

By: Price

H.B. No. 2166

Substitute the following for H.B. No. 2166:

By: Lucio III

C.S.H.B. No. 2166

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the procedures for and appeals of desired future
3 conditions adopted by groundwater management areas.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 36.001, Water Code, is amended by adding
6 Subdivision (30) to read as follows:

7 (30) "Desired future condition" means a quantitative
8 description, adopted in accordance with Section 36.108, of the
9 desired condition of the groundwater resources in a management area
10 at one or more specified future times.

11 SECTION 2. Section 36.063, Water Code, is amended to read as
12 follows:

13 Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by
14 Subsections (b) and (c), notice [~~Notice~~] of meetings of the board
15 shall be given as set forth in the Open Meetings Act, Chapter 551,
16 Government Code. Neither failure to provide notice of a regular
17 meeting nor an insubstantial defect in notice of any meeting shall
18 affect the validity of any action taken at the meeting.

19 (b) At least 10 days before a hearing under Section
20 36.108(d-2) or a meeting at which a district will adopt a desired
21 future condition under Section 36.108(d-4), the board must post
22 notice that includes:

23 (1) the proposed desired future conditions and a list
24 of any other agenda items;

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

3 (3) the name, telephone number, and address of the
4 person to whom questions or requests for additional information may
5 be submitted;

6 (4) the names of the other districts in the district's
7 management area; and

8 (5) information on how the public may submit comments.

9 (c) Except as provided by Subsection (b), notice of a
10 hearing described by Subsection (b) must be provided in the manner
11 prescribed for a rulemaking hearing under Section 36.101(d).

12 SECTION 3. Sections 36.1071(a) and (e), Water Code, are
13 amended to read as follows:

14 (a) Following notice and hearing, the district shall, in
15 coordination with surface water management entities on a regional
16 basis, develop a comprehensive management plan which addresses the
17 following management goals, as applicable:

18 (1) providing the most efficient use of groundwater;
19 (2) controlling and preventing waste of groundwater;
20 (3) controlling and preventing subsidence;
21 (4) addressing conjunctive surface water management
22 issues;

23 (5) addressing natural resource issues;

24 (6) addressing drought conditions;

25 (7) addressing conservation, recharge enhancement,
26 rainwater harvesting, precipitation enhancement, or brush control,
27 where appropriate and cost-effective; and

1 (8) addressing [~~in a quantitative manner~~] the desired
2 future conditions adopted by the district under Section 36.108 [~~of~~
3 ~~the groundwater resources~~].

4 (e) In the management plan described under Subsection (a),
5 the district shall:

6 (1) identify the performance standards and management
7 objectives under which the district will operate to achieve the
8 management goals identified under Subsection (a);

9 (2) specify, in as much detail as possible, the
10 actions, procedures, performance, and avoidance that are or may be
11 necessary to effect the plan, including specifications and proposed
12 rules;

13 (3) include estimates of the following:

14 (A) managed available groundwater in the
15 district based on the desired future condition adopted
16 [~~established~~] under Section 36.108;

17 (B) the amount of groundwater being used within
18 the district on an annual basis;

19 (C) the annual amount of recharge from
20 precipitation, if any, to the groundwater resources within the
21 district;

22 (D) for each aquifer, the annual volume of water
23 that discharges from the aquifer to springs and any surface water
24 bodies, including lakes, streams, and rivers;

25 (E) the annual volume of flow into and out of the
26 district within each aquifer and between aquifers in the district,
27 if a groundwater availability model is available;

1 (F) the projected surface water supply in the
2 district according to the most recently adopted state water plan;
3 and

4 (G) the projected total demand for water in the
5 district according to the most recently adopted state water plan;
6 and

7 (4) consider the water supply needs and water
8 management strategies included in the adopted state water plan.

9 SECTION 4. Subchapter D, Chapter 36, Water Code, is amended
10 by amending Section 36.108 and adding Sections 36.1081 through
11 36.1087 to read as follows:

12 Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In
13 this section:

14 (1) "Development [,~~"development~~] board" means the
15 Texas Water Development Board.

