

AN ACT

relating to the regulation of groundwater.

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

SECTION 1. Section 36.0015, Water Code, is amended to read as follows:

Sec. 36.0015. PURPOSE. (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a

1 district in accordance with the provisions of this chapter.

2 SECTION 2. Section 36.066, Water Code, is amended by
3 amending Subsection (g) and adding Subsection (h) to read as
4 follows:

5 (g) If the district prevails in any suit other than a suit in
6 which it voluntarily intervenes, the district may seek and the
7 court shall grant, in the interests of justice and as provided by
8 Subsection (h), in the same action, recovery for attorney's fees,
9 costs for expert witnesses, and other costs incurred by the
10 district before the court. The amount of the attorney's fees shall
11 be fixed by the court.

12 (h) If the district prevails on some, but not all, of the
13 issues in the suit, the court shall award attorney's fees and costs
14 only for those issues on which the district prevails. The district
15 has the burden of segregating the attorney's fees and costs in order
16 for the court to make an award.

17 SECTION 3. Section 36.108(d-1), Water Code, is amended to
18 read as follows:

19 (d-1) After considering and documenting the factors
20 described by Subsection (d) and other relevant scientific and
21 hydrogeological data, the [The] districts may establish different
22 desired future conditions for:

23 (1) each aquifer, subdivision of an aquifer, or
24 geologic strata located in whole or in part within the boundaries of
25 the management area; or

26 (2) each geographic area overlying an aquifer in whole
27 or in part or subdivision of an aquifer within the boundaries of the

1 management area.

2 SECTION 4. Section 36.1083, Water Code, is amended by
3 amending Subsections (a) and (b) and adding Subsections (e) through
4 (r) to read as follows:

5 (a) In this section:

6 (1) "Affected person" has the meaning assigned by
7 Section 36.1082.

8 (2) "Development [,"development] board" means the
9 Texas Water Development Board.

10 (3) "Office" means the State Office of Administrative
11 Hearings.

12 (b) Not later than the 120th day after the date on which a
13 district adopts a desired future condition under Section
14 36.108(d-4), an affected [A] person [with a legally defined
15 interest in the groundwater in the management area, a district in or
16 adjacent to the management area, or a regional water planning group
17 for a region in the management area] may file a petition with the
18 district requiring that the district contract with the office to
19 conduct a hearing [development board] appealing the reasonableness
20 [approval] of the desired future condition [conditions of the
21 groundwater resources established under this section]. The
22 petition must provide evidence that the districts did not establish
23 a reasonable desired future condition of the groundwater resources
24 in the management area.

25 (e) Not later than the 10th day after receiving a petition
26 described by Subsection (b), the district shall submit a copy of the
27 petition to the development board. On receipt of the petition, the

1 development board shall conduct:

2 (1) an administrative review to determine whether the
3 desired future condition established by the district meets the
4 criteria in Section 36.108(d); and

5 (2) a study containing scientific and technical
6 analysis of the desired future condition, including consideration
7 of:

8 (A) the hydrogeology of the aquifer;

9 (B) the explanatory report provided to the
10 development board under Section 36.108(d-3);

11 (C) the factors described under Section
12 36.108(d); and

13 (D) any relevant:

14 (i) groundwater availability models;

15 (ii) published studies;

16 (iii) estimates of total recoverable
17 storage capacity;

18 (iv) average annual amounts of recharge,
19 inflows, and discharge of groundwater; or

20 (v) information provided in the petition or
21 available to the development board.

22 (f) The development board must complete and deliver to the
23 office a study described by Subsection (e)(2) not later than the
24 120th day after the date the development board receives a copy of
25 the petition.

26 (g) For the purposes of a hearing conducted under Subsection
27 (b):

1 (1) the office shall consider the study described by
2 Subsection (e)(2) and the desired future conditions explanatory
3 report submitted to the development board under Section 36.108(d-3)
4 to be part of the administrative record; and

5 (2) the development board shall make available
6 relevant staff as expert witnesses if requested by the office or a
7 party to the hearing.

8 (h) Not later than the 60th day after receiving a petition
9 under Subsection (b), the district shall:

10 (1) contract with the office to conduct the contested
11 case hearing requested under Subsection (b); and

12 (2) submit to the office a copy of any petitions
13 related to the hearing requested under Subsection (b) and received
14 by the district.

15 (i) A hearing under Subsection (b) must be held:

16 (1) at a location described by Section 36.403(c); and

17 (2) in accordance with Chapter 2001, Government Code,
18 and the rules of the office.

19 (j) During the period between the filing of the petition and
20 the delivery of the study described by Subsection (e)(2), the
21 district may seek the assistance of the Center for Public Policy
22 Dispute Resolution, the development board, or another alternative
23 dispute resolution system to mediate the issues raised in the
24 petition. If the district and the petitioner cannot resolve the
25 issues raised in the petition, the office will proceed with a
26 hearing as described by this section.

27 (k) The district may adopt rules for notice and hearings

1 conducted under this section that are consistent with the
2 procedural rules of the office. In accordance with rules adopted by
3 the district and the office, the district shall provide:

4 (1) general notice of the hearing; and

5 (2) individual notice of the hearing to:

6 (A) the petitioner;

7 (B) any person who has requested notice;

8 (C) each nonparty district and regional water
9 planning group located in the same management area as a district
10 named in the petition;

11 (D) the development board; and

12 (E) the commission.

13 (1) Before a hearing conducted under this section, the
14 office shall hold a prehearing conference to determine preliminary
15 matters, including:

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

18 (2) whether a person seeking to participate in the
19 hearing is an affected person who is eligible to participate; and

20 (3) which affected persons shall be named as parties
21 to the hearing.

22 (m) The petitioner shall pay the costs associated with the
23 contract for the hearing under this section. The petitioner shall
24 deposit with the district an amount sufficient to pay the contract
25 amount before the hearing begins. After the hearing, the office may
26 assess costs to one or more of the parties participating in the
27 hearing and the district shall refund any excess money to the

1 petitioner. The office shall consider the following in
2 apportioning costs of the hearing:

- 3 (1) the party who requested the hearing;
4 (2) the party who prevailed in the hearing;
5 (3) the financial ability of the party to pay the
6 costs;
7 (4) the extent to which the party participated in the
8 hearing; and
9 (5) any other factor relevant to a just and reasonable
10 assessment of costs.

11 (n) On receipt of the administrative law judge's findings of
12 fact and conclusions of law in a proposal for decision, including a
13 dismissal of a petition, the district shall issue a final order
14 stating the district's decision on the contested matter and the
15 district's findings of fact and conclusions of law. The district
16 may change a finding of fact or conclusion of law made by the
17 administrative law judge, or may vacate or modify an order issued by
18 the administrative law judge, as provided by Section 2001.058(e),
19 Government Code.

20 (o) If the district vacates or modifies the proposal for
21 decision, the district shall issue a report describing in detail
22 the district's reasons for disagreement with the administrative law
23 judge's findings of fact and conclusions of law. The report shall
24 provide the policy, scientific, and technical justifications for
25 the district's decision.

26 (p) If the district in its final order finds that a desired
27 future condition is unreasonable, not later than the 60th day after

1 the date of the final order, the districts in the same management
2 area as the district that received the petition shall reconvene in a
3 joint planning meeting for the purpose of revising the desired
4 future condition. The districts in the management area shall
5 follow the procedures in Section 36.108 to adopt new desired future
6 conditions applicable to the district that received the petition.

7 (q) A final order by the district finding that a desired
8 future condition is unreasonable does not invalidate the adoption
9 of a desired future condition by a district that did not participate
10 as a party in the hearing conducted under this section.

11 (r) The administrative law judge may consolidate hearings
12 requested under this section that affect two or more districts. The
13 administrative law judge shall prepare separate findings of fact
14 and conclusions of law for each district included as a party in a
15 multidistrict hearing.

16 SECTION 5. Subchapter D, Chapter 36, Water Code, is amended
17 by adding Section 36.10835 to read as follows:

18 Sec. 36.10835. JUDICIAL APPEAL OF DESIRED FUTURE
19 CONDITIONS. (a) A final district order issued under Section
20 36.1083 may be appealed to a district court with jurisdiction over
21 any part of the territory of the district that issued the order. An
22 appeal under this subsection must be filed with the district court
23 not later than the 45th day after the date the district issues the
24 final order. The case shall be decided under the substantial
25 evidence standard of review as provided by Section 2001.174,
26 Government Code. If the court finds that a desired future condition
27 is unreasonable, the court shall strike the desired future

1 condition and order the districts in the same management area as the
2 district that received the petition to reconvene not later than the
3 60th day after the date of the court order in a joint planning
4 meeting for the purpose of revising the desired future condition.
5 The districts in the management area shall follow the procedures in
6 Section 36.108 to adopt new desired future conditions applicable to
7 the district that received the petition.

8 (b) A court's finding under this section does not apply to a
9 desired future condition that is not a matter before the court.

10 SECTION 6. Sections 36.1083(c) and (d), Water Code, are
11 repealed.

12 SECTION 7. Section 36.1083, Water Code, as amended by this
13 Act, and Section 36.10835, Water Code, as added by this Act, apply
14 only to a desired future condition adopted by a groundwater
15 conservation district on or after the effective date of this Act. A
16 desired future condition adopted before that date is governed by
17 the law in effect on the date the desired future condition was
18 adopted, and the former law is continued in effect for that purpose.

19 SECTION 8. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 200 was passed by the House on May 6, 2015, by the following vote: Yeas 141, Nays 5, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 200 on May 21, 2015, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 200 on May 28, 2015, by the following vote: Yeas 141, Nays 1, 2 present, not voting.

Chief Clerk of the House

H.B. No. 200

I certify that H.B. No. 200 was passed by the Senate, with amendments, on May 18, 2015, by the following vote: Yeas 29, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 200 on May 31, 2015, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor