

By: Seliger

S.B. No. 727

A BILL TO BE ENTITLED

AN ACT

relating to groundwater conservation district management plans.

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

SECTION 1. Subsections (a) and (b), Section 36.1071, Water Code, are amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a ~~[comprehensive]~~ management plan that ~~[which]~~ addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and
- (8) addressing in a quantitative manner the desired future conditions of the groundwater resources.

(b) The ~~[A-district]~~ management plan, or any amendments to the ~~[a-district-management]~~ plan, shall be developed ~~[by the district]~~ using the district's best available data and forwarded to

1 the regional water planning group for use in their planning
2 process.

3 SECTION 2. Section 36.1072, Water Code, is amended by
4 amending Subsections (a) through (d), (f), and (g) and adding
5 Subsection (a-1) to read as follows:

6 (a) In this section, "development board" means the Texas
7 Water Development Board.

8 (a-1) A district shall, not later than three years after the
9 creation of the district or, if the district required confirmation,
10 not later than three years after the election confirming the
11 district's creation, submit the management plan required under
12 Section 36.1071 to the executive administrator for review and
13 approval.

14 (b) Within 60 days of receipt of a district's management
15 plan adopted under Section 36.1071, readopted under Subsection (e)
16 or (g) of this section, or amended under Section 36.1073, the
17 executive administrator shall approve the district's [~~a~~
18 ~~management~~] plan if the plan is administratively complete. A
19 management plan is administratively complete when it contains the
20 information required to be submitted under Section 36.1071(a) and
21 (e). The executive administrator may determine whether conditions
22 justify waiver of the requirements under Section 36.1071(e)(4).

23 (c) Once the executive administrator has approved a
24 district's management plan:

25 (1) the executive administrator may not revoke but may
26 require revisions to the approved [~~groundwater conservation~~
27 ~~district~~] management plan as provided by Subsection (g); and

1 (2) the executive administrator may request
2 additional information from the district if the information is
3 necessary to clarify, modify, or supplement previously submitted
4 material, but a request for additional information does not render
5 the management plan unapproved.

6 (d) A management plan takes effect on approval by the
7 executive administrator or, if appealed, on approval by the
8 development board [~~Texas Water Development Board~~].

9 (f) If the executive administrator does not approve the
10 district's management plan, the executive administrator shall
11 provide to the district, in writing, the reasons for the action.
12 Not later than the 180th day after the date a district receives
13 notice that its management plan has not been approved, the district
14 may submit a revised management plan for review and approval. The
15 executive administrator's decision may be appealed to the
16 development board [~~Texas Water Development Board~~]. If the
17 development board [~~Texas Water Development Board~~] decides not to
18 approve the district's management plan on appeal, the district may
19 request that the conflict be mediated. The district and the board
20 may seek the assistance of the Center for Public Policy Dispute
21 Resolution at The University of Texas School of Law or an
22 alternative dispute resolution system established under Chapter
23 152, Civil Practice and Remedies Code, in obtaining a qualified
24 impartial third party to mediate the conflict. The cost of the
25 mediation services must be specified in the agreement between the
26 parties and the Center for Public Policy Dispute Resolution or the
27 alternative dispute resolution system. If the parties do not

1 resolve the conflict through mediation, the decision of the
2 development board [~~Texas Water Development Board~~] not to approve
3 the district's management plan may be appealed to a district court
4 in Travis County. Costs for the appeal shall be set by the court
5 hearing the appeal. An appeal under this subsection is by trial de
6 novo. The commission shall not take enforcement action against a
7 district under Subchapter I until the latest [~~later~~] of the
8 expiration of the 180-day period, the date the development board
9 [~~Texas Water Development Board~~] has taken final action withholding
10 approval of a revised management plan, the date the mediation is
11 completed, or the date a final judgment upholding the board's
12 decision is entered by a district court. An enforcement action may
13 not be taken against a district by the commission or the state
14 auditor under Subchapter I because the district's management plan
15 and the approved regional water plan are in conflict while the
16 parties are attempting to resolve the conflict before the
17 development board, in mediation, or in court. Rules of the district
18 continue in full force and effect until all appeals under this
19 subsection have been exhausted and the final judgment is adverse to
20 the district.

21 (g) [~~In this subsection, "development board" means the~~
22 ~~Texas Water Development Board.~~] A person with a legally defined
23 interest in groundwater in a district, or the regional water
24 planning group, may file a petition with the development board
25 stating that a conflict requiring resolution may exist between the
26 district's approved management plan developed under Section
27 36.1071 and the state water plan. If a conflict exists, the

1 development board shall provide technical assistance to and
2 facilitate coordination between the involved person or regional
3 water planning group and the district to resolve the conflict. Not
4 later than the 45th day after the date the person or the regional
5 water planning group files a petition with the development board,
6 if the conflict has not been resolved, the district and the involved
7 person or regional planning group may mediate the conflict. The
8 district and the involved person or regional planning group may
9 seek the assistance of the Center for Public Policy Dispute
10 Resolution at The University of Texas School of Law or an
11 alternative dispute resolution system established under Chapter
12 152, Civil Practice and Remedies Code, in obtaining a qualified
13 impartial third party to mediate the conflict. The cost of the
14 mediation services must be specified in the agreement between the
15 parties and the Center for Public Policy Dispute Resolution or the
16 alternative dispute resolution system. If the district and the
17 involved person or regional planning group cannot resolve the
18 conflict through mediation, the development board shall resolve the
19 conflict not later than the 60th day after the date the mediation is
20 completed. The development board action under this provision may
21 be consolidated, at the option of the board, with related action
22 under Section 16.053(p). If the development board determines that
23 resolution of the conflict requires a revision of the approved
24 [~~groundwater conservation district~~] management plan, the
25 development board shall provide information to the district. The
26 district shall prepare any revisions to the plan based on the
27 information provided by the development board and shall hold, after

1 notice, at least one public hearing at some central location within
2 the district. The district shall consider all public and
3 development board comments, prepare, revise, and adopt its
4 management plan, and submit the revised management plan to the
5 development board for approval. On the request of the district or
6 the regional water planning group, the development board shall
7 include discussion of the conflict and its resolution in the state
8 water plan that the development board provides to the governor, the
9 lieutenant governor, and the speaker of the house of
10 representatives under Section 16.051(e). If the groundwater
11 conservation district disagrees with the decision of the
12 development board under this subsection, the district may appeal
13 the decision to a district court in Travis County. Costs for the
14 appeal shall be set by the court hearing the appeal. An appeal
15 under this subsection is by trial de novo.

16 SECTION 3. Subsections (b) and (c), Section 36.108, Water
17 Code, are amended to read as follows:

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

1 (c) The presiding officer, or the presiding officer's
2 designee, of each district located in whole or in part in the
3 management area shall meet at least annually to conduct joint
4 planning with the other districts in the management area and to
5 review the management plans and accomplishments for the management
6 area. In reviewing the management plans, the districts shall
7 consider:

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

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

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

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

20 SECTION 4. Subsection (d), Section 36.113, Water Code, is
21 amended to read as follows:

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

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

27 (2) the proposed use of water unreasonably affects

1 existing groundwater and surface water resources or existing permit
2 holders;

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

5 (4) the proposed use of water is consistent with the
6 district's approved [~~certified water~~] management plan;

7 (5) if the well will be located in the Hill Country
8 Priority Groundwater Management Area, the proposed use of water
9 from the well is wholly or partly to provide water to a pond, lake,
10 or reservoir to enhance the appearance of the landscape;

11 (6) the applicant has agreed to avoid waste and
12 achieve water conservation; and

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

16 SECTION 5. Subsection (b), Section 36.116, Water Code, is
17 amended to read as follows:

18 (b) In promulgating any rules limiting groundwater
19 production, the district may preserve historic or existing use
20 before the effective date of the rules to the maximum extent
21 practicable consistent with the district's [~~comprehensive~~]
22 management plan under Section 36.1071 and as provided by Section
23 36.113.

24 SECTION 6. Subsection (f), Section 36.122, Water Code, is
25 amended to read as follows:

26 (f) In reviewing a proposed transfer of groundwater out of
27 the district, the district shall consider:

1 (1) the availability of water in the district and in
2 the proposed receiving area during the period for which the water
3 supply is requested;

4 (2) the projected effect of the proposed transfer on
5 aquifer conditions, depletion, subsidence, or effects on existing
6 permit holders or other groundwater users within the district; and

7 (3) the approved regional water plan and approved
8 [~~certified~~] district management plan.

9 SECTION 7. Section 36.207, Water Code, is amended to read as
10 follows:

11 Sec. 36.207. USE OF PERMIT FEES AUTHORIZED BY SPECIAL LAW.
12 A district may use funds obtained from permit fees collected
13 pursuant to the special law governing the district for any purpose
14 consistent with the district's approved [~~certified water~~]
15 management plan including, without limitation, making grants,
16 loans, or contractual payments to achieve, facilitate, or expedite
17 reductions in groundwater pumping or the development or
18 distribution of alternative water supplies.

19 SECTION 8. Section 36.301, Water Code, is amended to read as
20 follows:

21 Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a
22 district [~~board~~] fails to submit a management plan or to receive
23 approval [~~certification~~] of its management plan under Section
24 36.1072, or fails to submit or receive approval [~~certification~~] of
25 an amendment to the management plan under Section 36.1073, the
26 commission shall take appropriate action under Section 36.303.

27 SECTION 9. Section 36.3011, Water Code, is amended to read

1 as follows:

2 Sec. 36.3011. FAILURE OF DISTRICT TO CONDUCT JOINT
3 PLANNING. Not later than the 45th day after receiving the review
4 panel's report under Section 36.108, the executive director or the
5 commission shall take action to implement any or all of the panel's
6 recommendations. The commission may take any action against a
7 district it considers necessary in accordance with Section 36.303
8 if the commission finds that:

9 (1) a district has failed to submit its management
10 plan to the executive administrator;

11 (2) a district has failed to adopt rules;

12 (3) the rules adopted by the district are not designed
13 to achieve the desired future condition of the groundwater
14 resources in the groundwater management area; or

15 (4) the groundwater in the management area is not
16 adequately protected by the rules adopted by the district, or the
17 groundwater in the management area is not adequately protected
18 because of the district's failure to enforce substantial compliance
19 with its rules.

20 SECTION 10. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2011.