitution.

4-38 Sec. 8859.056. QUORUM; CONCURRENCE FOR TRANSACTING  
4-39 BUSINESS. (a) A majority of the board membership constitutes a  
4-40 quorum for any meeting and a concurrence of a majority of the board  
4-41 shall be sufficient to transact district business, except as  
4-42 provided by Subsection (b).

4-43 (b) A concurrence of not fewer than six directors is  
4-44 required for transacting the following district business:

4-45 (1) establishing or amending a groundwater production  
4-46 fee assessed by the district based on the amount of groundwater  
4-47 authorized by permit to be withdrawn from a well or on the amount of  
4-48 water actually withdrawn from a well;

4-49 (2) adopting the annual budget of the district; and

4-50 (3) except as provided by Subsection (c), granting or  
4-51 denying a permit or permit amendment for a well that is intended to  
4-52 produce water within the district which will be transported in any  
4-53 amount for use outside the boundaries of the district.

4-54 (c) A concurrence of a majority of the board is sufficient  
4-55 to grant or deny a permit or permit amendment submitted by a retail  
4-56 public utility that provides retail water service in the district  
4-57 and intends to:

4-58 (1) produce water from a well located:

4-59 (A) within the district; and

4-60 (B) inside the boundaries or a certificated  
4-61 service area of a retail public utility; and

4-62 (2) transport the water outside the district, so long  
4-63 as the water is used within the same certificated service area or  
4-64 boundary of the retail public utility.

4-65 Sec. 8859.057. DECENNIAL REVIEW OF DISTRICT  
4-66 REPRESENTATION. (a) Not later than January 1, 2019, and every 10  
4-67 years following that date, the board shall complete a review of the  
4-68 adequacy of representation of water users on the board based on  
4-69 groundwater production and use within the district.

5-1           (b) Not later than the 20th day following the date the  
 5-2 review is complete, the board shall submit the review described in  
 5-3 Subsection (a) and any recommendation the board may have relating  
 5-4 to the reapportionment of directors or the representational  
 5-5 structure of the board to each member of the house of  
 5-6 representatives and each member of the senate whose state  
 5-7 legislative district includes territory in the district.

5-8           [Sections 8859.058-8859.100 reserved for expansion]

5-9                               SUBCHAPTER C. POWERS AND DUTIES

5-10           Sec. 8859.101. GROUNDWATER CONSERVATION DISTRICT POWERS  
 5-11 AND DUTIES. Except as provided by this chapter, the district has  
 5-12 the powers and duties provided by the general law of this state,  
 5-13 including Chapter 36, Water Code, applicable to groundwater  
 5-14 conservation districts created under Section 59, Article XVI, Texas  
 5-15 Constitution.

5-16           Sec. 8859.102. CONTRACTS. The district may enter into a  
 5-17 contract with any person, public or private, for any purpose  
 5-18 authorized by law.

5-19           Sec. 8859.103. APPLICABILITY OF DISTRICT RULES REGULATING  
 5-20 GROUNDWATER. District rules regulating groundwater adopted under  
 5-21 this chapter apply to all persons except as exempted under Section  
 5-22 36.117, Water Code, or this chapter.

5-23           Sec. 8859.104. WELL SPACING RULES; EXEMPTIONS. (a) Except  
 5-24 as provided by Subsection (b), the district shall exempt from the  
 5-25 well spacing requirements adopted by the district any well that is  
 5-26 completed on or before the effective date of those requirements.

5-27           (b) The district by rule may provide that a well may lose its  
 5-28 exemption under this section if the well is modified in a manner  
 5-29 that substantially increases the capacity of the well after the  
 5-30 effective date of the well spacing requirements adopted by the  
 5-31 district.

5-32           (c) Except as provided by this section and notwithstanding  
 5-33 Section 8859.103, the district may require any well or class of  
 5-34 wells exempt from permitting under Chapter 36, Water Code, to  
 5-35 comply with the well spacing requirements adopted by the district.  
 5-36 The district shall apply well spacing requirements uniformly to any  
 5-37 well or class of wells based on the size or capacity of the well and  
 5-38 without regard to the type of use of the groundwater produced by the  
 5-39 well.

5-40           Sec. 8859.105. REGISTRATION AND REPORTING REQUIREMENTS FOR  
 5-41 CERTAIN EXEMPT WELLS. The district may adopt rules that require the  
 5-42 owner or operator of a well or class of wells exempt from permitting  
 5-43 under Section 36.117, Water Code, to register the well with the  
 5-44 district and, except for a well exempt from permitting under  
 5-45 Subsection (b)(1) of that section, to report groundwater  
 5-46 withdrawals from the well using reasonable and appropriate  
 5-47 reporting methods and frequency.

