

District Regulatory Plan Phase II(B) Frequently Asked Questions



The Board of Directors of the Lone Star Groundwater Conservation District adopted Phase II(B) of the District Regulatory Plan (“DRP”) on November 10, 2009. The DRP Phase II(B) contains the District’s primary regulatory requirements for achieving sustainability of the Gulf Coast Aquifer by reducing groundwater dependency within Montgomery County. The following document is not a substitute for the specific requirements of the DRP Phase II(B). It is instead intended to provide general guidance to permittees as they work to comply with the requirements of Phase II(B) by answering some of the routine questions regarding major components of the DRP. If you have any further questions regarding the DRP Phase II(B), you should contact the District office directly at (936) 494-3436.

Initial Conversion Obligation

Q: *What is my Initial Conversion Obligation?*

A: “Initial Conversion Obligation” describes the obligation of each Large Volume Groundwater User (“LVGU”) to reduce its groundwater production to no more than 70 percent of its Total Qualifying Demand by the year 2016 and continuing every year thereafter.

Q: *In what years am I required to meet my Initial Conversion Obligation?*

A: An LVGU’s Initial Conversion Obligation is not a one year requirement. It is a requirement to **permanently** reduce groundwater production by at least 30 percent of that permittee’s Total Qualifying Demand. Each LVGU is required to meet its Initial Conversion Obligation beginning in 2016 and continuing every year thereafter.

Q: *What is my Total Qualifying Demand?*

A: An LVGU’s Total Qualifying Demand was determined by the LVGU’s final permitted groundwater production authorization for calendar year 2009, some of which were adjusted after submission to the District in early 2010 of annual 2009 groundwater production reports. Every LVGU should know its Total Qualifying Demand number so that it can calculate (by multiplying that number by 0.7) how much groundwater it will be authorized to pump in 2016 and each year after 2016. Any LVGU that does not know its Total Qualifying Demand should contact the District immediately.

Groundwater Reduction Plans

Q: *What is Groundwater Reduction Plan?*

A: A Groundwater Reduction Plan (“GRP”) is a plan that each LVGU must submit to the District demonstrating specifically how it will achieve the Initial Conversion Obligation at least through the calendar year 2045 planning horizon. The GRP must include specific project details, including legal, financial, technical, and engineering details, as set forth below.

Q: When is my Groundwater Reduction Plan due?

A: By no later than April 1, 2011, each LVGU must submit a fully compliant GRP to the District for approval, or must be included in a Joint GRP.

Q: What must be included in a compliant Groundwater Reduction Plan?

A: A GRP must meet the following requirements under Phase II(B):

- It must be signed and sealed by a person that is registered as a professional engineer in the State of Texas.
- The GRP must identify the population and the projected water demand for 2016, 2025, 2035, and 2045 for each LVGU that is subject to the GRP using data from the Texas Water Development Board or the Texas State Demographer, unless it is demonstrated in the GRP to the satisfaction of the District that an alternative methodology or source of data is more reliable. This data must include explanations detailing significant projected increases or decreases in total water demand. Public water suppliers should use intended service areas for each of the above years.
- It must include a water reuse feasibility assessment describing the availability of reclaimed water to serve as all or a portion of the Alternative Water Source.
- It must include evidence demonstrating that each Alternative Water Source proposed in the GRP will be a source or sources of water that will be adequate in volume to allow the LVGU to meet its Initial Conversion Obligation.
- The GRP must also include any design, engineering, construction, legal, financial, and technical components of the proposed conversion plan.
- It must include a description of the feasibility studies undertaken, or that are proposed to be undertaken, by the LVGU for facilities development, siting, easement acquisition, and construction.
- The GRP must include a report of preliminary engineering on proposed facilities to be constructed through 2016, including a description of the proposed project and area maps.
- It must include a description of how substantial infrastructure costs may be financed.
- It must include a description of each Alternative Water Source and/or conservation project the LVGU intends to rely upon to meet its Initial Conversion Obligation, including, where applicable, the disclosure of each supplier of water that the LVGU proposes to use as an Alternative Water Source.
- It must include any executed contracts, proof of financial commitments, or other documentation necessary to demonstrate that every water supplier that the LVGU proposed to rely upon for an Alternative Water Source does in fact have sufficient supplies of, and sufficiently reliable legal rights to, the requisite volumes of Alternative Water Source, and is willing to provide the Alternative Water Source in the volumes and rates required to satisfy the LVGU's Initial Conversion Obligation.
- The GRP must include a timetable that identifies the specific deadlines, by date, that the LVGU itself must meet in order to comply with its Initial Conversion Obligation for:
 - Securing financing

