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AGENDA ITEM MEMO

BOARD MEETING DATE: December 17, 2024

TO: Board Members

THROUGH: Bryan McMath, Executive Administrator
Ashley Harden, General Counsel
John T. Dupnik, P.G. Deputy Executive Administrator, Water Science & Conservation

FROM: Natalie Ballew, P.G., Director, Groundwater

SUBJECT: Adoption of rulemaking for 31 TAC Chapter 356 related to Groundwater Management

ACTION REQUESTED

Consider authorizing the publication of the adoption of amendments to 31 Texas Administrative Code (TAC) Chapter 356 related to Groundwater Management.

BACKGROUND

Chapter 356 contains the agency's programmatic rules related to groundwater management. The TWDB's role in Texas groundwater management relevant to this chapter is primarily to provide technical assistance and includes designating groundwater management areas for joint groundwater planning, reviewing and approving desired future condition documentation, reviewing and approving groundwater conservation district (GCD) management plans, designating brackish groundwater production zones, and providing a technical review of GCD permit applications for production from production zones.

The amendments modernize, update, and clarify the rule language to facilitate groundwater management in the state and clarify requirements for GCDs

KEY ISSUES

The amendments add more specificity and clarity regarding desired future conditions packages, required elements of groundwater management plans, and brackish groundwater production zones. Additionally, the amendments add definitions for conservation, groundwater management area, non-relevant aquifer for the purposes of joint groundwater planning, and brackish groundwater for the purposes of brackish groundwater production zone designation.

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Leading the state's efforts
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water future for Texas

Board Members

Brooke T. Paup, Chairwoman | L'Oreal Stepney, P.E., Board Member | Tonya R. Miller, Board Member
Bryan McMath, Executive Administrator

The Board approved publication of proposed amendments to 31 TAC Chapter 356 on July 23, 2024. The proposed rules were posted to the *Texas Register* on August 9, 2024 (49 TexReg 5912) and public comments were accepted for 30 days until September 9, 2024.

The TWDB received one public comment letter (Attachment 1) from the Texas Alliance of Groundwater Districts (TAGD) primarily seeking additional clarifications on definitions and two sections of the rule. TAGD noted concerns with the definition of brackish groundwater potentially limiting use in brackish aquifers, but this definition is only defined for the purposes of brackish groundwater production zone designations by the TWDB. In response to this comment, the Executive Administrator recommends modifying the proposed rule language to include a statutory reference to brackish groundwater production zones in Chapter 16, Texas Water Code.

TAGD also commented on whether the definition of conservation could be expanded to include recharge enhancement. The proposed definition is consistent with the definition in Texas Water Code § 15.001(9)(B) and was added to define the conservation goal, a goal that includes recharge enhancement, which must be addressed in a groundwater management plan.

TAGD also inquired about the requirement to consider water supply needs and strategies in the state water plan in a groundwater management plan, which is a statutory requirement that was clarified in the rule. And finally, TAGD recommended adjusting the five-year management plan adoption cycle, which may be reset at any time by a groundwater conservation district who submits a full plan for TWDB review and approval.

The Executive Administrator recommends adding the statutory reference for brackish groundwater production zone designations to the definition of brackish groundwater for clarifying the purpose of the definition but does not recommend making any additional changes to the rulemaking in response to the other comments. A compilation of TWDB responses to comments are included in Attachment 2.

RECOMMENDATION

The Executive Administrator recommends adoption of the previously proposed amendments to 31 TAC Chapter 356 related to Groundwater Management.

Attachment(s):

1. Public comments from the Texas Alliance of Groundwater Districts
2. Adoption of rulemaking to be filed with the *Texas Register*



P.O. Box 90277 Austin, Texas 78709 (512) 596-3101

September 09, 2024

Ashley Harden
Texas Water Development Board
Office of the General Counsel
P.O. Box 13231
Austin, Texas 78711-3231

Via email to: rulescomments@twdb.texas.gov

RE: Proposed Rulemaking - Texas Administrative Code §§ 356

In response to the proposed rules published in the Texas Register (49 TexReg 5912-5921) on August 9, 2024, the Texas Alliance of Groundwater Districts (TAGD) submits this comment letter for the Texas Water Development Board's consideration. Thank you in advance for the opportunity to provide input.

TAGD was established in 1988 to provide a means for Groundwater Conservation Districts (GCDs), the regulatory arm of groundwater management in Texas, to stay current in groundwater science, policy and management. TAGD currently represents 90 GCDs, and 44 associate members comprised of groundwater geoscientists, attorneys, and consultants.

TAGD appreciates that the proposed rule changes aim to modernize and improve the existing regulatory framework for groundwater management. As we prepare for the future, TAGD believes it is essential that these updates are clear, practical, and support the goals of efficient groundwater management across the state. We respectfully submit the comments below to help achieve those objectives.

Section 356.10 - Definitions:

Brackish – TAGD has concerns regarding the definition of “brackish” and its potential to designate significant portions of aquifers, such as the Blaine Aquifer, as brackish. This could have significant implications for these resources. While the definition seems to be intended for Brackish Groundwater Production Zones (BGPZ), there is language that might limit certain uses based on whether the water is designated as a BGPZ or is being used for significant production. We recommend further clarification in the rule regarding the distinction between brackish zone designations and current uses of aquifers to avoid unintended impacts on aquifers like the Blaine.



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Conservation – TAGD members raised the question of whether the definition of “conservation” could be expanded to include the enhancement of recharge. We believe adding language on recharge enhancement could make the definition more comprehensive by acknowledging efforts that improve long-term water resource availability beyond demand management alone.

Section 356.52 – Required Content of Management Plan:

TAGD has concerns about the newly added requirement in §356.52(a)(7) to consider water supply needs in the water plan. TAGD seeks clarification on the intent and purpose behind this addition, particularly how districts are expected to address these needs given the frequent presence of unmet needs in regional and state planning frameworks. Providing more detailed guidance on this requirement would greatly assist districts in ensuring compliance with the rule.

Section 356.56 – Approval of Management Plan Amendments:

Several GCDs have encountered difficulties with 5-year adoption periods not being reset with the MAG generation by TWDB and aligning their management plan cycles with the updates to DFC adoption. TAGD recommends adjusting the management plan cycle to begin following the release of MAG updates, as opposed to DFCs. This would reduce administrative burdens and ensure that management plans reflect the most current groundwater data, improving long-term planning and compliance.

Thank you for your consideration of these comments and for the opportunity to provide our input. Please do not hesitate to contact me if you have any questions or would like to discuss.

Sincerely,

Adam Foster
Executive Director, TAGD
adam@texasgroundwater.org
(512) 961-2652

The Texas Water Development Board (TWDB) adopts amendments in 31 Texas Administrative Code (TAC) Subchapters A, B, C, E, and G, more specifically §§356.10, 356.20, 356.22, 356.31, 356.32, 356.33, 356.34, 356.35, 356.51, 356.52, 356.53, 356.54, 356.55, 356.56, 356.57, 356.70, 356.71, and 356.72. The proposal is adopted with changes as published in the August 9, 2024 issue of the *Texas Register* (49 Tex Reg 5914). The rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The TWDB adopts this rulemaking updating and clarifying rule language that will facilitate groundwater management in the state and related requirements for groundwater conservation districts. The adopted rule language adds specificity and clarity regarding desired future condition packages, including non-relevant aquifer documentation; required elements of groundwater management plans; and brackish groundwater production zones. Additionally, the TWDB adds new definitions for brackish groundwater, conservation, groundwater management area, and non-relevant aquifer.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

31 TAC 356, Subchapter A

The adopted amendments in §356.10, Definitions, adds the following new definitions: “brackish groundwater” in §356.10(5), “conservation” in §356.10(9), “groundwater management area” in §356.10(15), and “non-relevant aquifer” in §356.10(21). Other adopted amendments to §356.10 include correcting an error in §356.10(3) to refer to the “quantity” of water rather than the “quality” of water, renumbering the entire section to provide for new definitions, and to clarify rule language improving the readability of the rule.

31 TAC 356, Subchapter B

The adopted amendments in §§356.20 and 356.22 modernize the rule language. No changes are adopted to §356.21 and that rule will not be published with this adoption.

31 TAC 356, Subchapter C

No changes are adopted to §356.30. That rule will not be published with this adoption.

The adopted amendments in §356.31 update the title of the section and the due date by which desired future condition packages are due from a designated representative of each groundwater management area to the Executive Administrator of the TWDB. The adopted amendments also clarify “non-relevant” aquifer designations and required documentation submitted as part of a desired future condition package.

The adopted amendments in §356.32 update the title of the section, clarify the contents of the submission package for desired future conditions due to the TWDB, requires the submission of “non-relevant” aquifer information, and renumbers the section, as appropriate.

The adopted amendments in §356.33 require that a package submitting a desired future condition by the representative of a groundwater management area be signed and dated by that representative. The adopted amendments also clarify how the Executive Administrator of the TWDB will determine whether a submission package is administratively complete.

The adopted amendments in §356.34 modernize the rule language.

The adopted amendments in §356.35 clarify that a desired future condition package is what is declared administratively complete by the Executive Administrator.

31 TAC 356, Subchapter E

No changes are adopted to §356.50, and the rule will not be republished with this adoption.

The adopted amendments in §356.51 modernize the rule language.

The adopted amendments in §356.52 clarify that “management objectives,” must correspond to a “management goal,” to include adopted §356.52(a)(5) in the review of submitted management plans. Adopted amendments to this section also include §356.52(a)(7) requiring a consideration of water supply needs and water management strategies, in accordance with statute, and to modernize and re-number the rule language throughout the section.

The adopted amendments in §356.53 modernize the rule language, update the kind of information submitted to the Executive Administrator during review of a management plan, and reflect that documentation of notice of the plan’s adoption may be posted on the official website of a District. §356.53(a)(1) removes the requirement for hard-copy submissions of adopted management plans and provide for only the submission of electronic versions of adopted management plans.

The adopted amendments in §356.54 clarify that management plans are “revised” rather than “amended” when an adopted plan is not approved by the Executive Administrator.

The adopted amendments in §356.55 the rule language.

The adopted amendments in §356.56 update the title of the section, adds new §356.56(a) clarifying the process of Executive Administrator approval of amended management plans, to provide that changes to approved management plans will be defined as “amendments” rather than “addendums,” and to re-number the section.

The adopted amendments in §356.57 update the rule language.

31 TAC 356 Subchapter G

The adopted amendments in §356.70 update the language and update §356.70(d), providing the TWDB authority to amend a designated brackish groundwater production zone on its own, or by request by a district. In addition, §356.70(e) requires the TWDB to provide public notice of an amendment related to a designated brackish groundwater production zone.

The adopted amendments in §356.71 updates the rule language.

The adopted amendments in §356.72 requires districts to submit certain report information to the TWDB and clarifies and updates the rule language.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB 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 update and clarify existing rules that are necessary for groundwater management in the state and certain requirements for groundwater conservation districts.

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 any 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 Texas Water Code §15.001, §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

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 this rulemaking is to update and clarify existing rules that are necessary for groundwater management in the state and certain requirements for groundwater conservation districts. The adopted rulemaking will substantially advance this stated purpose by aligning definitions with agency and industry practice and providing greater detail for desired future condition packages and required elements of groundwater management plans.

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 mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency charged with the delineation of groundwater management areas in order to assist with the conservation, preservation, protection and prevention of the waste of the state's groundwater resources.

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 adopted 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, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking updates the state's existing rules that facilitate groundwater management without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The following comments were received from Adam Foster, the Executive Director for the Texas Alliance of Groundwater Districts. The public comment period for this rulemaking ended on September 9, 2024. The following is a compilation of the comments received including a response to each.