5-48           Sec. 8859.106. ENFORCEMENT. (a) The district may enforce  
 5-49 this chapter in the manner provided by Chapter 36, Water Code. In  
 5-50 lieu of a remedy available to the district under Section 36.102,  
 5-51 Water Code, or in addition to those remedies, the district may  
 5-52 impose a fee in addition to a fee assessed under Section 8859.152 on  
 5-53 a person producing groundwater in violation of a rule of the  
 5-54 district, including the failure or refusal to comply with any order  
 5-55 or rule of the district to reduce or cease groundwater usage. The  
 5-56 purpose of a fee authorized under this subsection is to serve as a  
 5-57 disincentive to producing groundwater except as authorized by the  
 5-58 district.

5-59           (b) A fee imposed under Subsection (a) may not exceed an  
 5-60 amount equal to 10 times the amount of a fee assessed under Section  
 5-61 8859.152.

5-62           [Sections 8859.107-8859.150 reserved for expansion]

5-63                               SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

5-64           Sec. 8859.151. TAXES PROHIBITED. The district may not  
 5-65 impose a tax. Sections 36.201-36.204, Water Code, do not apply to  
 5-66 the district.

5-67           Sec. 8859.152. DISTRICT REVENUES. (a) The district by  
 5-68 rule, resolution, or order may establish, amend, pledge, encumber,  
 5-69 expend the proceeds from, and assess to any person production fees

6-1 based on the amount of groundwater authorized by permit to be  
6-2 withdrawn from a well or on the amount of water actually withdrawn,  
6-3 to enable the district to fulfill its purposes and regulatory  
6-4 functions as provided by this chapter. The district may use  
6-5 revenues generated by fees it assesses for any lawful purpose.

6-6 (b) Notwithstanding any provision of general law to the  
6-7 contrary, a fee authorized by Subsection (a) may not exceed:

6-8 (1) \$1 per acre-foot annually for groundwater used for  
6-9 agricultural purposes; or

6-10 (2) 30 cents per thousand gallons annually for  
6-11 groundwater used for nonagricultural purposes.

6-12 (c) Notwithstanding any provision of general law or this  
6-13 chapter to the contrary, the district may assess a production fee  
6-14 under this section for groundwater produced from a well or class of  
6-15 wells exempt from permitting under Section 36.117, Water Code,  
6-16 except for a well exempt from permitting under Subsection (b)(1) of  
6-17 that section. A production fee assessed by the district under this  
6-18 subsection must be based on the amount of groundwater actually  
6-19 withdrawn from the well and may not exceed the amount established by  
6-20 the district for permitted uses under Subsection (b)(2) of this  
6-21 section.

6-22 (d) Notwithstanding Section 36.1071(f), Water Code, the  
6-23 district by rule, resolution, or order before the adoption of its  
6-24 management plan may:

6-25 (1) establish, assess, and enforce the collection of  
6-26 production fees under this section; and

6-27 (2) establish and enforce metering and reporting  
6-28 requirements, except for a well exempt from permitting under  
6-29 Section 36.117(b)(1), Water Code.

6-30 (e) The district by rule may establish a temporary or  
6-31 permanent discounted fee rate for persons who prepay production  
6-32 fees to the district under this section on or before the dates  
6-33 established by district rule.

6-34 (f) The district may not assess a fee for transporting water  
6-35 that is produced from a well located inside the district and inside  
6-36 a certificated service area of a retail public utility and  
6-37 transported outside of the district, if the water is used in the  
6-38 same certificated service area of the retail public utility.

6-39 SECTION 2. The legislature finds that for the purpose of  
6-40 Subdivision (4), Subsection (a), Section 8859.053, Special  
6-41 District Local Laws Code, as added by this Act, the City of Sherman  
6-42 is the municipality in Grayson County with the largest annual  
6-43 production of groundwater by volume for the four years preceding  
6-44 the effective date of this Act.

6-45 SECTION 3. (a) The legal notice of the intention to  
6-46 introduce this Act, setting forth the general substance of this  
6-47 Act, has been published as provided by law, and the notice and a  
6-48 copy of this Act have been furnished to all persons, agencies,  
6-49 officials, or entities to which they are required to be furnished  
6-50 under Section 59, Article XVI, Texas Constitution, and Chapter 313,  
6-51 Government Code.

6-52 (b) The governor has submitted the notice and Act to the  
6-53 Texas Commission on Environmental Quality.

6-54 (c) The Texas Commission on Environmental Quality has filed  
6-55 its recommendations relating to this Act with the governor,  
6-56 lieutenant governor, and speaker of the house of representatives  
6-57 within the required time.

6-58 (d) All requirements of the constitution and laws of this  
6-59 state and the rules and procedures of the legislature with respect  
6-60 to the notice, introduction, and passage of this Act are fulfilled  
6-61 and accomplished.

6-62 SECTION 4. This Act takes effect immediately if it receives  
6-63 a vote of two-thirds of all the members elected to each house, as  
6-64 provided by Section 39, Article III, Texas Constitution. If this  
6-65 Act does not receive the vote necessary for immediate effect, this  
6-66 Act takes effect September 1, 2009.

6-67

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