

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. Sections 36.1071(a) and (b), 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 to read
4 as follows:

5 Sec. 36.1072. TEXAS WATER DEVELOPMENT BOARD REVIEW AND
6 APPROVAL OF MANAGEMENT PLAN. (a) In this section, "development
7 board" means the Texas 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 (e) The district may review the plan annually and must
10 review and readopt the plan with or without revisions at least once
11 every five years. The district shall provide the readopted plan to
12 the executive administrator not later than the 60th day after the
13 date on which the plan was readopted. Approval of the preceding
14 management plan remains in effect until the executive administrator
15 approves the readopted management plan or until the date on which
16 any dispute under Subsection (f) or (g) is resolved. The executive
17 administrator shall report a district's failure to timely submit a
18 readopted management plan to the commission [+

19 [~~(1) the district fails to timely readopt a management~~
20 ~~plan,~~

21 [~~(2) the district fails to timely submit the~~
22 ~~district's readopted management plan to the executive~~
23 ~~administrator, or~~

24 [~~(3) the executive administrator determines that the~~
25 ~~readopted management plan does not meet the requirements for~~
26 ~~approval, and the district has exhausted all appeals to the Texas~~
27 ~~Water Development Board or appropriate court].~~

1 (f) If the executive administrator does not approve the
2 district's management plan, the executive administrator shall
3 provide to the district, in writing, the reasons for the
4 action. Not later than the 180th day after the date a district
5 receives notice that its management plan has not been approved, the
6 district may submit a revised management plan for review and
7 approval. The executive administrator's decision may be appealed
8 to the development board [~~Texas Water Development Board~~]. If the
9 development board [~~Texas Water Development Board~~] decides not to
10 approve the district's management plan on appeal, the district may
11 request that the conflict be mediated. The district and the board
12 may seek the assistance of the Center for Public Policy Dispute
13 Resolution at The University of Texas School of Law or an
14 alternative dispute resolution system established under Chapter
15 152, Civil Practice and Remedies Code, in obtaining a qualified
16 impartial third party to mediate the conflict. The cost of the
17 mediation services must be specified in the agreement between the
18 parties and the Center for Public Policy Dispute Resolution or the
19 alternative dispute resolution system. If the parties do not
20 resolve the conflict through mediation, the decision of the
21 development board [~~Texas Water Development Board~~] not to approve
22 the district's management plan may be appealed to a district court
23 in Travis County. Costs for the appeal shall be set by the court
24 hearing the appeal. An appeal under this subsection is by trial de
25 novo. The commission shall not take enforcement action against a
26 district under Subchapter I until the latest [~~later~~] of the
27 expiration of the 180-day period, the date the development board

1 ~~[Texas Water Development Board]~~ has taken final action withholding
2 approval of a revised management plan, the date the mediation is
3 completed, or the date a final judgment upholding the board's
4 decision is entered by a district court. An enforcement action may
5 not be taken against a district by the commission or the state
6 auditor under Subchapter I because the district's management plan
7 and the approved regional water plan are in conflict while the
8 parties are attempting to resolve the conflict before the
9 development board, in mediation, or in court. Rules of the
10 district continue in full force and effect until all appeals under
11 this subsection have been exhausted and the final judgment is
12 adverse to the district.

13 (g) ~~[In this subsection, "development board" means the~~
14 ~~Texas Water Development Board.]~~ A person with a legally defined
15 interest in groundwater in a district, or the regional water
16 planning group, may file a petition with the development board
17 stating that a conflict requiring resolution may exist between the
18 district's approved management plan developed under Section
19 36.1071 and the state water plan. If a conflict exists, the
20 development board shall provide technical assistance to and
21 facilitate coordination between the involved person or regional
22 water planning group and the district to resolve the conflict. Not
23 later than the 45th day after the date the person or the regional
24 water planning group files a petition with the development board,
25 if the conflict has not been resolved, the district and the involved
26 person or regional planning group may mediate the conflict. The
27 district and the involved person or regional planning group may

