

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 30, 2021

The Honorable Dade Phelan
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) 4636, as Filed by Representative Eddie Morales-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 Phelan:

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 blue ink, appearing to read "Kim Nygren".

Kim Nygren, Deputy Director
Water Availability Division

cc: The Honorable Tracy O. King, Chairman, House Committee on Natural Resources
Representative Eddie Morales, Texas House of Representatives
Representative John P. Cyrrier, Texas House of Representatives

Enclosure

HB 4636, as Introduced by Representative Eddie Morales 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 (HB) 4636, as authored by Representative Eddie Morales, 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 and the city of Del Rio appoint five temporary directors with one director appointed jointly by the city council and the commissioners court to represent the Devils River Management Zone, one director appointed by the city council to represent the San Felipe/Sycamore Management Zone, one director appointed by the city council to represent the Amistad Management Zone, one director appointed by the commissioners court to represent the Pecos River Management Zone, and one director appointed by the commissioners court to represent the District at large. Not later than 30 days after the effective date, the city council and the commissioners court must each nominate at least one individual to serve as temporary director for the Devils River Management Zone. If one entity makes a timely nomination and the other entity does not make a timely nomination, the entity that made the timely nomination may appoint the temporary director for the Devils River Management Zone. If neither entity makes a timely nomination, the governor must appoint the temporary director for the Devils River Management Zone. If the city council, commissioners court, or both do not make a timely appointment for the five temporary directors, the governor must appoint the temporary director to the applicable position. An individual appointed to serve as a temporary director representing a management zone must own taxable property in the management zone. An individual appointed to serve as a temporary director representing the district at large must own taxable property in Val Verde County; or be a resident of Val Verde County. 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, 2022. The temporary directors are authorized to hold subsequent confirmation elections no sooner than one year after a failed confirmation election. The temporary directors serve until they become the initial directors if creation of the District is confirmed, or until Chapter 8872 expires on September 1, 2028 if not confirmed.

If the District is confirmed, the temporary directors will serve staggered four-year terms with two of the three terms expiring December 1 of every other year. A director may serve consecutive terms.

The District is divided into four management zones; The San Felipe/Sycamore Management Zone, the Devil's River Management Zone, the Pecos River Management Zone and the Amistad Management Zone. The District may adopt different rules for the management zones to regulate groundwater production. One director is elected from each of the four management zones by voters of the applicable management zone and one director is elected by the voters of the district at large. An election to elect directors must be held on the uniform election date in November of even-numbered years. 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, to maintain sufficient river flows during periods of drought and water shortage to protect endangered species and the habitats of endangered species, 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, 2021; 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 wells 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, adoption of rules for well registration and groundwater production reporting, and adoption of water management guidelines by the Texas Water Development Board (TWDB). Unlike general law GCDs, the District may not exercise the power of eminent domain and the limitation on rulemaking power under TWC §36.121 is not applicable to the District.

Unlike general law GCDs, the bill provides that the TWDB must adopt guidelines for the development of standards, best management practices, and management objectives for surface water and groundwater resources in the District, including a plan for the monitoring of, collection of data on, and study of the groundwater conditions in the District and the relationship between groundwater conditions and flows in the Pecos River, the Devils River, and San Felipe Springs.

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 that is 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, 2021; 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 dye tracer hydrologic study and reduce aquifer drawdown, all in order to protect spring flow and base flow, reduce aquifer drawdown, and protect endangered species. 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, 26.06, and 26.07 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 4636

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.

4/15/2021

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.

April 16, 2021

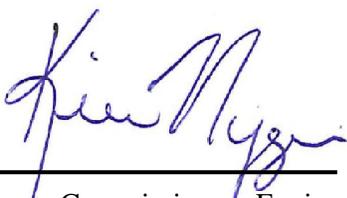
Date transmitted to
Texas Commission on Environmental Quality



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



87R HB 04636