

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 27, 2015

The Honorable Joe Straus
Texas House of Representatives
Capitol Station
PO Box 2910
Austin, Texas 78768-2910

Re: Responsibility of the Texas Commission on Environmental Quality (TCEQ) Pursuant to Article XVI, Section 59(d), Texas Constitution

House Bill (HB) 2407, as Filed by Representative Doug Miller-Relating to the creation of the Comal Trinity Groundwater Conservation District; providing authority to issue bonds; providing authority to impose assessments and fees.

Dear Speaker Straus:

The following comments are provided pursuant to the Constitutional requirements referenced above. Under those requirements, the TCEQ must submit, to the Governor, Lieutenant Governor and Speaker of the House of Representatives, the TCEQ's recommendations on specific legislation affecting water districts. We recommend that these comments be considered in the evaluation of the proposed legislation.

Sincerely,

A handwritten signature in cursive script that reads "Kellye Rila".

Kellye Rila, Director
Water Availability Division

cc: The Honorable Jim Keffer, Chairman, House Natural Resources Committee
Representative Doug Miller, Texas House of Representatives

Enclosure

**HB 2407, as Introduced by Representative Doug Miller
Texas Commission on Environmental Quality's Comments**

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), has determined that:

House Bill 2407, as authored by Representative Doug Miller, would create the Comal Trinity Groundwater Conservation District (District) in Comal County with the powers and duties of Water Code, Chapter 36 related to the general law for groundwater conservation districts (GCDs). The boundaries of the District are coextensive with the boundaries of Comal County, excluding any territory that is included in the boundaries of the Trinity Glen Rose Groundwater Conservation District. The purpose of the District is to benefit property by providing for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and to control subsidence caused by the withdrawal of groundwater under powers conferred by Article XVI, Section 59 of the Texas Constitution. Creation of the District is not subject to a confirmation election.

Comments on Powers/Duties Different from Similar Types of Districts – Unlike general law GCDs, the bill defines domestic use to mean residential household use. The bill defines exempt well to mean a well incapable of producing more than 10,000 gallons of groundwater per day, a metered well that produces less than 10 acre-feet of groundwater per calendar year, or a well that is incapable of producing more than 25,000 gallons of groundwater per day for domestic use or for livestock or poultry regardless of land lot size. Under the Water Code, an exempt well used for domestic use or for providing water for livestock or poultry is located on a tract of land larger than 10 acres and is drilled, completed or equipped so the well is incapable of producing more than 25,000 gallons per day.

Unlike general law GCDs, the bill provides that the Commissioners Court of Comal County appoint seven directors with three representing the incorporated areas of Comal County and four representing the four commissioner precincts. The Commissioners Court of Comal County shall appoint the initial directors before December 31, 2015. The initial directors are required to hold an organizational meeting as soon as practicable and elect officers. The initial directors shall draw lots for two positions with

four-year terms, two positions with three-year terms, two positions with two-year terms, and one position with a one-year term. Subsequent directors are appointed by the Commissioners Court of Comal County and will serve four-year terms. Under the Water Code, general law GCD directors are elected by the single-precinct method.

Similar to general law GCDs, the bill provides special provisions for the District to contract with other entities and for the District to participate in the development and implementation of best management practices for water resource management. Unlike general law GCDs, the District may not require the owner of an exempt well to install a meter or measuring device; allow the sale, transport, or export of groundwater produced from a well inside the District to a person or location outside the District; prohibit the sale, transport, or export of groundwater produced from a well inside the District to a person located inside the territory covered by the well owner's certificate of public convenience and necessity (CCN) if the owner of a well with a CCN obtains a permit from the district; assess and collect a production fee on an exempt well; or levy and collect ad valorem taxes. The bill provides that an existing nonexempt well shall have its annual groundwater production permitted at the well's maximum production capacity and shall not be required to obtain a production permit and that a new nonexempt well shall obtain a permit from the District. The bill provides that the owner of an existing or new nonexempt well, at his own expense and within 36 months of the effective date, shall install, operate and maintain a water-well meter or alternative measuring device or method approved by the District. Unlike general law GCDs, the District may not exercise the power of eminent domain.

Similar to general law GCDs, the District may set administrative fees that do not unreasonably exceed the cost to perform the administrative function. Unlike general law GCDs, the District may assess annual administrative fees that do not exceed \$15 for exempt domestic and livestock wells and \$50 for other exempt wells. Similar to general law GCDs, the District may impose reasonable production fees based on the amount of groundwater actually produced by nonexempt wells. Annual District production fees may not exceed \$1 per acre-foot for groundwater used for agricultural purposes or \$40 per acre-foot for groundwater used for any other purpose. Under the Water Code, general law GCDs may impose annual production fees that may not exceed \$1 per acre-foot for

groundwater used for agricultural purposes or \$10 per acre-foot for groundwater used for any other purpose.

