

**RESOLUTION ESTABLISHING ADMINISTRATIVE PROCEDURES FOR THE
CONSIDERATION, PROPOSAL, AND ADOPTION OF
DESIRED FUTURE CONDITIONS FOR
GROUNDWATER MANAGEMENT AREA 14**

WHEREAS, pursuant to Section 35.004 of the Texas Water Code, the Texas Water Development Board ("TWDB") has designated groundwater management areas, which together cover all major and minor aquifers in the state, for the objective of providing the most suitable area for the management of the groundwater resources; and

WHEREAS, through Title 31, Section 356.21 of the Texas Administrative Code, the TWDB has designated the area encompassing all of Austin, Brazoria, Chambers, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Tyler, Walker, Waller, and Washington counties as Groundwater Management Area No. 14 ("GMA 14"); and

WHEREAS, the Bluebonnet Groundwater Conservation District, Brazoria County Groundwater Conservation District, Lone Star Groundwater Conservation District, Lower Trinity Groundwater Conservation District, and Southeast Texas Groundwater Conservation District (the "Member Districts") are located wholly or partially within GMA 14; and

WHEREAS, the Member Districts are authorized by Chapter 36, Texas Water Code, to engage in joint planning activities for the coordinated management of the aquifers located in GMA 14, and in that regard, shall establish desired future conditions ("DFCs") for the relevant aquifers within GMA 14; and

WHEREAS, Section 36.108 of the Texas Water Code requires the Member District Representatives to hold joint planning meetings for the consideration of DFC options, the proposal of DFCs for adoption, and, after the contemplation of comments and suggested revisions provided by the public and Member Districts, the adoption of DFCs for each relevant aquifer in GMA 14 and the submission of an explanatory report to the TWDB for approval of the DFCs adopted; and

WHEREAS, Section 36.108(d-3) of the Texas Water Code provides that the explanatory report must include the following: (1) identification of each DFC; (2) the policy and technical justification for each DFC; (3) documentation that the Member Districts considered the nine statutory factors listed in 36.108(d)(1)-(9), Water Code, and how the DFC adopted impacts each factor, (4) a list of the other DFC options considered, if any, and the reasons why those options were not adopted, and (5) the reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the DFCs; and

WHEREAS, the DFC explanatory report serves as the administrative record in the DFC adoption process, and for this reason, the Member Districts recognize the importance of establishing a procedural record from the beginning of the DFC consideration, proposal, and

adoption process that contemplates each of the items to be addressed and included in the explanatory report under Section 36.108(d-3), Water Code; and

WHEREAS, Section 36.108 of the Texas Water Code provides a clear procedural process for DFCs that have been approved by a two-thirds vote by the Member District Representatives as the proposed DFCs for distribution to the Member Districts for public hearings and subject to a public comment period, but the statute is less clear as to the procedure applicable to the consideration of one or more DFC option(s), DFC options that may be discussed, evaluated, or considered but not adopted, the extent to which those DFC options must be addressed in the explanatory report, and the consideration of the nine statutory factors prior to the Member District Representatives' vote to approve a DFC option as the proposed DFC; and

WHEREAS, the Member Districts desire to adopt an administrative procedural process that is consistent with Chapter 36, including the procedural requirements currently in place under Texas Water Code Section 36.108, for the consideration, proposal, and adoption of DFCs to ensure the development of a clear administrative record that not only supports the DFCs ultimately adopted, but also addresses any DFCs considered but not adopted, in a manner that is sufficient for inclusion in the explanatory report as required by Texas Water Code Section 36.108(d-3); and

NOW, THEREFORE, it is agreed and understood among the Member Districts as follows:

SECTION ONE **INTENT AND PURPOSES**

1.01 It is the intent and purpose of the Member Districts to carry out and fulfill the joint planning activities and requirements of Chapter 36, Texas Water Code, to establish DFCs by adopting administrative procedures for the consideration, proposal, and adoption of DFCs that promote the consideration of various DFC options, as necessary, to be included in the explanatory report, while preventing the lack of procedural guidance provided in Texas Water Code Chapter 36 from hindering the development of a defensible administrative record or explanatory report. The Member Districts intend for the administrative procedures herein to promote the ability of the Member Districts to openly identify, evaluate, and discuss multiple ideas, proposals, technical information, and policy options regarding the establishment of DFCs while simultaneously establishing some procedures to identify when a particular discussion or evaluation rises to the level of it being formally considered for inclusion in the DFC explanatory report.

SECTION TWO **PARTICIPATION IN JOINT PLANNING PROCESS TO ESTABLISH DFCs**

2.01 Each Member District shall be subject to these administrative procedures.

2.02 Only a Member District Representative may vote or take action on GMA 14 activities. For any action, only one representative from each Member District may vote.

2.03 Each Member District of GMA 14 shall endeavor to participate and contribute in good faith in joint planning activities and to satisfy the joint planning requirements of Chapter 36, Water Code.

2.04 The GMA 14 Member Districts, as a group to engage in joint planning activities, shall have only the power granted by Chapter 36, Water Code, that relates to joint planning activities.

2.05 GMA 14 joint planning meetings must be held in accordance with the Texas Open Meetings Act, Chapter 551, Government Code. The Member Districts agree that notice of meetings shall be provided in accordance with the requirements of Chapter 36, Texas Water Code.

2.06 Each Member District shall comply with the Texas Public Information Act, Chapter 552, Government Code, with regard to joint planning activities.

SECTION THREE
PROCEDURE FOR THE CONSIDERATION, PROPOSAL, AND ADOPTION OF DFCs

3.01 For a DFC option to be formally considered as a potential candidate for proposal and adoption by the Member Districts to be included in the explanatory report as a DFC that was adopted or a DFC that was considered but not adopted pursuant to Section 36.108(d-3), Water Code, the DFC option must be requested in writing and approved by the Member District Representatives for formal consideration at a GMA 14 joint planning meeting.

3.02 A Member District Representative shall request a DFC option to be approved for formal consideration by submitting, no less than 14 days before a GMA 14 joint planning meeting, a written request to each Member District and the Contracted Consultant, as defined in Section 4 below, describing with sufficient specificity the DFC option requested to be approved for formal consideration. The sufficiency of the written request shall be reviewed by the Contracted Consultant and, no later than 7 days after receiving the written request, the Contract Consultant shall notify the requesting party of any possible deficiencies in the written request in preparation for discussion of the request at the GMA 14 joint planning meeting.

3.03 Based on the information provided in the written request, including any supplemental information provided in writing and accepted by the Member District Representatives at or before the GMA 14 joint planning meeting, the Member District Representatives shall vote to determine whether the requested DFC option shall be formally considered. To be formally considered, the requested DFC option must be approved by a two-thirds vote of the total Member District Representatives. If through discussions at the GMA 14 joint planning meeting, the DFC option originally requested in writing is amended, the DFC option, as amended, may nonetheless be approved for formal consideration by a two-thirds vote of the total Member District Representatives without the submission of an additional, amended

written request. A DFC option approved for formal consideration under this section shall be included in the explanatory report pursuant to Texas Water Code Section 36.108(d-3).

3.04 Of the DFC options formally considered, at least one of the DFC options shall be approved by two-thirds vote of the total Member District Representatives to be further reviewed in consideration of the nine statutory factors listed in Section 36.108(d)(1)-(9), Water Code. For a DFC option approved for further review, the Member District Representatives shall discuss and consider the nine statutory factors and how the DFC option impacts each of the nine factors at a joint planning meeting. A written report shall be prepared to document the consideration of the nine statutory factors and the discussions relevant to the DFC option's impact to each factor, to the extent necessary for purposes of the explanatory report as required by Section 36.108(d-3)(3), Water Code.

3.05 Only after consideration of the nine statutory factors as stated in Section 3.04 may a DFC option become eligible for approval as the proposed DFC. For each relevant aquifer in GMA 14, the Member District Representatives shall approve by two-thirds vote of the total Member District Representatives one DFC option to serve as the proposed DFC as required by Sections 36.108(d) and (d-2), Water Code. The proposed DFC must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in GMA 14.

3.06 The proposed DFC approved by two-thirds vote of the total Member District Representatives shall be distributed to the Member Districts. A period of not less than 90 days for public comment begins on the day the proposed DFC is mailed to the Member Districts.

3.07 During the public comment period and after posting proper notice as required by Section 36.063, Water Code, each Member District shall hold a public hearing on the proposed DFCs relevant to that Member District pursuant to the requirements set forth in Section 36.108(d-2), Water Code. After the public hearing, each Member District shall compile for consideration at the next joint planning meeting a summary report of relevant comments received and any suggested revisions to the proposed DFC and the basis for the revisions.

3.08 Pursuant to Texas Water Code Section 36.108(d-3), after the earlier of the date on which all the Member District have submitted their district summaries or the expiration of the public comment period, the Member District Representatives shall reconvene to review the reports, consider any Member District's suggested revisions to the proposed DFCs, and vote to adopt the proposed DFCs. The DFCs must be adopted as a resolution by a two-thirds vote of all the Member District Representatives.