Comment:

Adam Foster, Executive Director of Texas Alliance of Groundwater Districts (TAGD) commented that TAGD had concerns about the proposed definition of "brackish" and the "potential to designated significant portions of aquifers, such as the Blaine Aquifer, as brackish." He noted that the proposed definition appeared to be intended to be limited for "Brackish Groundwater Production Zones." He additionally recommended further clarification about the proposed rule.

Response:

The TWDB acknowledges these comments. The added definition of "brackish groundwater" is for the purposes of brackish groundwater production zone designations under Texas Water Code §16.060 and includes the salinity range used currently for zone designations.

The TWDB does not designate zones in areas that meet exclusionary criteria described in Texas Water Code §16.060(b)(5). Areas expressly excluded from zone designations include: 1) the Edwards Aquifer located within the jurisdictional boundaries of the Edwards Aquifer Authority, the Barton Springs-Edwards Aquifer Conservation District, the Harris Galveston Subsidence District, and the Fort Bend Subsidence District; 2) aquifers, subdivisions of aquifers, or geologic

strata that have an average total dissolved solids concentration of more than 1,000 milligrams per liter which serve as a significant source of water supply for municipal, domestic, or agricultural purposes; and 3) geologic formations that are designated or used for wastewater injection through the use of injection or disposal wells permitted under Texas Water Code Chapter 27.

The TWDB completed a brackish aquifer study for the Blaine Aquifer in 2016 and did not designate any brackish groundwater production zones due to the exclusionary criteria, including that the aquifer serves as significant source of water for domestic and agricultural purposes.

The TWDB added the statutory reference for brackish groundwater production zone designations to the definition of brackish groundwater in response to this comment.

Comment:

Adam Foster also commented whether the proposed definition of conservation could be expanded to include the enhancement of recharge.

Response:

The TWDB acknowledges these comments. The definition of “conservation” is consistent with the definition in Texas Water Code §15.001(9)(B) and was added to define the conservation goal that must be addressed in a groundwater management plan. The goal related to conservation also includes recharge enhancement, rainwater harvesting, precipitation enhancement, and brush control (Texas Water Code §36.1071(a)(8)). The TWDB made no changes to the rule in response to this comment.

Comment:

Adam Foster also submitted comments on behalf of TAGD about 31 TAC Section 356.52(a)(7), specifically about the addition to “consider water supply needs in the water plan.” TAGD seeks clarification for the proposed addition to the rule.

Response:

Groundwater conservation districts are currently required by Texas Water Code §36.1071(e)(4), to consider the water supply needs and water management strategies in the state water plan. The purpose of this proposed amendment is to emphasize the focus on considering the needs and strategies that potentially impact groundwater supplies or can be impacted by district actions. The TWDB routinely provides guidance during pre-reviews of management plans before final approval. The TWDB made no changes to the rule in response to these comments.

Comment:

Adam Foster of TAGD commented about changes to 31 TAC §356.56, stating that groundwater conservation districts “have encountered difficulties with 5-year adoption periods not being reset with the MAG generation by TWDB and aligning their management plan cycle.” Additionally,

TAGD “recommends adjusting the management plan cycle to begin following the release of MAG updates, as opposed to DFCs.”

Response:

The TWDB acknowledges these comments. A groundwater conservation district may reset their 5-year management plan adoption cycle at any time by submitting a fully updated groundwater management plan to the TWDB for review and approval. Texas Water Code §36.3011(b)(5) alludes to the requirement that a groundwater conservation district must update its groundwater management plan before the second anniversary of the adoption of desired future conditions by the groundwater management area. Any efforts to require an updated management plan following the distribution of modeled available groundwater estimates rather than the date desired future conditions are adopted within a groundwater management area would require a statutory change that is outside the scope of this rulemaking. The TWDB made no changes to the rule in response to these comments.

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is 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 Water Code and other laws of the State, and also under the authority of Water Code §§15.001, §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085.

This rulemaking affects Texas Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

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§15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

SUBCHAPTER A DEFINITIONS

§356.10. Definitions.

The following words and terms, when used in this chapter, will 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 will 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 data from Texas Water Development Board historical water use estimates, an estimate of exempt uses, and data collected by the district.

(4) Board—The governing body of the Texas Water Development Board.

(5) Brackish groundwater—Groundwater containing 1,000 to 9,999 milligrams per liter of total dissolved solids for the purposes of brackish groundwater production zone designations under Texas Water Code §16.060.

(6) Brackish groundwater production zone operating permit--A permit issued by a district under Texas Water Code §36.1015.

(7) 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.

(8) Conjunctive surface water 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.

(9) Conservation— Practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(10) Designated brackish groundwater production zone--An aquifer, subdivision of an aquifer, or geologic stratum designated under Texas Water Code §16.060(b)(5).

(11) Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a groundwater management area at one or more specified future times as defined by district representatives within a groundwater management area as part of the joint planning process.

(12) District--Any district or authority subject to Chapter 36, Texas Water Code.

- (13) Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.
- (14) Groundwater availability model--A regional groundwater flow model provided by the executive administrator.
- (15) Groundwater management area--An area delineated and designated by the Texas Water Development Board as an area most suitable for management of groundwater resources through regional joint groundwater planning.
- (16) Major aquifer--An aquifer designated as a major aquifer by the board.
- (17) Minor aquifer--An aquifer designated as a minor aquifer by the board.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) Non-relevant aquifer--An aquifer or portion of an aquifer deemed not relevant for joint planning purposes by district representatives within a groundwater management area.
- (22) Office--State Office of Administrative Hearings.
- (23) Petition--A document submitted to a district by an affected person appealing the reasonableness of a desired future condition.
- (24) 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.
- (25) 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.
- (26) Relevant aquifer--An aquifer designated as a major or minor aquifer, or any undesignated aquifer deemed relevant for joint planning by district representatives within a groundwater management area.

(27) State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(28) 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, including but not limited to river authorities or irrigation authorities.

(29) 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.

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§15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

SUBCHAPTER B DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

§356.20. Scope of Subchapter.

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

§356.22 Request to Amend Groundwater Management Area Boundaries

(a) A request to amend the boundaries of a groundwater management area must be made in writing 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.

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§15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

SUBCHAPTER C SUBMISSION OF DESIRED FUTURE CONDITIONS

§356.31 Desired Future Condition Package Submission Date

(a) The desired future conditions for the relevant aquifers within the groundwater management area must be approved by a resolution adopted by a two-thirds vote of all the district representatives in a groundwater management area not later than January 5, 2027, in accordance with Texas Water Code §36.108. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date.

(b) A designated representative of the groundwater management area must provide complete copies of all documents required under §356.32 of this subchapter (relating to Desired Future Condition Package) to the executive administrator no later than 60 days following the date on which the district representatives within the groundwater management area adopted desired future conditions.

(c) The district representatives in a groundwater management area may, as part of the process for adopting and submitting desired future conditions, propose classification of a relevant aquifer or portions of a relevant aquifer as non-relevant if the districts determine that aquifer characteristics, projected groundwater demands, and current groundwater uses do not warrant adoption of a desired future condition. Non-relevant aquifers do not require a desired future condition. The districts must submit the following documentation for non-relevant aquifers to the agency as part of the desired future condition package:

(1) A description, location, and/or map of the aquifer or portion of the aquifer;

(2) A summary of aquifer characteristics, projected 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. Desired Future Condition Package.

A designated representative of the groundwater management area must provide the following to the executive administrator no later than 60 days following the date on which the district representatives in the groundwater management area adopted the desired future condition(s):

(1) a copy of the desired future conditions 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) non-relevant aquifer documentation required by §356.31(c) of this subchapter (relating to Desired Future Condition Package Submission Date);

(3) 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);

(4) 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);

(5) the name of a designated representative of the groundwater management area;

(6) 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

(7) 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 Desired Future Condition Package) and is signed and dated by the designated representative of the groundwater management area.

