

TO: Board Members

THROUGH: Darrell Nichols, Assistant Executive Administrator
Robert E. Mace, Ph.D., P.G., Deputy Executive Administrator, Water
Science & Conservation
Les Trobman, General Counsel

FROM: Larry French, P.G., Director, Groundwater Division

DATE: May 19, 2016

SUBJECT: Adopt amendments to and repeal portions of 31 Texas Administrative
Code Chapter 356 relating to Groundwater Management

ACTION REQUESTED

Adopt amendments to and repeal portions of 31 Texas Administrative Code (TAC) Chapter 356, relating to Groundwater Management; §356.10, relating to Definitions; §356.21, relating to Designation of Groundwater Management Areas; §356.22, relating to Request to Amend Groundwater Management Area Boundaries; §356.34, relating to District Adoption of the Desired Future Condition; §356.35, relating to Modeled Available Groundwater; §356.41, relating to Petition: Reviewability, Form, Receipt, Postponement, and Joinder; §356.42, relating to Hearing; §356.43, relating to Board Evaluation, Consideration, and Deliberation; §356.44, relating to Board Findings and Public Hearing on Recommended Revisions; §356.45, relating to Waiver; §356.46, relating to Administrative Record of the Proceedings; and §356.53, relating to Plan Submission.

BACKGROUND

The 84th Texas Legislature passed House Bill (HB) 200 in 2015. It amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a groundwater conservation district. The revision of these procedures in statute requires a revision of Texas Water Development Board (TWDB) rules pertaining to the appeal of a desired future condition adopted by a groundwater conservation district. On January 19, 2016, the Board authorized the Executive Administrator to post the proposed revisions to TWDB's groundwater management rules (31 TAC Chapter 356) related to HB 200 as well as amendments related to boundaries of groundwater management areas and correcting a definition. These proposed changes are described below.

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Changes to Process to Consider Desired Future Conditions Petitions

The proposed rules reflect the change in statute that removes TWDB's petition process for desired future conditions and instead allows an affected person to petition a groundwater conservation district (District) to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge. An affected person or entity has to file a petition with the District within 120 days of the District's adoption of the desired future condition. Within 60 days of receiving a petition, a District is required to contract with SOAH to conduct the contested case hearing and submit any related petitions. A District can also seek the assistance of TWDB to mediate the issues raised in the petition. If the issues cannot be resolved through mediation (if requested), SOAH is to proceed with the hearing. Within 10 days of receiving the petition, the District is to submit a copy of the petition to TWDB so it can conduct an administrative review of the desired future condition and a scientific and technical analysis. TWDB has 120 days after the date it receives a copy of the petition to complete and deliver the scientific and technical analysis to SOAH. TWDB staff responsible for the scientific and technical analysis may be called to testify as expert witnesses.

Amending Boundaries of Groundwater Management Areas

In accordance with 31 TAC §356.22(b)(2), authorization is required from the TWDB to proceed with rulemaking for a boundary change involving a substantive change to the physical groundwater management area boundary. Originally, TWDB maintained the groundwater management area boundary designations in certain internal data files. The titles of these data files were included in TWDB rules relating to groundwater management area designations. Because of this, the TWDB was required to authorize a rulemaking every time it amended groundwater management area boundaries; however, the titles of the data files are no longer listed in TWDB rules. Therefore, a rulemaking to reflect a substantive change to groundwater management area boundaries is no longer needed.

The proposed amendment to 31 TAC §356.22(b)(2) reflects the changes in TWDB practice for amending groundwater management area boundaries by removing the required rulemaking. Each groundwater management area requesting a change to its boundaries must continue to hold a public meeting on the issue and submit the notice and minutes of that meeting to TWDB with its request. Furthermore, 31 TAC §356.22(b)(2) would still require TWDB approval at a public board meeting for substantive changes. Therefore, a thorough notice and comment process will still be involved for amending groundwater management area boundaries even if the process no longer includes a rulemaking by TWDB. The proposed changes to rules related to amending groundwater management area boundaries ensure consistency with current practice related to data and map files.

Correction of a term used in rules for Groundwater Management Plan submission

The proposed replacement of the word "evidence" with "documentation" in 31 TAC §356.53(a)(3) will provide the correct description to the activities described in the rule.

KEY ISSUES

On February 5, 2016, the TWDB published proposed amendments to 31 TAC Chapter 356 in the Texas Register with a deadline of March 7, 2016, to receive public comments. The TWDB received comments from Prairielands Groundwater Conservation District, Upper

Trinity Groundwater Conservation District, and Xcel Energy. By statute, the TWDB is required to respond to each comment and, if necessary, modify the proposed rules. The adoption preamble (Attachment 1) includes the TWDB's response to comments. Changes in the final language considered for adoption are summarized below.

Comments from Prairielands Groundwater Conservation District and the Upper Trinity Groundwater Conservation District

The Prairielands Groundwater Conservation District and the Upper Trinity Groundwater Conservation District (collectively referred to as "the Districts") recommended two changes: (1) Section 356.41(a) should be revised to reflect that the desired future conditions are truly established by the district representatives of the groundwater management area during the joint planning process, which each individual district must later adopt; and (2) Section 356.42(c) should be stricken because the Districts feel that the ability of the Executive Administrator of the TWDB to unilaterally contract with an independent mediator at the district's expense exceeds the statutory language in HB 200 and the intent of the legislature.

The proposed amendments published in the *Texas Register* were as follows:

Section 356.41(a) The agency will perform an administrative review of the desired future condition established by the district to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

Section 356.42(c) Depending on the details of the petition, the executive administrator may contract with an independent mediator to be paid for by the district.

Responses

With respect to comments on proposed Section 356.41(a), the rule has been revised to clarify that the TWDB will perform an administrative review of a petition that is filed appealing a desired future condition adopted by an individual district:

Section 356.41(a) The agency will perform an administrative review of the desired future condition adopted by the district under Texas Water Code §36.108(d-4) to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

With respect to comments on proposed Section 356.42(c), the language concerning expenses for mediation has been deleted. The revised language gives the Executive Administrator flexibility in mediating issues using agency staff or an independent mediator. The proposed amendment has been revised as follows:

Section 356.42(c) Depending on the details and technical complexity of issues in the petition, the executive administrator may direct agency staff to mediate the issues raised in the petition or contract with an independent mediator.

Comment from Xcel Energy

Xcel Energy stated that they would like the definition of “Affected Person” in Section 356.10 to include persons and entities because an entity could also have an interest in groundwater rights. They suggested a way to accomplish this would be to either add “or entity” after the term “person” in the definition of “Affected Person,” or use the word “owner” throughout the definition.

The proposed amendment published in the *Texas Register* was as follows:

Section 356.10(1) Affected Person -- An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person who holds or is applying for a permit from a district in the management area, a person who has groundwater rights in the management area, or any other person defined as affected by Texas Commission on Environmental Quality rule.

Response

The definition has been revised to add “or entity” where appropriate. The proposed amendment has been revised as follows:

Section 356.10(1) Affected Person -- An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person or entity who holds or is applying for a permit from a district in the management area, a person or entity who has groundwater rights in the management area, or any other person defined as affected by Texas Commission on Environmental Quality rule.

RECOMMENDATION

The Assistant Executive Administrator recommends approval of this item.

This recommendation has been reviewed by legal counsel and complies with applicable statutes and TWDB rules.

Attachment 1: Preamble for Adopted Amendments

Attachment 2: Discussion of the Repeal

Attachment 3: Final version of Adopted 31 TAC Chapter 356

ATTACHMENT 1 – PREAMBLE FOR ADOPTED AMENDMENTS

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) Chapter 356, relating to Groundwater Management, §356.10, relating to Definitions; §356.21, relating to Designation of Groundwater Management Areas; §356.22, relating to Request to Amend Groundwater Management Area Boundaries; §356.34, relating to District Adoption of the Desired Future Conditions; §356.35, relating to Modeled Available Groundwater; and §356.53, relating to Plan Submission. The TWDB also adopts new §356.41, relating to Petition: Required Administrative Review and Scientific and Technical Study, and new §356.42, regarding Petition: Mediation of Issues. The proposal is adopted with changes as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 937).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB proposed these changes in order to clarify procedures related to amending the boundaries of groundwater management areas and to conform to changes in statute due to passage of House Bill (HB) 200 in 2015 by the 84th Texas Legislature.

Amending Boundaries of Groundwater Management Areas

In accordance with 31 TAC §356.22(b)(2), authorization is required from the TWDB to proceed with rulemaking for a boundary change involving a substantive change to the physical groundwater management area boundary. Originally, TWDB maintained the groundwater management area boundary designations in certain internal data files. The titles of these data files were included in TWDB rules relating to groundwater management area designations. Because of this, the TWDB was required to authorize a rulemaking every time it amended groundwater management area boundaries. However, the titles of the data files are no longer listed in TWDB rules. Therefore, the requirement for a rulemaking to reflect a substantive change to groundwater management area boundaries has been deleted.

The adopted amendment to 31 TAC §356.22(b)(2) reflects the changes in TWDB practice for amending groundwater management area boundaries by removing the required rulemaking. Each groundwater management area requesting a change to its boundaries must continue to hold a public meeting on the issue and submit the notice and minutes of that meeting to TWDB with its request. Furthermore, the adopted amendment to 31 TAC §356.22(b)(2) would still require TWDB approval at a public board meeting for substantive changes. Therefore, a thorough notice and comment process will still be involved for amending groundwater management area boundaries even if the process no longer includes a rulemaking by TWDB.

Changes to Process to Consider Desired Future Conditions Petitions

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedure for the appeal of a desired future condition adopted by a groundwater conservation district (District). The adopted amendments reflect the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH)

to hear the challenge. An affected person has to file a petition with the District within 120 days of the District's adoption of the desired future condition. Within 60 days of receiving a petition, a District is required to contract with SOAH to conduct the contested case hearing and submit any related petitions. Within 10 days of receiving the petition, the District is to submit a copy of the petition to the TWDB so it can conduct an administrative review of the desired future condition and a scientific and technical analysis. TWDB has 120 days to deliver the scientific and technical analysis to SOAH. TWDB staff responsible for the scientific and technical analysis may be called to testify as expert witnesses.

A District can also seek the assistance of the TWDB to mediate the issues raised in the petition. If the issues cannot be resolved, SOAH is to proceed with the hearing.

SECTION BY SECTION DISCUSSION OF THE ADOPTED AMENDMENTS

Section 356.10 Definitions

The definition of "Affected Person" is added to define the term as used in 31 TAC Chapter 356 to implement HB 200.

The definition of "Evidence" is deleted because it is unnecessary and is no longer applicable.

The definition of "Office" is added to define the term as used in Chapter 36 of the Texas Water Code.

The definition of "Person with a legally defined interest in groundwater" is deleted because it is unnecessary and is no longer applicable.

The definition of "Petition" is revised for consistency with Chapter 36 of the Texas Water Code.

The definition of "Petitioner" has been deleted because it is unnecessary and is no longer applicable.

The definition of "Relevant aquifer" has been moved within this Definitions section and renumbered.

Definitions have been renumbered accordingly.

Section 356.21 Designation of Groundwater Management Areas

Section 356.21 is revised for consistency with current agency practice related to data and map files.

Section 356.22 Request to Amend Groundwater Management Area Boundaries

Section 356.22 has been revised for consistency with current agency practice related to amending groundwater management area boundaries.

Section 356.34 District Adoption of the Desired Future Condition

Section 356.34 has been revised for consistency with agency practice and rules related to the submission of a desired future condition package.

Section 356.35 Modeled Available Groundwater

Section 356.35 has been revised to require the TWDB to provide the modeled available groundwater value no later than 180 days after the executive administrator has provided notice that the desired future condition package submitted is administratively complete.

Section 356.41 Petition: Required Administrative Review and Scientific and Technical Study

Section 356.41 (relating to Petition: Required Administrative Review and Scientific and Technical Study) has been repealed and new §356.41 has been adopted. Section 356.41 details the procedures for the appeal of a desired future condition adopted by a groundwater conservation district, consistent with Chapter 36 of the Texas Water Code, as amended by HB 200, 84th Legislative Session. This amendment reflects the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a groundwater conservation district to contract with the SOAH to hear the challenge. The adopted rule requires the TWDB to conduct an administrative review of the desired future condition and a scientific and technical analysis.

Section 356.42 Petition: Mediation of Issues

Section 356.42 (relating to Hearing) has been repealed and a new §356.42 has been adopted. It allows a groundwater conservation district to request the TWDB's assistance in mediating the issues raised in the petition, consistent with Chapter 36 of the Texas Water Code, as amended by HB 200, 84th Legislative Session. If the issues cannot be resolved, SOAH is to proceed with the hearing.

Section 356.53 Plan Submission

Section 356.53 is revised to correct a term.

REGULATORY IMPACT ANALYSIS

The TWDB has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area

boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The TWDB evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The adopted rulemaking would substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 36 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b)(4).

Nevertheless, the TWDB further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25 percent or more beyond that which would otherwise exist in the absence of the regulation. In other words, this adopted rulemaking provides clarity regarding the TWDB's process for changing groundwater management area boundaries and more closely aligns the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. This will not burden, restrict, or limit an owner's right to property. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

Written comments were received from Prairielands Groundwater Conservation District, Upper Trinity Groundwater Conservation District, and Xcel Energy.

RESPONSE TO COMMENTS

Comment

The Prairielands Groundwater Conservation District and the Upper Trinity Groundwater Conservation District (collectively referred to as “the Districts”) expressed their appreciation to the TWDB for presenting a complete and thoughtful rule package that effectively clarifies the procedures related to amending the boundaries of groundwater management areas, and represents the new petition process to appeal the adoption of desired future conditions. However, the Districts did recommend the following changes: (1) Section 356.41(a) should be revised to reflect that the desired future conditions are truly established by the district representatives of the groundwater management area during the joint planning process, which each individual district must later adopt; and (2) Section 356.42(c) should be stricken because the Districts feel that the ability of the Executive Administrator of the TWDB to unilaterally contract with an independent mediator at the district’s expense exceeds the statutory language in HB 200 and the intent of the legislature. The Districts contend that HB 200, as codified in Section 36.1083 of the Texas Water Code, does not require the district to pay the cost of the mediation.

Response

The TWDB appreciates these comments from the Districts and agrees to clarify the rules to address the comments.

With respect to comments on proposed Section 356.41(a), the rule has been revised to clarify that the TWDB will perform an administrative review of a petition that is filed appealing a desired future condition adopted by an individual district under Texas Water Code §36.108(d-4).

With respect to comments on proposed Section 356.42(c), we have deleted the language concerning expenses for mediation. The new language gives the Executive Administrator flexibility in mediating issues using agency staff or an independent mediator.

Comment

Xcel Energy stated that they would like the definition of “Affected Person” in Section 356.10 to include persons and entities because an entity could also have an interest in groundwater rights. They suggested a way to accomplish this would be to either add “or entity” after the term “person” in the definition of “Affected Person,” or use the word “owner” throughout the definition.

Response

The TWDB agrees that an entity could also have an interest in groundwater rights. Accordingly, the rule has been revised to add “or entity” where appropriate.

STATUTORY AUTHORITY

The amendment is adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Chapter 36, concerning the procedures for the appeal of a desired future condition adopted by a groundwater conservation district.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

Section 356.10 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here shall have the meanings provided in Chapter 36.

- (1) Affected Person--An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person **or entity** who holds or is applying for a permit from a district in the management area, a person **or entity** who has groundwater rights in the management area, or any other person defined as affected with respect to a management area by Texas Commission on Environmental Quality rule.
- (2) Agency--The Texas Water Development Board.
- (3) Amount of groundwater being used on an annual basis--An estimate of the quantity of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include an estimate of exempt uses.
- (4) Board--The governing body of the Texas Water Development Board.
- (5) Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.
- (6) Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

- (7) Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.
- (8) District--Any district or authority subject to Chapter 36, Texas Water Code.
- (9) Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.
- (10) Groundwater Availability Model--A regional groundwater flow model approved by the executive administrator.
- (11) Major aquifer--An aquifer designated as a major aquifer in the State Water Plan.
- (12) Minor aquifer--An aquifer designated as a minor aquifer in the State Water Plan.
- (13) Modeled Available Groundwater--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.
- (14) Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.
- (15) Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.
- (16) Office--State Office of Administrative Hearings.
- (17) Petition--A document submitted to the groundwater conservation district by an affected person appealing the reasonableness of a desired future condition.
- (18) Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.
- (19) Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.
- (20) Relevant aquifer--An aquifer designated as a major or minor aquifer.
- (21) State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(22) Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

(23) Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

Section 356.21 Designation of Groundwater Management Areas

The boundaries of the groundwater management areas are delineated using a geographic information system maintained and updated by the executive administrator. The digital files and a graphic representation of the groundwater management area boundaries are available on the agency's web site at <http://www.twdb.texas.gov>. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. These files are controlling in the event of a conflict with any graphic representation.

Section 356.22 Request to Amend Groundwater Management Area Boundaries

(a) A request to amend the boundaries of a groundwater management area must be addressed to the executive administrator and must contain the following:

(1) a resolution supporting the change signed by each of the district representatives in each affected groundwater management area;

(2) a demonstration that the geographic and hydrogeologic conditions require the proposed boundary change or an explanation that the change involves only an administrative correction; and

(3) a copy of the notice and minutes of the public meeting held by the districts in each affected groundwater management area at which the districts approved the resolution in paragraph (1) of this subsection.

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization.

(c) The executive administrator may, in his discretion, make administrative corrections to the data files described in §356.21 of this subchapter. The executive administrator will notify the affected districts before making any correction.

(d) The executive administrator may, in his discretion, waive any of the requirements of this subchapter upon a showing of good cause.

SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also adopted under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

Section 356.34 District Adoption of the Desired Future Condition

Each district shall adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Submission Package) is administratively complete.

Section 356.35 Modeled Available Groundwater

The executive administrator will provide the modeled available groundwater value for each aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness).

SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rule-making is also adopted under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

Section 356.41 Petition: Required Administrative Review and Scientific and Technical Study

(a) The agency will perform an administrative review of the desired future condition **adopted** by the district **under Texas Water Code §36.108(d-4)** to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

(b) The agency will complete and deliver to the Office a scientific and technical analysis of the desired future condition considering the criteria listed in Texas Water Code §36.1083(e)(2) within 120 days after receiving a copy of the petition from the district. The scientific and technical analysis of the desired future condition will be conducted according to the guidance published on the agency website.

Section 356.42 Petition: Mediation of Issues

(a) In accordance with Texas Water Code §36.1083(j), a district may seek assistance of the agency in mediating the issues raised in the petition.

(b) If the agency's assistance is sought by the district, the executive administrator or his designee shall hold at least one meeting with the district and the affected person and shall establish procedures to mediate the issues raised in the petition.

(c) Depending on the details **and technical complexity** of **issues in** the petition, the executive administrator may **direct agency staff to mediate the issues raised in the petition or** contract with an independent mediator **[to be paid for by the district]**.

(d) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation.

SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rule-making is also adopted under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

Section 356.53 Plan Submission

(a) A district requesting approval of its management plan, or of an update of its management plan to incorporate adopted desired future conditions that apply to the district, shall submit to the executive administrator the following:

(1) one hard copy of the adopted management plan;

(2) one electronic copy of the adopted management plan; and

(3) documentation that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice printed in the newspaper or publisher's affidavit.

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) shall be considered properly submitted to the executive administrator when all of the items specified in subsection (a) of this section are received by the executive administrator.

ATTACHMENT 2 – DISCUSSION OF THE REPEAL

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code (TAC) Chapter 356, §§356.41 - 356.46. The proposal is adopted without changes as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 942).

DISCUSSION OF THE REPEAL

The TWDB adopts these repeals in order to clarify procedures related to amending the boundaries of groundwater management areas, and to conform to changes in statute due to passage of House Bill (HB) 200 in 2015 by the 84th Texas Legislature. Changes to existing rules and proposed new rules to conform to the HB 200 amendments are being adopted simultaneously elsewhere in this issue of the *Texas Register*.

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a groundwater conservation district (District). These repealed rules reflect the change in statute that removes the TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge.

REGULATORY IMPACT ANALYSIS

The TWDB has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or

representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, the adopted repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this repealed rule constitutes neither a statutory nor a constitutional taking of private real property. The repealed rules do not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific purpose of the repeals is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The repealed rules substantially advance this stated purpose by incorporating applicable language from the Texas Water Code. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENT

No public comments were received.

STATUTORY AUTHORITY

The repeals are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and also under the authority of Texas Water Code Chapter 36, concerning the procedures for the appeal of a desired future condition adopted by a groundwater conservation district.

This rulemaking affects Texas Water Code, Chapter 36.

Section 356.40 Scope of Subchapter

This subchapter describes the process related to an appeal challenging the adoption of desired future conditions established by Texas Water Code §36.1083.