3.09 A record shall be prepared to address each relevant comment received during the public comment period or at the public hearing and any suggested revisions included in the Member Districts' summary reports submitted to and considered by the Member District Representatives at the joint planning meeting, as well as any recommendations made by advisory committees. The record shall identify those comments and revisions incorporated into the DFC, as well as those comments and revisions not incorporated, and provide the reasoning behind the

decision to incorporate or not to incorporate the comments or revisions, and the record shall be included in the explanatory report as required by Texas Water Code Section 36.108(d-3)(5).

3.10 Upon adoption of the DFCs, the Member District Representatives shall prepare an explanatory report as required by Texas Water Code Section 36.108(d-3). Consistent with the statutory requirements and the procedural requirements adopted by this resolution, the explanatory report shall:

- a. identify each DFC adopted pursuant to Section 3.08;
- b. provide the policy and technical justifications for each DFC adopted;
- c. include the written reports required by Section 3.04, relevant to the DFCs adopted, that document the discussions of the Member District Representatives in consideration of the nine factors listed in Texas Water Code 36.108(d)(1)-(9) and how the adopted DFCs impact each factor, inclusive of any amendments or supplemental information deemed necessary and taken into consideration for the adopted DFCs after the vote to approve the proposed DFCs under Section 3.05;
- d. list the other DFC options approved for formal consideration under Sections 3.03, but not adopted, and the reasons why those options were not adopted, based on the written reports prepared for each DFC option approved for formal consideration under Section 3.03 or further review under Section 3.04; and
- e. discuss reasons why recommendations made by advisory committees, if any, and relevant public comments received by the Member Districts were or were not incorporated into the DFCs by inclusion of the record prepared pursuant to Section 3.09; and
- f. describe how the DFCs provide a balance between the highest practicable level of groundwater production and the conservation, preservation, recharging, and prevention of waste of groundwater and control of subsidence in GMA 14.

3.11 The Member District Representatives shall submit to the TWDB and each Member District proof that notice was posted for the joint planning meeting to adopt the DFCs, a copy of the resolution adopting the DFCs, and a copy of the explanatory report.

3.12 As soon as possible after the Member Districts receives the DFCs resolution and explanatory report, the Member district shall adopt the DFCs in the resolution and explanatory report that applies to the Member District.

SECTION FOUR **DEFINITIONS**

These terms shall have the following meaning when used herein:

Advisory Committee: A nonvoting advisory committee or subcommittee, appointed by the Member District Representatives during the joint planning process, who represent social, governmental, environmental, or economic interest to assist in the development of DFCs as provided by Texas Water Code Section 36.1081. The appointment of an advisory committee by the Member District Representatives during the joint planning process is permissible and not mandatory.

Contracted Consultant: The consultant retained by the Member Districts to assist in conducting joint planning activities, developing DFCs for the relevant aquifers in GMA 14, and preparing the explanatory report as required by Section 36.108(d-3) of the Texas Water Code.

Desired Future Condition or DFC: The desired future conditions for the relevant aquifers within GMA 14 established in accordance with Chapter 36, Texas Water Code.

Groundwater Management Area 14 or GMA 14: Groundwater Management Area 14 as designated by the Texas Water Development Board and as may be amended from time to time.

Member District: A groundwater conservation district subject to Texas Water Code Chapter 36 that is located in whole or in part inside GMA 14, including the Bluebonnet Groundwater Conservation District, Brazoria County Groundwater Conservation District, Lone Star Groundwater Conservation District, Lower Trinity Groundwater Conservation District, and Southeast Texas Groundwater Conservation District. If the creation of a particular district requires confirmation through an election, the district shall not be a Member District until it is confirmed.

Member District Representative: The presiding officer or the presiding officer's designee for any district located wholly or partly in GMA 14.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBER DISTRICTS OF GROUNDWATER MANAGEMENT AREA 14:

- 1) Each of the affirmations and recitals set forth herein are true and correct;
- 2) The authorized voting representatives of the GMA 14 Member Districts have approved by a two-thirds vote of the total number of Member Districts in GMA 14 the administrative procedures set forth herein; and
- 3) Any previous administrative procedure agreed to by the Member Districts that is in conflict with the administrative procedures set forth herein is superseded by the administrative procedures set forth in this resolution for future actions of the Member Districts.

AND IT IS SO ORDERED.

PASSED AND ADOPTED on this 18 day of November, 2014.

ATTEST:



Bluebonnet Groundwater Conservation District



~~Brazoria Country Groundwater Conservation District~~



Lone Star Groundwater Conservation District



Lower Trinity Groundwater Conservation District



Southeast Texas Groundwater Conservation District