

# **District Regulatory Plan Phase II(B)**

**As Adopted November 10, 2009**



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## **Background and Purpose**

Since its creation by the Texas Legislature and subsequent confirmation by the citizens of Montgomery County in 2001, the District has worked tirelessly to be an effective and prudent manager of the groundwater resources underlying Montgomery County and to otherwise meet its obligations under the law. The Gulf Coast Aquifer serves as the primary source of all consumptive water uses within Montgomery County and, based on the most recent data available to the District, has a sustainable yield in the District of approximately 64,000 acre-feet per year.

Sustainable yield, in this case, is the amount of groundwater each year that is reintroduced as recharge into the portion of the Gulf Coast Aquifer that underlies Montgomery County. Any amount of groundwater withdrawn from an aquifer that is in excess of its sustainable yield has the effect of taking more water from the aquifer than can be replenished naturally through recharge. This condition is often referred to as “aquifer mining.”

The District has rejected any groundwater management strategy that would encourage mining of the Gulf Coast Aquifer. Instead, the District committed to managing water in the Gulf Coast Aquifer on a sustainable basis early after its creation, and it remains equally committed to this principle today. This commitment is reflected in the District’s Management Plan, which was updated and readopted in accordance with State law in 2008. The sustainable yield of the Gulf Coast Aquifer is thus an important regulatory marker for the District.

As of October 2009, the District had authorized the production of approximately 87,215 acre-feet per year of groundwater from the Gulf Coast Aquifer through permits issued by the District. In addition to permitted production, state law and District rules provide exemptions to the District’s permitting and metering requirements for certain groundwater users—*i.e.*, those that use limited amounts of groundwater for individual domestic purposes or for watering livestock or poultry. A recent study commissioned by the District determined that the best current estimate for exempt uses accounts for an estimated 7,700 acre-feet of groundwater production each year from primarily the Gulf Coast Aquifer.

Thus, approximately 95,000 acre-feet of groundwater is authorized for production from the Gulf Coast Aquifer each year from within the District under permits issued by the District or under a permitting exemption. This exceeds the currently recognized sustainable yield of the Gulf Coast Aquifer in the District by approximately 31,000 acre-feet. Because Montgomery County is one of the fastest growing counties in the United States, the disparity between the Gulf Coast Aquifer’s sustainable yield and the total volume of groundwater that is produced from the aquifer will continue to grow—unless significant efforts are made to permanently reduce the county’s reliance on groundwater.

In 2006, the District formally adopted Phase I of what is a multi-phased regulatory plan designed to require a comprehensive conversion from groundwater to alternative water sources in an effort to reduce total annual groundwater production within Montgomery County to a level that does not exceed, on average, the sustainable yield of the Gulf Coast Aquifer. In the 2006 District Regulatory Plan (“DRP”) Phase I, the District established January 1, 2015, as the deadline by which total annual groundwater production within Montgomery County had to be reduced to an

amount equal to or less than the sustainable yield of the Gulf Coast Aquifer in the District, which is presently considered to be 64,000 acre-feet.

In February 2008, the District adopted Phase II(A) of the DRP to insure that water producers and users in the District were making incremental progress toward compliance with the 2015 groundwater reduction requirement. Phase II(A) required certain Large Volume Groundwater Users (“LVGUs”), either individually or jointly with other LVGUs, to submit a Water Resources Assessment Plan (“WRAP”) to the District. Through the WRAPs, LVGUs were required to describe (a) their current and projected water demands through 2045, and (b) their plans for substituting not less than 30 percent of their total water demands with an Alternative Water Source by January 1, 2015. Phase II(A) defined a Large Volume Groundwater User to be any non-exempt and non-agricultural groundwater producer subject to the District’s regulatory jurisdiction that, through a single well or a combination of wells, actually produced or was authorized by any permit issued by the District to produce 10 million gallons or more of groundwater annually on or after January 1, 2008. Those authorized to produce, or actually producing, 10 million gallons of groundwater per year or more for non-agricultural uses account for approximately 92 percent of total permitted production in Montgomery County.

Today, in its continuing conversion effort that formally began in 2006, the District adopts this Phase II(B) of the DRP. DRP Phase II(B) is designed to provide the actual regulatory requirements for achieving a long-term sustainable rate of groundwater production within Montgomery County—beginning with an initial conversion effort that is required to be met by 2016. The District has determined that the year of initial groundwater reduction and conversion should be changed from calendar year 2015 to 2016, because of the delay in the originally anticipated time frame for adoption of these actual regulatory requirements and the need for LVGUs to have a corresponding increment of time to implement them. As part of those requirements, Phase II(B) requires each LVGU in the District to submit a Groundwater Reduction Plan (“GRP”), either individually or jointly with other LVGUs, and it otherwise establishes regulatory milestones designed to allow for the initial phase of conversion from groundwater to an Alternative Water Source, generally consistent with the underlying conversion assumptions set out in Phases I and II(A) of the DRP.

## **DRP Phase II(B) Requirements**

Based on the District’s review of the WRAPs submitted in compliance with Phase II(A) of the DRP, and the continuing recognition that groundwater depletion remains a county-wide concern, the District has determined that maintaining the single, county-wide management zone regulatory approach established in the DRP Phase I is the most appropriate approach for developing, administering and enforcing the initial conversion requirements set forth and defined herein. In addition, only Large Volume Groundwater Users, as that term has been redefined for purposes of this DRP Phase II(B), are subject to the Initial Conversion Obligation provided for herein. The District may amend the class of groundwater producers subject to the conversion requirements of this DRP Phase II(B) in the future to include other groundwater users in the District if it determines such an amendment is warranted in its efforts to conserve, preserve, and protect the groundwater resources of Montgomery County. In addition, if the level of

groundwater production in the District from the Gulf Coast Aquifer that is attributable to permitted uses by non-LVGUs and to exempt uses increases, the District may require further reductions in groundwater production beyond the level achieved by the Initial Conversion Obligation required in this DRP Phase II(B).

It is important to recognize that the purpose of this initial conversion effort, and related requirements in this DRP Phase II(B), is to begin in 2016 reducing groundwater production within the District to sustainable levels, or as close to sustainable levels as the District determines is pragmatic at this time based upon technological, economical, and practical considerations. It is equally important to recognize that, because of the continued growth in Montgomery County and the increases in water demand that are attributable to such sustained growth since 2006, the District will likely require further groundwater reductions and conversion efforts in the future to achieve and maintain a truly sustainable level of groundwater production in Montgomery County. The District anticipates that the development of these anticipated additional conversion requirements will also be motivated by the availability of better science and more precise data regarding the sustainable level of production—referred to herein as the Aquifer Sustainable Yield.

Unless further reduced in the future by the District, the maximum amount of groundwater that an LVGU will be authorized to produce in any calendar year after 2016 will be the same static, fixed maximum volume of groundwater that the LVGU was legally authorized to produce in 2016 while achieving the reduction and conversion requirements set forth in this DRP Phase IIB (the Conversion Obligation), which are based upon a reduction in calendar year 2009 permitted authorization. An LVGU will not be authorized in years after 2016 to increase groundwater production based upon any type of percentage or ratio approach of total demand or use.

The District recognizes, however, that such rigid production ceilings described above could in some instances prove impracticable to achieve and, as a result, could have unintended adverse impacts on economic development within Montgomery County. To address the often competing goals of robust economic growth and prudent groundwater resource management, the District has designed the DRP Phase II(B) to allow, under certain conditions described in greater detail below, an LVGU to continue meeting increased demand after 2016 by using groundwater in the short-term. However, any LVGU that chooses to meet post-2016 demand growth by using groundwater in this manner must nevertheless 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, and also achieve any further groundwater reductions that may be required by the District in the future. The District anticipates that these additional conversion efforts may involve the promulgation of additional DRP phases in the future.

A person or entity that owns or operates two or more otherwise independent public water supply systems or commercial operations under separate permits issued by the District that are not tied to a common distribution system is not subject to the Initial Conversion Obligation or other applicable provisions of this DRP Phase II(B) for any of its independent systems or operations that do not, on their own accord, qualify the person or entity as a Large Volume Groundwater User or a New LVGU. For example, an investor owned utility that owns numerous separate and

distinct public water systems for separate platted subdivisions is not required to submit a GRP for a particular public water supply system that: (1) is authorized under its own permit, (2) is not interconnected to a larger aggregated system, and (3) is permitted for, and produces, less than 10,000,000 gallons per year. However, the District may revise the definitions of “LVGU” or “New LVGU” in the future to include non-exempt persons or other persons or entities producing less than 10,000,000 gallons per year if the District determines such a revision is necessary to conserve, preserve, and protect the groundwater resources of Montgomery County.

Based on these premises, the DRP Phase II(B) requirements include the following:

1. By 2016, each LVGU in the District must meet its Initial Conversion Obligation, which means each LVGU must:
  - A. have reduced its groundwater production to no more than 70 percent of its Total Qualifying Demand, which is based upon the LVGU’s 2009 permitted authorization; and
  - B. actually met not less than 30 percent of its Total Qualifying Demand by implementing water conservation measures and/or using an Alternative Water Source.
2. For any growth in water demand experienced by an LVGU after 2009 that cannot be met by the implementation of water conservation measures, such increased demand must be met using an Alternative Water Source beginning in 2016, unless:
  - A. the LVGU does in fact timely meet or exceed its Initial Conversion Obligation; and
  - B. the LVGU’s overall annual groundwater production does not exceed 70 percent of its Total Qualifying Demand when averaged over the 2016-2045 planning period.

Thus, groundwater use by an LVGU after its successful 2016 groundwater reduction and conversion will not exceed 70 percent of its Total Qualifying Demand, except as specifically allowed under this averaging provision, regardless of what percentage such groundwater use is of an LVGU’s overall water use or demand. In addition, LVGUs must also achieve any further groundwater reductions that may be adopted in the future by the District.

3. The District encourages the use of conservation among all groundwater users within the District, and particularly among all LVGUs, in an effort to reduce overall demand on the Gulf Coast Aquifer. Accordingly, the District recognizes the implementation of aggressive conservation measures by all LVGUs in the District as a best practice, and it strongly encourages each LVGU to implement sound water conservation practices and mechanisms as a way of reducing its overall water demand, and thus reducing its need for additional Alternative Water Sources and groundwater to otherwise meet those demands.
4. Each LVGU must submit a Groundwater Reduction Plan (“GRP”) to the District in accordance with the provisions herein:

- A. to ensure that necessary progress is made by each LVGU to appropriately plan, finance, design, construct, and otherwise implement conservation measures and/or develop an Alternative Water Source so that, by the end of calendar year 2016, it will have met its Initial Conversion Obligation;
  - B. to ensure that the District can identify and accurately account for LVGUs participating jointly in achieving the Initial Conversion Obligation; and
  - C. to ensure the District can reasonably anticipate and establish the achievement, timing, and level of groundwater reductions for its groundwater planning and management purposes.
5. Two or more LVGUs may enter into contractual agreements to share costs, to increase efficiencies in the development, planning and construction of water supply infrastructure, to increase efficiencies in the distribution and delivery of groundwater alternatives and to otherwise cooperate under the framework of a single, Joint GRP. In these instances, individual LVGUs will satisfy the requirements of the DRP if they are included in a Joint GRP that, as an aggregated group, achieves full regulatory compliance with all applicable provisions of this DRP Phase II(B).
6. Notwithstanding anything in this DRP Phase II(B) to the contrary, an LVGU may include groundwater produced from the Gulf Coast Aquifer in a county adjacent to the District as an Alternative Water Source for purposes of meeting its Initial Conversion Obligation only if each of the following conditions are met:
- A. the LVGU provides retail water service in a distribution system located both within the District and in an adjacent county that is supplied by groundwater or surface water produced or diverted from locations both within the District and the adjacent county;
  - B. the LVGU included as an element of its WRAP, and by April 1, 2009, did accomplish, a reduction of groundwater production in the District so that the user's total annual volume of groundwater produced in the District was reduced by no less than 35 percent from its 2008 calendar year production within the District, if annualized at the rate of production after April 1, 2009, and if the LVGU thereafter does not exceed that total annual volume;
  - C. no less than 100 percent of groundwater used by the LVGU as an alternative supply in the adjacent county is subject to the surface water conversion requirements of a subsidence district or a groundwater conservation district other than the District that are at least as stringent as the Initial Conversion Obligations set forth in this DRP Phase II(B); and
  - D. the LVGU committed in writing to the District before April 1, 2009, that it would not ever increase groundwater production in the District above the levels produced in accordance with Paragraph (B) above.
7. On or before June 1, 2010, each LVGU must submit to the District a Declaration of Intent to Submit a GRP ("DOI"). In its DOI, each LVGU must indicate whether it intends to submit

an individual GRP that accounts only for its efforts to meet its Initial Conversion Obligation, or whether it intends to participate in a Joint GRP with at least one other LVGU. For DOIs that indicate the intent to participate in a Joint GRP, the LVGU must identify the Joint GRP Sponsor and provide a copy of a written agreement or other confirmation from the Joint GRP Sponsor indicating that the LVGU will be included in such Joint GRP. For purposes of efficiency, and as an alternative to the foregoing, a Joint GRP Sponsor may submit a single DOI on behalf of all LVGUs that intend to participate in its Joint GRP, so long as such DOI is accompanied with copies of written agreements or other confirmation indicating that each LVGU identified in the DOI has agreed to be included in the Joint GRP.

8. A person that qualifies as a New LVGU who has a Total Qualifying Demand must submit to and have certified by the District a GRP, or become included in a fully compliant Joint GRP, as otherwise provided by this DRP Phase II(B) before being authorized to continue producing groundwater as a New LVGU. A New LVGU that held a permit from the District to produce groundwater in calendar year 2009 may be authorized to produce groundwater within the District in an amount not to exceed 70 percent of its Total Qualifying Demand, unless and until subsequent conversion requirements are adopted by the District. Unless otherwise provided for in this DRP Phase II(B), a GRP submitted by a New LVGU must meet all applicable GRP requirements provided for in this DRP Phase II(B).
9. A New LVGU that has no Total Qualifying Demand may only be authorized to produce groundwater within the District if:
  - A. the New LVGU joins a fully compliant Joint GRP; and
  - B. each gallon of groundwater produced by the New LVGU is offset by a gallon-for-gallon conversion from groundwater to an Alternative Water Source by a groundwater producer or producers within the same Joint GRP.
10. An LVGU that timely submits a fully compliant GRP to the District but later determines that one or more of its Alternative Water Sources is no longer available to it because of regulatory denials or unanticipated economic considerations shall notify the District in writing as soon as practicable after such a determination is made by the LVGU. Within 180 days after submitting such notice to the District, the LVGU shall submit to the District an amended individual GRP or an amended Joint GRP indicating that the LVGU has joined a Joint GRP.
11. Notwithstanding paragraphs 9 and 10 above, the District may authorize a New LVGU, or an existing LVGU that determines that one or more of its Alternative Water Sources is no longer available to it because of regulatory denials or unanticipated economic considerations, to continue producing groundwater without submitting a GRP, or an amended GRP, to the District if it demonstrates to the satisfaction of the District that:
  - A. there are no economically feasible Alternative Water Sources available that would allow it to submit its own compliant GRP or amended GRP to the District, and, if applicable, that its Alternative Water Source or sources are no longer available to it because of regulatory denials or unanticipated economic considerations;

- B. it did in fact make a written request to join the Joint GRP Sponsor of each Safe Harbor GRP in the District for inclusion into its respective Joint GRP under substantially the same terms and conditions as are applicable to existing participants in such Safe Harbor GRP plus paying for any additional costs of the GRP reasonably attributable to the addition of the LVGU or New LVGU; and
  - C. it was unable, after attempting to negotiate in good faith with the Joint GRP Sponsor of each Safe Harbor GRP in the District, to reach agreement with any Safe Harbor GRP for inclusion into its respective Joint GRP.
12. An LVGU or New LVGU that qualifies for a GRP exception under paragraph 11 above may be authorized to produce groundwater without a GRP only until such time as it is able to join a Joint GRP, or until such time as an Alternative Water Source or sources becomes economically feasible and available to it. The District may order any such LVGU or New LVGU to implement special groundwater conservation measures and to pay a civil penalty of not to exceed \$4.00 per 1,000 gallons of groundwater produced in excess of 70 percent of its Total Qualifying Demand during the time it produces groundwater within the District without being a part of a compliant GRP.
13. The District may authorize an LVGU to convey or transfer a permit issued by the District to only if:
- A. the conveyed or transferred permit is amended to authorize the production of not to exceed 70 percent of the transferring LVGU's Total Qualifying Demand; and
  - B. the type of use authorized by the conveyed or transferred permit remains the same.

The District shall not authorize the conveyance or transfer to an LVGU of any permit held by a non-LVGU.

## **Groundwater Reduction Plans**

A GRP represents the specific plan that each LVGU will follow in developing, securing, and executing all necessary financing and other contractual agreements, land and right-of-way acquisition, infrastructure design and construction, and any additional regulatory authorizations required under the laws of the State of Texas or of the United States in order to meet its Initial Conversion Obligation.

By no later than January 1, 2011, each LVGU must submit a GRP to the District, or must be included in a Joint GRP that is submitted to the District, that fully complies with the requirements set forth in this DRP Phase II(B). The District will review each GRP for compliance with the DRP and all applicable District Rules. The failure of an LVGU to submit a fully compliant GRP to the District by January 1, 2011, or to be included in a fully compliant Joint GRP that is submitted to the District by January 1, 2011, will subject each applicable LVGU to civil penalties and other enforcement measures as provided for herein.

A GRP must be signed and sealed by a person that is registered as a professional engineer in the State of Texas.

In order to demonstrate the requisite commitment and actual ability to meet the Initial Conversion Obligation, each LVGU must submit a GRP, or must be included in a Joint GRP, that includes, at a minimum, the information described below.

### **Projected Water Demand**

1. 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 when completing this population and water demand information, and should include a map of such intended service areas for each of the above years.
2. Include a water reuse feasibility assessment describing the availability of reclaimed water to serve as all or a portion of the Alternative Water Source.
3. Provide 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.

### **Plans for Meeting Initial Conversion Obligation**

In order to ensure that an LVGU has the requisite ability and commitment to reduce its groundwater production to a level that satisfies its Initial Conversion Obligation and thus ensure that the District can achieve its groundwater management objectives, each LVGU must demonstrate in its GRP that its plan for meeting its Initial Conversion Obligation is reasonably feasible under professionally accepted technical, engineering, legal, or financial standards applicable at the time of submission. Therefore, each GRP must include:

1. any design, engineering, construction, legal, financial, and technical components of the proposed conversion plan;
2. a description of any feasibility studies undertaken, or that are proposed to be undertaken, by the LVGU for facilities development, siting, easement acquisition, and construction;
3. a report of preliminary engineering on proposed facilities to be constructed through 2016, including a description of the proposed project and area maps;
4. a description of how substantial infrastructure costs may be financed;

5. 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;
6. 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;
7. 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:
  - A. securing financing;
  - B. executing all water supply agreements or other contractual obligations necessary for the supply or delivery of each Alternative Water Source identified in the GRP;
  - C. closing on all right-of-way or other necessary real property acquisitions;
  - D. finalizing all requisite preliminary designs;
  - E. obtaining all necessary permits or other legal authorizations necessary from any applicable State or Federal regulatory authority;
  - F. initiating and completing each necessary phase of construction or implementation of a conservation project; and
  - G. 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.

Any LVGU that chooses to meet post-2016 demand growth after the Initial Conversion Obligation by producing groundwater in some years in an amount that exceeds its 2016 maximum authorized groundwater production level by undergoing subsequent groundwater reduction and conversion efforts so that its average groundwater use throughout the 2016-2045 planning period does not exceed its 2016 maximum authorized groundwater production level must also include in its GRP identification and conceptual engineering of the Alternate Water Sources and/or conservation measures that it intends to pursue to achieve average groundwater use throughout the planning period that is compliant with the Initial Conversion Obligation.

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. If contract renewal options are not available to the LVGU, then the GRP should include a description of

available alternatives to replacing the Alternative Water Source upon expiration of the contract term.

If the District determines that implementation of the GRP is not feasible under the appropriate standards:

- A. the District may pursue enforcement action against the LVGU based on the submission of a GRP that does not comply with this DRP Phase II(B); or,
- B. in its sole discretion, the District may defer enforcement until it is determined that the LVGU has failed to achieve the Initial Conversion Obligation.

### **Additional Requirements for Joint GRPs**

1. As discussed above, an LVGU may satisfy its GRP requirement by participating in a Joint GRP along with one or more additional LVGUs. There is no maximum number of LVGUs that may be included 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.
2. Each Joint GRP must:
  - A. demonstrate the requisite commitment and actual ability of the aggregated LVGUs participating in the Joint GRP to collectively meet the Initial Conversion Obligation;
  - B. designate a Joint GRP participant to serve as the Joint GRP Sponsor;
  - C. 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.
3. Notwithstanding any other provision of this DRP Phase II(B) to the contrary, a Joint GRP may provide for the over-conversion to Alternative Water Sources of some participant LVGUs and for the under-conversion to Alternative Water Sources by other participant LVGUs if the participants in the Joint GRP collectively achieve the Initial Conversion Obligation for the aggregated Total Qualifying Demand of all of the participants. For example, the Joint GRP may provide that the water demands for some individual participant LVGUs will be met by using 100 percent groundwater, as long as the group as a whole achieves the required conversion amount for all participants by over-converting other participant LVGUs. The purpose of allowing this conversion flexibility within each Joint GRP is to assist in reducing overall conversion costs by reducing the amount of infrastructure that must be built to achieve the required conversion.

## **Safe Harbor GRPs**

It is essential to the economic viability of Montgomery County that New LVGUs are allowed to develop within the District after the initial conversion process required by this DRP Phase II(B) is underway, or is initially completed. Likewise, it is essential to the viability of the portion of the Gulf Coast Aquifer that underlies Montgomery County and the District's ability to manage the aquifer as required by law that any new LVGU development be done in a manner that is consistent with the fundamental purpose of this conversion effort, so that the County's water demands can still be satisfied with the use of groundwater only on a long-term sustainable basis. In effort to find a responsible balance between these two important considerations, and recognizing that the ability of the District to achieve its regulatory goals for all applicants likely hinges on a coordinated approach to water planning by all or most LVGUs so that each LVGU will have an opportunity to comply with the District's regulations, the District will recognize any Joint GRP that accounts for 10 percent or more of the total water demand within the District as a Safe Harbor GRP. A Safe Harbor GRP is simply a Joint GRP that the District recognizes is of sufficient size that it may have the ability to accommodate water demand growth within the District by accepting groundwater users that become LVGUs for the first time after January 1, 2010, into its Joint GRP. A Safe Harbor GRP has no additional obligations than another Joint GRP, except for the following:

- A. A Safe Harbor GRP must include a New LVGU Growth Plan that identifies how, and under what conditions, the Joint GRP could accommodate groundwater producers that become LVGUs for the first time after January 1, 2010;
- B. A Safe Harbor GRP must ensure that its New LVGU Growth Plan is periodically updated by submitting amendments to the plan to the District as warranted by any material change in circumstances or capacity; and

A Safe Harbor GRP that was unable or unwilling to accept a New LVGU that attempted to join its GRP must, within 60 days of receiving a written request by the District, submit in writing to the District and the New LVGU a statement setting forth the reasons for the denial and an estimate of the time, conditions, and circumstances, if any, under which acceptance of the New LVGU may be feasible.

## **District Review of GRPs**

1. The District will review a GRP or GRP amendment following its submittal and, within 90 days thereafter, either (i) approve the GRP and provide the LVGU or Joint GRP Sponsor with a certificate indicating such approval, or (ii) provide the LVGU or Joint GRP Sponsor with a list of deficiencies that must be addressed in order for the GRP to be so certified, and a reasonable time period within which such deficiencies must be addressed. Within 90 days following the receipt of the additional requested information, the District shall either certify the GRP or, if the GRP still contains deficiencies, the District shall return the GRP to the LVGU and commence enforcement actions against the same for failure to comply with the requirements of this DRP Phase II(B). Notwithstanding any of the foregoing, a GRP that is

found by the District to be noncompliant with any requirement in this DRP Phase II(B) at any time after submission, including during either 90-day review period, may be subject to enforcement action by the District. The District may, in its sole discretion, defer enforcement under this paragraph until such time as the District determines that the LVGU has failed to meet its Initial Conversion Obligation.

2. An LVGU or Joint GRP Sponsor may amend a certified GRP at any time, without penalty, so long as the amended GRP meets applicable District requirements, in order to update, supplement, correct, modify or otherwise revise such GRP or any component thereof.
3. The District will review each component of the timetable required under numbered paragraph 7 of the Plans for Meeting Initial Conversion Obligation above for a determination of whether the milestones are reasonably achievable.
4. If the District concludes that information in a certified GRP is materially inaccurate the District may revoke its certification of the GRP and order the LVGU or Joint GRP Sponsor to timely amend the GRP or be subject to civil penalties or other enforcement action by the District.

## **Early Conversion Incentive**

In order to promote conservation, the District will allow any LVGU that completes a project between November 11, 2008, and December 31, 2015, that employs a metered conservation measure, including without limitation metered reclaimed water from a wastewater treatment plant, to replace local groundwater as a source of supply to apply to the District for an early conversion credit. The District shall review the application and the evidence supporting it and issue the early conversion credits in an amount equal to twice the total amount of metered conserved or reclaimed water the District determines was used or will be used during that time period, along with any appropriate terms and conditions it deems appropriate.

Notwithstanding the Initial Conversion Obligation, an LVGU may utilize the 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 by an amount not to exceed the amount recognized in the LVGU's early conversion credits. A gallon of groundwater production authorized under an early conversion credit may only be used once before it is expended for all times. Any metered conserved or reclaimed water used by an LVGU on or after January 1, 2016, shall not be eligible for such credits and shall instead be considered as part of the LVGU's Alternative Water Source for purposes of meeting its Initial Conversion Obligation on a gallon-for-gallon ratio.

## **Enforcement**

Each LVGU that fails to submit to the District a DOI, or be included in a DOI that is submitted to the District, that complies with the provisions herein by June 1, 2010, shall be subject to

enforcement for violation of District Rules. In addition, the District shall review all GRPs to determine compliance with the requirements set forth herein. A person required to submit a GRP under this DRP Phase II(B) that fails to submit to the District a fully compliant GRP by January 1, 2011, shall be subject to enforcement for violation of District Rules, including permit suspension or revocation and the assessment of penalties by the District. The District may order an LVGU or New LVGU that the District determines is not in compliance with the provisions contained in this DRP Phase II(B) to implement special groundwater conservation measures, and it may assess a noncompliant LVGU or New LVGU the following penalties in lieu of or in addition to seeking an injunction or other legal or equitable remedies available to the District:

- A. a flat fee civil penalty not to exceed \$10,000.00 per day per violation, for each day of a continuing violation; or
- B. a civil penalty of up to \$4.00 per thousand gallons of groundwater produced after failing to comply with any applicable deadline provided for herein, but not to exceed \$10,000 per day per violation, for each day of a continuing violation.

## **District Regulatory Plan Construction and Severability**

This DRP Phase II(B) shall be broadly construed to achieve the intent and purposes of Chapter 36 of the Texas Water Code, the District Act, and the District Rules. In the event of a conflict between this DRP Phase II(B) and any provision of the District Rules, the DRP Phase II(B) provisions shall control. If a provision contained in this DRP Phase II(B) is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability does not affect any other provisions of this DRP Phase II(B), which shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

## **Definitions**

“Alternative Water Source” means water other than groundwater produced from the Gulf Coast Aquifer within Montgomery County, or any county that adjoins Montgomery County. An Alternative Water Source may include brackish groundwater produced from geologic formations underlying the Gulf Coast Aquifer, but only to the extent that any such production will not threaten the quality or the quantity of fresh water supplies within the Gulf Coast Aquifer within the District, and to the extent that such production does not cause subsidence within the District.

“Aquifer Sustainable Yield” means the annual amount of groundwater, expressed in acre-feet, that is reintroduced as recharge into the Gulf Coast Aquifer and is available for production from within the District. The Aquifer Sustainable Yield shall be determined by the District using the most reliable information that is readily available. Thus, the Aquifer Sustainable Yield may be adjusted from time-to-time as new information regarding the depletion and recharge of the Gulf Coast Aquifer from within Montgomery County is developed and published. The Aquifer Sustainable Yield is currently recognized as 64,000 acre-feet.

“Brackish groundwater” means groundwater with a total dissolved solids (“TDS”) concentration in excess of 1,500 milligrams per liter (mg/l), unless it can be shown to the District that a discrete source of water that has a lesser concentration of TDS nevertheless requires demineralization treatment before it is suitable for development as an Alternative Water Source.

“Gulf Coast Aquifer” means the major aquifer in Texas that parallels the Gulf of Mexico and includes the Evangeline, Chicot, and Jasper Aquifers. The Gulf Coast Aquifer is described in more detail by the Texas Water Development Board in the most recently adopted State Water Plan. The Texas Water Development Board’s description of the Gulf Coast Aquifer, as it may be amended from time-to-time, is incorporated into this definition. For purposes of this DRP Phase II(B), the Gulf Coast Aquifer also includes any perched aquifers that may serve as sources of recharge to the Evangeline, Chicot, or Jasper Aquifers.

“Initial Conversion Obligation” is the requirement that by the end of calendar year 2016, each LVGU must have reduced its groundwater production to no more than 70 percent of its Total Qualifying Demand and actually met not less than 30 percent of its Total Qualifying Demand by implementation of conservation measures and/or by using an Alternative Water Source.

“Joint GRP” means a GRP submitted by one or more LVGUs that have contractually agreed to abide by its terms, that includes all requisite information for each participating LVGU that would otherwise be required of the LVGU if it was submitting an individual GRP, and that allows the participating LVGU’s to achieve the Initial Conversion Obligation as a group rather than as individuals.

“Joint GRP Sponsor” is the LVGU representative designated as such in a Joint GRP to be principally responsible for coordinating the development, submission, and execution of the Joint GRP.

“Large Volume Groundwater User” or “LVGU” is defined for purposes of this DRP Phase II(B) to mean any person or entity that, through a single well or a combination of wells, actually produced or was authorized by a permit or permits issued by the District to produce 10 million gallons or more of groundwater annually from within the District during calendar year 2009. A Large Volume Groundwater User does not include any person or entity that produces groundwater solely for its own domestic use associated with a single family residence, agricultural use, as that term is defined by Chapter 36, Water Code, or both domestic and agricultural use.

“New Large Volume Groundwater User” or “New LVGU” means any person or entity that:

- A. through a single well or a combination of wells actually produces, or is permitted to produce, 10 million gallons or more of groundwater annually on or after January 1, 2010, but did not qualify as an LVGU prior to January 1, 2010; or
- B. otherwise requires 10 million gallons or more of groundwater annually for the first time on or after January 1, 2010.

“Preliminary Engineering” means the amount of engineering necessary to define the infrastructure needs of the project, to determine the feasibility and projected construction timetable of the project, and to establish reliable cost estimates. The requirement of preliminary engineering is not intended to include preliminary construction plans for the entire submittal, however, that level of detail could be required for specific components. The District will make the final determination of whether a proposed GRP meets the definition of preliminary engineering.

“Safe Harbor GRP” is any Joint GRP that accounts for at least 10 percent of the total water demand of all LVGUs within the District.

“Total Qualifying Demand” means the final volume of groundwater that a permit holder is authorized under the terms of a permit issued by the District to produce in calendar year 2009. Such final volume shall be determined by the District after receipt of water production reports due to the District on February 15, 2010. The District may reduce the final volume by amending the permit if and to the extent it determines that the amount previously authorized in the permit unreasonably exceeded the 2009 groundwater demand of the permit holder.