

pay for the services under the contract out of the general fund of the county."

Sec. 2. The importance of this legislation and the crowded condition of the Calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 20, 1965: Yeas 145, Nays 2; passed by the Senate on May 26, 1965: Yeas 31, Nays 0.

Approved June 16, 1965.

Effective June 16, 1965.

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## PLATEAU UNDERGROUND WATER CONSERVATION AND SUPPLY DISTRICT

### CHAPTER 517<sup>21</sup>

H. B. No. 1059

An Act relating to the creation, organization, powers, and duties of an underground water conservation district located in Schleicher County; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

#### SUBCHAPTER A. GENERAL PROVISIONS.

##### Short title

Section 1. This Act may be cited as the Plateau Underground Water Conservation and Supply District Act.

##### Definitions

Sec. 2. In this Act, unless the context requires a different definition:

- (1) "person" includes firm, association, partnership, and corporation;
- (2) "underground water" means water suitable for agriculture, gardening, domestic, or stock-raising uses, percolating below the earth's surface;
- (3) "district" means the Plateau Underground Water Conservation and Supply District;
- (4) "board" means the board of directors of the district.

#### SUBCHAPTER B. ADMINISTRATION.

##### Creation of district

Sec. 3. The Plateau Underground Water Conservation and Supply District is created only in the event and at such time an underground water reservoir or reservoir subdivision is designated by the Texas Water Commission. Pursuant to the general laws applicable to underground water conservation districts, the district must be created with boundaries coterminous with an underground water reservoir or subdivision thereof

21. Vernon's Ann.Civ.St. art. 8280—305,  
§§ 1-44.

which theretofore has been designated as such by the Texas Water Commission. At such time, the district is created under Section 59, Article XVI, Constitution of the State of Texas.

#### Area of district

Sec. 4. The district covers the same area that Schleicher County covers, and all other area added by the board under Section 38 of this Act, except area under which there is either no underground water or no underground water that can be brought to the surface at a cost that makes bringing it to the surface economically feasible, which the board excludes under Section 37(c) of this Act.

#### Establishment of board

Sec. 5. The board of directors of the Plateau Underground Water Conservation and Supply District is established.

#### Composition and terms of office

Sec. 6. (a) The board consists of five directors.

(b) The directors are elected at elections provided for in Section 10 of this Act. A director serves a two-year term.

(c) If a constitutional amendment is adopted authorizing directors of conservation and reclamation districts to serve six-year terms, Subsection (b) of this Section is repealed on the day of the first election to elect directors held under this Act after the constitutional amendment becomes effective, and the directors serve six-year terms. At that election, two directors are elected for two-year terms; two for four-year terms; and one for a six-year term. The director-at-large is elected for the six-year term. The board shall designate which precinct elects a director for a two-year term and which for a four-year term. The board shall conduct biennial elections after that election, at which directors are elected for six-year terms to replace retiring directors.

(d) If a position on the board becomes vacant, a majority of the remaining directors shall appoint another person to fill the vacated position for the unexpired term.

(e) A director serves until his successor is elected.

#### Qualification of directors

Sec. 7. A person is qualified to serve on the board who is elected or appointed to that position, and who

- (1) is at least 21 years of age;
- (2) owns real property in the district;
- (3) is a resident of the district.

#### Administrator and employees

Sec. 8. (a) The board may employ an administrator and set his salary. The board may delegate any of its powers and duties (except those of adopting rules, a dissolution resolution, a dissolution order, and those relating to hearings, taxation, and bonds) to the administrator, who may carry out powers and duties delegated to him by the board. Employment of personnel is subject to the general law on nepotism.

(b) The administrator, with the approval of the board, may employ employees of the board and set their salaries, and hire legal counsel for the board. If an employee or a member of his family is a member of the board, the employee may not receive compensation for his services as an employee.

**Board meetings and officers**

Sec. 9. (a) The board shall hold regular quarterly meetings. It may hold other meetings at the call of the chairman or at the request of at least two directors.

- (b) A majority of the directors is a quorum for conducting business.
- (c) The board shall elect its officers.

**Elections**

Sec. 10. (a) The board shall call an election to elect directors to the board on the second Tuesday in January of each odd-numbered year. The first election to elect directors under this Act is to be held on January 10, 1967. In the event the district is not created by January 9, 1967, as set out in Section 3 of this Act, the first election to elect directors under this Act is to be held immediately after creation of the district and the election held under this provision shall be conducted under the General Laws of the State relating to elections.

(b) The board shall conduct an election held under this Act under the General Laws of the State relating to elections.

(c) No board member may serve continuously for more than two terms.

(d) The board shall pay for the cost of elections with money of the district.

(e) No board member may hold any office of emolument.

**SUBCHAPTER C. ADMINISTRATIVE PROCEDURE.**

**Procedure for adopting and amending rules**

Sec. 11. (a) Before the board may adopt or amend a rule under this Act, it must publish a brief summary of the rule or the amendment in one or more newspapers as it decides is necessary to give the summary general circulation throughout the district. The Board must publish the summary one time a week for two weeks.

(b) The rule or amendment takes effect on the fourteenth day after the day the summary is published the second time, unless

(1) the board specifies that it takes effect at a later time; or

(2) the board rescinds the order adopting the rule or amendment.

(c) The board may rescind the order for (but it may not change) a rule or amendment from the time the summary is first published until after the rule or amendment takes effect. After the rule or amendment takes effect, the board may change or repeal it only by adopting a rule repealing or amending it.

(d) If the board rescinds an order for a rule or amendment, it may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

**Declaratory judgment on validity of rules**

Sec. 12. (a) The validity of a rule adopted under this Act may be determined upon petition for a declaratory judgment on the validity of the rule addressed to a district court sitting in the Plateau Underground Water Conservation and Supply District, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The board shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the board to pass upon the validity of the rule in question.



(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions, exceeds the statutory authority of the board, or was adopted without complying with Section 11 of this Act.

**Definition**

Sec. 13. In Sections 13 through 20 of this Act, "contested case" means a proceeding before the board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a board hearing.

**Hearing officer**

Sec. 14. (a) In a contested case, the board shall employ an attorney to serve as the hearing officer in the hearing. At the hearing, the hearing officer shall

- (1) preside over the hearing;
  - (2) rule on the admissibility of evidence;
  - (3) prepare the record, decision, and order of the board and the notices for the hearing;
  - (4) assist the board in all legal matters connected with the hearing.
- (b) The hearing officer may vote only to break a tie.
- (c) If a member of the board is an attorney, the board may designate that he is the hearing officer, rather than employ another attorney to be the hearing officer. In that case, Subsection (b) of this Section does not apply.

**Notice, hearing, records**

Sec. 15. (a) All parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, because of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, the issues shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect to the issues.

(b) The board shall prepare an official record, including testimony and exhibits, in each contested case, and shall prepare a mechanical recording of the proceedings. It is not necessary to transcribe the recording unless the transcription is requested for purposes of rehearing or court review.

(c) Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(d) The board shall adopt appropriate rules of procedure for notice and hearing in contested cases.

**Rules of evidence**

Sec. 16. (a) In contested cases, the board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(b) All evidence, including those of the board's records and documents it desires to use, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(c) Every party has the right to cross-examine witnesses who testify, and has the right to submit rebuttal evidence.

Official notice

Sec. 17. The board may take notice of judicially cognizable facts and in addition may take notice of general, technical, and scientific facts within its specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The board may use its experience, technical competence, and specialized knowledge in evaluating the evidence presented to it.

Examination of evidence by board

Sec. 18. When in a contested case a majority of the directors of the board who are to render the final decision have not heard or read the evidence, the decision, if adverse to the party to the proceeding other than the board itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the directors who are to render the decision, who shall personally consider the whole record or as much of it as may be cited by the parties.

Decisions and orders

Sec. 19. Every decision and order adverse to a party to the proceeding, rendered by the board in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law for each contested issue. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or to his attorney of record.

Judicial review of contested cases

Sec. 20. (a) A party aggrieved by a final decision in a contested case, whether the decision is affirmative or negative in form, is entitled to judicial review of the decision.

