

REVIEW OF THE DESIRED FUTURE CONDITIONS PROCESS

Project # 20120901

Texas Water 
Development Board



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PROJECT SUMMARY

Overview

The Texas Water Development Board (TWDB) has developed and implemented a review process that provides reasonable assurance that groundwater conservation districts develop and adopt desired future conditions (DFCs) in a manner that complies with state policy. In addition, TWDB's process for determining the reasonableness of petitioned DFCs provides reasonable assurance of compliance with the statute. Both of these processes include TWDB's rules and written procedures aimed at providing a framework for compliance with the statute. Further, both processes provide groundwater conservation districts and other relevant stakeholders with extensive technical and written guidance, most of which is available on the TWDB website. Recent significant reductions in staffing have affected both the level of guidance and the technical and modeling assistance staff provides various stakeholders. Management is currently determining which aspects of technical assistance and modeling to cut out of the next DFC cycle. The review found opportunities for improvement in the DFC appeal process and the reporting of modeled available groundwater (MAGs).

Operational Efficiency

Water Science & Conservation (WSC) management is actively leveraging technology to improve efficiencies in the manner in which groundwater modeling staff analyzes DFCs and calculates the relevant MAGs. MAGs represent the estimated amount of groundwater that may be produced to achieve the desired future condition. By using Parameter Estimation (PEST), with its predesigned/ prewritten scripts and cluster runs, the Groundwater Resources Division has streamlined groundwater modeling which has, in turn, significantly improved operational efficiencies and reduced the potential for error.

Reporting to the Board

The DFC process includes extensive reporting to senior management and the Board. DFC Board reports are detailed and require a considerable amount of analysis and quality assurance. Having completed the first DFC cycle, some of the details reported to the Board may no longer be pertinent. Groundwater Resources management should consider streamlining the Board reports.

Stakeholder Feedback

The DFC rule-making process has significantly improved stakeholder involvement, with management soliciting feedback from key constituents throughout the process, including before rule-drafting. In addition, Groundwater Resources has sought formal stakeholder feedback on a number of processes and issues, providing a wealth of valuable information.

Summary of Management's Response

Management appreciates Internal Audit's acknowledgement that the DFC process provides reasonable assurance for compliance with requirements. Management also appreciates Internal Audit's suggestions for improvement and is working to implement the recommendations provided in this report. Detailed responses are described in each of the following sections.

Scope

The audit focused on Groundwater Resources' review and processing of the DFCs from the time they are received from groundwater conservation districts to the time TWDB reports the final MAGs to the groundwater conservation districts. In addition, the audit included a review of the DFC appeal process. The audit focused primarily on the 2010 DFC cycle (i.e. activities from May 1, 2010 through June 31, 2012). Fieldwork was conducted from June through August, 2012.

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

1. The DFC Petition Process

1.1 Due Process

Observation

TWDB's process for determining the reasonableness of petitioned DFCs provides reasonable assurance of compliance with the statute. While the Legislature neither defined "reasonable," nor provided guidelines for the TWDB to use in determining whether a DFC is reasonable, the TWDB process for determining the reasonableness of petitioned DFCs consistently and objectively considers evidence regarding socio-economic, environmental and property rights impacts. However, it is not a judicial process and the statutory scheme is not designed to create due process protections for those prospectively affected by these decisions. In addition, the review found that processing DFC petitions takes a considerable portion of staff's time, most of which has been taken from other TWDB tasks. TWDB's senior management is aware of this and has, through TWDB's Legislative Priorities Report, sought to remove this petition process (concerning the reasonableness of a DFC) or to modify it to include judicial remedy, exclusive of the TWDB, with TWDB providing commentary based on its technical review of the DFC.

Recommendation

Continue to monitor the activities of the Legislature regarding this process, and provide resources where needed.

Management Response

Management is aware of the issue relating to the DFC petition process, will monitor the evaluation of the Legislative Priorities Report, and provide briefings and supporting information to the Legislature as requested. Changing the process ultimately rests with the Legislature. Responsible parties: Executive Administrator, Deputy Executive Administrator for Water Science & Conservation, Director of Groundwater Resources and Director of Governmental Relations. **Target Implementation Date: June 2013.**

1.2 Quality Control Procedures

TWDB's process for determining the reasonableness of petitioned DFCs includes a quality control framework to ensure regulatory compliance, objectivity, and consistency in the consideration of evidence regarding socio-economic and environmental and property rights impacts. For the petitions tested, some of the key observations follow:

- (i) DFC petition documentation met reviewability, form, and content requirements.
- (ii) TWDB acknowledged (in writing) the receipt of the petition within 10 business days, as required by TWDB rules.
- (iii) Hearing notices were published in the Texas Register and provided to petitioners and respondents.
- (iv) Petition hearings were held at a central location in the groundwater management area.
- (v) Postponement requests were appropriately addressed.

