

# Water for Texas

## What is the Process to Appeal the Approval of a Desired Future Condition of an Aquifer?

### Background

Groundwater conservation districts are charged by the Texas Legislature with establishing the desired future conditions for the relevant aquifers inside each groundwater management area of the state. A desired future condition is the projected, quantified condition of a groundwater resource (such as water levels, water quality, springflows, or volumes) at a specified time or times in the future. After groundwater conservation districts adopt desired future conditions, they submit them to the executive administrator of the Texas Water Development Board (TWDB). The executive administrator then provides each groundwater conservation district and regional water planning group in the groundwater management area with the managed available groundwater based on the desired future conditions. The managed available groundwater is the amount of water that may be permitted, to the extent possible, by a groundwater conservation district for use, consistent with the established desired future condition.

State law allows for the filing of a petition with the TWDB appealing the reasonableness of a desired future condition. The purpose of this document is to describe the process and requirements for filing such a petition. The process and requirements are described in statute (Texas Water Code §§ 36.108[1]) and TWDB rules (31 Texas Administrative Code §§ 356.41).

### Who can file?

A person with a legally defined interest in groundwater in the groundwater management area, a groundwater conservation district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the TWDB appealing the approval of a desired future condition.

A person with a legally defined interest

- ▶ owns land or groundwater rights in the groundwater management area,
- ▶ has a legal interest in a well in the groundwater management area,
- ▶ has authorization from a groundwater conservation district in the groundwater management area to produce groundwater, or
- ▶ otherwise has an interest in groundwater in the groundwater management area as granted by court order or judgment.

If you are not sure if you fit the description listed above, you should seek professional legal advice on how to proceed.

### When can a petition be filed?

A petition must be filed with the TWDB within one calendar year of the adoption of the desired future condition by the groundwater conservation districts. For example, if the desired future condition was adopted on December 1, 2008, a complete petition would have to arrive and be stamped “received” by December 1, 2009, for the petition to be considered timely. We recommend documented delivery when sending petitions. Note that the complete petition must first be provided to the groundwater conservation districts 30 days before a petition is filed with the TWDB (see “Where does the petition go?” below for more information). Therefore, a petitioner needs to consider the 30-day review by the districts when complying with the one-year time limit.

## What should a complete petition look like?

At a minimum, the petition needs to include

- ▶ the specific desired future condition that is being appealed;
- ▶ the petitioner's name and contact information, including mailing address, e-mail address, telephone number, and fax number;
- ▶ an affidavit attesting to the truth of the matters contained in the petition;
- ▶ documents describing the nature of the petitioner's legally defined interest in the groundwater in the area (this requirement does not apply to a groundwater conservation district or a regional water planning group);
- ▶ the evidence upon which the petitioner will rely in support of the contention that the adopted desired future condition is not reasonable;
- ▶ a summary of this evidence; and
- ▶ the petitioner's signature and attestation before a notary regarding the truth of the matters contained in the petition.

If the petitioner has designated a person or entity to represent the petitioner in the petition, then the petitioner needs to also provide

- ▶ the representative's name and contact information, including mailing address, e-mail address, telephone number, and fax number; and
- ▶ a certified copy of a resolution or other official document describing the extent and nature of the authority of the representative.

The petitioner should also include evidence that the petition, including the supporting evidence, was submitted to the groundwater conservation districts at least 30 days before the petition was submitted to the TWDB.

It is essential that a petitioner do more than just state that the desired future condition is unreasonable—the petitioner must provide evidence that demonstrates why the desired future condition is unreasonable.

The Board may, at its discretion and for good cause shown, waive any of the requirements for the submission of a complete petition.

## Where does the petition go?

TWDB rules require that the complete petition and the supporting evidence be provided to the groundwater conservation districts whose adopted desired future condition is being appealed at least 30 days before the petition is submitted to the TWDB. Note that the 30 days count from when the districts receive the materials, not from when the petitioner sends the materials; therefore, we recommend documented delivery.

After the groundwater conservation districts have had

the petition for 30 days, the petition is submitted to the TWDB at

Texas Water Development Board  
ATTN: Executive Administrator  
P.O. Box 13231  
Austin, Texas 78711-3231

or for documented delivery at

Texas Water Development Board  
ATTN: Executive Administrator  
1700 North Congress Avenue  
Austin, Texas 78701

## What happens to my petition once it is received by the TWDB?

Within 10 days of receipt of an administratively complete petition, TWDB staff will send a letter to the petitioner and the affected groundwater conservation districts acknowledging receipt of the petition. To be considered administratively complete, a petition must contain each of the required elements listed above under "What should a petition look like?" The TWDB will not consider a petition officially received until the petition is administratively complete.

The affected groundwater conservation districts have 10 business days from their receipt of the TWDB's acknowledgment of the receipt of a petition to request the executive administrator of the TWDB to postpone Board review of the petition for 60 days. The intent of the 60-day delay is to encourage consultation and resolution of the petition by the petitioner and the groundwater conservation districts. Any one of the affected districts may request this postponement.

If there is no request for postponement, TWDB staff will present the petition to its Board no later than 120 days after receipt of the administratively complete petition. If there is a request for postponement, TWDB staff will present the petition to the Board no later than 120 days after the 60 day postponement period has expired.

The executive administrator may join multiple petitions concerning the same area, aquifers, and issues if such joinder is beneficial to the TWDB, the petitioners, and the respondents.

After the petition is received and before it is presented to the Board, staff will hold at least one public hearing in the groundwater management area to take sworn testimony and receive evidence on the petition from the petitioner and the groundwater conservation districts. Generally, the hearing will be limited to one day. The petitioner and the districts will be given equal time, with the petitioner given the right to reserve some presentation time for rebuttal testimony. The hearing will be conducted in a manner that is orderly, fair, and efficient. The petitioner is expected to provide evidence as described in the petition. The districts should direct their testimony to the petitioner's evidence, and the petitioner's rebuttal—if any—is limited to responding to the districts' evidence. The hearing is not a formal legal proceeding. Although the testimony is sworn,

no opportunity will be provided for cross-examination of witnesses, objections to the testimony or exhibits, procedural motions, or briefing by the parties. The record of the hearing remains open for 10 days after the close of the hearing, during which time other interested parties may provide written evidence for Board consideration.

Once the hearing record is closed, TWDB staff will analyze the petition and response, testimony and evidence presented at the hearing, and written comments submitted by other interested persons and prepare a report for the Board. This report will consist of the information listed above, along with a summary and analysis of the evidence, a list of findings, and any recommendations prepared by staff relating to revisions to the desired future condition. The report will be provided to the petitioner and the districts a week before the Board meets and will be presented to the Board during a regular Board meeting or, more likely, at a special meeting to be held before or after a regular meeting. At the meeting, staff, petitioners, and the districts will be given the opportunity to address the Board, and the Board may ask questions of staff, the petitioner, or the districts. Time for public comments will also be provided and will follow the Board's regular procedures for public comment. The Board will then have time to deliberate and make a finding.

If the Board finds that the desired future condition is reasonable, the executive administrator will send a letter to the petitioner and the groundwater conservation districts noting the Board's decision.

If the Board finds that the desired future condition is not reasonable, then the Board will prepare a report that includes a list of findings and recommended revisions to the desired future condition. The executive administrator will send a letter to the petitioner and the groundwater conservation districts noting the Board's decision. The groundwater conservation districts are then required to revise their desired future condition in accordance with the Board's recommendations and submit the revised desired future condition to the TWDB. The districts may request an opinion from the TWDB as to whether or not the districts' revisions are in accordance with the Board's recommendations. The groundwater conservation districts will then hold a public hearing on the revised plans and desired future condition in a central location in the groundwater management area. After considering comments from the public and the Board, the districts will revise the desired future condition and submit the revised condition to the Board for review, along with the rationale, if necessary, for changing the condition from the Board's recommendations.

The Board will then provide public notice of the districts' revision and may provide a public response to the districts' revised desired future condition. The executive administrator will provide new managed available groundwater numbers to the groundwater conservation districts and the regional water planning groups.

## Statute and rules

To read Chapter 36 of the Texas Water Code:  
<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.36.htm>

To read Chapter 356, Subchapter D, of Title 31 of the Texas Administrative Code:  
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=5&ti=31&pt=10&ch=356&sch=D&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=31&pt=10&ch=356&sch=D&rl=Y)

To access a digital version of this document:  
<http://www.twdb.texas.gov/publications/shells/PetitiotoAppealDFC.pdf>

For more information on groundwater management and the desired future condition process, please visit the following Web site:

<http://www.twdb.texas.gov/GWRD/GTA/gtahome.htm>

For more information on the desired future condition appeal process, please visit the following page:  
<http://www.twdb.texas.gov/publications/shells/petitionprocessflochart.pdf>