

WATER CODE  
SUBTITLE E. GROUNDWATER MANAGEMENT  
CHAPTER 35. GROUNDWATER STUDIES

Sec. 35.001. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater management areas may be created as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 35.002. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(9) "Board" means the board of directors of a district.

(10) "Director" means a member of a board.

(11) "Management area" means an area designated and delineated by the Texas Water Development Board as an area suitable for management of groundwater resources.

(12) "Priority groundwater management area" means an area designated and delineated by the commission as an area that is experiencing or is expected to experience critical groundwater problems.

(13) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.10, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.21, eff. Sept. 1, 2001.

Sec. 35.003. SURFACE WATER LAWS NOT APPLICABLE. The laws and administrative rules relating to the use of surface water do not apply to groundwater.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Sec. 35.004. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS. (a) The Texas Water Development Board, with assistance and cooperation from the commission, shall designate groundwater management areas covering all major and minor aquifers in the state. The initial designation of groundwater management areas shall be completed not later than September 1, 2003. Each groundwater management area shall be designated with the objective of providing the most suitable area for the management of the groundwater resources. To the extent feasible, the groundwater management area shall coincide with the boundaries of a groundwater reservoir or a subdivision of a groundwater reservoir. The Texas Water Development Board also may consider other factors, including the boundaries of political subdivisions.

(b) The commission may designate a groundwater management

area after September 1, 2001, for a petition filed and accepted by the commission according to its rules in effect before September 1, 2001. The commission shall act on the designation in accordance with this section.

(c) The Texas Water Development Board may alter the boundaries of designated management areas as required by future conditions and as justified by factual data. An alteration of boundaries does not invalidate the previous creation of any district.

(d) The Texas Water Development Board shall designate groundwater management areas using the procedures applicable to rulemaking under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.22, eff. Sept. 1, 2001.

Sec. 35.007. IDENTIFYING, DESIGNATING, AND DELINEATING PRIORITY GROUNDWATER MANAGEMENT AREAS. (a) The executive director and the executive administrator shall meet periodically to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 25-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management areas across all major and minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development Board shall annually review the need for additional designations as provided by this subsection.

(b) If the executive director concludes that an area of the state should be considered for designation as a priority groundwater management area, the executive director shall prepare a report to the commission.

(c) Before the executive director requests a study from the executive administrator under Subsection (d), the executive director shall provide notice to the persons listed in Section 35.009(c) of areas being considered for identification as experiencing or expected to experience critical groundwater problems and shall consider any information or studies submitted under this subsection. Not later than the 45th day after the date of the notice, a person required to receive notice under this subsection may submit to the executive director information or studies that address the potential effects on an area of being identified as experiencing or expected to experience critical groundwater problems.

(d) The executive director shall begin preparation of a priority groundwater management area report by requesting a study from the executive administrator. The study must:

(1) include an appraisal of the hydrogeology of the area and matters within the Texas Water Development Board's planning expertise relevant to the area;

(2) assess the area's immediate, short-term, and long-term water supply and needs; and

(3) be completed and delivered to the executive director on or before the 180th day following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report.

(e) The executive director shall request a study from the executive director of the Parks and Wildlife Department for the purpose of preparing the report required by this section. The Department of Agriculture may also provide input to the executive director for purposes of the report. The study must:

(1) evaluate the potential effects of the designation of a priority groundwater management area on an area's natural resources; and

(2) be completed and delivered to the executive

director on or before the 180th day following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report.

(f) The report shall include:

(1) the recommended delineation of the boundaries of any proposed priority groundwater management area in the form of an order to be considered for adoption by the commission;

(2) the reasons and supporting information for or against designating the area as a priority groundwater management area;

(3) a recommendation regarding whether one or more districts should be created in the priority groundwater management area, whether the priority groundwater management area should be added to an existing district, or whether a combination of those actions should be taken;

(4) a recommendation as to actions that should be considered to conserve natural resources;

(5) an evaluation of information or studies submitted to the executive director under Subsection (c); and

(6) any other information that the executive director considers helpful to the commission.

(g) The executive director must complete the report and file it with the commission on or before the 240th day following the date on which the executive administrator was requested to produce a study. The executive director shall make the report available for public inspection by providing a copy of the report to at least one public library and the county clerk's office in each county in which the proposed priority groundwater management area is located and to all districts adjacent to the area of the proposed priority groundwater management area.

(h) To carry out this section, the executive director may make necessary studies, hold hearings, solicit and collect information, and use information already prepared by the executive director or the executive administrator for other purposes.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 10, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 12, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.23, eff. Sept. 1, 2001.

Sec. 35.008. PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF NEW DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT; COMMISSION ORDER. (a) The commission shall designate priority groundwater management areas using the procedures provided by this chapter in lieu of those provided by Subchapter B, Chapter 2001, Government Code.

(b) The commission shall call an evidentiary hearing to consider:

(1) the designation of a priority groundwater management area; and

(2) whether one or more districts should be created over all or part of a priority groundwater management area, all or part of the land in the priority groundwater management area should be added to an existing district, or a combination of those actions should be taken. Consideration of this issue shall include a determination of whether a district is feasible and practicable.

(c) Evidentiary hearings shall be held at a location in one of the counties in which the priority groundwater management area is located, or proposed to be located, or in the nearest convenient location if adequate facilities are not available in those counties.

(d) At the hearing, the commission shall hear testimony and receive evidence from affected persons. Affected persons shall include landowners, well owners, and other users of groundwater in the proposed priority groundwater management area. The commission shall consider the executive director's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, the commission may request such information from any source.

(e) Any evidentiary hearing shall be concluded not later than the 75th day after the date notice of the hearing is published.

(f) At the conclusion of the hearing and the commission's considerations, the commission shall issue an order stating its findings and conclusions, including whether a priority groundwater

management area should be designated in the area and recommendations regarding district creation as set forth in Subsection (g).

(g) The commission's order designating a priority groundwater management area must recommend that the area be covered by a district in any of the following ways:

- (1) creation of one or more new districts;
- (2) addition of the land in the priority groundwater management area to one or more existing districts; or
- (3) a combination of actions under Subdivisions (1) and (2).

(h) In recommending the boundaries of a district or districts under Subsection (g), the commission shall give preference to boundaries that are coterminous with those of the priority groundwater management area, but may recommend district boundaries along existing political subdivision boundaries at the discretion of the commission to facilitate district creation and confirmation.

(i) The designation of a priority groundwater management area may not be appealed nor may it be challenged under Section 5.351 of this code or Section 2001.038, Government Code.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.12, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.24, eff. Sept. 1, 2001.

Sec. 35.009. NOTICE AND HEARING. (a) The commission shall have notice of the hearing published in at least one newspaper with general circulation in the county or counties in which the area proposed for designation as a priority groundwater management area is located. Notice must be published not later than the 30th day before the date set for the hearing.

(b) The notice must include:

(1) if applicable, a statement of the general purpose and effect of designating the proposed priority groundwater management area;

(2) if applicable, a statement of the general purpose and effect of creating a new district in the priority groundwater management area;

(3) if applicable, a statement of the general purpose and effect of adding all or part of the land in the priority groundwater management area to an existing district;

(4) a map generally outlining the boundaries of the area being considered for priority groundwater management area designation or notice of the location at which a copy of the map may be examined or obtained;

(5) a statement that the executive director's report concerning the priority groundwater management area or proposed area is available at the commission's main office in Austin, Texas, and at regional offices of the commission for regions which include territory within the priority groundwater management area or proposed priority groundwater management area and that the report is available for inspection during regular business hours;

(6) a description or the name of the locations in the affected area at which the commission has provided copies of the executive director's report to be made available for public inspection;

(7) the name and address of each public library, each county clerk's office, and each district to which the commission has provided copies of the executive director's report; and

(8) the date, time, and place of the hearing.

(c) The commission shall also give written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent groundwater district, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the priority groundwater management area or proposed priority groundwater management area. The notice must be given before the 30th day preceding the date set for the hearing.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.25, eff. Sept. 1, 2001.

Sec. 35.012. CREATION OF DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. (a) Following the issuance of a commission order under Section 35.008 designating a priority groundwater management

area and recommending the creation of one or more districts, or the addition of land to an existing district, the landowners in the priority groundwater management area may:

(1) create one or more districts under Subchapter B, Chapter 36;

(2) have the area annexed to a district that adjoins the area; or

(3) create one or more districts through the legislative process.

(b) Within two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, the commission shall:

(1) create one or more new districts under Section 36.0151;

(2) recommend that the areas, or a portion of the areas, be added to an existing district under Section 35.013; or

(3) take any combination of the actions under Subdivisions (1) and (2).

(c) Following the issuance of a commission order under Section 35.008, the Texas Agricultural Extension Service shall begin an educational program within such areas with the assistance and cooperation of the Texas Water Development Board, the commission, the Department of Agriculture, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district. The county commissioners court of each county in the priority groundwater management area shall form a steering committee to provide assistance to the Texas Agricultural Extension Service in accomplishing the goals of the education program within the area.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 11, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 13, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.26, eff. Sept. 1, 2001.

Sec. 35.013. ADDING PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT. (a) If the commission in its order under Section 35.008 recommends that the priority groundwater management area or a portion of the priority groundwater management area be added to an existing district, the commission shall give notice to the board of the existing district recommended in its order and to any other existing districts adjacent to the priority groundwater management area.

(b) The commission shall submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. The board shall vote on the addition of the priority groundwater management area to the district and shall advise the commission of the outcome.

(c) If the board votes to accept the addition of the priority groundwater management area to the district, the board:

(1) may request the Texas Agricultural Extension Service, the commission, and the Texas Water Development Board, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources and management options including possible annexation into a district;

(2) shall call an election within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by the commission to determine if the priority groundwater management area will be added to the district; and

(3) shall designate election precincts and polling places for the elections in the order calling an election under this subsection.

(d) The board shall give notice of the election and the proposition to be voted on. The board shall publish notice of the election at least one time in one or more newspapers with general circulation within the boundaries of the priority groundwater management area. The notice must be published before the 30th day preceding the date set for the election.

(e) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of

\_\_\_\_\_ (briefly describe priority groundwater

management area) in the \_\_\_\_\_ District." If the district has outstanding debts or taxes, the proposition shall include the following language: "and assumption by the described area of a proportional share of the debts or taxes of the district. "

(f) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the priority groundwater management area and declare the results. If a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, the board shall declare that the priority groundwater management area is added to the district. If a majority of the voters in the priority groundwater management area voting on the proposition vote against adding the priority groundwater management area to the district, the board shall declare that the priority groundwater management area is not added to the district. The board shall file a copy of the election results with the commission.

(g) If the voters approve adding the priority groundwater management area to the district, the board of the district to which the priority groundwater management area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation. Not later than the 30th day after the date on which the board declares that the priority groundwater management area is added to the district, the board of the existing district shall appoint a person or persons to represent the area until the next regularly scheduled election or appointment of directors.

(h) If the proposition is defeated, or if the board of the existing district votes not to accept the addition of the area to the district, then the commission shall, except as provided under Subsection (i), create under Section 36.0151 one or more districts covering the priority groundwater management area not later than the first anniversary of the date on which the proposition is defeated or the board votes not to accept the area.

(i) For an area that is not feasible for the creation of one or more districts as determined in the commission's findings under Section 35.008, the commission shall include in its report under Section 35.018 recommendations for the future management of the priority groundwater management area.

(j) Another election to add the priority groundwater management area to an existing district may not be called before the first anniversary of the date on which the election on the proposition was held.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 12, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 14, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.27, eff. Sept. 1, 2001.

Sec. 35.014. COSTS OF ELECTIONS. (a) The costs of an election to create a district at which a district is authorized to be created shall be paid by the district.

(b) The costs of an election to add a priority groundwater management area to an existing district at which the voters approve adding the priority groundwater management area to the district shall be paid by the existing district.

(c) The costs of an election to create a district or add a priority groundwater management area to an existing district at which the proposition fails shall be paid by the commission.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.16, eff. Sept. 1, 1997.

Sec. 35.015. STATE ASSISTANCE. A political subdivision located in an area delineated as a priority groundwater management area, and in which qualified voters approve the creation of a district or annexation into an existing district, shall be given consideration to receive financial assistance from the state under Chapter 17 for funds to be used in addressing issues identified in the priority groundwater management area report in the manner provided by Sections 17.124 and 17.125.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.17, eff. Sept. 1, 1997.

Sec. 35.017. STATE-OWNED LAND. If state-owned land or a portion of state-owned land is located in a priority groundwater

management area, the state agency that has management and control over that land under the constitution or by statute may elect by written agreement with the commission and the district to include the state-owned land in the district. The agreement shall be entered into as provided by the Texas Intergovernmental Cooperation Act, Chapter 741, Government Code, and may include provisions for the payment by the state agency of reasonable fees to the district. If the state does not elect to enter into the agreement to include the state-owned land in the district, the state agency must establish a groundwater management plan that will conserve, protect, and prevent the waste of groundwater on that state-owned land.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.18, eff. Sept. 1, 1997.

Sec. 35.018. REPORTS. (a) No later than January 31 of each odd-numbered year, the commission in conjunction with the Texas Water Development Board shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a comprehensive report concerning activities during the preceding two years relating to the designation of priority groundwater management areas by the commission and the creation and operation of districts.

(b) The report must include:

(1) the names and locations of all priority groundwater management areas and districts created or attempted to be created on or after November 5, 1985, the effective date of Chapter 133 (H.B. No. 2), Acts of the 69th Legislature, Regular Session, 1985;

(2) the authority under which each priority groundwater management area and district was proposed for creation;

(3) a detailed analysis of each election held to confirm the creation of a district, including analysis of election results, possible reasons for the success or failure to confirm the creation of a district, and the possibility for future voter approval of districts in areas in which attempts to create districts failed;

(4) a detailed analysis of the activities of each district created, including those districts which are implementing management plans certified under Section 36.1072;

(5) a report on audits performed on districts under Section 36.302 and remedial actions taken under Section 36.303;

(6) recommendations for changes in this chapter and Chapter 36 that will facilitate the creation of priority groundwater management areas and the creation and operation of districts;

(7) a report on educational efforts in newly designated priority groundwater management areas; and

(8) any other information and recommendations that the commission considers relevant.

(c) If the commission determines that a district created under Chapter 36 is not appropriate for, or capable of, the protection of the groundwater resources for a particular management area or priority groundwater management area, the commission may recommend in its report to the legislature the creation of a special district or amendment of an existing district.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.19, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.28, eff. Sept. 1, 2001.

Sec. 35.019. WATER AVAILABILITY. (a) The commissioners court of a county in a priority groundwater management area may adopt water availability requirements in an area where platting is required if the court determines that the requirements are necessary to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply.

(b) The commissioners court of a county in a priority groundwater management area may:

(1) require a person seeking approval of a plat required by Subchapter A, Chapter 232, Local Government Code, to show:

(A) compliance with the water availability requirements adopted by the court under this section; and

(B) that an adequate supply of water of sufficient quantity and quality is available to supply the number

of lots proposed for the platted area;

(2) adopt standards or formulas to determine whether an adequate water supply exists for the platted area; and

(3) adopt procedures for submitting the information necessary to determine whether an adequate water supply exists for the platted area.

(c) The water availability requirements established by a commissioners court under this section may require that:

(1) a person seeking approval of a plat or attempting to sell a lot in a subdivision:

(A) notify a purchaser of a lot in the subdivision if an approved water supply for the subdivision does not exist; or

(B) if the person attempts to build a water supply system to serve one or more lots within the subdivision:

(i) comply with federal, state, and local law; and

(ii) establish an entity to construct and operate the system; or

(2) a planned or operating water supply system serving one or more lots within a subdivision be built and operated in compliance with federal, state, and local laws and rules related to public drinking water.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.19, eff. Sept. 1, 1997.