Management should be commended for successfully developing and implementing procedures for processing DFC appeals in a relatively short period of time, while dealing with changes in key supervisory positions.

2. DFC Review & Reporting Process

Observation

2.1 Review Procedures

TWDB's DFC review process includes quality assurance procedures that ensure compliance with the statute and TWDB requirements. The review found that groundwater conservation districts in groundwater management areas adopted and submitted DFCs in accordance with the statute and TWDB requirements. In addition, the review found that TWDB staff processed the DFCs in accordance with the statute and TWDB requirements. Internal processes include a tracking system and formal (written) quality review procedures (e.g. peer reviews and completion checklists to ensure compliance with requirements, and reviewer consistency). WSC's comprehensive DFC written procedures allow employees to understand their roles and responsibilities within predefined limits, increasing accountability (and consistency). In addition, the written procedures allow management to control events in advance, circumventing certain legal issues, without constant management intervention.

All of the DFCs reviewed were adopted by September 1, 2010, by resolution of the groundwater management area member representatives at a public meeting, which had been posted as required by Texas Water Code § 36.108(e) and 36.108(e-3). Further, the review found that TWDB management acknowledged receipt of DFC packages within 20 business days, in accordance with TWDB rules. The review also found evidence of TWDB's technical and quality assurance review procedures.

2.2 Reporting Process

The review found an opportunity to improve operational efficiencies by streamlining reporting to both the groundwater conservation districts and the Board. The reporting process includes reporting draft MAG runs and showing the estimated amount of groundwater that may be produced to achieve the DFC to the groundwater conservation districts for review and comment. However, the review found that the groundwater conservation districts generally take a considerable amount of time to respond, and when they do, it is with minimal commentary. Since the statute does not require that draft MAG reports be provided to the groundwater conservation districts, there may be a benefit in eliminating these, after consultation with the groundwater conservation districts. This would significantly reduce the length of the process while improving operational efficiency.

The review found that staff spends a considerable amount of resources on further analyses of the aquifers in order to provide the Board with an understanding on how the draft MAGs compare to estimates of maximum sustainable pumping, historical recoverable storage, current pumping, and estimates of availability used in the regional and statewide planning process. While the Board has requested the ability to review MAGs prior to staff's delivery of final values to the groundwater conservation districts and regional water planning groups, current Board members have indicated that this additional information may not be necessary for future DFC

cycles. This would eliminate the need for the extensive data analysis that goes into producing the Board report, streamlining the report, and providing improved operational efficiencies. TWDB rules do not require formal Board action on these reports.

Recommendation

Consider streamlining the reporting process by eliminating the draft MAG report (to the groundwater conservation districts) and the additional information from the Board report.

Management Response

Management agrees with the recommendation and will consider approaches to streamline the reporting process, which may include revising the draft MAG report review process and evaluating the need to include the estimated maximum sustainable pumping estimate in the Board report. Responsible parties: Deputy Executive Administrator for Water Science & Conservation and Director of the Groundwater Resources Division. **Target Implementation Date: June 2013.**

BASIS OF REVIEW

Objective & Scope

The objective of this review was to determine whether the processes and controls over TWDB's involvement with the DFC process including technical assistance, processing DFCs, delivering MAGs, and processing petitions provide reasonable assurance that the state's goals are met effectively and efficiently and in compliance with relevant laws.

The review focused on the process from the time the DFCs are received from the groundwater conservation districts to the time when the relevant final MAGs are published, and primarily on activities from May 1, 2010 through June 31, 2012. Fieldwork was conducted from June through August, 2012.

Criteria

Our audit was based upon standards as set forth in the Texas Administrative Code, Texas Water Code, TWDB's rules and other sound administrative practices. The audit was performed in compliance with the Institute of Internal Auditors' "International Standards for Professional Practice of Internal Auditing."

Additionally, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

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obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

“Desired future condition” means the desired, quantified condition of groundwater resources (such as water levels, water quality, spring flows, or volumes) for a specified aquifer within a management area at a specified time or times in the future. The DFC statement extends through at least the period that includes the current planning period for the development of regional water plans pursuant to Texas Water Code § 16.053, or longer, as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

Texas Water Code Section 36.108(d) requires groundwater conservation districts within each groundwater management area to adopt DFCs. Texas Water Code Section 36.108 (o) requires groundwater conservation districts to submit the adopted desired future condition to TWDB. TWDB staff uses the DFCs to develop MAGs i.e. the estimated amount of groundwater that may be produced to achieve the DFCs. These values are important because they impact groundwater management planning and water permitting decisions.

The 79th Legislature provided that a person with a legally defined interest in the groundwater in a groundwater management area could file a petition with TWDB appealing the approval of a DFC by the districts in that groundwater management area. The Legislature placed the burden on the petitioner to provide evidence that the districts did not establish a reasonable DFC.

AUDIT TEAM INFORMATION

Contact Information

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