

TO: Board Members

THROUGH: Kevin Patteson, 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 Resources

DATE: January 7, 2016

SUBJECT: Proposed Rulemaking – 31 Texas Administrative Code Chapter 356 relating to Groundwater Management

ACTION REQUESTED

Authorize publication of proposed amendments to 31 Texas Administrative Code 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; § 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.

Groundwater conservation districts in groundwater management areas may request the TWDB to amend boundaries of the groundwater management areas. The current rules that describe the procedures for changing these boundaries do not conform to current approaches for handling internal data files related to groundwater management area boundaries. The proposed amendments to these rules will clarify the process for making changes in groundwater management area boundaries.

Our Mission : **Board Members**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas :
: Bech Bruun, Chairman | Kathleen Jackson, Member | Peter Lake, Member
:
: Kevin Patteson, Executive Administrator

KEY ISSUES

The purpose of the proposed amendments to 31 Texas Administrative Code (TAC) Chapter 356 is to conform to changes in statute due to passage of HB 200 by the 84th Texas Legislature in 2015 and to clarify procedures related to amending the boundaries of groundwater management areas. The proposed amendments also include a correction to a term used in the rule addressing submission of groundwater management plans to the Executive Administrator by groundwater conservation districts. The key issues related to the proposed amendments to these rules are outlined in the paragraphs below.

Changes to Process to Consider Desired Future Conditions Petitions

HB 200, 84th Legislative Session, 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). The proposed rules 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 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 TWDB to mediate the issues raised in the petition. If the issues cannot be resolved, SOAH is to proceed with the hearing.

The proposed changes to rules related to petitions challenging the reasonableness of desired future conditions are primarily deletion of previous rules that described the Board's previous responsibilities in processing and evaluating petitions. While TWDB is mostly removed from the decision-making responsibilities, agency staff will continue to be responsible for preparing a technical and scientific analysis of the petition issues and may be called to testify at a contested case hearing 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.

RECOMMENDATION

The Executive Administrator recommends approval of this item.

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

Attachment: Preamble and Proposed Amendments to 31 TAC Chapter 356

The Texas Water Development Board (TWDB) proposes 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; § 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 AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB is proposing rulemaking 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 (H.B.) 200 by the 84th Texas Legislature in 2015.

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.

Changes to Process to Consider Desired Future Conditions Petitions

H.B. 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). The proposed rules 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 PROPOSED AMENDMENTS.

Section 356.10. Definitions

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

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.

§ 356.21. Designation of Groundwater Management Areas

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

§ 356.22. Request to Amend Groundwater Management Area Boundaries

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

§ 356.34. District Adoption of the Desired Future Condition

Section 356.34 is revised for consistency with agency practice and rules related to the

submission of a desired future condition package.

§ 356.35. Modeled Available Groundwater

Section 356.35 is 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.

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

Section 356.41 is revised for consistency with Chapter 36 of the Texas Water Code as amended by H.B. 200, 84th Legislative Session, which details the procedures for the appeal of a desired future condition adopted by a groundwater conservation district. The proposed rulemaking 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 proposed rulemaking requires the TWDB to conduct an administrative review of the desired future condition and a scientific and technical analysis.

§356.42. Petition: Mediation of Issues

Section 356.42 is revised for consistency with Chapter 36 of the Texas Water Code as amended by H.B. 200, 84th Legislative Session, which allows a groundwater conservation district to request the TWDB's assistance in mediating the issues raised in the petition. If the issues cannot be resolved, SOAH is to proceed with the hearing.

§ 356.43. Board Evaluation, Consideration, and Deliberation

Section 356.43 has been deleted because it is unnecessary and is no longer applicable.

§ 356.44. Board Findings and Public Hearing on Recommended Revisions

Section 356.44 has been deleted because it is unnecessary and is no longer applicable.

§ 356.45. Waiver

Section 356.45 has been deleted because it is unnecessary and is no longer applicable.