16 (2) "District representative" means the presiding
17 officer or the presiding officer's designee for any district
18 located wholly or partly in the management area.

19 (b) If two or more districts are located within the
20 boundaries of the same management area, each district shall prepare
21 a comprehensive management plan as required by Section 36.1071
22 covering that district's respective territory. On completion and
23 approval of the plan as required by Section 36.1072, each district
24 shall forward a copy of the new or revised management plan to the
25 other districts in the management area. The boards of the districts
26 shall consider the plans individually and shall compare them to
27 other management plans then in force in the management area.

1 (c) The district representatives [~~The presiding officer, or~~
2 ~~the presiding officer's designee, of each district located in whole~~
3 ~~or in part in the management area~~] shall meet at least annually to
4 conduct joint planning with the other districts in the management
5 area and to review the management plans, the [~~and~~] accomplishments
6 of [~~for~~] the management area, and proposals to adopt new or amend
7 existing desired future conditions. In reviewing the management
8 plans, the districts shall consider:

9 (1) the goals of each management plan and its impact on
10 planning throughout the management area;

11 (2) the effectiveness of the measures established by
12 each management plan for conserving and protecting groundwater and
13 preventing waste, and the effectiveness of these measures in the
14 management area generally;

15 (3) any other matters that the boards consider
16 relevant to the protection and conservation of groundwater and the
17 prevention of waste in the management area; and

18 (4) the degree to which each management plan achieves
19 the desired future conditions established during the joint planning
20 process.

21 (d) Not later than September 1, 2010, and every five years
22 thereafter, the districts shall consider groundwater availability
23 models and other data or information for the management area and
24 shall propose for adoption [~~establish~~] desired future conditions
25 for the relevant aquifers within the management area. Before
26 voting on the proposed [~~In establishing the~~] desired future
27 conditions of the aquifers under Subsection (d-2) [~~this section~~],

1 the districts shall consider:

2 (1) aquifer uses or conditions within the management
3 area, including conditions that differ substantially from one
4 geographic area to another;

5 (2) the water supply needs and water management
6 strategies included in the state water plan;

7 (3) hydrological conditions, including for each
8 aquifer in the management area the total estimated recoverable
9 storage as provided by the executive administrator, and the average
10 annual recharge, inflows, and discharge;

11 (4) other environmental impacts, including impacts on
12 spring flow and other interactions between groundwater and surface
13 water;

14 (5) the impact on subsidence;

15 (6) socioeconomic impacts reasonably expected to
16 occur;

17 (7) the impact on the interests and rights in private
18 property, including ownership and the rights of management area
19 landowners and their lessees and assigns in groundwater as
20 recognized under Section 36.002;

21 (8) whether the desired future conditions are
22 physically possible; and

23 (9) any other information relevant to the specific
24 desired future conditions [~~uses or conditions of an aquifer within~~
25 ~~the management area that differ substantially from one geographic~~
26 ~~area to another~~].

27 (d-1) The districts may establish different desired future

1 conditions for:

2 (1) each aquifer, subdivision of an aquifer, or
3 geologic strata located in whole or in part within the boundaries of
4 the management area; or

5 (2) each geographic area overlying an aquifer in whole
6 or in part or subdivision of an aquifer within the boundaries of the
7 management area.

8 (d-2) [~~(d-1)~~] The desired future conditions proposed
9 [~~established~~] under Subsection (d) must provide a balance between
10 the highest practicable level of groundwater production and the
11 conservation, preservation, protection, recharging, and prevention
12 of waste of groundwater and control of subsidence in the management
13 area. This subsection does not prohibit the establishment of
14 desired future conditions that provide for the reasonable long-term
15 management of groundwater resources consistent with the management
16 goals under Section 36.1071(a). The desired future conditions
17 proposed under Subsection (d) must be approved [~~adopted~~] by a
18 two-thirds vote of all the district representatives for
19 distribution to the districts in the management area. A period of
20 not less than 30 or more than 90 days for public comments begins on
21 the day the proposed desired future conditions are mailed to the
22 districts. During the public comment period and after posting
23 notice as required by Section 36.063, each district shall hold a
24 public hearing on the proposed desired future conditions relevant
25 to that district. During the public comment period, the district
26 shall make available in its office a copy of the proposed desired
27 future conditions and any supporting materials, such as the

1 documentation of factors considered under Subsection (d) and
2 groundwater availability model run results. After the public
3 hearing, the district shall compile for consideration at the next
4 joint planning meeting a summary of relevant comments received, any
5 suggested revisions to the proposed desired future conditions, and
6 the basis for the revisions [~~present at a meeting.~~

7 [~~(1) at which at least two-thirds of the districts~~
8 ~~located in whole or in part in the management area have a voting~~
9 ~~representative in attendance; and~~

10 [~~(2) for which all districts located in whole or in~~
11 ~~part in the management area provide public notice in accordance~~
12 ~~with Chapter 551, Government Code.~~

13 [~~(d-2) Each district in the management area shall ensure~~
14 ~~that its management plan contains goals and objectives consistent~~
15 ~~with achieving the desired future conditions of the relevant~~
16 ~~aquifers as adopted during the joint planning process].~~

17 (d-3) After the earlier of the date on which all the
18 districts have submitted their district summaries or the expiration
19 of the public comment period under Subsection (d-2), the district
20 representatives shall reconvene to review the reports, consider any
21 district's suggested revisions to the proposed desired future
22 conditions, and finally adopt the desired future conditions for the
23 management area. The desired future conditions must be adopted as a
24 resolution by a two-thirds vote of all the district
25 representatives. The district representatives shall produce a
26 desired future conditions explanatory report for the management
27 area and submit to the development board and each district in the

1 management area proof that notice was posted for the joint planning
2 meeting, a copy of the resolution, and a copy of the explanatory
3 report. The report must:

4 (1) identify each desired future condition;

5 (2) provide the policy and technical justifications
6 for each desired future condition;

7 (3) include documentation that the factors under
8 Subsection (d) were considered by the districts and a discussion of
9 how the adopted desired future conditions impact each factor;

10 (4) list other desired future condition options
11 considered, if any, and the reasons why those options were not
12 adopted; and

13 (5) discuss reasons why recommendations made by
14 advisory committees and public comments received by the districts
15 were or were not incorporated into the desired future conditions.

16 (d-4) As soon as possible after a district receives the
17 desired future conditions resolution and explanatory report under
18 Subsection (d-3), the district shall adopt the desired future
19 conditions in the resolution and report that apply to the district.

20 (e) Except as provided by this section, a [A] joint meeting
21 under this section must be held in accordance with Chapter 551,
22 Government Code. Each district shall comply with Chapter 552,
23 Government Code. The district representatives may elect one
24 district to be responsible for providing the notice of a joint
25 meeting that this section would otherwise require of each district
26 in the management area. Notice of a joint ~~the~~ meeting must be
27 provided at least 10 days before the date of the meeting by:

1 (1) providing notice to the secretary of state;

2 (2) providing notice to the county clerk of each
3 county located wholly or partly in a district that is located wholly
4 or partly in the management area; and

5 (3) posting notice at a place readily accessible to
6 the public at the district office of each district located wholly or
7 partly in the management area.

8 (e-1) The secretary of state and the county clerk of each
9 county described by Subsection (e) shall post notice of the meeting
10 in the manner provided by Section 551.053, Government Code.

11 (e-2) Notice of a joint meeting must include:

12 (1) the date, time, and location of the meeting;

13 (2) a summary of any action proposed to be taken;

14 (3) the name of each district located wholly or partly
15 in the management area; and

16 (4) the name, telephone number, and address of one or
17 more persons to whom questions, requests for additional
18 information, or comments may be submitted.

19 (e-3) The failure or refusal of one or more districts to
20 post notice for a joint meeting under Subsection (e)(3) does not
21 invalidate an action taken at the joint meeting [~~shall be given in~~
22 ~~accordance with the requirements for notice of district board of~~
23 ~~directors meetings under that Act].~~

24 Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT
25 PLANNING. (a) On request, the commission and the Texas Water
26 Development Board shall make technical staff available to serve in
27 a nonvoting advisory capacity to assist with the development of

1 desired future conditions during the joint planning process under
2 Section 36.108.

3 (b) During the joint planning process under Section 36.108,
4 the district representatives may appoint and convene nonvoting
5 advisory subcommittees who represent social, governmental,
6 environmental, or economic interests to assist in the development
7 of desired future conditions.

8 Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section,
9 "affected person" means, with respect to a management area:

- 10 (1) an owner of land in the management area;
11 (2) a district in or adjacent to the management area;
12 (3) a regional water planning group with a water
13 management strategy in the management area;
14 (4) a person who holds or is applying for a permit from
15 a district in the management area;
16 (5) a person who, under Section 36.002, has an
17 ownership interest in groundwater in the management area; or
18 (6) any other person defined as affected by commission
19 rule.

20 (b) An affected person [~~(f) A district or person with a~~
21 ~~legally defined interest in the groundwater within the management~~
22 ~~area] may file a petition with the commission requesting an inquiry
23 for any of the following reasons:~~

24 (1) a district fails to submit its management plan to
25 the executive administrator;

26 (2) [if] a district fails [~~or districts refused]~~ to
27 participate [~~join]~~ in the joint planning process under Section

1 36.108;

2 (3) a district fails to adopt rules;

3 (4) a district fails to adopt the applicable desired
4 future conditions adopted by the management area at a joint
5 meeting;

6 (5) a district fails to update its management plan
7 before the second anniversary of the adoption of desired future
8 conditions by the management area;

9 (6) a district fails to update its rules to implement
10 the applicable desired future conditions before the first
11 anniversary of the date it updated its management plan with the
12 adopted desired future conditions;

13 ~~(7) [or the process failed to result in adequate~~
14 ~~planning, including the establishment of reasonable future desired~~
15 ~~conditions of the aquifers, and the petition provides evidence~~
16 ~~that:~~

17 ~~[(1) a district in the groundwater management area has~~
18 ~~failed to adopt rules;~~

19 ~~[(2)] the rules adopted by a district are not designed~~
20 ~~to achieve the desired future conditions adopted by [condition of~~
21 ~~the groundwater resources in] the [groundwater] management area~~
22 ~~[established] during the joint planning process;~~

23 (8) [(3)] the groundwater in the management area is
24 not adequately protected by the rules adopted by a district; or

25 (9) [(4)] the groundwater in the [groundwater]
26 management area is not adequately protected due to the failure of a
27 district to enforce substantial compliance with its rules.

1 (c) [~~(g)~~] Not later than the 90th day after the date the
2 petition is filed, the commission shall review the petition and
3 either:

4 (1) dismiss the petition if the commission finds that
5 the evidence is not adequate to show that any of the conditions
6 alleged in the petition exist; or

7 (2) select a review panel as provided in Subsection
8 (d) [~~(h)~~].

9 (d) [~~(h)~~] If the petition is not dismissed under Subsection
10 (c) [~~(g)~~], the commission shall appoint a review panel consisting
11 of a chairman and four other members. A director or general manager
12 of a district located outside the [~~groundwater~~] management area
13 that is the subject of the petition may be appointed to the review
14 panel. The commission may not appoint more than two members of the
15 review panel from any one district. The commission also shall
16 appoint a disinterested person to serve as a nonvoting recording
17 secretary for the review panel. The recording secretary may be an
18 employee of the commission. The recording secretary shall record
19 and document the proceedings of the panel.