(1) The executive administrator will acknowledge in writing receipt of submitted packages and will review for administrative completeness. The agency may request clarifications while

reviewing the package for administrative completeness. If the submitted package is administratively complete, the executive administrator will notify the district representatives within the groundwater management area in writing. If requests for clarification are not acknowledged or addressed in a reasonable amount of time, the executive administrator will provide a notice of deficiencies.

(2) The designated representative of the groundwater management area 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 must 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 Desired Future Condition Package) is administratively complete.

§356.35. Modeled Available Groundwater.

The executive administrator will provide the modeled available groundwater value for each relevant 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 desired future condition package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness).

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§15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

SUBCHAPTER E GROUNDWATER MANAGEMENT PLAN APPROVAL

§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 must 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).

§356.52. Required Content of Management Plan.

(a) A management plan must contain, unless explained in detail 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 adopted by the district under Texas Water Code §36.108;

(2) Management objective(s) for each management goal. Management objectives are specific, measurable, and time-based statements of future outcomes that the district will use to achieve each management goal in paragraph (1) of this subsection. 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 standard(s) 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;

(5) The actions, procedures, performance, and avoidance that are or may be necessary by the district to effect the plan, including specifications and proposed rules;

(6) 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 each aquifer within the district, as provided by the executive administrator;

(D) the annual volume of water that discharges from each aquifer within the district 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, as provided by 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; and

(7) Details of the district's consideration of:

(A) Water supply needs within the district according to the most recently adopted state water plan, emphasizing those needs that impact groundwater supply within the district; and

(B) Water management strategies sourced from within the district boundaries according to the most recently adopted state water plan, emphasizing strategies that are or will be impacted by district actions.

(b) The management goals, management objectives, and performance standards 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) Estimates required in subsection (a)(5) of this section must be developed with groundwater availability modeling information provided by the executive administrator in conjunction with the district's best available site-specific information and data.

§356.53. Plan Submission.

(a) A district requesting approval of its management plan, or of an amended management plan to incorporate adopted desired future conditions, or any other updates as necessary, will submit to the executive administrator the following:

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

(2) 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 either posted on the district's website or provided to the county clerk.

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) will 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 will 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 must 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 will 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 must 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 Management Plan Amendments.

(a) Amendments to a plan that substantially affect the management plan require approval by the executive administrator and must be submitted in accordance with §356.53 of this subchapter (relating to Plan Submission). Substantial amendments include updating estimates of modeled available groundwater, revising the desired future conditions goal, or any changes to elements required by Texas Water Code §36.1071. A plan must be updated no later than two years after the adoption of desired future conditions by the district representatives within the groundwater management area(s).

(b) If the district proposes to amend its plan for revisions of items not required by Texas Water Code §36.1071 or that do not substantially affect the plan, the district must submit a written copy of the proposed amendment to the executive administrator so that the executive administrator may determine whether the amendment requires approval.

(c) If the executive administrator determines that a proposed amendment substantially affects the plan and requires approval, the district must 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.

(d) All management plan amendments or proposed amendments must be submitted in writing to the executive administrator and include a cover letter noting the amendments made or proposed amendments to the plan.

§356.57. Sharing with Regional Water Planning Groups.

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

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§15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

SUBCHAPTER G BRACKISH GROUNDWATER PRODUCTION ZONES

§356.70. Brackish Groundwater Production Zone Designation.

(a) The agency will identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(1) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(2) are not located in:

(A) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(B) the boundaries of the:

(i) Barton Springs-Edwards Aquifer Conservation District;

(ii) Harris-Galveston Subsidence District; or

(iii) Fort Bend Subsidence District;

(C) an aquifer, subdivision of an aquifer, or geologic stratum that:

(i) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(ii) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time of designation of the zones; or

(D) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Texas Water Code Chapter 27.

(b) In designating a brackish groundwater production zone under this section, the agency will:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by subsection (a)(1) of this section;

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by paragraph (1) of this subsection; and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone; and

(3) work with districts and stakeholders and consider the most recently updated Brackish Groundwater Manual for Texas Regional Water Planning Groups and other relevant scientific data or findings.

