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Chapter 884

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
purposes of Section 59, Article XVI, Texas Constitution.

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

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

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

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

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

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

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

[Sections 8859.006-8859.020 reserved for expansion]
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
the meeting described by Subsection (b) and to cast the vote on behalf of the entity. Failure of a governing body to designate a representative or of a representative to cast a vote does not invalidate the appointment of the initial directors.

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

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

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

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

Sec. 8859.022. INITIAL DIRECTORS; TERMS OF OFFICE.

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

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

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

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

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

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

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

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

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

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

(1) a person appointed under Section 8859.053(a)(1),

(2), or (3) must be a registered voter of Fannin County; and

(2) a person appointed under Section 8859.053(a)(4),

(5), or (6) must be a registered voter of Grayson County.

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

Sec. 8859.024. ORGANIZATIONAL MEETING OF INITIAL DIRECTORS. (a) As soon as practicable after all the initial directors have qualified under Section 36.055, Water Code, a
majority of the initial directors shall convene the organizational
meeting of the district at the Grayson County courthouse or at
another location in the district agreeable to a majority of the
initial directors.

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

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

[Sections 8859.026-8859.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

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

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

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

Sec. 8859.052. DIRECTOR ELIGIBILITY; QUALIFICATION.

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

(1) a person appointed under Section 8859.053(a)(1),

(2), (3) must be a registered voter of Fannin County; and

(2) a person appointed under Section 8859.053(a)(4),

(5), (6) must be a registered voter of Grayson County.

(b) Each director must qualify to serve in the manner
provided by Section 36.055, Water Code.
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(c) A person who qualifies as a director may participate in all votes relating to the business of the district, regardless of any common law doctrine or statutory prohibition related to conflicts of interest or incompatibility.

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

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

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

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

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

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

(5) one director appointed jointly by the governing bodies of the municipalities in Grayson County other than the municipality described by Subdivision (4); and
(6) one director appointed jointly by the governing boards of all water services districts and water supply corporations that provide retail water service to customers in Grayson County, subject to the limitation provided by Subsection (f).

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

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

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

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

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

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

Sec. 8859.055. COMPENSATION; REIMBURSEMENT.

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

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

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

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

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

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

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

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

(1) produce water from a well located:

(A) within the district; and

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

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

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

(b) Not later than the 20th day following the date the
review is complete, the board shall submit the review described in
Subsection (a) and any recommendation the board may have relating
to the reapportionment of directors or the representational
structure of the board to each member of the house of
representatives and each member of the senate whose state
legislative district includes territory in the district.
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[Sections 8859.058-8859.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

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

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

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

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

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

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

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

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

(b) A fee imposed under Subsection (a) may not exceed an
amount equal to 10 times the amount of a fee assessed under Section
8859.152.
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[Sections 8859.107-8859.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. (a) The legal notice of the intention to
introduce this Act, setting forth the general substance of this
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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
7 (b) The governor has submitted the notice and Act to the
8 Texas Commission on Environmental Quality.
9
10 (c) The Texas Commission on Environmental Quality has filed
11 its recommendations relating to this Act with the governor,
12 lieutenant governor, and speaker of the house of representatives
13 within the required time.
14
15 (d) All requirements of the constitution and laws of this
16 state and the rules and procedures of the legislature with respect
17 to the notice, introduction, and passage of this Act are fulfilled
18 and accomplished.
19
20 SECTION 4. This Act takes effect September 1, 2009.
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RIOVALD G. OLIVAR
President of the Senate

I hereby certify that S.B. No. 2529 passed the Senate on April 28, 2009, by the following vote: Yeas 31, Nays 0.

Speaker of the House

I hereby certify that S.B. No. 2529 passed the House on May 25, 2009, by the following vote: Yeas 145, Nays 0, one present not voting.

Secretary of the Senate

Chief Clerk of the House

Approved:

19 JUN '09

Date

Governor

Filed in the Office of the Secretary of State
7 A.M. O'Clock
JUN 19 2009

Colby S. Slaughter