

Item 7d – 88th Legislative Session Update

The Texas Legislature will convene January 10, 2023 for the 88th Legislative Session. There will be bills filed that will affect the management of groundwater. You will be made aware of any bills filed and have the opportunity as a board to not only discuss it but determine whether to support, oppose, or remain neutral on the filing.

The General Manager will be the District's envoy to the Legislature concerning the stance taken by the District. It has been customary for the board, once all bills have been filed, to review all bills affecting groundwater management in the District and take a position giving guidance to the General Manager as visits are made to the Capitol.

Currently, there has been only one bill filed affecting the management of groundwater:

SB 156 Sen. Perry (Attorney fees, Petition for Rulemaking, Permit Application & Amendment Notice, Undesirable DFCs)

SB 638 Sen. Springer (Importance of Groundwater to Economic Growth, Disqualification of Directors for failure to attend meetings, Quorum for permit or permit amendment, time limit for action following an administrative law judge recommendation)

The text revisions for the above listed bills are attached.

BILL	AUTHOR	STATUS	ACTION REQUESTED	COMMENTS
SB 156	Perry	Filed 11-14-22		<p>Amends:</p> <p><u>ATTORNEY'S FEES</u></p> <ul style="list-style-type: none"> - Amends §36.066, Water Code to change “shall” to “may” regarding court granting GCD attorney fees if GCD prevails - Makes same change to all GCD enabling acts <p><u>PETITION FOR RULEMAKING</u></p> <ul style="list-style-type: none"> - adds §36.1025 to allow a person with groundwater rights in the GCD to petition to adopt or modify a GCD rule. - requires petitioner to provide written notice to all affected by proposed rule - GCD must grant or deny petition within 90 days after a hearing and GCD “<u>shall provide an explanation for the action the district takes on the petition, including a determination about the consistency of the action with the concerns raised by the petitioner ’s explanation</u>” - GCD shall engage in granted rulemaking as soon as practicable <p><u>NOTICE REQUIRED FOR PERMIT APPLICATION/AMENDMENT</u></p> <ul style="list-style-type: none"> - Amends §36.114(h) and adds §36.1141, Water Code, is amended to require permit (or amendment) applicant to “<u>provide notice by certified mail, return receipt requested, to each person with a real property interest in the groundwater beneath the land within the space prescribed by the district’s spacing rules for the proposed or existing well</u>” before the application can be administratively complete. The people receiving notice are deemed to have “<u>a personal justiciable interest</u>” to “<u>contest the application for the permit or permit amendment.</u>”

				<p><u>UNDESIRABLE DESIRED FUTURE CONDITIONS</u></p> <p>Section 36.1071, Water Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to include the: (2)<u>(A) most recently approved desired future conditions adopted under Section 36.108; and (B) amount of modeled available groundwater corresponding to the most recently approved desired future conditions.</u> (b-1) district shall amend a management plan before the second anniversary of the adoption of desired future conditions included under Subsection (b). (b-2) <u>If a petition challenging the reasonableness of a desired future condition is filed under Section 36.1083(b), the executive administrator shall consider the management plan administratively complete if the district includes: (1) the most recently approved desired future conditions adopted under Section 36.108; (2) the amount of modeled available groundwater corresponding to the desired future conditions; (3) a statement of the status of the petition challenging the reasonableness of a desired future condition; and (4) the information required by Subsections (a) and (e).</u></p>
SB 638	Springer	Filed 1-26-23		<p>Relating to the governance and decision-making of groundwater conservation districts in contested cases.</p> <p>Adds Section 36.003, Water Code,</p> <p><u>IMPORTANCE OF GROUNDWATER TO THE STATE'S ECONOMIC GROWTH. The legislature recognizes that timely decisions regarding production and transport of private groundwater are essential to the state's continued economic development. Delays in such decisions substantially increase uncertainty and expense, and thereby have a detrimental impact on the state's ability to competitively attract businesses. Accordingly, districts should ensure timely decisions in accordance with the procedures set forth in this chapter.</u></p> <p>Sec. 36.051, Water Code is amended by adding subsection (c-1) as</p>

				<p>follows:</p> <p><u>(c-1) A director who has been recused from voting on more than one application for a permit or permit amendment or fails to attend meetings two consecutive meetings of the district board shall be disqualified from further service on the Board. The resulting vacant position shall be filled as provided by this chapter or as prescribed by the district's enabling legislation.</u></p> <p>Sec. 36.053, Water Code is amended as follows:</p> <p><u>(a) A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district, except as provided by subsection (b).</u></p> <p><u>(b) For purposes of reaching a final decision on a permit or permit amendment application, any board member who is recused from voting or fails to attend shall not count towards the quorum or majority requirements set forth in subsection (a).</u></p> <p>Sec. 36.409, Water Code is amended as follows:</p> <p>The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404; <u>however, in no event shall such continuance exceed the time limits prescribed for issuance of a final decision as set forth in Section 36.4165.</u></p> <p>Sec. 36.412, Water Code is amended as follows:</p> <p>a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application. <u>Except for</u></p>
--	--	--	--	---

				<p><u>decisions by the board under Section 36.4165, a party seeking to appeal a decision by the board must request by requesting written findings and conclusions not later than the 20th day after the date of the board's decision.</u></p> <p><u>(b) On receipt of a timely written request required by subsection (a), the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application.</u></p> <p>Sec. 36.413, Water Code is amended as follows:</p> <p><u>(c) The final decision issued by the district under this section must be in writing and shall either adopt the proposed findings of fact and conclusions of law as proposed by the administrative law judge or include revised findings of fact and conclusions of law consistent with subsection (b). No request for findings of fact or conclusions of law from a party is required under this section.</u></p> <p><u>(d) Notwithstanding any other timelines provided in this chapter, and unless otherwise agreed to by the applicant, a district must issue its final decision under this section no later than 180 days after receipt of the proposal for decision, including final disposition of all motions for rehearing.</u></p> <p><u>(e) If the administrative law judge recommends granting one or more permits, and the district fails to issue its final decision as required by subsection (d) for any reason, the district shall be deemed to have adopted the recommendations of the administrative law judge as a final order.</u></p> <p><u>(f) A decision under (e) is final and appealable immediately and not subject to a motion for rehearing.</u></p> <p>Sec. 36.4165, Water Code is amended as follows:</p> <p><u>(c) The final decision issued by the district under this section must be in writing and shall either adopt the proposed findings of fact and</u></p>
--	--	--	--	--

				<p><u>conclusions of law as proposed by the administrative law judge or include revised findings of fact and conclusions of law consistent with subsection (b). No request for findings of fact or conclusions of law from a party is required under this section.</u></p> <p><u>(d) Notwithstanding any other timelines provided in this chapter, and unless otherwise agreed to by the applicant, a district must issue its final decision under this section no later than 180 days after receipt of the proposal for decision, including final disposition of all motions for rehearing.</u></p> <p><u>(e) If the administrative law judge recommends granting one or more permits, and the district fails to issue its final decision as required by subsection (d) for any reason, the district shall be deemed to have adopted the recommendations of the administrative law judge as a final order.</u></p> <p><u>(f) A decision under (e) is final and appealable immediately and not subject to a motion for rehearing.</u></p>
--	--	--	--	---