- Executing all water supply agreements or other contractual obligations necessary for the supply or delivery of each Alternative Water Source identified in the GRP
- Closing on all right-of-way or other necessary real property acquisitions
- Finalizing all requisite preliminary designs
- Obtaining all necessary permits or other legal authorizations necessary from any applicable State or Federal regulatory authority
- Initiating and completing each necessary phase of construction or implementation of a conservation project
- All other milestones or information that the LVGU believes are important for an adequate understanding of the proposed Alternative Water Source and/or conservation project.
- If the contractual commitment for any Alternative Water Source is for a term that expires before January 1, 2045, the GRP should include a description regarding the availability of contract renewal options through an additional term or terms until at least January 1, 2045.

Q: *Are there any additional requirements that my GRP must satisfy if I am submitting a Joint GRP?*

A: Yes. A Joint GRP must satisfy the following additional requirements:

- It must demonstrate the requisite commitment and actual ability of the aggregated LVGUs participating in the Joint GRP to collectively meet the Initial Conversion Obligation.
- It must identify a Joint GRP participant to serve as the Joint GRP Sponsor.
- A Joint GRP must include a written agreement between the participants demonstrating that the Joint GRP Sponsor is duly authorized to submit the Joint GRP and to otherwise act on behalf of all of the participants in developing, submitting, and executing the Joint GRP.

Q: *Is there a limit to the number of LVGUs that can join together in a Joint GRP?*

A: No, there is no maximum number of LVGUs that can participate in a Joint GRP. However, each Joint GRP submitted to the District must include all requisite information for each LVGU that would otherwise be required of the LVGU if it was submitting an individual GRP.

Q: *Can I use early conversion credits as part of my planning strategy to meet my Initial Conversion Obligation in my GRP?*

A: Yes. Early conversion credits may be used as a component strategy of a GRP that otherwise makes the demonstrations required in the District Regulatory Plan. It is important to recognize that such a use of early conversion credits to meet your Initial Conversion Obligation will be only a short-term planning strategy, however, as the credits can be amassed only until the end of 2015, making the number of credits potentially available for use to meet an LVGU's Initial Conversion Obligation limited. A GRP that includes use of early conversion credits must nonetheless include all of the project details for the remainder of its groundwater reduction strategy. There is more information on early conversion credits below.

Q: *Can I use conservation measures as a planning strategy for meeting my Initial Conversion Obligation in my GRP?*

A: Yes, LVGUs may use conservation measures as a planning strategy for meeting their Initial Conversion Obligation in their GRP. LVGUs should include technical, engineering, legal, and financial information for conservation projects in their GRPs as with any other groundwater reduction strategy.

Q: *If I am not a public water system and otherwise not legally obligated to provide water to another person, and I intend to rely on conservation measures alone to meet my Initial Conversion Obligation, and not development of an Alternative Water Source, am I still bound to comply with all of the GRP requirements listed in Phase II(B)?*

A: Yes, all LVGUs are subject to the GRP requirements of Phase II(B). However, an LVGU that is not a public water system, does not provide water to any residential or other potable uses, and that intends to rely solely on conservation as a groundwater reduction strategy may be eligible to apply to the District for an exception from some requirements of the Groundwater Reduction Plan that are inapplicable to the conservation strategy. An example of such an LVGU might include one who uses its water well solely for irrigation or for filling an amenity pond. Such an LVGU that intends to seek an exception must timely submit to the District a GRP Requirements Exception Request that explains in sufficient detail the nature and consequences of its planned conservation strategies, the specific required elements of the GRP from which the LVGU is seeking an exception, and an explanation of why those elements are inapplicable to the LVGU's groundwater reduction strategy. The District General Manager may approve, deny, or partially approve the request, and may request additional information from the applicant before taking action.

Early Conversion Incentive Program

Q: *Can an LVGU utilize early conversion credits received as part of the Early Conversion Incentive Program toward meeting its Initial Conversion Obligation in 2016?*

A: Yes. Phase II(B) authorizes an LVGU to utilize early conversion credits to produce groundwater at any time after January 1, 2016, in excess of the amount it would otherwise be authorized to produce in a calendar year. Thus, an LVGU may apply any early conversion credits that it is able to actually accrue before December 31, 2015, to exceed the amount of groundwater that it would otherwise be legally authorized to produce in 2016 or any calendar year after 2016. However, early conversion credits are valid for use **one time only**.

Q: *One time only? Does this mean that I will lose all of my early conversion credits if I use only some, but not all, of my credits in a particular year?*

A: No. Early conversion credits will be issued on a gallon-by-gallon basis, and spent on a gallon-by-gallon basis, just like money in a bank account. For example, suppose a particular LVGU had a Total Qualifying Demand of 20 million gallons, and was also able to amass a total of 1 million gallons of early conversion credits by December 31, 2015. In order to meet its Initial Conversion Obligation, that LVGU would only be able to produce 14 million

gallons (20 million x .7) of groundwater each year beginning in calendar year 2016. But, with the 1 million gallons of early conversion credits, that LVGU could pump 15 million (14 + 1) gallons in a single year of high demand after January 1, 2016, *OR* could pump 14,250,000 gallons in each of four different years (or any other combination of fractions of 1 million gallons). But, once the LVGU's overproduction of its 14 million gallon annual authorization *totals* 1 million gallons, it will have spent all of its early conversion credits, and it will be limited to producing only the 14 million gallons per year from that point forward.

Q: *How will early conversion credits be issued under the Early Conversion Incentive Program?*

A: To be eligible to receive early conversion credits, an LVGU must first apply to the District to have a project be approved as eligible to receive credits, and then demonstrate a completed project along with actual metered groundwater savings. Credits will then be issued on an annual basis to permittees with approved early conversion credit applications that timely submit annual project reports evidencing the actual number of gallons of metered water beneficially used without waste from the project during the prior calendar year, along with a log of monthly meter readings. These annual project reports will be evaluated by the District to determine the actual number of early conversion credits (expressed in terms of gallons) to be issued each calendar year for the project. No early conversion credits will be issued for water used by the project after 2015.

Q: *If I plan to incorporate early conversion credits as part of my planning strategy for meeting my Initial Conversion Obligation in my GRP, how should I go about doing so?*

A: If an LVGU plans to incorporate the utilization of early conversion credits as a component of its planning strategy in its GRP, it is obligated to demonstrate in specific and technical terms in its GRP how it will develop and/or acquire those credits, as with any other GRP strategy. This includes specific information regarding design, engineering, construction, legal, financial, and technical components of the metered conservation measures that the LVGU will employ to garner the needed early conversion credits and to demonstrate with specificity and supporting documentation how many gallons of credits it can expect to amass by the end of 2015.

Q: *Can I purchase early conversion credits from another LVGU?*

A: Yes, early conversion credits are fully transferable. However, if an LVGU plans to purchase early conversion credits from another LVGU as part of its planning strategy to meet its Initial Conversion Obligation, that LVGU's GRP should include detailed technical information specifying the source of the credits, the number of credits will be transferred, as well as contracts or other documentation demonstrating the purchasing LVGU's legal right to the transferred credits. The transferor LVGU must obtain approval from the District of its project as eligible for early conversion credits before a purchasing LVGU may rely upon such credits as a component of its GRP.

Q: *What procedural process will the District use to transfer early conversion credits from one LVGU to another?*

A: An early conversion credit holder that wishes to transfer its early conversion credits to another LVGU must first submit an Early Conversion Credit Transfer Notification to the District and attach to it any early conversion credits issued by the District that the LVGU would like to be transferred. The District will then reissue those credits in the name of the transferee and, if necessary, reissue to the original credit holder any remainder of credits not transferred. Please note that early conversion credits are not transferable until they have actually been issued by the District.

Other Requirements

Q: *What is the “averaging provision” of Phase II(B)?*

A: Phase II(B) allows an LVGU under certain circumstances to meet *post-2016 growth* in water demand by using groundwater in the short term when the LVGU’s GRP demonstrates that the LVGU will undergo subsequent conversion efforts so that its average groundwater use throughout the 2016-2045 planning period does not exceed its 2016 maximum authorized groundwater production level. Those subsequent conversion efforts must be identified in detail, with technical, legal, engineering, and financial supporting information.

Q: *Who is eligible to use the averaging provision of Phase II(B)?*

A: Only those LVGUs that meet both of the following two criteria will be eligible to utilize the averaging provision: (1) the LVGU must experience post-2016 increased demand attributable to system growth; and (2) the LVGU must demonstrate an ability to achieve (in its GRP), and actually achieve, the initial conversion obligation in 2016 and every year after 2016. LVGUs that do not demonstrate in their GRP a feasible long-term solution for addressing system demand using a groundwater component equal to or less than 70 percent of their Total Qualifying Demand will not be eligible to use the averaging provision.