Section 356.41 Petition: Reviewability, Form, Receipt, Postponement, and Joinder

(a) Reviewability. The agency will review a petition when:

(1) the petition conforms to the requirements of this subchapter;

(2) the issues raised in the petition have not previously been considered by the board for the particular desired future condition in a petition under Texas Water Code §36.1083; and

(3) the petition is submitted to the executive administrator within 120 days following the date the districts in the groundwater management area collectively adopt the desired future condition(s).

(b) Form and Contents of Petition. A petition shall be addressed to the executive administrator, signed by the petitioner, and contain the following information:

(1) the petitioner's name and contact information, including mailing address, e-mail address, telephone number, and fax number and, if applicable, the same information for any person or entity designated as a representative of the petitioner;

(2) documentation that clearly identifies the nature of the petitioner's legally defined interest in groundwater in the area unless the petitioner is a district in or adjacent to the groundwater management area or a regional water planning group for a region in the area;

(3) a summary of the evidence upon which the petitioner will rely at the hearing for the contention that the adopted desired future condition is not reasonable; and

(4) evidence that the petitioner has provided a copy of the petition to each of the districts in the groundwater management area.

(c) Receipt of Petition and Acknowledgment. The executive administrator shall notify the petitioner and the districts within the groundwater management area within 15 days of receipt of a petition and advise whether the petition has been accepted as reviewable or has not been accepted as reviewable and the reasons for not accepting the petition.

(d) If the petition is not accepted, the petitioner will be allowed an additional 15 days to remedy the failure.

(e) Requests for Postponement.

(1) A district in the groundwater management area may, within 10 business days of its receipt of the executive administrator's acknowledgment of a reviewable petition, request that the executive administrator postpone review of the petition for 60 days to encourage consultation and resolution of the issues raised in the petition.

(2) Further extensions may be granted upon the request of a petitioner or a district upon a showing that the parties are in negotiations toward a resolution of the issues raised in the petition.

(f) Districts' Response to Petition. If the districts choose to respond, they shall have 90 days in which to present a written response to agency and the petitioner.

(g) Joinder of Petitions. The executive administrator may join multiple petitions concerning the same aquifers or issues within a groundwater management area if such joinder is beneficial to the agency, the petitioners, and the respondents.

Section 356.42 Hearing

(a) Hearing on petition. The executive administrator shall hold at least one hearing to receive evidence and take testimony on the petition from the petitioner and the districts.

(b) Location of hearing. Any hearing shall be conducted at a central location in the groundwater management area.

(c) Notice of the hearing. The notice of hearing shall be published in the Texas Register and shall be provided to the petitioners, the districts, any districts adjacent to the groundwater management area, any regional water planning group in the groundwater management area, and the county judge for each county in the groundwater management area at least two weeks before the hearing.

(d) Form of hearing. A hearing under this subchapter is not a contested case hearing. The Texas Rules of Evidence, Rules of Civil Procedure, and the rules promulgated by the State Office for Administrative Hearings related to contested case hearings will not apply to this hearing. Testimony will be under oath.

(e) Hearing procedure. The executive administrator may issue any directives necessary to ensure an orderly, fair, and efficient hearing. The hearing to receive evidence and take testimony from the petitioner and districts shall be conducted by the executive administrator and shall proceed as follows:

(1) The executive administrator shall provide a concise statement relating to the scope and purpose of the hearing and shall proceed to take testimony and accept evidence.

(2) The petitioner and the districts shall be provided an equal amount of time to present testimony and evidence. The petitioner carries the burden of persuasion and may reserve time for rebuttal.

(f) Statements and information from other interested persons. The executive administrator shall provide other persons with a legally-defined interest in the issues raised in the petition the opportunity to provide statements and information in any form acceptable to the executive administrator after the hearing concludes. The executive administrator shall keep the record of the hearing open for 15 days following the end of the hearing for receipt of statements and information from other interested persons. Such statements and information will be made available to the TWDB board members when they consider the petition, but will not be considered part of the evidentiary record.

(g) The executive administrator has the discretion to adopt different or additional procedures at the hearing upon the joint request of the petitioner and the districts or on the executive administrator's own initiative.

Section 356.43 Board Evaluation, Consideration, and Deliberation

(a) The executive administrator shall prepare a report on the petition, including a summary of the testimony and an analysis of the evidence received, and recommendation regarding the reasonableness of the desired future condition and any necessary findings.

(b) Record. The record on which the board will decide whether to grant the petition shall consist of:

(1) the petition and the districts' response, if any;

(2) the testimony and evidence presented at the hearing; and

(3) the executive administrator's report and recommendations based on the issue or issues that were raised in the petition.

(c) The board shall review the petition and any evidence relevant to the petition including the following criteria when determining whether a desired future condition is unreasonable:

(1) whether the balance between the highest level of groundwater production from the aquifer and conservation of groundwater in the aquifer provided by the desired future condition as described in Texas Water Code §36.108(d-2) is unreasonable; and

(2) whether the consideration the districts have given appropriate consideration to the factors set out in Texas Water Code §36.108(d) is unreasonable.

(d) The board's consideration of the reasonableness of a desired future condition pursuant to this subchapter shall be limited to the issue or issues that were raised in the petition.

(e) If the desired future condition is found to be unreasonable, the board shall make findings and recommend revisions that would make the desired future condition reasonable.

(f) The executive administrator may at any stage of the process described in this subchapter, terminate the proceedings on a petition when an agreement is reached resolving the petition or a petition has been withdrawn. A copy of any such agreement or withdrawal of the petition shall become a part of the record.

Section 356.44 Board Findings and Public Hearing on Recommended Revisions

(a) Within 90 days after the board finds that the desired future condition is unreasonable and recommends revisions, the districts shall revise and propose for adoption the desired future condition in accordance with the board's recommendations.

(b) The districts shall hold a public hearing at a central location in the groundwater management area to solicit public comment on the revised desired future condition. The notice of the public hearing shall be posted no later than 30 days after the districts propose for adoption the desired

future condition and at least 10 days before the hearing and include a copy of the board's recommended revisions. The districts shall provide a copy of the notice of the public hearing to the executive administrator within three days of the date on which the notice is published.

(c) The districts shall consider all public and board comments, revise the desired future condition, and, within 30 days after the districts' action, submit the revised desired future condition to the board along with the rationale, based upon comments received at the public hearing, for any changes to the desired future condition that vary from the board's recommended revisions. The districts' rationale shall be part of the record.

(d) In revising the desired future conditions under this section, the districts are not required to prepare an explanatory report pursuant to Texas Water Code §36.108(d-3).

(e) The executive administrator shall provide the districts and appropriate regional water planning groups with the modeled available groundwater based on the desired future conditions as revised according to the process described in Texas Water Code §36.1084 and §356.35 of this chapter (relating to Modeled Available Groundwater).

Section 356.45 Waiver

The executive administrator may, in his discretion, waive any of the requirements of this subchapter upon a showing of good cause.

Section 356.46 Administrative Record of the Proceedings

When the executive administrator provides the modeled available groundwater to the districts and the regional water planning groups, the administrative record of the appeal will be closed. It shall contain, in addition to the items listed in §356.43(b) of this subchapter (relating to Board Evaluation, Consideration, and Deliberation):

- (1) the minutes of the board's public deliberation on the petition;
- (2) the board's report containing any recommended revisions transmitted to the districts along with a copy of the transmittal letter;
- (3) the rationale for the districts' changes to the desired future condition; and
- (4) any other information that the executive administrator determines is relevant.

**TITLE 31 NATURAL RESOURCES AND CONSERVATION
PART 10 TEXAS WATER DEVELOPMENT BOARD
CHAPTER 356 GROUNDWATER MANAGEMENT**

SUBCHAPTER A DEFINITIONS

§356.10 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here shall have the meanings provided in Chapter 36.

- (1) Affected Person -- An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person or entity who holds or is applying for a permit from a district in the management area, a person or entity who has groundwater rights in the management area, or any other person defined as affected by Texas Commission on Environmental Quality rule.
- (2) Agency--The Texas Water Development Board.
- (3) Amount of groundwater being used on an annual basis--An estimate of the quantity of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include an estimate of exempt uses.
- (4) Board--The governing body of the Texas Water Development Board.
- (5) Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.
- (6) Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.
- (7) Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.
- (8) District--Any district or authority subject to Chapter 36, Texas Water Code.
- (9) Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.
- (10) Groundwater Availability Model--A regional groundwater flow model approved by the executive administrator.
- (11) Major aquifer--An aquifer designated as a major aquifer in the State Water Plan.
- (12) Minor aquifer--An aquifer designated as a minor aquifer in the State Water Plan.

- (13) Modeled Available Groundwater--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.
- (14) Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.
- (15) Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.
- (16) Office – State Office of Administrative Hearings
- (17) Petition--A document submitted to the groundwater conservation district appealing the adoption of a desired future condition.
- (18) Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.
- (19) Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.
- (20) Relevant aquifer--An aquifer designated as a major or minor aquifer.
- (21) State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).
- (22) Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.
- (23) Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

SUBCHAPTER B DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

§356.20 Scope of Subchapter

This subchapter describes the agency's delineation of groundwater management areas pursuant to the requirements of Texas Water Code §35.004.

§356.21 Designation of Groundwater Management Areas

The boundaries of the groundwater management areas are delineated using a geographic information system maintained and updated by the executive administrator. The digital files and a graphic representation of the groundwater management area boundaries are available on the agency's web site at <http://www.twdb.texas.gov>. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may

be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. These files are controlling in the event of a conflict with any graphic representation.

§356.22 Request to Amend Groundwater Management Area Boundaries

(a) A request to amend the boundaries of a groundwater management area must be addressed to the executive administrator and must contain the following:

- (1) a resolution supporting the change signed by each of the district representatives in each affected groundwater management area;
- (2) a demonstration that the geographic and hydrogeologic conditions require the proposed boundary change or an explanation that the change involves only an administrative correction; and
- (3) a copy of the notice and minutes of the public meeting held by the districts in each affected groundwater management area at which the districts approved the resolution in paragraph (1) of this subsection.

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization.

(c) The executive administrator may, in his discretion, make administrative corrections to the data files described in §356.21 of this subchapter. The executive administrator will notify the affected districts before making any correction.

(d) The executive administrator may, in his discretion, waive any of the requirements of this subchapter upon a showing of good cause.

SUBCHAPTER C SUBMISSION OF DESIRED FUTURE CONDITIONS

§356.30 Scope of Subchapter

This subchapter identifies the agency's requirements and process for submitting desired future conditions under the requirement of Texas Water Code §36.108.

§356.31 Submission Date

(a) Not later than five years after the date on which the districts in a groundwater management area last collectively adopted a desired future condition, the districts shall propose a desired future condition for adoption in accordance with Texas Water Code §36.108.

(b) The districts in a groundwater management area may, as part of the process for adopting and submitting desired future conditions, propose classification of a portion or portions of a relevant

aquifer as non-relevant if the districts determine that aquifer characteristics, groundwater demands, and current groundwater uses do not warrant adoption of a desired future condition. In such a case no desired future condition is required. The districts must submit the following documentation to the agency related to the portion of the relevant aquifer proposed to be classified as non-relevant:

- (1) A description, location, and/or map of the aquifer or portion of the aquifer;
- (2) A summary of aquifer characteristics, groundwater demands, and current groundwater uses, including the total estimated recoverable storage as provided by the executive administrator, that support the conclusion that desired future conditions in adjacent or hydraulically connected relevant aquifer(s) will not be affected; and
- (3) An explanation of why the aquifer or portion of the aquifer is non-relevant for joint planning purposes.

§356.32 Submission Package

Districts must provide the following to the executive administrator no later than 60 days following the date on which the districts in the groundwater management area collectively adopted the desired future condition(s):

- (1) a copy of the explanatory report addressing the information required by Texas Water Code §36.108(d-3) and the criteria in Texas Water Code §36.108(d);
- (2) a copy of the resolution of the groundwater management area adopting the desired future conditions as required by Texas Water Code §36.108(d-3);
- (3) a copy of the notice that was posted for the joint planning meeting at which the districts collectively adopted the desired future condition(s) as required by Texas Water Code §36.108(e) and §36.108(e-2);
- (4) the name of a designated representative of the groundwater management area;
- (5) any groundwater availability model files or aquifer assessments acceptable to the executive administrator used in developing the adopted desired future condition with documentation sufficient to replicate the work; and
- (6) any other information the executive administrator may require to be able to estimate the modeled available groundwater.

§356.33 Determination of Administrative Completeness

A submitted package will be considered administratively complete if it contains complete copies of all documents required under §356.32 of this subchapter (relating to Submission Package) and is signed and dated.

- (1) The executive administrator will acknowledge in writing receipt of submitted packages and will advise whether they are administratively complete or will provide a notice of deficiencies.
- (2) Districts must submit to the executive administrator an updated package that contains corrections to the deficiencies noted in paragraph (1) of this section no later than 90 days following the date on which the executive administrator provided a notice of deficiencies.

§356.34 District Adoption of the Desired Future Condition

Each district shall adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Submission Package) is administratively complete.

§356.35 Modeled Available Groundwater

The executive administrator will provide the modeled available groundwater value for each aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness).

SUBCHAPTER D APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

§356.40 Scope of Subchapter

This subchapter describes the process related to an appeal challenging the adoption of desired future conditions established by Texas Water Code §36.1083.

§356.41 Petition: Required Administrative Review and Scientific and Technical Study

(a) The agency will perform an administrative review of the desired future condition adopted by the district under Texas Water Code §36.108(d-4) to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

(b) The agency will complete and deliver to the Office a scientific and technical analysis of the desired future condition considering the criteria listed in Texas Water Code §36.1083(e)(2) within 120 days after receiving a copy of the petition from the district. The scientific and technical analysis of the desired future condition will be conducted according to the guidance published on the agency website.

§356.42 Petition: Mediation of Issues

(a) In accordance with Texas Water Code 36.1083(j), a district may seek assistance of the agency in mediating the issues raised in the petition.

(b) If the agency's assistance is sought by the district, the executive administrator or his designee shall hold at least one meeting with the district and the affected person and shall establish procedures to mediate the issues raised in the petition.

(c) Depending on the details and technical complexity of issues in the petition, the executive administrator may direct agency staff to mediate the issues raised in the petition or contract with an independent mediator.

(d) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation.

SUBCHAPTER E GROUNDWATER MANAGEMENT PLAN APPROVAL

§356.50 Scope of Subchapter

This subchapter governs the agency's procedures for reviewing and approving management plans as administratively complete.

§356.51 Required Management Plan

In accordance with Texas Water Code §§36.1071 (including coordination with surface water management entities on a regional basis), 36.1072, and 36.1085, a district shall develop and submit to the executive administrator a management plan that meets the requirements of §356.52 of this subchapter (relating to Required Content of Management Plan). The management plan goals must be time-based and quantifiable.