20 (e) [~~(i)~~] Not later than the 120th day after appointment,
21 the review panel shall review the petition and any evidence
22 relevant to the petition and, in a public meeting, consider and
23 adopt a report to be submitted to the commission. The commission
24 may direct the review panel to conduct public hearings at a location
25 in the [~~groundwater~~] management area to take evidence on the
26 petition. The review panel may attempt to negotiate a settlement or
27 resolve the dispute by any lawful means.

1 (f) [~~(j)~~] In its report, the review panel shall include:

2 (1) a summary of all evidence taken in any hearing on
3 the petition;

4 (2) a list of findings and recommended actions
5 appropriate for the commission to take and the reasons it finds
6 those actions appropriate; and

7 (3) any other information the panel considers
8 appropriate.

9 (g) [~~(k)~~] The review panel shall submit its report to the
10 commission. The commission may take action under Section 36.3011.

11 Sec. 36.1083. ADMINISTRATIVE APPEAL OF DESIRED FUTURE
12 CONDITIONS. (a) In this section:

13 (1) "Affected person" has the meaning assigned by
14 Section 36.1082.

15 (2) "Development board" means the Texas Water
16 Development Board.

17 (3) "Office" means the State Office of Administrative
18 Hearings.

19 (b) Not later than the 180th day after the date on which a
20 district adopted a desired future condition under Section
21 36.108(d-4), an affected person may file a petition with the
22 district requesting that the district contract with the office to
23 conduct a hearing to appeal the desired future condition, including
24 the reasonableness of the desired future condition.

25 (c) Not later than the 45th day after receiving a request
26 under Subsection (b), the district shall:

27 (1) contract with the office;

1 (2) request a contested case hearing; and

2 (3) submit a copy of the petition to the office.

3 (d) The hearing must be held at a location described by
4 Section 36.403(c). The hearing shall be conducted in accordance
5 with Chapter 2001, Government Code, and rules of the office.

6 (e) The district may adopt rules for notice and hearings
7 conducted under this section that are consistent with the
8 procedural rules of the office. In the manner prescribed by
9 district and office rules, the district shall provide general
10 notice of the hearing and individual notice of the hearing to the
11 petitioner, any other party in the hearing identified under
12 Subsection (f)(3), each nonparty district and regional water
13 planning group in the management area, the development board, and
14 the commission. Only an affected person may participate as a party
15 in the hearing.

16 (f) The office shall hold a prehearing conference to
17 determine preliminary matters including:

18 (1) whether the petition should be dismissed for
19 failure to state a claim on which relief can be granted;

20 (2) whether a person is an affected person and
21 eligible to participate as a party in the hearing; and

22 (3) naming parties to the hearing.

23 (g) The petitioner shall pay all costs associated with the
24 contract for the hearing and shall deposit with the district an
25 amount sufficient to pay the contract amount before the hearing
26 begins. At the conclusion of the hearing, the district shall refund
27 any excess money to the petitioner.

1 (h) If the administrative law judge finds that a technical
2 analysis is needed related to the hydrogeology of the area or
3 matters within the development board's expertise, the judge may
4 request a study from the development board. In conducting the
5 technical analysis, the development board shall consider any
6 relevant information provided in the petition, as well as any
7 groundwater availability models, published studies, or other
8 information the development board considers relevant. The study
9 must be completed and delivered to the office not later than the
10 120th day after the date of the request for admission into the
11 evidentiary record for consideration at the hearing. The
12 development board shall make available the relevant staff as expert
13 witnesses during the hearing if requested by any party or the
14 administrative law judge.

15 (i) On receipt of the administrative law judge's findings of
16 fact and conclusions of law in a proposal for decision, including a
17 dismissal of a petition under Subsection (f), the district's board
18 shall issue a final order stating the district's decision on the
19 contested matter and the district's findings of fact and
20 conclusions of law. The board may change a finding of fact or
21 conclusion of law made by the administrative law judge, or may
22 vacate or modify an order issued by the administrative law judge in
23 the same manner as a state agency under Section 2001.058(e),
24 Government Code. If the district in its final order finds that a
25 desired future condition is unreasonable, the districts in the
26 management area shall reconvene in a joint planning meeting not
27 later than the 30th day after the date of the final order to revise

1 the desired future condition.