Overlapping Services — The boundaries of the District are coextensive with the boundaries of Comal County, excluding any territory that is included in the boundaries of the Trinity Glen Rose Groundwater Conservation District. The southeastern part of Comal County is within the boundaries of the Edwards Aquifer Authority (EAA), which will retain jurisdiction for management of the Edwards aquifer. The EAA Act authorizes GCDs to be created within the EAA's boundaries to manage other aquifers that occur within the EAA's boundaries. GCD functions do not conflict with services provided by other types of water districts or utilities.

TCEQ's Supervision — As with general law GCDs, the TCEQ will have general supervisory authority, including bond review authority and authority as it is related to the District's development and implementation of a management plan; the District would not have to comply with TCEQ financial auditing requirements.

LETTER OF TRANSMITTAL
HOUSE OF REPRESENTATIVES
STATE OF TEXAS

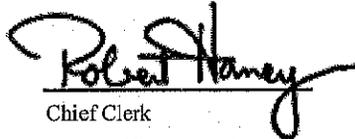
HB 2407
Bill Number

TO: The Honorable Governor of Texas
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to transmit to you and the Texas Commission on Environmental Quality copies of a bill relating to a conservation and reclamation district and copies of the notice of intention to introduce the bill. One copy is for your files and one for you to forward to the Texas Commission on Environmental Quality, under Section 59(d), Article XVI, Constitution of the State of Texas.

3/12/2015

Date transmitted to
Governor's Office

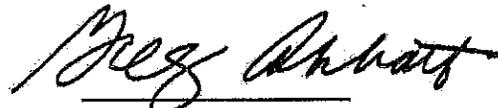

Chief Clerk
House of Representatives

TO: Texas Commission on Environmental Quality
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to forward to you a copy of a bill relating to conservation and reclamation district and a copy of the notice of intention to introduce the bill.

March 16, 2015

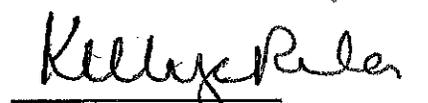
Date transmitted to
Texas Commission on Environmental Quality


Governor

TO: The Honorable Speaker of the House
The Honorable President of the Senate
The Honorable Governor of Texas

SUBJECT: A Bill Relating to a Conservation and Reclamation District

Attached are recommendations of the Texas Commission on Environmental Quality in compliance with Section 59(d), Article XVI, Constitution of the State of Texas.


Texas Commission on Environmental Quality



84R HB 02407

By: Miller of Comal

H.B. No. 2407

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation of the Comal Trinity Groundwater
3 Conservation District; providing authority to issue bonds;
4 providing authority to impose assessments and fees.

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

6 SECTION 1. Subtitle H, Title 6, Special District Local Laws
7 Code, is amended by adding Chapter 8875 to read as follows:

8 CHAPTER 8875. COMAL TRINITY GROUNDWATER CONSERVATION DISTRICT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 8875.001. DEFINITIONS. In this chapter:

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

13 (2) "Commissioners court" means the Comal County
14 Commissioners Court.

15 (3) "Director" means a member of the board.

16 (4) "District" means the Comal Trinity Groundwater
17 Conservation District.

18 (5) "Domestic use" means residential household use.

19 (6) "Exempt well" means:

20 (A) a well incapable of producing more than
21 10,000 gallons of groundwater a day;

22 (B) a metered well that produces not more than 10
23 acre-feet of groundwater in a calendar year; or

24 (C) a well that is drilled, completed, or

1 equipped so that it is incapable of producing more than 25,000
2 gallons of groundwater a day and produces water for domestic use or
3 for livestock or poultry, regardless of land lot size.

4 (7) "Existing well" means a well drilled into or
5 through the Trinity Aquifer on or before the effective date of the
6 Act enacting this chapter.

7 (8) "New well" means a well drilled into or through the
8 Trinity Aquifer after the effective date of the Act enacting this
9 chapter.

10 (9) "Trinity Aquifer" means the Trinity Group of
11 aquifers, including the Upper Trinity, consisting of the upper Glen
12 Rose Limestone; the Middle Trinity, consisting of the lower member
13 of the Glen Rose Limestone, the Hensell Sand, and the Cow Creek
14 Limestone; and the Lower Trinity, consisting of the Sligo Limestone
15 and Hosston Sand.

16 Sec. 8875.002. NATURE OF DISTRICT. The district is a
17 groundwater conservation district in Comal County created under and
18 essential to accomplish the purposes of Section 59, Article XVI,
19 Texas Constitution.

20 Sec. 8875.003. INITIAL DISTRICT TERRITORY. The initial
21 boundaries of the district are coextensive with the boundaries of
22 Comal County, excluding any territory that is included in the
23 boundaries of the Trinity Glen Rose Groundwater Conservation
24 District.

25 Sec. 8875.004. CONFLICTS OF LAW. This chapter prevails over
26 any provision of general law, including a provision of Chapter 36,
27 Water Code, that is in conflict or is inconsistent with this

1 chapter.

2 SUBCHAPTER B. BOARD OF DIRECTORS

3 Sec. 8875.051. APPOINTMENT OF DIRECTORS. (a) The district
4 is governed by a board of seven directors appointed by the
5 commissioners court as follows:

6 (1) three directors from the incorporated areas of
7 Comal County; and

8 (2) four directors, one from each of the four
9 commissioners court precincts.

10 (b) The commissioners court shall, to the degree possible,
11 consider directors familiar with the use of water by industry and
12 commerce, municipal and rural utilities, agriculture, and private
13 wells.

14 (c) A person appointed as a director must be a registered
15 voter of Comal County.

16 (d) A vacancy on the board shall be filled by the
17 commissioners court. A qualified person to fill a vacancy shall be
18 appointed to serve for the remainder of the unexpired term.

19 (e) The commissioners court shall appoint the district's
20 initial directors not later than December 31, 2015.

21 Sec. 8875.052. ORGANIZATIONAL MEETING OF DIRECTORS.

22 (a) As soon as practicable after all the directors have qualified
23 under Section 36.055, Water Code, a majority of the directors shall
24 convene the organizational meeting of the district at a location
25 within the district agreeable to a majority of the directors. At
26 the meeting, the directors shall elect a chair, vice chair,
27 secretary, and treasurer from among the directors.

1 (b) The initial directors shall draw lots to determine which
2 two directors shall serve a four-year term, which two directors
3 shall serve a three-year term, which two directors shall serve a
4 two-year term, and which director shall serve a one-year term.
5 Subsequent directors shall serve staggered four-year terms.

6 Sec. 8875.053. RULES AND FEES. The board may adopt rules
7 and assess fees to manage and operate the district.

8 SUBCHAPTER C. POWERS AND DUTIES

9 Sec. 8875.101. DISTRICT POWERS AND DUTIES. The district
10 has the rights, powers, privileges, functions, and duties provided
11 by the general law of this state, including Chapter 36, Water Code,
12 applicable to groundwater conservation districts created under
13 Section 59, Article XVI, Texas Constitution.

14 Sec. 8875.102. CONTRACTS. The district may contract with a
15 state agency or political subdivision, including, but not limited
16 to, a county, municipality, river authority, or another district,
17 to carry out any function of the district.

18 Sec. 8875.103. BEST MANAGEMENT PRACTICES. (a) The
19 district may participate in the development and implementation of
20 best management practices for water resource management in the
21 district and may engage in and promote the acceptance of best
22 management practices through education efforts sponsored by the
23 district.

24 (b) Development and implementation of best management
25 practices must address water quantity and quality practices such as
26 brush management, prescribed grazing, recharge structures, water
27 and silt detention and retention structures, plugging of abandoned

1 wells, rainwater harvesting, and other treatment measures for the
2 conservation of water resources.

3 (c) The district may not adopt or implement a best
4 management practice that is in conflict with, or duplicative of, a
5 best management practice adopted by another groundwater
6 conservation district whose territory covers any part of Comal
7 County.

8 Sec. 8875.104. LIMITATIONS ON DISTRICT POWERS. (a) The
9 district may not:

10 (1) require the owner of an exempt well to install a
11 meter or measuring device on the well;

12 (2) except as provided by Subdivision (3), and
13 notwithstanding Section 36.122, Water Code, allow the sale,
14 transport, or export of groundwater produced from a well inside the
15 district to a person or location outside the district;

16 (3) prohibit the sale, transport, or export of
17 groundwater produced from a well inside the district to a person
18 located inside the territory covered by the well owner's
19 certificate of public convenience and necessity if the owner of a
20 well with a certificate of public convenience and necessity obtains
21 a permit from the district; or

22 (4) assess and collect a production fee on an exempt
23 well.