§ 356.46 Administrative Record of the Proceedings

Section 356.46 has been deleted because it is unnecessary and is no longer applicable.

§356.53. Plan Submission

Section 356.53 is revised to correct a term.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendment. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their administration.

This rule is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed amendment. This rule is not expected to have any impact on state or local revenues. The rule does not require any increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule.

PUBLIC BENEFITS AND COSTS

Ms. Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it provides clarity regarding the TWDB's process for changing groundwater management area boundaries and it is consistent with statutory changes made to the process involving desired future conditions.

LOCAL EMPLOYMENT IMPACT STATEMENT

The TWDB has determined that a local employment impact statement is not required because the proposed amendment will not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this proposed rule. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rule as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The TWDB reviewed the proposed 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 related to the same.

Even if the proposed rule 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 proposed rule does not fall under any of the applicability criteria in Texas Government Code, § 2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendment 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 proposed rule 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 proposed rule 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 proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule 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% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this proposed 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 proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication in the Texas Register and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.texas.gov. or by fax at (512) 475-2053.

STATUTORY AUTHORITY

This rulemaking is proposed 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 proposal is also proposed under the authority of Chapter 36 of the Texas Water Code.

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

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

§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 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 with respect to a management area by Texas Commission on Environmental Quality rule.

(2[4]) Agency--The Texas Water Development Board.

(3[2]) 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[3]) Board--The governing body of the Texas Water Development Board.

(5[4]) 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[5]) 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[6]) 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[7]) District--Any district or authority subject to Chapter 36, Texas Water Code.

~~[(8) Evidence--Information, including but not limited to oral statements or presentations, written materials, data files, or graphic representations, which relates to the reasonableness of the desired future conditions.]~~

(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

~~[(16) Relevant aquifer--An aquifer designated as a major or minor aquifer.]~~

~~[(17) Person with a legally defined interest in groundwater person or entity that owns or leases land or rights to groundwater in a groundwater management area, uses a well for beneficial use~~

~~in a groundwater management area, or has current or pending authorization from a district to produce groundwater.]~~

~~(17[18])~~ Petition--A document submitted to the groundwater conservation district [~~executive administrator~~] by an affected person appealing the reasonableness of a desired future condition [~~that complies with the requirements of §356.41(b) of this chapter (relating to Petition: Reviewability, Form, Receipt, Postponement, and Joinder)~~].

~~(19) Petitioner--A person with a legally defined interest in groundwater, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area who appeals the adoption of a desired future condition.~~

~~(18[20])~~ 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[21])~~ 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[22])~~ 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[23])~~ 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[24])~~ 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.

§ 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 a CD-ROM located in agency offices and~~] 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 [~~to proceed with rulemaking~~].

(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.

§ 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

(a) 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). ~~[The modeled available groundwater value will be provided:~~

~~(1) No later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.32 of this subchapter (relating to Submission Package); or~~

~~(2) No later than 180 days after the date on which the board determines that an appeal under Subchapter D of this chapter (relating to Appealing Adoption of Desired Future Conditions) is resolved.~~

~~(b) An appeal of a desired future condition will be considered resolved when:~~

~~(1) The board determines that the desired future condition is reasonable; or~~

~~(2) When districts in the groundwater management area submit a revised desired future condition(s) to the board.]~~

**§ 356.41. Petition: Required Administrative Review and Scientific and Technical Study
[Reviewability, Form, Receipt, Postponement, and Joinder]**

~~(a) [Reviewability.]~~ 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). ~~[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) 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. [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.

(e) ~~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.]~~

§ 356.42. ~~[Hearing]~~ 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. ~~[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) 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. [Location of hearing. Any hearing shall be conducted at a central location in the groundwater management area.]~~

~~(c) Depending on the details of the petition, the executive administrator may contract with an independent mediator to be paid for by the district. [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) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation. [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.]~~

~~[§ 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.]~~

[§ 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).]~~

[§ 356.45. Waiver

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

[§ 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 to the petition.]~~

§ 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 [evidence] 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.