§356.52 Required Content of Management Plan

(a) A management plan shall contain, unless explained as not applicable, the following elements:

(1) Management goals:

(A) providing the most efficient use of groundwater;

(B) controlling and preventing waste of groundwater;

(C) controlling and preventing subsidence;

(D) addressing conjunctive surface water management issues;

(E) addressing natural resource issues which impact the use and availability of groundwater, and which are impacted by the use of groundwater;

(F) addressing drought conditions;

(G) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement and brush control, where appropriate and cost-effective; and

(H) addressing the desired future conditions established pursuant to Texas Water Code §36.108;

(2) Management objectives that the district will use to achieve the management goals in paragraph (1) of this subsection. Management objectives are specific and time-based statements of future outcomes, each linked to a management goal. Each future outcome must be the result of actions that can be taken by the district during the five years following the effective date of the adopted management plan;

(3) Performance standards for each management objective. Performance standards are indicators or measures used to evaluate the effectiveness and efficiency of district activities. Evaluation of the effectiveness of district activities measures the performance of the district. Evaluation of the efficiency of district activities measures how well district resources are used to produce an output, such as the amount of resources devoted for each management action;

(4) Details of how the district will manage groundwater supplies in the district, including a methodology by which the district will track its progress in achieving its management goals. At least one goal must be tracked on an annual basis; however, other goals may be defined and tracked over a longer time period as appropriate; and

(5) Estimates of the following:

(A) modeled available groundwater in the district as provided by the executive administrator based on the desired future condition established under Texas Water Code §36.108;

(B) the amount of groundwater being used within the district on an annual basis taken from either the water use survey data provided by the executive administrator or the district's own estimate;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district as provided by the executive administrator;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers as provided by the executive administrator;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available from the executive administrator;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected water demand for water in the district according to the most recently adopted state water plan.

(b) The management goals, performance standards and management objectives required in subsection (a)(1), (2), and (3) of this section must be consistent with the established desired future conditions of the district's groundwater management area(s).

(c) Each district must use the groundwater availability modeling information provided by the executive administrator in conjunction with available site-specific information provided by the district when developing the estimates required in subsection (a)(5) of this section.

§356.53 Plan Submission

(a) A district requesting approval of its management plan, or of an update of its management plan to incorporate adopted desired future conditions that apply to the district, shall submit to the executive administrator the following:

(1) one hard copy of the adopted management plan;

(2) one electronic copy of the adopted management plan; and

(3) documentation that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice printed in the newspaper or publisher's affidavit.

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) shall be considered properly submitted to the executive administrator when all of the items specified in subsection (a) of this section are received by the executive administrator.

§356.54 Approval

(a) The executive administrator will approve a plan as administratively complete when it contains the information required by Texas Water Code §36.1071(a) and (e). The executive administrator will notify the district in writing of the determination.

(b) If approval is denied, the executive administrator will provide written reasons for the denial with the notice of denial. A district has 180 days from receipt of notice to submit a revised management plan for review and approval. A revised or amended management plan must comply with all requirements of this subchapter.

(c) An approved management plan remains in effect until:

(1) the district fails to readopt a management plan at least 90 days before the plan expires;

(2) the district fails to submit the district's readopted management plan to the executive administrator at least 60 days before the plan expires; or

(3) the executive administrator determines that the readopted management plan does not meet the requirements for approval and the district has exhausted all appeals to the board or court in accordance with Texas Water Code §36.1072(f).

§356.55 Appeal of Denial of Management Plan Approval

(a) If the executive administrator denies approval of a management plan, a revised management plan, or an amendment to a management plan, the district may appeal the denial by notifying the executive administrator in writing of its intent to appeal, not later than 60 days after the executive administrator's written notice of denial.

(1) Not later than 30 days after filing its notice of intent to appeal, a district shall submit to the executive administrator in writing points of appeal addressing each of the executive administrator's reasons for denial of approval.

(2) The appeal shall be heard at the first regularly scheduled meeting of the board to occur after the expiration of 30 days from the receipt of the district's written points of appeal. Written notice of appeal and written points of appeal shall be considered to be received by the executive administrator when received in the Austin offices of the agency.

(3) The executive administrator may file a written response to the district's points of appeal with the board and shall provide a copy of the response to the district.

(b) If the board upholds the executive administrator's decision to deny approval of the management plan, the district may request that the matter be mediated or, failing mediation, may appeal to a district court in Travis County, in accordance with Texas Water Code §36.1072(f).

§356.56 Approval of Amendments

(a) If the district proposes to amend its plan for revisions of items other than the modeled available groundwater or desired future condition, the district shall submit a written copy of the proposed amendment to the executive administrator so that the executive administrator may determine whether the amendment requires approval.

(b) If the executive administrator determines that the amendment requires approval, the district shall submit all amendments to the management plan developed under §356.52 of this subchapter (relating to Required Content of Management Plan) to the executive administrator within 60 days

of adoption of the amendment by the district's board. Amendments shall be submitted either in the form of an addendum to the management plan or as changes highlighted within the entire management plan.

(c) If the amendments address items required by Texas Water Code §36.1071, they should be in the form of an amended plan instead of an addendum to avoid confusion and preserve the integrity of the plan. Amendments must be submitted in accordance with §356.53 of this subchapter (relating to Plan Submission). Incorporation of newly developed desired future conditions and modeled available groundwater values must be adopted as an amendment.

§356.57 Sharing with Regional Water Planning Groups

Each district shall forward a copy of its approved management plan to the chair of each regional water planning group within the district's boundaries.

SUBCHAPTER F DATA COLLECTION AND TRAINING

§356.60 Scope of Subchapter

This subchapter discusses data collection training and reporting by districts.

§356.61 Training on Data Collection Methodology

If requested by a district in writing to the executive administrator, the agency shall provide the district training on basic data collection methodology and reporting and provide technical assistance, including basic data collection and reporting methodology.

§356.62 Data Collected by the District

Upon written request of the executive administrator, a district shall provide any data collected by the district to the executive administrator in a format acceptable to the executive administrator. The executive administrator shall provide to the districts a list of acceptable formats for reporting by the districts.