2 (j) A district's final order finding that a desired future
3 condition is unreasonable does not invalidate the desired future
4 condition for a district not subject to the petition.

5 Sec. 36.1084. COURT APPEAL OF DESIRED FUTURE CONDITION. A
6 final district order under Section 36.1083 may be appealed to the
7 Travis County district court under the substantial evidence
8 standard of review as provided by Section 2001.174, Government
9 Code. If the court finds that a desired future condition is
10 unreasonable, the court shall strike the desired future condition
11 and order the districts in the management area to reconvene in a
12 joint planning meeting not later than the 30th day after the date of
13 the court's decision to revise the desired future condition.

14 Sec. 36.1085. MANAGED AVAILABLE GROUNDWATER. (a) The
15 Texas Water Development Board shall require the [~~1~~] ~~A person with~~
16 ~~a legally defined interest in the groundwater in the groundwater~~
17 ~~management area, a district in or adjacent to the groundwater~~
18 ~~management area, or a regional water planning group for a region in~~
19 ~~the groundwater management area may file a petition with the~~
20 ~~development board appealing the approval of the desired future~~
21 ~~conditions of the groundwater resources established under this~~
22 ~~section. The petition must provide evidence that the districts did~~
23 ~~not establish a reasonable desired future condition of the~~
24 ~~groundwater resources in the groundwater management area.~~

25 [~~m~~] ~~The development board shall review the petition and any~~
26 ~~evidence relevant to the petition. The development board shall~~
27 ~~hold at least one hearing at a central location in the management~~

1 ~~area to take testimony on the petition. The development board may~~
2 ~~delegate responsibility for a hearing to the executive~~
3 ~~administrator or to a person designated by the executive~~
4 ~~administrator. If the development board finds that the conditions~~
5 ~~require revision, the development board shall submit a report to~~
6 ~~the districts that includes a list of findings and recommended~~
7 ~~revisions to the desired future conditions of the groundwater~~
8 ~~resources.~~

9 ~~[(n) The districts shall prepare a revised plan in~~
10 ~~accordance with development board recommendations and hold, after~~
11 ~~notice, at least one public hearing at a central location in the~~
12 ~~groundwater management area. After consideration of all public and~~
13 ~~development board comments, the districts shall revise the~~
14 ~~conditions and submit the conditions to the development board for~~
15 ~~review.~~

16 ~~[(c) The] districts in a management area to [shall] submit~~
17 ~~to the executive administrator not later than the 60th day after the~~
18 ~~date on which the districts adopted desired future conditions under~~
19 ~~Section 36.108(d-3):~~

20 (1) the desired future conditions adopted
21 ~~[established] under Section 36.108;~~

22 (2) proof that notice was posted for the joint
23 planning meeting; and

24 (3) the desired future conditions explanatory report
25 ~~[this section to the executive administrator].~~

26 (b) The executive administrator shall provide each district
27 and regional water planning group located wholly or partly in the

1 management area with the managed available groundwater in the
2 management area based upon the desired future conditions adopted by
3 the districts [~~condition of the groundwater resources established~~
4 ~~under this section~~].

5 Sec. 36.1086. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each
6 district in the management area shall ensure that its management
7 plan contains goals and objectives consistent with achieving the
8 desired future conditions of the relevant aquifers as adopted
9 during the joint planning process.

10 Sec. 36.1087. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT
11 AREA. [~~(p)~~] Districts located within the same [~~groundwater~~]
12 management areas or in adjacent management areas may contract to
13 jointly conduct studies or research, or to construct projects,
14 under terms and conditions that the districts consider beneficial.
15 These joint efforts may include studies of groundwater availability
16 and quality, aquifer modeling, and the interaction of groundwater
17 and surface water; educational programs; the purchase and sharing
18 of equipment; and the implementation of projects to make
19 groundwater available, including aquifer recharge, brush control,
20 weather modification, desalination, regionalization, and treatment
21 or conveyance facilities. The districts may contract under their
22 existing authorizations including those of Chapter 791, Government
23 Code, if their contracting authority is not limited by Sections
24 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

25 SECTION 5. Section 36.3011, Water Code, is amended to read
26 as follows:

27 Sec. 36.3011. COMMISSION ACTION REGARDING [~~FAILURE OF~~]

1 DISTRICT DUTIES [~~TO CONDUCT JOINT PLANNING~~]. Not later than the
2 45th day after receiving the review panel's report under Section
3 36.1082 [~~36.108~~], the executive director or the commission shall
4 take action to implement any or all of the panel's recommendations.
5 The commission may take any action against a district it considers
6 necessary in accordance with Section 36.303 if the commission finds
7 that:

8 (1) the [~~a~~] district has failed to submit its
9 management plan to the executive administrator;

10 (2) the district has failed to participate in the
11 joint planning process under Section 36.108;

12 (3) the [~~(2)—a~~] district has failed to adopt rules;

13 (4) the district has failed to adopt the applicable
14 desired future conditions adopted by the management area at a joint
15 meeting;

16 (5) the district has failed to update its management
17 plan before the second anniversary of the adoption of desired
18 future conditions by the management area;

19 (6) the district has failed to update its rules to
20 implement the applicable desired future conditions before the first
21 anniversary of the date it updated its management plan with the
22 adopted desired future conditions;

23 (7) [~~(3)~~] the rules adopted by the district are not
24 designed to achieve the desired future conditions adopted by
25 [~~condition of the groundwater resources in~~] the [~~groundwater~~]
26 management area during the joint planning process; [~~or~~]

27 (8) [~~(4)~~] the groundwater in the management area is

1 not adequately protected by the rules adopted by the district; 7
2 or

3 (9) the groundwater in the management area is not
4 adequately protected because of the district's failure to enforce
5 substantial compliance with its rules.

6 SECTION 6. The notice provisions of Sections 36.063(b) and
7 (c), Water Code, as added by this Act, apply only to a meeting or
8 hearing of a groundwater conservation district or a joint planning
9 meeting of groundwater conservation districts held on or after the
10 effective date of this Act. A meeting or hearing held before the
11 effective date of this Act is subject to the notice provisions in
12 effect at the time of the meeting or hearing, and those provisions
13 are continued in effect for that purpose.

14 SECTION 7. The requirement that a groundwater conservation
15 district's management plan under Section 36.1071(e), Water Code, as
16 amended by this Act, include the desired future conditions adopted
17 under Section 36.108, Water Code, as amended by this Act, for
18 submission to the executive administrator of the Texas Water
19 Development Board before the plan is considered administratively
20 complete applies only to a district management plan submitted to
21 the executive administrator on or after the effective date of this
22 Act. A management plan submitted before the effective date of this
23 Act is governed by the law in effect on the date the plan was
24 submitted, and that law is continued in effect for that purpose.

25 SECTION 8. The procedures for the adoption and reporting of
26 desired future conditions of groundwater resources in a management
27 area under Section 36.108, Water Code, as amended by this Act, and

1 Section 36.1085, Water Code, as added by this Act, apply only to the
2 adoption of desired future conditions that occurs on or after the
3 effective date of this Act. Desired future conditions adopted
4 before the effective date of this Act are governed by the law in
5 effect on the date the desired future conditions were adopted, and
6 that law is continued in effect for that purpose.

7 SECTION 9. A petition filed and pending on the effective
8 date of this Act before the Texas Water Development Board to appeal
9 the adoption of desired future conditions by a groundwater
10 management area under former Section 36.108(1), Water Code, shall
11 be handled by the Texas Water Development Board in compliance with
12 Sections 36.108(1), (m), and (n), Water Code, as those sections
13 existed before the effective date of this Act.

14 SECTION 10. This Act takes effect September 1, 2011.