(b) Review shall be instituted by filing a written statement complaining of the board's decision in a district court within the boundaries of the district within 30 days after service of the final decision of the board. The statement shall specify concisely each finding, conclusion, or action of the board with which the aggrieved party disagrees. Copies of the statement shall be served upon the board and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(c) Filing the petition does not stay enforcement of the board's decision; but the board may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within 30 days after service of the statement or within such further time as the court may allow, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs caused by his refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is ma-



terial and that there was good reason for failing to present it in the proceeding before the Board, the court may order that the additional evidence be taken before the board upon such conditions as the court deems proper. The board may add to or modify its findings, conclusions, and decision in the light of the additional evidence and shall file with the court, as part of the record, the additional evidence, together with any additions or modifications to its findings, conclusions, or decision.

(f) The review shall be conducted by the court and shall be confined to the record, except that in cases of alleged irregularities in procedure before the board, not shown in the record, testimony on the alleged irregularities may be taken in court. The court shall, on request, hear oral argument and receive written briefs.

(g) The court may affirm the decision of the board or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of a party may have been prejudiced because the board's findings, inferences, conclusions, or decisions are

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the board;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

#### SUBCHAPTER D. FINANCIAL PROVISIONS.

##### Taxation

Sec. 21. (a) The board may levy and collect property taxes levied on the property in the district that are necessary to enable the board to perform the powers and functions given it in this Act.

(b) The board may levy annual taxes not to exceed thirty-five cents (35¢) on the one hundred dollar valuation on all taxable property within the district. The board may not levy or collect property taxes at a rate greater than the number of cents per one hundred dollar valuation based on Schleicher County valuations necessary to provide net fund or no greater than Ten Thousand Dollars (\$10,000) unless a district-wide election is held to provide a raise in taxes.

##### Bonds

Sec. 22. (a) The board may issue bonds to finance operations and construct projects authorized under this Act.

(b) The general law on water control and improvement districts, relating to issuing bonds and retiring bond issues, elections on bond issues, and elections in assuming and discharging tax liability for bonds, applies to issuing bonds and retiring bond issues by the board.

(c) The provisions of Section 139, Chapter 25, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 7880—139, Vernon's Texas Civil Statutes), relating to approval of plans and specifications for projects to be financed by the sale of bonds, apply to the sale of bonds under this Act.

#### SUBCHAPTER E. POWERS AND DUTIES OF THE BOARD.

##### Conservation rules

Sec. 23. The board may adopt rules for the purpose of conserving, preserving, protecting, and recharging the underground water in the district.

Waste

Sec. 24. The board may adopt rules designed to prevent waste of the underground water in the district. Nothing contained herein shall in any way amend, alter, or otherwise change the declaration of water priorities and appropriation thereof as set out in Article 7471, Revised Civil Statutes of Texas, 1925.

Permits

Sec. 25. (a) The board may adopt rules requiring a person to obtain a permit from the board before he may drill, equip, complete, or substantially alter the size of a well or the size of a pump used in connection with the well.

(b) The board may add whatever terms and conditions to the permit and modify the terms and conditions, that are necessary to insure that drilling, equipping, completing, or substantially altering the size of a well or the size of a pump used in connection with the well will

(1) preserve and conserve the underground water in the district;

(2) prevent any of the kinds of waste of the underground water specified in Section 24 of this Act;

(3) minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;

(4) lessen interference between wells.

(c) a permit issued under this Section is conditional and the board may revoke it if the person to whom it was issued does not comply with rules adopted under Sections 23 through 28 of this Act or with the terms and conditions stated in the permit.

(d) Before the board may refuse to issue a permit, add terms or conditions to a permit, modify the terms or conditions of a permit, or revoke a permit, it must offer the applicant or holder of the permit an opportunity to be heard by the board.

Spacing and production

Sec. 26. (a) The board may adopt rules to

(1) provide for spacing wells to be drilled to produce water from the underground water in the district;

(2) regulate the production of wells producing water from the underground water in the district.

(b) To be valid, a rule adopted under this Section must relate to minimizing as far as practicable the drawdown of the water table or the reduction of artesian pressure, or to the prevention of any of the kinds of waste of the underground water specified in Section 24 of this Act.

(c) Rules adopted under this Section do not apply to wells drilled to produce water to be used by an individual, a family, or a household for

(1) drinking water and cooking;

(2) washing;

(3) irrigating a garden or orchard, if the produce of the garden or orchard is primarily to be eaten by the individual, family, or household;

(4) watering animals.

(d) If the board sees fit, it may require that not more than one well producing more than 500 gallons a minute be drilled on 80 acres.

**Records and reports**

Sec. 27. The board may adopt rules

(1) requiring that records be kept and reports be made to the board concerning

(A) drilling, equipping, and completing wells into the underground water strata in the district;

(B) taking and using underground water in the district;

(2) requiring accurate driller's logs to be kept of wells into underground water strata, and that driller's logs and any electric logs kept be filed with the board.

**Rules relating to capping wells**

Sec. 28. The board may adopt regulations implementing the requirements in Section 36 of this Act relating to capping uncapped wells.

**Projects**

Sec. 29. The board, through its employees and agents, may

(1) construct and maintain dams;

(2) drain lakes, depressions, draws, and creeks;

(3) install and operate pumps and other equipment necessary to recharge the underground water in the district;

(4) acquire land, by eminent domain or otherwise, to do the things specified in Subdivisions (1) through (3) of this Section.

**Surveys**

Sec. 30. The board may employ engineers to

(1) survey the underground water in the district and the facilities for developing, producing, and using the underground water;

(2) determine the quality of the underground water available for production and use and the improvements, developments, and recharges needed in regard to the underground water in the district.

**Plans**

Sec. 31. (a) The board shall develop comprehensive plans for

(1) efficiently using the underground water in the districts;

(2) controlling and preventing waste of the underground water.

(b) The board shall specify in the plans, to the maximum extent practicable, the acts, procedure, performance and avoidance which are or may be necessary to effect the plans, including specifications for them.

(c) The board shall carry out research projects, develop information, and determine limitations, if any, which should be made on withdrawing underground water in the district.

(d) The board shall collect and preserve information regarding the use of underground water in the district and the practicability of recharging the underground water.

(e) The board shall publish plans and information developed under this Section, bring them to the attention of the users of underground water in the district, and encourage the users to adopt and use the information.

**Water supply for municipalities**

Sec. 32. (a) The district may purchase water rights and pipeline rights-of-way, drill wells, and erect suitable storage and other facilities for the purpose of selling water to municipalities within the district.



(b) The district may employ pumpers and well service personnel and may purchase vehicles and gauges pertinent to operation. No vehicle of the district may be used other than for official business.

(c) Rights of eminent domain are specifically excluded from proceedings or negotiations under this Section.

(d) Amortization of bonds and operating expenses must be guaranteed by the purchasers of the water, and any tax money spent for these purposes must be refunded to the district.

#### SUBCHAPTER F. RIGHTS AND DUTIES OF PERSONS IN THE DISTRICT.

##### Ownership of water

Sec. 33. The ownership and rights of the owner of the land and his lessees and assigns in underground water are recognized, and this Act does not in any way deprive or divest the owner or his assigns or lessees of that ownership or those rights, subject, however, to the rules adopted under this Act.

##### Responsibility for complying

Sec. 34. The owner of underground water or his lessee, if there is one, is responsible for complying with rules adopted by the board under this Act.

##### Illegal drilling and production

Sec. 35. Drilling a well without a permit or drilling or operating a well in violation of the terms and conditions of the permit, if a permit is required, and operating a well at a higher rate of production than the rate approved by the board for the well, are each declared to be illegal, wasteful per se, and a nuisance.

##### Capping wells

Sec. 36. The owner of underground water being produced from an underground water well shall keep the well capped with a covering capable of sustaining a pressure of at least 400 pounds, except when the well is in use, and shall comply with rules adopted under Section 23 of this Act.

#### SUBCHAPTER G. MISCELLANEOUS PROVISIONS.

##### Excluding land from the district

Sec. 37. (a) A person who owns land over which the board is exercising authority or claiming jurisdiction may petition the board for a hearing to determine whether or not the land is or should be excluded from the district. There will be no exclusion of any property after bonds are voted.

(b) At the conclusion of the hearing, the land is a part of the district if the board finds that the person has failed to establish that there is no underground water under the land or that the underground water cannot be brought to the surface at a cost that makes bringing it to the surface economically feasible.

(c) If the board makes a contrary finding under Subsection (b) of this Section, the land is excluded from the district on the day the person filed the petition with the board to determine whether or not the land should be excluded.

Sec. 38. (a) Including land in the district. Land may be included in the district under the provisions of the general annexation law relating to underground water control and improvement districts.

(b) Application. The provisions of this Act to not apply to a well drilled under a permit from the Railroad Commission of Texas.

#### Dissolution

Sec. 39. (a) The board may dissolve the district if it finds that the continued existence of the district will not best serve a public purpose, either because conditions in the district have changed so that regulation of underground water in the district is no longer necessary, or because it would be more efficient to have that regulation performed by some other agency.

(b) To dissolve the district, the board shall adopt a resolution proposing dissolution using the procedure for adopting rules provided for in Section 11 of this Act. After the resolution becomes effective, the board shall appoint a trustee, who shall settle the affairs of the district as quickly as possible. The trustee serves at the pleasure of the board, and is entitled to reasonable compensation set by the board.

(c) The trustee shall reduce to possession, and money, all assets and resources of the district, and shall apply the money to discharging the outstanding obligations of the district, having regard to specific funds. If it is necessary to do so, the board shall levy, assess, and collect additional taxes to pay all necessary expenses and outstanding obligations of the district.

(d) When all expenses and outstanding obligations are paid and the trustee's account is verified, the board shall discharge the trustee. When the trustee is discharged, the board shall enter of record its final order of dissolution and record the order in the deed records of the counties in which the district is located. The district is dissolved on the date specified in the order. The board shall file a copy of the dissolution order with the Texas Water Commission and mail a copy to the Texas Legislative Council.

(e) The board shall pay to the counties in the district a proportionate part of all money in the possession of the district not needed to pay for expenses and outstanding obligations of the district when it is dissolved.

#### Legislative findings

Sec. 40. The Legislature finds that the boundaries of the aquifer in the district are reasonably consistent with the county lines of Schleicher County; that all of the land and other property included within the area and boundaries of the district will be benefited by the works and projects which are to be accomplished by the district pursuant to the powers granted it by this Act; and that the district is created to serve a public use and benefit.

### SUBCHAPTER H. ENFORCEMENT PROVISIONS.

#### Suits by the board

Sec. 41. The board shall sue for injunctions, mandatory injunctions, and other appropriate remedies, to compel persons to comply with rules adopted by the board and with the provisions of Section 3 of this Act.

SUBCHAPTER I. TEMPORARY PROVISIONS.

**Initial board**

Sec. 42. (a) On the effective date of the creation of this district, as set out in Section 3 of this Act, the following persons are the directors of the board:

Precinct 1, Ford Oglesby  
Precinct 2, James L. Powell  
Precinct 3, Bobby R. Sykes  
Precinct 4, Earl Lloyd  
Director-at-large, Mort Merz.

(b) The term of office of the initial board members is from the effective date of the creation of this district, as set out in Section 3 of this Act until January 10, 1967. In the event the effective date of the creation of this district is after January 10, 1967, the term of office of the initial board members is from the effective date of the creation of the district, as set out in Section 3 of this Act, until January 10, 1969.

**Expiration date**

Sec. 43. If the board dissolves the district under Section 39 of this Act, this Act expires on the day the dissolution order is effective.

**Severance and savings clause**

Sec. 44. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications and to this end the provisions of this Act are declared to be severable.

**Emergency clause**

Sec. 45. The importance of this legislation and the crowded condition of the Calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended; and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 21, 1965, by a non-record vote; passed by the Senate on May 26, 1965: Yeas 31, Nays 0.

Approved June 16, 1965.

Effective Aug. 30, 1965, 90 days after date of adjournment.