

NEW DIRECTOR ORIENTATION

Lost Pines Groundwater Conservation District

February 10, 2024

Natasha Martin

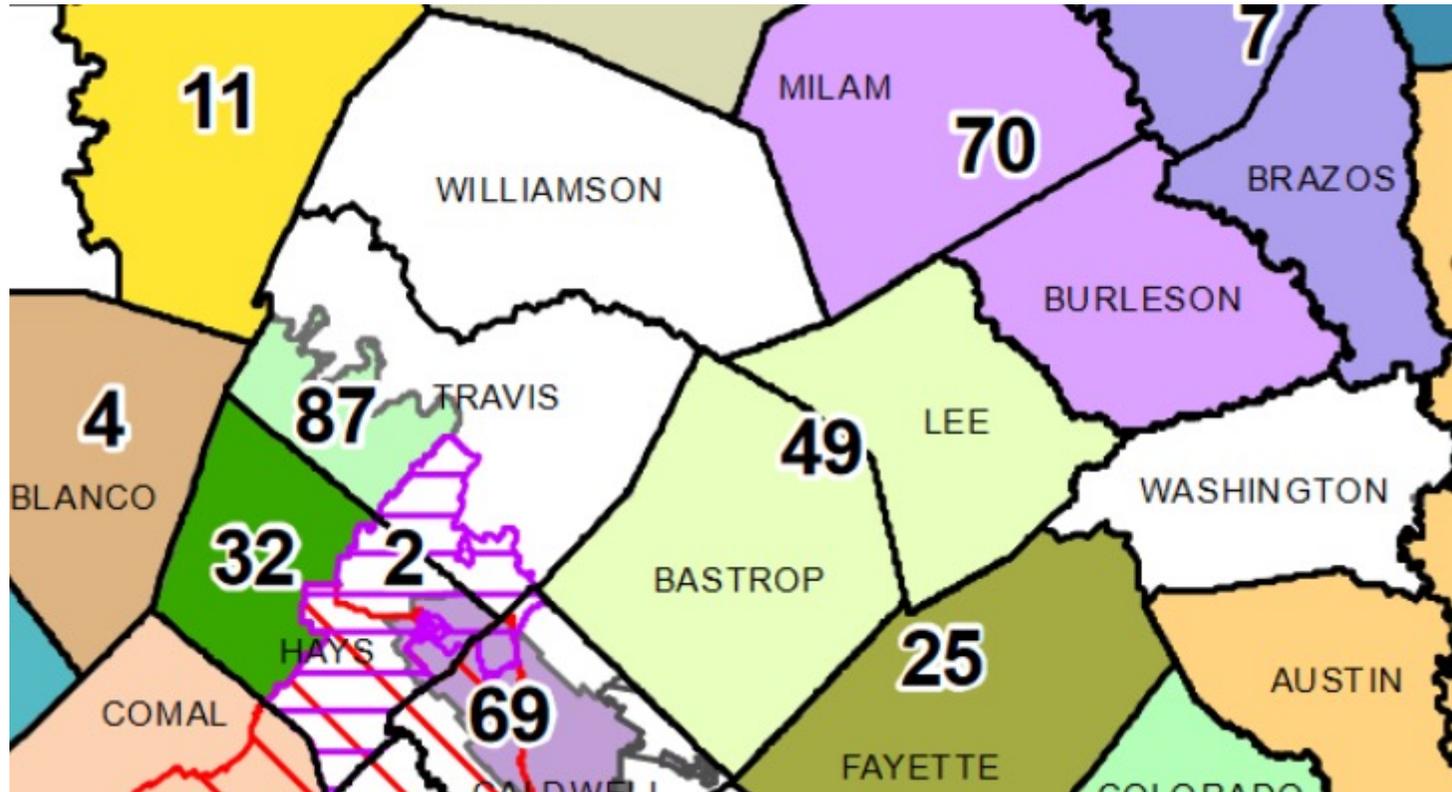
AGENDA

- a) Overview of the District.
- b) Aquifers and Surface Water in the District.
- c) Texas Groundwater Law.
- d) Texas Open Government Law.
- e) District Permitting Process.
- f) Joint Planning and Desired Future Conditions.
- g) Litigation Update.



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Overview of the District



District Creation

HB 2237 76th Regular Session, 1999

By Cook, et al.

H.B. No. 2237

A BILL TO BE ENTITLED

1-1 AN ACT

1-2 relating to the creation, administration, powers, duties,
1-3 operation, and financing of the Lost Pines Groundwater Conservation
1-4 District.

1-5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-6 SECTION 1. CREATION. (a) A groundwater conservation
1-7 district, to be known as the **Lost Pines Groundwater Conservation**
1-8 **District, is created in Bastrop and Lee counties** subject to a
1-9 confirmation election held as provided by Section 8 of this Act.
1-10 **The district is a governmental agency and a body politic and**
1-11 **corporate.**

1-12 (b) The district is created under and is essential to
1-13 **accomplish the purposes of Section 59, Article XVI, Texas**
1-14 **Constitution.**

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1-14 **Constitution.**



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Ratification

Ratification of Groundwater Conservation Districts

77th Regular Session 2001

C.S.S.B. 2 ratifies the following groundwater conservation districts created in 1999 by the 76th Legislature:

- Cow Creek Groundwater Conservation District;
- Crossroads Groundwater Conservation District;
- Hays Trinity Groundwater Conservation District;
- Lone Wolf Groundwater Conservation District;
- **Lost Pines Groundwater Conservation District;**
- AND 7 MORE...



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SPECIAL DISTRICT LOCAL LAWS CODE
TITLE 6. WATER AND WASTEWATER
SUBTITLE H. DISTRICTS GOVERNING GROUNDWATER
CHAPTER 8849. LOST PINES GROUNDWATER
CONSERVATION DISTRICT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8849.003. FINDINGS OF PUBLIC USE AND BENEFIT. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the works and projects accomplished by the district under the powers conferred by Section [59](#), Article XVI, Texas Constitution.

Added by Acts 2009, 81st Leg., R.S., Ch. 1139 (H.B. [2619](#)), Sec. 1.05, eff. April 1, 2011.



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Texas Groundwater Law

But what can GCDs do?



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What is groundwater?

- “Water percolating below the surface of the earth.” Tex. Water Code Sec. 36.001(5)
- Does NOT include underground streams or the underflow of rivers, which are “state water.” Tex. Water Code Sec. 11.021
- Does NOT include water withdrawn from the ground that enters a state watercourse. *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814 (Tex. 2012)
- Surface water owned and regulated by the State

Who owns groundwater?

- Landowners own “groundwater in place,” similar to the ownership of oil and gas. *Day case*.
- Landowner owns the groundwater below the surface of the landowner's land as real property. Sec. 36.002(a).



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Ownership Continued: Common Law

Rule of Capture

- Landowners who capture groundwater (or oil or gas) from a well that bottoms within the subsurface of their land acquire absolute ownership of the groundwater, even if it is drained from adjacent properties.
- A water well owner may dry up wells owned by adjacent landowners without fear of liability, unless they act maliciously, fail to put the groundwater to a beneficial use without waste, or the withdrawal is a proximate cause of land subsidence.

Regulation - *Day case*

- “Unquestionably, the State is empowered to regulate groundwater production.”
- Regulation is essential to its [groundwater] conservation and use.”



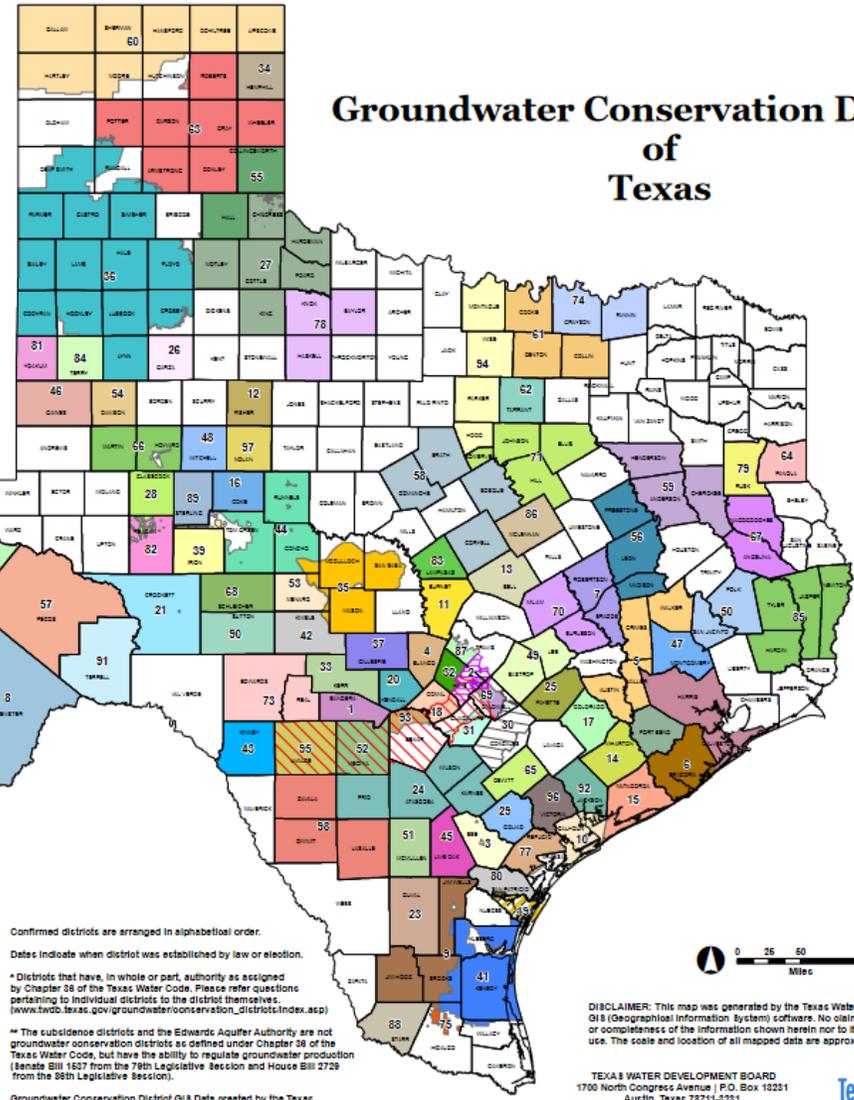
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Groundwater Conservation Districts of Texas

- Confirmed Groundwater Conservation Districts ***
1. Sanders County River Authority & Groundwater District - 11/7/1999
 2. Barton Springs-Edwards Aquifer CD - 8/13/1987
 3. Bee GCD - 1/20/2001
 4. Blanco-Pedernales GCD - 1/23/2001
 5. Bluebonnet GCD - 11/6/2002
 6. Brazoria County GCD - 11/8/2006
 7. Brazos Valley GCD - 11/6/2002
 8. Brewster County GCD - 11/8/2001
 9. Brush Country GCD - 11/3/2009
 10. Calhoun County GCD - 11/4/2014
 11. Central Texas GCD - 8/24/2006
 12. Clear Fork GCD - 11/6/2002
 13. Clearwater UWCD - 8/21/1999
 14. Coastal Bend GCD - 11/8/2001
 15. Coastal Plains GCD - 11/8/2001
 16. Coke County UWCD - 11/4/1999
 17. Colorado County GCD - 11/8/2007
 18. Comal Trinity GCD - 8/17/2016
 19. Corpus Christi ABRCD - 8/17/2006
 20. Cow Creek GCD - 11/6/2002
 21. Crockett County GCD - 1/28/1991
 22. Culberson County GCD - 6/2/1999
 23. Duval County GCD - 7/26/2009
 24. Evergreen UWCD - 3/30/1986
 25. Fayette County GCD - 11/8/2001
 26. Garza County UWCD - 11/6/1999
 27. Gateway GCD - 6/3/2003
 28. Glascock GCD - 9/22/1981
 29. Goddard County GCD - 11/8/2001
 30. Gonzales County UWCD - 11/2/1984
 31. Guadalupe County GCD - 11/14/1999
 32. Hays Trinity GCD - 6/3/2003
 33. Headwaters GCD - 11/6/1991
 34. Hemphill County UWCD - 11/4/1997
 35. Hickory UWCD No. 1 - 3/14/1992
 36. High Plains UWCD No. 1 - 8/29/1961
 37. Hill Country UWCD - 3/8/1997
 38. Hudspeth County UWCD No. 1 - 10/6/1967
 39. Iron County WCD - 5/2/1995
 40. Jeff Davis County UWCD - 11/2/1993
 41. Kennedy County GCD - 11/2/2004

- Confirmed Groundwater Conservation Districts (Cont.) ***
42. Kimble County GCD - 6/3/2002
 43. Kinney County GCD - 11/2/2002
 44. Lipan-Kiskadee WCD - 11/6/1997
 45. Live Oak UWCD - 11/7/1999
 46. Llano Estacado UWCD - 11/3/1999
 47. Lone Star GCD - 11/6/2001
 48. Lone Wolf GCD - 2/2/2002
 49. Lost Pines GCD - 11/6/2002
 50. Lower Trinity GCD - 11/7/2009
 51. McMullen GCD - 11/8/2001
 52. Medina County GCD - 8/29/1991
 53. Menard County UWCD - 8/14/1999
 54. Mesa UWCD - 1/20/1990
 55. Mesquite GCD - 11/4/1999
 56. Mid-East Texas GCD - 11/6/2002
 57. Middle Peacos GCD - 11/6/2002
 58. Middle Trinity GCD - 6/4/2002
 59. Nueces & Trinity Valleys GCD - 11/8/2001
 60. North Plains GCD - 1/2/1966
 61. North Texas GCD - 12/1/2009
 62. Northern Trinity GCD - 6/16/2007
 63. Panhandle GCD - 1/21/1999
 64. Panola County GCD - 11/8/2007
 65. Pecon Valley GCD - 11/8/2001
 66. Permian Basin UWCD - 8/1/1986
 67. Pineywoods GCD - 11/8/2001
 68. Plateau UWC and Supply District - 3/4/1974
 69. Plum Creek CD - 6/1/1995
 70. Post Oak Savannah GCD - 11/6/2002
 71. Prairielands GCD - 9/1/2009
 72. Precidio County UWCD - 3/31/1999
 73. Real-Edwards O and R District - 6/30/1999
 74. Red River GCD - 8/1/2009
 75. Red Sands GCD - 11/6/2002
 76. Reeves County GCD - 11/3/2016
 77. Refugio GCD - 11/8/2001
 78. Rolling Plains GCD - 1/28/1999
 79. Rusk County GCD - 8/6/2004
 80. San Patricio County GCD - 6/12/2007
 81. Sandy Land UWCD - 11/7/1999
 82. Santa Rita UWCD - 3/19/1999
 83. Saratoga UWCD - 11/7/1999
 84. South Plains UWCD - 2/3/1992
 85. Southeast Texas GCD - 11/2/2004
 86. Southern Trinity GCD - 8/19/2009
 87. Southwestern Travis County GCD - 11/6/2019
 88. Starr County GCD - 1/8/2007
 89. Starling County UWCD - 11/3/1987
 90. Sutton County UWCD - 4/6/1999
 91. Terrell County GCD - 11/8/2012
 92. Texana GCD - 11/8/2001
 93. Trinity Glen Rose GCD - 11/6/2002
 94. Upper Trinity GCD - 11/8/2007
 95. Uvalde County UWCD - 8/1/1993
 96. Victoria County GCD - 8/6/2006
 97. Wax-Tex GCD - 11/6/2001
 98. Wintergarden GCD - 1/17/1998

- Other Districts ****
- Edwards Aquifer Authority
 - Harris-Galveston Subdenode District
 - Fort Bend Subdenode District
 - County Boundaries

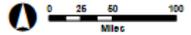


Confirmed districts are arranged in alphabetical order.
 Date indicates when district was established by law or election.

* Districts that have, in whole or part, authority as assigned by Chapter 38 of the Texas Water Code. Please refer questions pertaining to individual districts to the district themselves. (www.twdb.texas.gov/groundwater/conservation_districts/index.asp)

** The subdenode districts and the Edwards Aquifer Authority are not groundwater conservation districts as defined under Chapter 38 of the Texas Water Code, but have the ability to regulate groundwater production (Senate Bill 1627 from the 78th Legislative Session and House Bill 2729 from the 80th Legislative Session).

Groundwater Conservation District G18 Data created by the Texas Commission on Environmental Quality. For more information, please contact TCEQ at 612-239-1000 or wrwg@tceq.texas.gov.



DISCLAIMER: This map was generated by the Texas Water Development Board using G18 (Geographical Information System) software. No claims are made to the accuracy or completeness of the information shown herein nor to its suitability for a particular use. The scale and location of all mapped data are approximate. Map date: NOV-2019

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Governing Authorities for LPGCD

1. Section 59, Article XVI, Texas Constitution
2. Chapter 36 of the Texas Water Code
3. Chapter 8849 of the Texas Special Districts Local Laws Code
4. District Rules
5. District Management Plan
6. TWDB Rules under 31 TAC Chapter 356
7. Statutes governing political subdivisions
8. District Policies
9. Case law (last but not least important)



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Chapter 36 Overview

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE E. GROUNDWATER MANAGEMENT

CHAPTER 36. GROUNDWATER CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Organization

- Subchapter A: General Provisions
- Subchapter B: Creation of District
- Subchapter C: Administration
- Subchapter D: Powers and Duties
- Subchapter E. District Finances
- Subchapter F. Bonds and Notes
- Subchapter G. District Revenues
- Subchapter H. Judicial Review
- Subchapter I: Performance Review and Dissolution
- Subchapter J: Adding Territory to District
- Subchapter K: Consolidation of Districts
- Subchapter L: Groundwater Conservation District Loan Fund
- Subchapter M: Permit and Permit Amendment Applications; Notice and Hearing
- Subchapter N: Aquifer Storage and Recovery Projects



Subch. A: General Provisions

- Ownership
- Purpose
- Definitions



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General Provisions: Ownership

OWNERSHIP OF GROUNDWATER (§36.002)

- (a) Landowner owns the groundwater below the surface of the landowner's land as real property.
- Rights Include:
 - Drilling and producing groundwater without causing waste, malicious drainage of other property, or negligently causing subsidence.
 - Common law rights

General Provisions: Ownership

OWNERSHIP OF GROUNDWATER (§36.002)

- (d) This section does not:
 - (1) Prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;
 - (2) Affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122
 - (3) Require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.

General Provisions: Purpose

Purpose (§36.0015)

- “[P]rovide for the **conservation, preservation, protection, recharging, and prevention of waste** of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence . . .”
- “. . . 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 . . .”

General Provisions: Definitions

Key Definitions – 36.001

- “groundwater” 36.001(5)
- “waste” 36.001(8)
 - Water produced is not used for a “beneficial purpose”
 - Pollution or harmful alteration
 - “Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26.”



General Provisions: Definitions



Abandoned oil and gas wells can cause waste.

<https://www.texastribune.org/2016/12/21/texas-abandoned-oil-wells-seen-ticking-time-bombs/>

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General Provisions: Definitions

- “beneficial purpose” 36.001(9)
 - agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes
 - Oil and gas
 - “any other purpose that is useful and beneficial to the user”



Subchapter C: Administration

- The Board “shall adopt” the following policies “in writing”:
- Code of Ethics
- Travel expenditures
- Investments
- Professional Services
- Financial Management (budgets and audits)



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Subchapter D: Powers and Duties

- Rulemaking
- Enforcement
- Management Plan
- Joint Planning
- Production Regulation
- Permits



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Powers and Duties: Rulemaking

Rulemaking Power—may make and enforce rules: 36.101

- (1) consider all groundwater uses and needs;
- (2) develop rules that are fair and impartial;
- (3) consider the groundwater ownership and rights described by §36.002;
- (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, controlling subsidence consistent with the objectives of Section 59, Article XVI, Texas Constitution;
- (5) consider the goals developed as part of the district's management plan under §36.1071; and
- (6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

Powers and Duties: Rulemaking

36.101 Process (see also GCD rules):

- Post/publish Notice
- Make proposed rules available
- Conduct Hearing and receive comments
- Consider action to adopt

note: Optional advisory committee

MID-EAST TEXAS GROUNDWATER CONSERVATION DISTRICT RULES Effective August 27, 2019

TABLE OF CONTENTS

Rule 1: GENERAL PROVISIONS	1
1.1 Authority to Promulgate Rules	1
1.2 District Boundaries	1
1.3 Purpose of the Rules	1
1.4 Effective Date	2
1.5 Action on Rules	2
1.6 Regulatory Compliance	2
1.7 Variances	2
Rule 2: DEFINITIONS	2
Rule 3: REPORTING AND RECORDKEEPING	9
3.1 Well Drilling, Completion, and Water Data Reporting	9
3.2 Annual Water Use Report	10
3.3 Water Exported Out of the District.....	10
3.4 Plugging Report.....	10
3.5 Monitoring Well Report	10
3.6 Repealed <i>August 27, 2019</i> by Board Order; <i>effective August 27, 2019</i>	11
Rule 4: WATER WELLS ASSOCIATED WITH OIL, GAS, AND MINING ACTIVITIES	11
4.1 District Jurisdiction Over Water Wells Associated with Oil, Gas, and Mining Activities.....	11
4.2 District Jurisdiction Over Water Wells Permitted by the Railroad Commission of Texas.....	11
4.3 Water Wells Associated With Oil and Gas Activities	12
Rule 5: WELL LOCATION AND SPACING	13
5.1 Preamble	13
5.2 Applicability	13
5.3 Authorized Well Location	13
5.4 Determining Distances of a Tract Bordered By a Public Roadway.....	13
5.5 Spacing from Potential Sources of Pollution	13
5.6 Spacing From Property Lines and Other Wells	14
5.7 Variance to Spacing Requirements.....	14

Powers and Duties: Enforcement

Authority (36.102)

Enforce rules against any person by filing suit in court

- Negotiated Settlements – Pre-Civil Suit Efforts
- Injunctions
- Civil Suits - Civil Penalties up to \$10,000 per day per violation
- Penalty Schedule Set by Board

Powers and Duties: Enforcement

Pre-Civil Suit Efforts

- Show cause process and hearing
- Before filing suit, try to settle the violation
- Usually involves corrective action and/or payment to the district
- Settlement Approved by the Board



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Powers and Duties: Management Plans

District Management Plan Goals §36.1071(a)

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and
- (8) addressing the desired future conditions adopted by the district under §36.108.



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Powers and Duties: Management Plans

How are goals developed?

- Gather Best Available Data (36.1071)
- Surveys (36.106)
- Research (36.107)
- Monitoring Wells
- Well Registrations
- Pumping reports

How are goals developed?

- Gather Best Available Data (36.1071)
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Powers and Duties: Joint Planning

Joint Planning in Management Area (§36.108)

- 16 Groundwater Management Areas (35.004): Made of Groundwater Conservation District Presidents or designees
- Choose the **Desired Future Condition** for each aquifer
- TWDB calculates the Modeled Available Groundwater amount for each District and County

Desired Future Conditions to Modeled Available Groundwater Process

TWDB	Texas Water Development Board
GMA	Groundwater Management Area
GCD	Groundwater Conservation District
RWPG	Regional Water Planning Group
TERS	Total Estimated Recoverable Storage
DFC	Desired Future Condition
MAG	Modeled Available Groundwater

*As of July 2017, GMAs must propose to adopt DFCs no later than May 1, 2021 and must finally adopt DFCs no later than January 5, 2022.



<https://www.twdb.texas.gov/groundwater/dfc/2021jointplanning.asp>

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Powers and Duties: Regulation of Spacing and Production

- “In order to **minimize as far as practicable, the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste**, a district by rule may regulate [spacing of water wells] and [production of groundwater].”



Powers and Duties: Spacing

Spacing 36.116(a)(1)

- Siting new wells minimum distances from property lines/adjoining wells;
- Imposing minimum distances based on production capacity, pump size;
- Other spacing requirements adopted by the board.

Rule 8.2 Minimum Well Spacing Requirements

A. **From Property Lines.** A new non-exempt well may not be drilled within 100 feet of the nearest Property Line. A new exempt well may not be drilled within 50 feet of the nearest Property Line.

B. **From other wells.** A new non-exempt well shall be spaced from the nearest well that is (1) registered or permitted on the date that the application for well registration is filed; (2) completed in the same aquifer unit; and (3) owned by a different Well Owner. The minimum spacing required is based on the maximum pump capacity of the well to be drilled as follows:

Maximum Pump Capacity (gpm)	Minimum Spacing (feet)
≤ 500	1,500
501 – 1000	2,500
> 1000	5,000

Powers and Duties: Production Limits

Production Limits 36.116(a)(2)

- imposing per-well or well-field production limits;
- limiting production based on acreage or tract size;
- limiting based on maximum water to be produced from a defined number of acres assigned to an authorized site;
- by "managed depletion"; or
- by "limiting the maximum amount of water that may be produced on the basis of acre feet per acre or gallons per minute per well site per acre."



A. Maximum Allowable Production.

(1) For applications for Operating Permits or amendments to Operating Permits that seek to increase annual production of groundwater submitted to the District after June 21, 2023, the annual groundwater production volume shall be limited to the lesser of the following (“Maximum Allowable Production”):

(a) the amount of water per year determined by the Board that can be beneficially used after considering the factors enumerated in Rule 5.2.D; or

(b) the amount of water per year per one Contiguous Acre for wells completed in an aquifer in the District as designated below.

Aquifer	Amount (acre-foot/acre)
Calvert Bluff	0.5
Carrizo	0.8
Hooper	0.5
Queen City	0.2
Sparta	0.3
Simsboro	1.6

Powers and Duties: Permits

- Drilling Permits 36.113
- Operating Permits 36.113
- Export or Transport Permits 36.122
- Exempt Permits 36.117



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Management Toolbox

- Rulemaking
- Spacing
- Production Limits
- Management Plan
- DFCs
- Monitoring
- Curtailment
- Enforcement



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Thank you