(c) Areas of the state that are not designated as brackish groundwater production zones are not precluded from development of brackish groundwater or from future designation of zones.

(d) The agency may amend a designated brackish groundwater production zone upon its own initiative or upon request by a district. A request for an amendment from a district must be made in writing and include justification and documentation supporting the requested amendment.

(e) The Agency will provide notice of the intent to amend a designated brackish groundwater production zone with proposed changes to any district within the applicable brackish groundwater production zone and to the district(s) and any entity that requested the amendment through a district.

§356.71. Brackish Groundwater Production Zone Operating Permit Review.

(a) This section does not apply to a district that overlies the Dockum Aquifer and includes wholly or partly 10 or more counties.

(b) When a district submits an application for a brackish groundwater production zone operating permit to the agency, the agency will conduct a technical review of the application, subject to subsections (c) and (d) of this section.

(c) Upon receipt of such an application, the agency will assess the application to determine whether a proposed production well is located within a designated brackish groundwater production zone. If a proposed production well is not located within a designated brackish groundwater production zone, the agency will not conduct the technical review of the application. If a proposed production well is located within a designated brackish groundwater production zone, the agency will conduct the technical review of the applicable permit application or applicable portions of a permit application in accordance with subsections (d) - (f) of this section.

(d) Upon receipt of an application for a brackish groundwater production zone operating permit for a proposed production well located within a designated brackish groundwater production zone and that includes all of the information required by Texas Water Code §36.1015(g), the agency will conduct a technical review of the application. If the agency does not receive all of the information required by Texas Water Code §36.1015(g), the agency will notify the district of the missing information. The agency will not conduct a technical review of an incomplete application until all required information is received.

(e) After conducting the application assessment and required technical review of a complete application, the agency will provide a report of the technical review of the application to the district that submitted the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone, including:

(A) whether the proposed production exceeds the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period, as determined pursuant to Texas Water Code §16.060(e) and [is] in addition to the amount of modeled available groundwater provided under Texas Water Code §36.108; and

(B) whether the parameters and assumptions used in the model described in Texas Water Code §36.1015(g)(4)(A) are compatible with the designated brackish groundwater production zone;

(2) recommendations for the monitoring system required by Texas Water Code §36.1015(e)(4) and (6), including whether the number of monitoring wells are adequate and in appropriate locations and aquifers, in accordance with recommendations established under Texas Water Code §16.060(e)(2)(B);

(3) verification the district rules require monitoring of land elevations for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, as required by Texas Water Code §36.1015(e)(5).

(f) The findings and recommendations included in subsection (e) of this section only be site-specific if the agency has received site-specific data and information from the district.

§356.72. Annual Report Review.

(a) When a district has received an annual report required under Texas Water Code §36.1015(e)(6) and reviewed the report for any missing information, the district will submit the report to the agency and request a review, under Texas Water Code §36.1015(j). The agency will investigate and issue a technical report to the district that sent the request, subject to subsection (b) of this section.

(b) Upon receipt of a request, the agency will determine whether it has received the applicable annual report and all of the information required under Texas Water Code §36.1015(e)(6), and for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, the information required to be collected under Texas Water Code §36.1015(e)(5) related to subsidence. If the agency has not received all of the information required under Texas Water Code §36.1015(e)(6) or §36.1016(e)(5), as applicable, the agency will notify the district of the missing information and will not conduct a technical review of the reports until all required information is received.

(c) Not later than the 120th day after the date the agency receives all of the required information, the agency will investigate and issue a technical report on whether:

(1) brackish groundwater production from the designated brackish groundwater production zone under the project that is the subject of the report is projected to cause:

(A) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the agency in the designation of the zone;

(B) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(C) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term; or

(2) enough information is available to determine if brackish groundwater production from the designated brackish groundwater production zone under the project that is the subject of the report is projected to cause the conditions listed in paragraph 1 of this subsection.