

CHAPTER 10 – GROUNDWATER MANAGEMENT AREAS

SECTION 10.1 – MANAGEMENT AREA

RULE 10.1.1 - JOINT PLANNING IN MANAGEMENT AREA

- a) Management Plan Distribution – Upon completion and approval of the District's comprehensive Management Plan, as required by §36.1071 and §36.1072, Texas Water Code, the District shall forward a copy of the new or revised Management Plan to the other groundwater districts in its Texas Commission on Environmental Quality designated Management Area. The Board shall consider the plans of the other districts individually and shall compare them to other management plans then in force in the Management Area.
- b) Annual Meeting – The presiding officer, or the presiding officer's designee, of the District shall meet at least annually to conduct joint planning with the other districts in the Management Area and to review the management plans and accomplishments for the Management Area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:
 - i. the goals of each management plan and its impact on planning throughout the Management Area;
 - ii. the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measure in the Management Area generally;
 - iii. any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the Management Area; and,
 - iv. the degree to which each management plan achieves the desired future conditions established during the joint planning process.

SECTION 10.2 – DESIRED FUTURE CONDITIONS (DFC)

RULE 10.2.1 - ADOPTION PROCESS OF DESIRED FUTURE CONDITIONS

- a) Consideration of Factors – Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under the districts shall consider:
 - i. aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
 - ii. the water supply needs and water management strategies included in the state water plan;
 - iii. hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the Texas Water Development Board, and the average annual recharge, inflows, and discharge;
 - iv. other governmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
 - v. the impact of subsidence;
 - vi. socioeconomic impacts reasonably expected to occur;
 - vii. the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002.
 - viii. the feasibility of achieving the desired future condition; and
 - ix. any other information relevant to the specific desired future conditions.
- b) Defining a DFC – After considering and documenting the factors described by Subsection (a) and other relevant scientific and hydrogeological data, the District may establish different desired future conditions for: (i) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or, (ii) each geographic area overlying an aquifer in whole or in part; or, (iii) subdivisions of an aquifer within the boundaries of the management area.
- c) Balance of Considerations – The desired future conditions must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.107(a).
- d) Preliminary Approval and Public Comment – The DFC proposed must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than

90 days for public comments begins on the day the proposed DFC are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed DFC relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed DFC and any supporting materials, such as the documentation of factors considered and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed DFC, and the basis for the revisions.

- e) **Adoption and Report** – After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period, the district representatives shall reconvene to review the reports, consider any district’s suggested revisions to the proposed DFC, and finally adopt the DFC for the management area. The DFC must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a DFC explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must: identify each DFC; provide the policy and technical justification for each DFC; include documentation that the factors under Subsection (c) were considered by the districts and a discussion of how the adopted DFC impact each factor; list other DFC considered, if any, and the reasons why those options were not adopted; and discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the DFC.
- f) **District Resolution and Notice** – As soon as possible after a district receives the DFC resolution and explanatory report, the district shall adopt the DFC in the resolution and report that apply to the district. Except as provided by this section, a joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint meeting must be provided at least 10 days before the date of the meeting by: providing notice to the Secretary of State; providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and, posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area. The Secretary of State and the county clerk of each county shall post notice of the meeting in the manner provided by Section 551.053, Government Code. Notice of the meeting must include: the date, time and location of the meeting; a summary of any action proposed to be taken; the name of each district located wholly or partly in the management area; and, the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted. The failure or refusal of one or more districts to post notice for a joint meeting does not invalidate an action taken at the joint meeting.

RULE 10.2.2 - PETITION OF DESIRED FUTURE CONDITIONS TO TCEQ

- a) **Timing and Criteria for Petition** – Not later than the 120th day after the date on which a District adopts a desired future condition (DFC) under Section 36.108(d-4), Texas Water Code, an affected person may file a petition with the District requiring that the District contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing appealing the reasonableness of the DFC. The petition must provide evidence that the Districts did not establish a reasonable DFC of the groundwater resources in the management area.
- b) **District Response to Petition** – Not later than the 10th day after receiving a petition described by Subsection (a), the District shall submit a copy of the petition to the Texas Water Development Board (TWDB).
- c) **TWDB Response to Petition** – On receipt of the petition from the District, the TWDB shall commence:
 - i. An administrative review to determine whether the DFC established by the District meets the criteria in Section 36.108(d), Texas Water Code; and,
 - ii. A Study containing scientific and technical analysis of the DFC, including consideration of: (A) the hydrology of the aquifer; (B) the explanatory report provided to TWDB under Section 36.108(d-3), Texas Water Code; (C) the factors described under Section 36.108(d); and, (D) any relevant groundwater availability models, published studies, estimates of total recoverable storage capacity, average annual amounts of recharge, inflows, and discharge of groundwater; or information provided in the petition or available to the TWDB.
- d) **Timing of Response to Petition** – TWDB must complete and deliver to SOAH a study described by Subsection (c)(ii) not later than the 120th day after the date TWDB receives a copy of the petition.
- e) **Acknowledgement of Reports and Availability of Expert Witnesses** – For the purposes of a hearing conducted under Subsection (a):

- i. SOAH shall consider the study described by Subsection (c)(ii) and the DFC explanatory report submitted to TWDB under Section 36.108(d-3), Texas Water Code, to be part of the administrative record; and
 - ii. TWDB shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.
- f) **District Contract with SOAH** – Not later than the 60th day after receiving a petition under Subsection (a), the District shall:
 - i. Contract with SOAH to conduct the contested case hearing requested under Subsection (a); and
 - ii. Submit to SOAH a copy of any petitions related to the hearing requested under Subsection (a) and received by the District.
- g) **Hearing Guidelines** – A hearing under Subsection (a) must be held:
 - i. At a location described by Section 36.403(c), Texas Water Code; and,
 - ii. In accordance with Chapter 2001, Government Code, and the rules of SOAH.
- h) **Mediation Assistance** – During the period between the filing of the petition and the delivery of the study described by Subsection (e)(i), the District may seek the assistance of the Center for Public Policy Dispute Resolution, the TWDB, or another alternative dispute resolution system to mediate the issues raised in the petition. If the District and the petitioner cannot resolve the issues raised in the petition, the office will proceed with a hearing as described by this section.
- i) **Rules for Notice and Hearings** – The District may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of SOAH. In accordance with rules adopted by the District and SOAH, the District shall provide:
 - i. General notice of the hearing; and,
 - ii. Individual notice of the hearing to: (A) the petitioner; (B) any person who has requested notice; (C) each nonparty district and regional water planning group located in the same management area as the District named in the petition; (D) TWDB; and, (D) the Texas Commission on Environmental Quality (TCEQ).
- j) **Prehearing Conference** – Before a hearing conducted under this section, SOAH shall hold a prehearing conference to determine preliminary matters, including:
 - i. Whether the petition should be dismissed for failure to state a claim on which relief can be granted;
 - ii. Whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and,
 - iii. Which affected persons shall be named as parties to the hearing.
- k) **Responsibility of Costs for Hearing** – The petitioner shall pay the costs associated with the contract for the hearing under this section. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, SOAH may assess costs to one or more of the parties participating in the hearing and the District shall refund any excess money to the petitioner. SOAH shall consider the following in apportioning costs of the hearing:
 - i. The party who requested the hearing;
 - ii. The party who prevailed in the hearing;
 - iii. The financial ability of the party to pay the costs;
 - iv. The extent to which the party participated in the hearing; and,
 - v. Any other factor relevant to a just and reasonable assessment of costs.
- l) **District Decision** – On receipt of the administrative law judge’s findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the District shall issue a final order stating the District’s decision on the contested matter and the District’s findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(d), Government Code.
- m) **District Vacates or Modifies SOAH Decision** – If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District’s reasons for disagreement with the administrative law judge’s findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District’s decision.
- n) **Finding of an Unreasonable DFC** – If the District in its final order finds that a DFC is unreasonable, not later than the 60th day after the date of the final order, the districts in the same management area as the District that received the petition shall reconvene in a joint planning meeting for the purpose of revising the DFC. The districts in the management area shall follow the procedures in Section 36.108 to adopt new DFC applicable to the District that received the petition.

- o) Impact on Other Districts – A final order by the District finding that a DFC is unreasonable does not invalidate the adoption of a DFC by a district that did not participate as a party in the hearing conducted under this section.
- p) Consolidation of Hearings – The administrative law judge may consolidate hearings requested under this section that affect two or more Districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each District included as a party in a multidistrict hearing.
- q) Judicial Appeal of Desired Future Conditions
 - i. A final District order issued under Section 36.1083 may be appealed to a District Court with jurisdiction over any part of the territory of the District that issued the order. An appeal under this subsection must be filed with the District Court not later than the 45th day after the date the District issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a DFC is unreasonable, the court shall strike the DFC and order the districts in the same management area as the District that received the petition to reconvene not later than the 60th day after the date of the court order in a joint planning meeting for the purpose of revising the DFC. The districts in the management area shall follow the procedures in Section 36.108 to adopt new DFC applicable to the District that received the petition.
 - ii. A court’s finding under this section does not apply to a DFC that is not a matter before the court.

RULE 10.2.3 - MANAGEMENT AREA JOINT CONTRACTS

- a) Beneficial Joint Studies and Contracts - Districts located within the same Management Areas or in adjacent Management Areas may contract to jointly conduct studies or research, or to construe projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment of conveyance facilities.

RULE 10.2.4 - MANAGEMENT AREA PUBLIC NOTICE

- a) Notice of Meetings
 - i. Except as provided by Subsections (ii) and (iii), notice of meetings of the Board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.
 - ii. At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition (DFC) under Section 36.108(d-4), the Board must post notice that includes: (A) the proposed DFC and a list of any other agenda items; (B) the date, time, and location of the meeting or hearing; (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; (D) the names of the other districts in the District’s management area; and (E) information on how the public may submit comments.
 - iii. Except as provided by Subsection (ii), notice of a hearing described by Subsection (ii), must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

RULE 10.2.5 - MANAGEMENT AREA MODELED AVAILABLE GROUNDWATER

- a) Modeled Available Groundwater
 - i. The Texas Water Development Board shall require the districts in a management area to submit to the Texas Water Development Board not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):
 - A. the desired future conditions adopted under Section 36.108(d-3);
 - B. proof that notice was posted for the joint planning meeting; and,
 - C. the desired future conditions explanatory report.
 - ii. The Texas Water Development Board shall provide each district and regional water planning group located wholly or partly in the management area with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts.