

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

1 purposes of Section 59, Article XVI, Texas Constitution.

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

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

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

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

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

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

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

26 [Sections 8859.006-8859.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

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

1 the meeting described by Subsection (b) and to cast the vote on  
2 behalf of the entity. Failure of a governing body to designate a  
3 representative or of a representative to cast a vote does not  
4 invalidate the appointment of the initial directors.

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

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

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

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

22 Sec. 8859.022. INITIAL DIRECTORS; TERMS OF OFFICE.

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

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

27 (2) one initial director appointed by the governing

1 body of the municipality under Section 8859.053(a)(4); and

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

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

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

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

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

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

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

19 (1) a person appointed under Section 8859.053(a)(1),  
20 (2), or (3) must be a registered voter of Fannin County; and

21 (2) a person appointed under Section 8859.053(a)(4),  
22 (5), or (6) must be a registered voter of Grayson County.

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

25 Sec. 8859.024. ORGANIZATIONAL MEETING OF INITIAL  
26 DIRECTORS. (a) As soon as practicable after all the initial  
27 directors have qualified under Section 36.055, Water Code, a

1 majority of the initial directors shall convene the organizational  
2 meeting of the district at the Grayson County courthouse or at  
3 another location in the district agreeable to a majority of the  
4 initial directors.

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

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

10 [Sections 8859.026-8859.050 reserved for expansion]

11 SUBCHAPTER B. BOARD OF DIRECTORS

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

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

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

20 Sec. 8859.052. DIRECTOR ELIGIBILITY; QUALIFICATION.

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

22 (1) a person appointed under Section 8859.053(a)(1),  
23 (2), or (3) must be a registered voter of Fannin County; and

24 (2) a person appointed under Section 8859.053(a)(4),  
25 (5), or (6) must be a registered voter of Grayson County.

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

1       (c) A person who qualifies as a director may participate in  
2 all votes relating to the business of the district, regardless of  
3 any common law doctrine or statutory prohibition related to  
4 conflicts of interest or incompatibility.

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

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

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

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

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

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

25           (5) one director appointed jointly by the governing  
26 bodies of the municipalities in Grayson County other than the  
27 municipality described by Subdivision (4); and

1           (6) one director appointed jointly by the governing  
2 boards of all water services districts and water supply  
3 corporations that provide retail water service to customers in  
4 Grayson County, subject to the limitation provided by Subsection  
5 (f).

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

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

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

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

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



1 board may require evidence of eligibility to participate.

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

6 Sec. 8859.055. COMPENSATION; REIMBURSEMENT.

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

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

13 (c) A position on the board is not a civil office of  
14 emolument for any purpose, including a purpose described in Section  
15 40, Article XVI, Texas Constitution.

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

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

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

27 (2) adopting the annual budget of the district; and

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

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

9           (1) produce water from a well located:

10                   (A) within the district; and

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

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

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

21           (b) Not later than the 20th day following the date the  
22 review is complete, the board shall submit the review described in  
23 Subsection (a) and any recommendation the board may have relating  
24 to the reapportionment of directors or the representational  
25 structure of the board to each member of the house of  
26 representatives and each member of the senate whose state  
27 legislative district includes territory in the district.

1 [Sections 8859.058-8859.100 reserved for expansion]

2 SUBCHAPTER C. POWERS AND DUTIES

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

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

12 Sec. 8859.103. APPLICABILITY OF DISTRICT RULES REGULATING  
13 GROUNDWATER. District rules regulating groundwater adopted under  
14 this chapter apply to all persons except as exempted under Section  
15 36.117, Water Code, or this chapter.

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

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

25 (c) Except as provided by this section and notwithstanding  
26 Section 8859.103, the district may require any well or class of  
27 wells exempt from permitting under Chapter 36, Water Code, to

1 comply with the well spacing requirements adopted by the district.  
2 The district shall apply well spacing requirements uniformly to any  
3 well or class of wells based on the size or capacity of the well and  
4 without regard to the type of use of the groundwater produced by the  
5 well.

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

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

25 (b) A fee imposed under Subsection (a) may not exceed an  
26 amount equal to 10 times the amount of a fee assessed under Section  
27 8859.152.

1 [Sections 8859.107-8859.150 reserved for expansion]

2 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

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

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

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

16 (1) \$1 per acre-foot annually for groundwater used for  
17 agricultural purposes; or

18 (2) 30 cents per thousand gallons annually for  
19 groundwater used for nonagricultural purposes.

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

1 the district for permitted uses under Subsection (b)(2) of this  
2 section.

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

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

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

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

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

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

26 SECTION 3. (a) The legal notice of the intention to  
27 introduce this Act, setting forth the general substance of this

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 (b) The governor has submitted the notice and Act to the  
7 Texas Commission on Environmental Quality.

8 (c) The Texas Commission on Environmental Quality has filed  
9 its recommendations relating to this Act with the governor,  
10 lieutenant governor, and speaker of the house of representatives  
11 within the required time.

12 (d) All requirements of the constitution and laws of this  
13 state and the rules and procedures of the legislature with respect  
14 to the notice, introduction, and passage of this Act are fulfilled  
15 and accomplished.

16 SECTION 4. This Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

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

\_\_\_\_\_  
Secretary of the Senate

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.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor