

Amend HB 3035 by inserting the following new appropriately numbered SECTIONS and renumber the subsequent SECTIONS accordingly to read as follows:

SECTION _____. Section 36.101, Water Code, is amended by amending Subsection (b) and adding Subsections (d) through (i) to read as follows:

(b) After notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. [~~Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.~~]

(d) Not later than the 10th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public in the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located; and

(4) provide notice by mail, facsimile, or electronic mail to any person who has submitted a written request by certified mail, return receipt requested, for notice of a rulemaking hearing.

(e) The notice provided under Subsection (d) must include:

(1) the time, date, and location of the hearing;

(2) a brief explanation of the subject of the hearing;

and

(3) a location at which a copy of the proposed rules may be reviewed or copied.

(f) The presiding officer shall conduct a rulemaking hearing in a manner appropriate to obtain information and testimony relating to the proposed rule as conveniently and expeditiously as possible without prejudicing the rights of any person who has requested the opportunity to offer information relating to the proposed rule or rulemaking.

(g) The presiding officer shall prepare and keep a record of

each rulemaking hearing in the form of an audio or video recording or a court reporter transcription. On the request of any party, the hearing shall be transcribed by a court reporter. The presiding officer may assess any costs associated with the court reporter transcription against the party requesting the transcription or among the parties to the hearing at the discretion of the presiding officer.

(h) A person may submit to the district a written request for notice of a rulemaking hearing. A written request for notice of a rulemaking hearing must be submitted by certified mail, return receipt requested, and is effective for one year from the date the request is received by the district. To receive notice of a hearing after a request expires, a person must submit a new request. A written offer of proof by a district that notice was provided under Subsection (d)(4) or this subsection shall create a rebuttable presumption that proper notice was provided under Subsection (d)(4) or this subsection.

SECTION _____. Section 36.113, Water Code, is amended to read as follows:

Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) A district shall require permits for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that an increase in the rate of withdrawal, total authorized production, or a change in the type of use of groundwater under a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change. A district may not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rates.

(b) A district shall require that an application for a permit or a permit amendment be in writing and sworn to.

(c) A district may require that the following be included in the permit or permit amendment application:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; and

(7) a drought contingency plan.

(d) Before granting or denying a permit or permit amendment, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase ~~increased~~ use by historic users if the limitations:

(1) apply to all subsequent new permit applications and permit amendment applications to increase ~~increased~~ use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits and permit amendments may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, ~~[or]~~ alteration, or operation of, or production of groundwater from, ~~[of]~~ wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence. The district by rule may limit the operation of or the production of groundwater from a well or pump under an existing permit only if the rule is uniformly applied as authorized by this chapter.

(g) In implementing Subsection (e) or Section 36.116(b), a district may require an existing or historic user to prove the maximum annual amount of groundwater that the user applied to a beneficial use during a reasonable period established by the district that ends on or before the date on which the district publishes notice or adopts rules protecting existing or historic users under Subsection (e) or Section 36.116(b).

(h) In implementing Subsection (g), a district may:

(1) for a user who produced groundwater only within the final year of the period established under Subsection (g), issue a permit for existing or historic use based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use;

(2) for use based on agricultural irrigation, issue a permit based on:

(A) the maximum annual amount of groundwater actually used during the period established under Subsection (g);
or

(B) the acreage irrigated during the period established under Subsection (g); or

(3) for an electric utility, a power generation

company, or a retail electric provider as defined by Section 31.002, Utilities Code, issue a permit based on the amount actually used as computed under and for the period established under Subsection (g) or Subdivision (1).

(i) An annual report of groundwater use previously submitted to a state agency is admissible as evidence of existing or historic use under Subsection (g) or (h).

(j) Notwithstanding any provision to the contrary in this chapter, a district that implements Subsection (e) or Section 36.116(b) shall issue a permit to an existing or historic user for water actually produced for mining purposes but exempt from permitting pursuant to Section 36.117(b)(3) for the maximum annual amount of groundwater produced by the user for such mining purposes in the period established by the district under Subsection (g). Any permit or permit amendment that may be required by a district of an existing or historic user of groundwater for mining purposes described under this subsection to authorize the production, use, or transport of such groundwater for another type of use shall not be considered to be a new permit or a permit amendment to increase the amount of groundwater recognized by the district as an existing or historic use of groundwater for mining purposes described under this subsection, and the application for the permit or permit amendment shall be processed pursuant to the district's rules the same as any other application related to existing or historic use.

(k) Subsections (g), (h), (i), and (j) do not apply in a district in which the Internal Revenue Service has approved or approves a cost depletion deduction for extraction of groundwater from an aquifer from which total maximum annual historic use in this state has ever been determined by the Texas Water Development Board to be greater than 5 million acre-feet per year. [~~A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.~~]

SECTION _____. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1132 to read as follows:

Sec. 36.1132. DEFINED HISTORIC USE PERIODS FOR CERTAIN DISTRICTS. (a) This section applies only to a groundwater

conservation district created under Section 59, Article XVI, Texas Constitution, that:

(1) is, at least in part, adjacent to an international border;

(2) has within its boundaries a part of an aquifer that is regulated under Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993; and

(3) is not regulated under Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

(b) In implementing Section 36.113(e) or 36.116(b), and notwithstanding the periods described under Section 36.113(g), a district may institute a process requiring an existing or historic user to prove the maximum annual amount of groundwater that the user applied to a beneficial use during the period from:

(1) June 1, 1972, to December 31, 1991; or

(2) January 1, 1992, to January 7, 2003.

(c) In implementing Subsection (b), for a user who produced groundwater only within the final year of the period established under Subsection (b)(2), a district shall issue a permit for existing or historic use based on an extrapolation of the user's beneficial use of groundwater to the amount that would have been used in a full calendar year for the same beneficial use.

(d) If a district limits or reduces total permitted production within its boundaries in a manner consistent with its certified groundwater district management plan under Section 36.1072, the district shall limit or reduce the amount of permitted production of groundwater through proportionate reductions that will apply equally among classes of users in the following order, with all limitations or reductions that can be made in one class being made in that class before proceeding with limitations or reductions in the next subsequent class:

(1) new users, except as provided by Subdivision (2);

(2) the class of users described by Subsections (b)(1) and (c), or any new user who was issued a permit by the district on or before May 1, 2003, for the amount recognized in the permit; and

(3) the class of users described by Subsection (b)(2).

SECTION _____. Section 36.114, Water Code, is amended to

read as follows:

Sec. 36.114. PERMIT; PERMIT AMENDMENT; APPLICATION AND HEARING. (a) The district by rule shall determine each activity which may be regulated by the district under this chapter for which a permit or permit amendment is required.

(b) For each activity for which the district determines a permit or permit amendment is required under Subsection (a), the district by rule shall determine the quantity, rate of production, or other grounds for which a hearing on the permit or permit amendment application is not required.

(c) For all applications for which a hearing is not required under Subsection (b), the board shall act on the application at a meeting, as defined by Section 551.001(4), Government Code, unless the board by rule has delegated to the general manager the authority to act on the application.

(d) The district shall promptly consider and act on each administratively complete application for a permit or permit amendment as provided by Subsection (c) or Subchapter M.

(e) If, within 60 [30] days after the date an [the] administratively complete application is submitted, the [an] application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.

(f) For applications requiring a hearing, the initial [A] hearing shall be held within 35 days after the setting of the date, and the district shall act on the application within 60 [35] days after the date [of] the final hearing on the application is concluded.

(g) The district may by rule set a time when an application will expire if the information requested in the application is not provided to the district.

(h) An administratively complete application requires information set forth in accordance with Sections 36.113 and 36.1131.

SECTION _____. Subchapter L, Chapter 36, Water Code, is

amended by adding Section 36.3705 to read as follows:

Sec. 36.3705. DEFINITION. In this subchapter, "applicant" means a newly confirmed district applying for a loan from the loan fund.

SECTION _____. Chapter 36, Water Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PERMIT AND PERMIT AMENDMENT

APPLICATIONS; NOTICE AND HEARING PROCESS

Sec. 36.401. DEFINITION. In this subchapter, "applicant" means a person who is applying for a permit or a permit amendment.

Sec. 36.402. APPLICABILITY. Except as provided by Section 36.415, this subchapter applies to the notice and hearing process used by a district for permit and permit amendment applications.

Sec. 36.403. SCHEDULING OF HEARING. (a) The general manager or board shall schedule a hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) The general manager or board may schedule more than one application for consideration at a hearing.

(c) A hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) A hearing may be held in conjunction with a regularly scheduled board meeting.

Sec. 36.404. NOTICE. (a) The general manager or board shall give notice of each hearing on an application for a permit or permit amendment.

(b) The notice must include:

(1) the name of the applicant;

(2) the address or approximate location of the well or proposed well;

(3) for a permit amendment hearing, a brief explanation of the proposed amendment;

(4) the time, date, and location of the hearing; and

(5) any other information the general manager or board considers relevant and appropriate.

(c) Not later than the 10th day before the date of a hearing,

the general manager or board shall:

(1) post notice in a place readily accessible to the public in the district office;

(2) provide notice to the county clerk of each county in the district; and

(3) provide notice by:

(A) regular mail to the applicant;

(B) regular mail, facsimile, or electronic mail to any person who has submitted a written request to the district by certified mail, return receipt requested, for notice of the hearing; and

(C) regular mail to any other person entitled to receive notice under the rules of the district.

(d) A person may submit to the district a written request for notice of a hearing on a permit or permit amendment application. A written request for notice of a hearing must be submitted by certified mail, return receipt requested, and is effective for one year from the date the request is received by the district. To receive notice of a hearing after a request expires, a person must submit a new request. A written offer of proof by a district that notice was provided under Subsection (c)(3) or this subsection shall create a rebuttable presumption that proper notice was provided under Subsection (c)(3) or this subsection.

Sec. 36.405. HEARING REGISTRATION. The district may require each person who participates in a hearing to submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and

(3) whom the person represents, if the person is not there in the person's individual capacity.

Sec. 36.406. HEARING PROCEDURES. (a) A hearing must be conducted by:

(1) a quorum of the board; or

(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing.

(b) The board president or the hearings examiner shall serve

as the presiding officer at the hearing.

(c) The presiding officer shall:

(1) convene the hearing at the time and place specified in the notice;

(2) set any necessary additional hearing dates;

(3) establish the order for presentation of evidence;

(4) administer oaths to all persons presenting testimony;

(5) examine persons presenting testimony;

(6) determine whether to allow cross examination of any witness qualified as an expert presenting scientific testimony;

(7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party; and

(8) prescribe reasonable time limits for testimony, the cross examination of any witness qualified as an expert presenting scientific testimony, and the presentation of evidence.

(d) Any person, including the general manager or a district employee, who is determined by the presiding officer to be an affected party, or a witness or expert on behalf of that person, may present evidence at the hearing.

(e) The presiding officer may allow testimony to be submitted in writing and shall require that any written testimony be sworn to.

(f) The presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the board or hearings examiner not later than the 10th day after the date of the hearing if no decision has been made by the board.

(g) Notwithstanding any other provision of this section, if authorized by the rules of the district, the presiding officer, at the discretion of the presiding officer, may issue an order at any time before board action under Section 36.411 that:

(1) refers parties to a contested application hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;

(2) apportions costs equally among the parties; and

(3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

Sec. 36.407. EVIDENCE. (a) The presiding officer shall admit evidence if it is relevant and material to an issue at the hearing.

(b) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

Sec. 36.408. RECORDING. (a) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of minutes, audio or video recording, or court reporter transcription. On the request of any party to a contested hearing, the hearing shall be transcribed by a court reporter. The presiding officer may assess costs associated with the court reporter transcription against the party requesting the transcription or among the parties to the hearing at the presiding officer's discretion. The presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner any costs associated with a court reporter transcription that were assessed against that party.

(b) If a hearing is uncontested, the presiding officer may substitute the report required under Section 36.410 for a method of recording the hearing described by Subsection (a).

Sec. 36.409. CONTINUANCE. The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 36.404. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to persons who submitted a hearing registration form under Section 36.405.

Sec. 36.410. REPORT. (a) The presiding officer shall submit a report to the board not later than the 30th day after the date a hearing is concluded, unless the hearing was conducted by a quorum of the board. If the hearing was conducted by a quorum of the board, the presiding officer shall determine at the presiding officer's discretion whether to prepare and submit a report to the board under this section. If the application is contested, the presiding

officer shall prepare and submit a report to the board under this section, and any board action on the application must be accompanied by the report.

(b) The report must include:

(1) a summary of the subject matter of the hearing;

(2) a summary of the admissible evidence or public comments received; and

(3) the presiding officer's recommendations for board action on the subject matter of the hearing.

(c) A person who participated in the hearing may:

(1) submit a written request to review a copy of the report; and

(2) submit to the board written exceptions to the report.

(d) The presiding officer or general manager shall mail a copy of the report to each person who requests to review the report under Subsection (c).

Sec. 36.411. BOARD ACTION. The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

Sec. 36.412. REQUEST FOR REHEARING AND APPEAL. (a) An applicant may appeal a decision of the board or the general manager on a permit or permit amendment application, including a decision under Section 36.114(c), by requesting a rehearing before the board not later than the 20th day after the date of the decision of the board or general manager.

(b) A request for rehearing must be filed in writing in the district office and must state the grounds for the request.

(c) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(d) The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted constitutes a denial of the request.

(e) If an application for which a hearing was not required is denied by the board, the applicant may request a rehearing on the application.

Sec. 36.413. DECISION; WHEN FINAL. (a) A decision by the board on a permit or permit amendment application is final:

(1) if a timely request for rehearing is not filed, on the expiration of the period for filing a request for rehearing; or

(2) if a timely request for rehearing is filed, on the date:

(A) the board denies the request for rehearing;

(B) the board renders a decision after rehearing;

or

(C) the request for rehearing is denied by operation of law.

(b) A decision by the board on a permit or permit amendment application may be appealed to the district court when the decision is final under Subsection (a)(2).

Sec. 36.414. ADDITIONAL PROCEDURES. A district by rule shall adopt procedural rules to implement this subchapter and may adopt notice and hearing procedures in addition to those provided by this subchapter.

Sec. 36.415. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. This subchapter does not apply to a hearing conducted by the State Office of Administrative Hearings under Section 2003.021(b)(4), Government Code. If a district contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.

Sec. 36.416. ALTERNATIVE DISPUTE RESOLUTION. A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

Sec. 36.417. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. Except as provided by Section 36.415, Chapter 2001, Government Code, does not apply to a hearing under this chapter.

SECTION _____. Subdivision (17), Section 36.001, Water Code, is repealed.

SECTION _____. (a) The legislature finds that:

(1) groundwater conservation districts have existing statutory authority to protect existing or historic use under

Subsection (e), Section 36.113, and Subsection (b), Section 36.116, Water Code;

(2) in implementing Subsection (e), Section 36.113, and Subsection (b), Section 36.116, Water Code, it is important that groundwater conservation districts, in the conservation and management of groundwater, adopt precise rules regarding existing or historic use of groundwater, and that those rules may or may not include definite time periods during which existing or historic use must be proven; and

(3) it will benefit the state and its citizens to set express statutory guidelines that clarify the ability of groundwater conservation districts to define and identify existing or historic use periods.

(b) The changes in law made by this Act do not:

(1) limit the express or implied powers that groundwater conservation districts had before the effective date of this Act to implement Subsection (e), Section 36.113, and Subsection (b), Section 36.116, Water Code, using reasonable time periods during which existing or historic use must be proven by a permit applicant; or

(2) invalidate rules lawfully adopted by a groundwater conservation district before the effective date of this Act that use those reasonable time periods.

(c) A district to which Section 36.1132, Water Code, as added by this Act, applies may require a well that was previously exempted by district rule from the permitting procedures of the district but that is not exempt under Subsection (b), Section 36.117, Water Code, and is no longer exempted by district rule, as of the effective date of this Act, to comply with the permitting procedures and rules of the district, as amended. This subsection does not apply to the requirement to obtain a permit to drill, equip, or complete a well that was drilled, equipped, or completed under an exemption by district rule before the date of repeal of the exemption; however, this subsection does apply to the production of groundwater from or operation of such a well.

(d) Notwithstanding Subdivision (3), Subsection (h), Section 36.113, Water Code, as added by this Act, a district that

issues permits based on existing or historic use under Subsection (e), Section 36.113, or Subsection (b), Section 36.116, Water Code, and implements Subsection (g), Section 36.113, Water Code, may issue an electric utility, a power generation company, or a retail electric provider as defined by Section 31.002, Utilities Code, a permit based on an amount necessary to annually provide sufficient groundwater for cooling, boiler make-up, and potable purposes for use at an existing or planned power generation facility using land or the right to produce groundwater from land that was acquired by the electric utility, power generation company, or retail electric provider before May 1, 2003, to supply water to power generation facilities that on that date existed or were planned for future construction.

SECTION _____. The change in law made by this Act related to a permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district applies only to a permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district on or after the effective date of this Act. A permit or permit amendment application hearing or a rulemaking hearing held by a groundwater conservation district before the effective date of this Act is governed by the law related to notice and hearing in effect at the time the hearing is held, and the former law is continued in effect for that purpose.