

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 26, 2019

The Honorable Dennis Bonnen
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) 3781, as Filed by Representative Poncho Nevárez -relating to the creation of the Val Verde County Groundwater Conservation District; providing authority to issue bonds; providing authority to impose fees, surcharges, and taxes.

Dear Speaker Bonnen:

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,


Kim Nygren, Director
Water Availability Division

cc: The Honorable Lyle Larson, Chairman, House Committee on Natural Resources
Representative Poncho Nevárez, Texas House of Representatives

Enclosure

HB 3781, as Introduced by Representative Poncho Nevárez 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 3781, as authored by Representative Poncho Nevárez, would create, subject to a confirmation election, the Val Verde County Groundwater Conservation District (District) in Val Verde County with the powers and duties of Water Code, Chapter 36 related to the general law for groundwater conservation districts (GCDs). 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.

Comments on Powers/Duties Different from Similar Types of Districts – Unlike general law GCDs, the bill provides that as soon as practicable after the effective date, the Commissioners Court of Val Verde County appoint three temporary directors, the City Council of Del Rio appoint three temporary directors, and the Commissioners Court of Val Verde County, City Council of Del Rio and Mayor of Del Rio jointly appoint three temporary directors. The temporary directors are required to hold an organizational meeting as soon as practicable and are required to elect officers, schedule the election to confirm creation of the District in November after January 1, 2019. The temporary directors are authorized to hold subsequent confirmation elections no sooner than one year after a failed confirmation election. The District is dissolved on September 1, 2022, if creation of the District is not confirmed.

If the District is confirmed, the temporary directors will become initial directors and will draw lots to determine which five directors will serve an initial two-year term and which four directors will serve an initial four-year term. A director may serve consecutive terms. Directors serve staggered four-year terms.

The bill establishes three management zones based on different groundwater conditions: the San Felipe Springs Management Zone, the Devil's River Management Zone and the Pecos River Management Zone. The District may adopt different rules for the management zones to regulate groundwater production. One director will be appointed by the Commissioners Court of Val Verde County for each of the three management zones in Val Verde County. One director will be appointed by the City Council of Del Rio for each of the three management zones in Val Verde County. One director is jointly appointed by the Commissioners Court of Val Verde County, City Council of Del Rio and Mayor of Del Rio for each of the three management zones in Val Verde County. If there is a vacancy on the board, a majority of the district directors will make an appointment within 90 days of the position becoming vacant. If the board fails to select a replacement within the time frame, the Val Verde County Judge and the Mayor of Del Rio will jointly appoint a qualified individual to complete the unexpired term and directors do not receive compensation for serving, however, may receive reimbursement for expenses incurred representing the board.

In addition to the purpose provided to general law GCDs under Water Code, Chapter 36, the bill provides the purpose of the District is to regulate the transport of groundwater out of the boundaries of the District; to regulate groundwater production and the implementation of drought management and conservation plans for the reduction of drawdown when conditions warrant to protect spring flow and base flow; and to manage the issuance of permits, by requiring studies and groundwater availability model analysis of permit applications, that include conservation triggers that mitigate impact to spring flow, base flow or drawdown.

Similar to general law GCDs, the District by rule must: require a person to obtain a permit to pump groundwater unless exempted; regulate the terms of a transfer of groundwater out of the District; regulate the spacing of wells drilled after September 1, 2019; provide for uniform and nondiscriminatory reductions or curtailment of groundwater production by all permit holders if necessary to protect spring flow and base flow and reduce aquifer drawdown; limit groundwater production by spacing of water wells, by basing production on acreage or tract size, or for a public water supplier, by basing production on the service area of the supplier; and require owners of

permitted well to annually report groundwater production based on metered production. Under the Water Code, most of these are permissive authorities for general law GCDs.

Unlike general law GCDs, District powers are limited before confirmation to the performance of duties necessary to hold the confirmation election, registration of existing wells that are not exempt from permitting, collection of annual groundwater production reports for nonexempt wells, participation in joint planning, and adoption of rules for well registration and groundwater production reporting. Unlike general law GCDs, the District may not exercise the power of eminent domain. Also, unlike general law GCDs, the District may not sue nor be sued in the courts of this state. The bill provides for an appeal of an action by the District by an affected person via a petition filed with the Texas Water Development Board (TWDB). The TWDB is required to conduct an administrative review and make a determination as to whether the District's action meets the requirement of the District's rules. Decision by the TWDB is final and non-appealable.

Unlike general law GCDs, the District has specific permitting provisions for landowners, the City of Del Rio, retail public utilities, agriculture, and commerce and industry. The District also has specific provisions relating to property rights, reductions and curtailments, management zones, and permit renewals. The bill provides that the District may not require a person to install a meter or obtain a permit for a well used to produce groundwater for in-District domestic, household, or agricultural use, or other exempt purpose. The bill provides that an owner of these exempt wells must register the well with the District. The bill provides that the District may not require a permit or permit amendment for maintenance of a non-exempt well if the well's production capability is not increased, that groundwater produced for domestic use is exempt from production permit requirements, and that groundwater produced for agriculture is exempt from District permitting requirements. The bill provides that the District may not purchase, sell, transport, or distribute surface water or groundwater for any purpose and provides special provisions for the right to enter land, water conservation initiatives, and regional groundwater planning. The bill provides that the District, by rule, must require a person to obtain a permit to pump groundwater unless exclusively for agricultural, domestic or household use,

or is otherwise exempt under TWC Chapter 36. The District must also adopt rules to regulate the terms of a transfer of groundwater out of the District; regulate the spacing of wells drilled after September 1, 2019; provide for uniform and nondiscriminatory reductions or curtailment of groundwater production by all permit holders if necessary; provide permit-specific production curtailment as part of a hydrologic study and reduce aquifer drawdown, all in order to protect spring flow and base flow, and reduce aquifer drawdown. The limitation of groundwater production may be accomplished by spacing of water wells, by basing production on acreage or tract size, or for a public water supplier, by basing production on the service area of the supplier. Owners of permitted wells are required to report groundwater production based on metered production annually.

Unlike general law GCDs, the District may not levy ad valorem taxes at any rate that exceeds three cents on each \$100 of assessed valuation of taxable property. Under the Water Code, general law GCDs may impose a voter-approved ad valorem tax that does not exceed fifty cents on each \$100 of assessed valuation to pay for operation and maintenance expenses. The rollback provisions of Tax Code, §§26.04, 26.05 and 26.06 do not apply to the District and instead the District must follow the requirements of Water Code, §49.236. Similar to general law GCDs, the District is authorized to set reasonable and equitable groundwater production fees for permitted wells, reasonable export fees for groundwater transported outside of the District, and fees for administrative functions. Unlike general law GCDs, administrative fees for District permit processing is capped at \$250.

Overlapping Services — The boundaries of the District are coextensive with the boundaries of Val Verde County. 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 3781
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.

3/7/2019

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 18, 2019

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