1 seek the assistance of the Center for Public Policy Dispute
2 Resolution at The University of Texas School of Law or an
3 alternative dispute resolution system established under Chapter
4 152, Civil Practice and Remedies Code, in obtaining a qualified
5 impartial third party to mediate the conflict. The cost of the
6 mediation services must be specified in the agreement between the
7 parties and the Center for Public Policy Dispute Resolution or the
8 alternative dispute resolution system. If the district and the
9 involved person or regional planning group cannot resolve the
10 conflict through mediation, the development board shall resolve the
11 conflict not later than the 60th day after the date the mediation is
12 completed. The development board action under this provision may
13 be consolidated, at the option of the board, with related action
14 under Section 16.053(p). If the development board determines that
15 resolution of the conflict requires a revision of the approved
16 [~~groundwater conservation district~~] management plan, the
17 development board shall provide information to the district. The
18 district shall prepare any revisions to the plan based on the
19 information provided by the development board and shall hold, after
20 notice, at least one public hearing at some central location within
21 the district. The district shall consider all public and
22 development board comments, prepare, revise, and adopt its
23 management plan, and submit the revised management plan to the
24 development board for approval. On the request of the district or
25 the regional water planning group, the development board shall
26 include discussion of the conflict and its resolution in the state
27 water plan that the development board provides to the governor, the

1 lieutenant governor, and the speaker of the house of
2 representatives under Section 16.051(e). If the groundwater
3 conservation district disagrees with the decision of the
4 development board under this subsection, the district may appeal
5 the decision to a district court in Travis County. Costs for the
6 appeal shall be set by the court hearing the appeal. An appeal
7 under this subsection is by trial de novo.

8 SECTION 3. Sections 36.108(b) and (c), Water Code, are
9 amended to read as follows:

10 (b) If two or more districts are located within the
11 boundaries of the same management area, each district shall
12 ~~[prepare a comprehensive management plan as required by Section~~
13 ~~36.1071 covering that district's respective territory. On~~
14 ~~completion and approval of the plan as required by Section 36.1072,~~
15 ~~each district shall]~~ forward a copy of that district's ~~[the]~~ new or
16 revised management plan to the other districts in the management
17 area. The boards of the districts shall consider the plans
18 individually and shall compare them to other management plans then
19 in force in the management area.

20 (c) The presiding officer, or the presiding officer's
21 designee, of each district located in whole or in part in the
22 management area shall meet at least annually to conduct joint
23 planning with the other districts in the management area and to
24 review the management plans and accomplishments for the management
25 area. In reviewing the management plans, the districts shall
26 consider:

27 (1) the goals of each management plan and its impact on

1 planning throughout the management area;

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

6 (3) any other matters that the boards consider
7 relevant to the protection and conservation of groundwater and the
8 prevention of waste in the management area; and

9 (4) the degree to which each management plan achieves
10 the desired future conditions established during the joint planning
11 process.

12 SECTION 4. Section 36.113(d), Water Code, is amended to
13 read as follows:

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

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

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

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

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

26 (5) if the well will be located in the Hill Country
27 Priority Groundwater Management Area, the proposed use of water

1 from the well is wholly or partly to provide water to a pond, lake,
2 or reservoir to enhance the appearance of the landscape;

3 (6) the applicant has agreed to avoid waste and
4 achieve water conservation; and

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

8 SECTION 5. Section 36.116(b), Water Code, is amended to
9 read as follows:

10 (b) In promulgating any rules limiting groundwater
11 production, the district may preserve historic or existing use
12 before the effective date of the rules to the maximum extent
13 practicable consistent with the district's [~~comprehensive~~]
14 management plan under Section 36.1071 and as provided by Section
15 36.113.

16 SECTION 6. Section 36.122(f), Water Code, is amended to
17 read as follows:

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

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

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

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

1 SECTION 7. Section 36.207, Water Code, is amended to read as
2 follows:

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

11 SECTION 8. Section 36.301, Water Code, is amended to read as
12 follows:

13 Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a
14 district [~~board~~] fails to submit a management plan or to receive
15 approval [~~certification~~] of its management plan under Section
16 36.1072, or fails to submit or receive approval [~~certification~~] of
17 an amendment to the management plan under Section 36.1073, the
18 commission shall take appropriate action under Section 36.303.

19 SECTION 9. Section 36.3011, Water Code, is amended to read
20 as follows:

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

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

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

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

7 (4) the groundwater in the management area is not
8 adequately protected by the rules adopted by the district, or the
9 groundwater in the management area is not adequately protected
10 because of the district's failure to enforce substantial compliance
11 with its rules.

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