24 (b) The district does not have the authority granted by
25 Sections 36.020 and 36.201-36.204, Water Code, relating to taxes.

26 Sec. 8875.105. PERMITS. Notwithstanding Section
27 36.117(j), Water Code:

1 (1) an existing nonexempt well shall have its annual
2 groundwater production permitted at the well's maximum production
3 capacity and shall not be required to obtain a production permit;
4 and

5 (2) a new nonexempt well shall obtain a permit from the
6 district.

7 Sec. 8875.106. MEASURING DEVICES. (a) The owner of an
8 existing or new well that is not an exempt well shall install and
9 maintain a water-well meter, or alternative measuring device or
10 method approved by the district, designed to indicate the flow rate
11 and cumulative amount of water withdrawn by that well, on each
12 individual well no later than 36 months after the effective date of
13 the Act enacting this chapter.

14 (b) A well owner is responsible for the costs of installing,
15 operating, and maintaining measuring devices.

16 Sec. 8875.107. NO EMINENT DOMAIN. The district may not
17 exercise the power of eminent domain.

18 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

19 Sec. 8875.151. FEES. (a) The district may set fees for
20 administrative acts of the district such as filing applications.
21 Fees set by the district may not unreasonably exceed the cost to the
22 district of performing the administrative function for which the
23 fee is charged. The district may set fees for administrative
24 management on domestic and livestock exempt wells with a cap of \$15
25 per year per well and a cap of \$50 per year per well on other exempt
26 wells.

27 (b) The district may impose reasonable production fees,

1 based on the amount of groundwater actually produced, on both new
2 and existing nonexempt wells. The district may not impose a
3 production fee in an amount greater than:

4 (1) \$1 per acre-foot for groundwater used for
5 agricultural purposes; or

6 (2) \$40 per acre-foot for groundwater used for any
7 other purpose.

8 (c) The district may use money collected from fees:

9 (1) in any manner necessary for the management and
10 operation of the district;

11 (2) to pay all or part of the principal of and interest
12 on district bonds or notes; and

13 (3) for any purpose consistent with the district's
14 approved water management plan.

15 SECTION 2. (a) The legal notice of the intention to
16 introduce this Act, setting forth the general substance of this
17 Act, has been published as provided by law, and the notice and a
18 copy of this Act have been furnished to all persons, agencies,
19 officials, or entities to which they are required to be furnished
20 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
21 Government Code.

22 (b) The governor, one of the required recipients, has
23 submitted the notice and Act to the Texas Commission on
24 Environmental Quality.

25 (c) The Texas Commission on Environmental Quality has filed
26 its recommendations relating to this Act with the governor, the
27 lieutenant governor, and the speaker of the house of

1 representatives within the required time.

2 (d) All requirements of the constitution and laws of this
3 state and the rules and procedures of the legislature with respect
4 to the notice, introduction, and passage of this Act are fulfilled
5 and accomplished.

6 SECTION 3. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2015.

AFFP
C-LEGAL Intent Introduce Bill

Affidavit of Publication

STATE OF TEXAS)
COUNTY OF COMAL) SS

Rosie Willingham, being duly sworn, says:

That she is Business Manager of the New Braunfels Herald-Zeitung, a daily newspaper of general circulation, printed and published in New Braunfels, Comal County, Texas; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

January 22, 2015

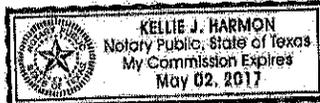
That said newspaper was regularly issued and circulated on those dates.

SIGNED:

Rosie M. Willingham
Business Manager

Subscribed to and sworn to me this 22nd day of January 2015.

Kellie J. Harmon
Kellie J. Harmon, Receptionist, Comal County, Texas



My commission expires: May 02, 2017

04123934 00158956

County Auditor
Comal County Purchasing - PBS
150 N Seguin Ave, ste. 201
Ste 201
NEW BRAUNFELS, TX 78130

LEGAL NOTICE

Notice of Intent to Introduce a Bill

Pursuant to the Texas Constitution and laws of the State of Texas, notice is hereby given of the intention to apply to the 84th Legislature of the State of Texas at its regular session in Austin, Texas, for the introduction of a bill, the substance of the contemplated law being as follows: This legislation proposes to ratify the creation of the Comal Trinity Groundwater Conservation District in Comal County, Texas, under the provisions of Section 59, Article XVI, Texas Constitution. The bill will provide for the district's administration, powers, duties, financing and operations.