



Texas Agricultural Extension Service
The Texas A&M University System

B-1612
11-98

Managing Texas' Groundwater Resources Through Groundwater Conservation Districts

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Managing Texas' Groundwater Resources

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Texas is blessed with extensive groundwater resources. Most areas of the state are underlain by one or more of nine major aquifers and 20 minor aquifers (Figures 1 and 2). As a result, approximately 57 percent of fresh water use and nearly 80 percent of agricultural water use in Texas come from groundwater supplies.

Proper management and protection of the quality of this groundwater resource are widely recognized as being vital to Texas' economy and growth, human health and

well being, and preservation of ecosystems. To help protect and manage our groundwater resources, the Texas Legislature has established a process for local management through groundwater conservation districts.

This publication provides an overview of Texas water law, a summary of the powers and responsibilities of groundwater conservation districts, a review of the processes involved in creating districts, and an overview of issues related to groundwater conservation districts.

Brief Overview of Texas Water Law

Texas law distinguishes between surface water and groundwater. All surface water, including streams, rivers, and lakes, belongs to the state. The only exception is diffused water, such as storm water runoff, which belongs to the landowner. Surface waters are "held in trust" by the state and appropriated to users through permits or "water rights."

Water rights are issued by the Water Uses and Availability Section, Water Quality Division of the Texas Natural Resource Conservation Commission (TNRCC) in Austin. A water right specifies the amount of water that can be taken, usually in terms of acre-feet per year, and the specific stream segment or water body from which water can be taken. Holders of water rights are required to submit water conservation plans. Water rights also are subject to cancellation if not used in whole or part over a consecutive 10-year period.

In sharp contrast to surface water, groundwater law is based on the English common law doctrine. This doctrine and its interpretation through case law provide that the landowner may withdraw

groundwater without limitations and without being liable to neighboring landowners for any harmful effects resulting from the withdrawal. This is commonly referred to as the "right of capture." The right of landowners to capture and make "non-wasteful" use of groundwater has been upheld by Texas courts over the years with only a few exceptions. These include:

- drilling a well on someone else's property, or drilling a "slant" well on adjoining property that crosses the property line ("trespass");
- pumping water for the sole purpose of injuring an adjoining landowner ("malicious or wanton conduct"); and
- causing land subsidence on adjoining land from negligent over-pumping.

Waste is defined in Chapter 36 of the Texas Water Code as the non-beneficial use of groundwater. This includes:

- allowing the escape of groundwater from one geological formation to another that does not contain groundwater;
- polluting a groundwater reservoir by salt-water or other substances;

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- willfully or through negligence causing or allowing groundwater to escape into surface waters or other land features unless authorized;
- allowing groundwater to become irrigation tailwater on someone else's land without permission;
- withdrawing groundwater at a rate and in an amount that allows poorer quality water to encroach into the groundwater reservoir;
- allowing the flow or use of groundwater for a non-beneficial purpose;

- willfully causing or knowingly permitting the water from an artesian well to run off the owner's land or to percolate through the stratum above which the water is found.

Texas groundwater law has often been called the "law of the biggest pump"; the deepest well and most powerful pump get the water. Texas has established local groundwater conservation districts (GCDs) to manage groundwater. GCDs have a number of powers they can invoke to provide some control over groundwater use. Landowners outside of conservation districts have little recourse in protecting local groundwater or in limiting groundwater pumping impacts by neighbors.

Groundwater Conservation Districts

In 1949, the Texas Legislature first provided for the voluntary creation of groundwater conservation districts. These conservation districts could be created over any groundwater reservoir designated by the state, following approval by county commissioners' courts for single-county districts or by the appropriate state agency for districts encompassing multiple counties. A confirmation election was required. (State law on groundwater conservation districts is contained in Chapter 36 of the Texas Water Code.)

The Texas Legislature, while continuing to acknowledge the "right of capture" of groundwater by landowners, passed additional legislation in 1985 and 1997 to encourage the establishment of groundwater conservation districts and, in limited cases, to allow for the creation of districts by state initiative. This legislation confirmed that locally controlled groundwater conservation districts are the state's preferred method of managing groundwater resources. The legislation also stressed the importance and responsibility of GCDs in developing and implementing comprehensive management plans to conserve and protect groundwater resources.

Groundwater conservation districts can be created by the TNRCC only in designated groundwater

management areas. The term "groundwater management area" refers to:

- *groundwater reservoirs*, or subdivisions thereof, that were delineated by the state from the 1950s to 1970s;
- *groundwater management areas* that were delineated by the state in the 1980s;
- *groundwater management areas* delineated by the state following a petition from landowners within the area; and
- *priority groundwater management areas* (PGMAs) that were designated by the state in the 1990s. (Refer to the following section.)

As of November 1998, there were 23 groundwater management areas delineated and/or designated within the state.

Groundwater management areas are designated by the TNRCC on its own action or upon receiving a petition. By rule, the TNRCC determines or delineates the most suitable area for management of groundwater resources that, to the extent possible, coincide with the boundaries of groundwater formations. (State law regarding the delineation of groundwater management areas is contained in Chapter 35 of the Texas Water Code.)



Priority Groundwater Management Areas

The 1985 legislation, House Bill 2, contained provisions for the Texas Water Commission (TWC, the predecessor to the TNRCC) to identify areas of the state that have critical groundwater problems, such as aquifer depletion, water quality contamination, land subsidence or shortage of water supply. Accordingly, beginning in 1986, the TWC and the Texas Development Board identified possible critical areas and conducted further studies.

In 1997, the Texas Legislature enacted Senate Bill 1, a major water planning and management bill that, among other provisions, required regional water planning and development of a state plan. The bill also reconfirmed and strengthened provisions for the creation of groundwater conservation districts by state initiative in "critical areas" that were renamed as priority groundwater management areas (PGMAs). (State law regarding the des-

ignation of a PGMA is contained in Chapter 35 of the Texas Water Code.) Financial assistance is available for groundwater conservation districts created within a PGMA (Chapter 17 of the Texas Water Code).

PGMAs may be designated by the TNRCC in regions that are experiencing or that are expected to experience, within the next 25 years, critical groundwater problems such as shortages of surface water or groundwater, land subsidence and contamination of groundwater. A detailed study is conducted before a "study area" is declared a PGMA. To the extent possible, PGMAs are to coincide with the boundaries of groundwater formations.

To date, 15 PGMA studies have been completed and one study is completed pending commission ruling. Four study areas have been designated as PGMAs (Figure 3).

Special Districts

The Texas Legislature can give special powers or responsibilities to groundwater conservation districts through the legislation that creates them. To effectively deal with specific and difficult groundwater problems, the Legislature has created three special districts that have unusual responsibilities and powers as compared to other groundwater conservation districts.

In 1975, the Texas Legislature created the Harris-Galveston Coastal Subsidence District to provide for the regulation of groundwater withdrawals for the purpose of ending land subsidence. This district has the authority to regulate well drilling, and restrict pumping and groundwater use.

Similarly, in 1989, the Ft. Bend Subsidence District was created to control land subsidence in Ft. Bend County.

In 1993, the Legislature approved Senate Bill 1477 authorizing the abolition of the Edwards Underground Water District and the creation of the Edwards Aquifer Authority. The bill declared the Edwards Aquifer to be a "distinctive natural resource and aquifer" that required a "special regional management district for the effective control of the resource." The authority has the power to manage and control groundwater withdrawals through permitting, metering, fees and fines, and is directed by law to reduce total withdrawals from the aquifer over time. The bill survived court challenges, and the authority began operation in 1996. In 1997, the authority began efforts to issue water permits for groundwater withdrawal, assess fees and install flow meters on pumps.

Current Extent of Groundwater Districts

As of November 1998, 43 groundwater districts (Figure 4) have been confirmed by law or election from the total of 59 districts created by the Texas Legislature, the TNRCC (or its predecessor agencies), and county commissioners' courts (as validat-

ed by the Legislature). Of the remaining districts, eight had not held confirmation elections as of November 1998, six districts had failed confirmation elections, and two districts had been abolished and replaced by the Legislature.



Most existing districts were created by acts of the Texas Legislature. Seven districts were created in the 1950s and 1960s by the Texas Board of Water Engineers and county commissioners' courts under statutory provisions that have since been repealed. Six of these seven districts were validated at a later date by the Texas Legislature (the seventh district

failed confirmation). Four districts have been created by the TNRCC or its predecessor agencies through the landowner petition process as provided in Chapter 36 of the Texas Water Code. To date, no districts have been created by direct TNRCC initiated action under the PGMA process provided in Chapter 35 of the Texas Water Code.

Powers and Responsibilities of Groundwater Conservation Districts

Groundwater conservation districts are charged to manage groundwater by providing for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater resources within their jurisdictions. Groundwater conservation districts have required duties that must be performed, as well as a number of authorized powers that may be invoked.

The required duties of groundwater conservation districts are to:

- Develop and adopt a comprehensive management plan. The plan should provide for the most efficient use of groundwater, for controlling and preventing waste of groundwater, and for controlling and preventing land subsidence. The plan should specify the acts, procedures, performance, and avoidance measures necessary for implementation. The plan may be amended as necessary and must be re-adopted at least every 5 years. Management plans and amendments must be submitted and certified by the Texas Water Development Board and filed with other districts in a common management area.
- Adopt necessary rules to implement the management plan.
- Require permits for drilling, equipping or completing wells that produce more than 25,000 gallons per day or for alterations to well size or well pumps. Districts must promptly review and approve or deny permit applications. All wells producing at least 25,000 gallons per day in existence prior to the district's creation must automatically be granted a permit.
- Require records to be kept of the drilling, equipping and completion of water wells, as well as on the production and use of groundwater. Water well drillers' logs and electric

use logs must be kept and filed with the district.

- Make information on groundwater resources available to the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Water Development Board (TWDB) upon request.

Requirements for the organization and operation of a groundwater conservation district include:

- Operate on the basis of a fiscal year, prepare and approve an annual budget, audit financial accounts annually.
- Hold regular board meetings at least quarterly, keep a complete account of all meetings and proceedings, and preserve minutes, contracts, records, notices, accounts, receipts and other records.
- Submit bonds and notes issued by the district to the Attorney General for examination, file confirmation election results with the TNRCC, and register board members with the TNRCC.

Authorized powers and optional duties of groundwater conservation districts include:

- Adopt rules to conserve, preserve, protect, recharge and prevent waste of groundwater and control land subsidence.
- Provide for the spacing of water wells and regulate the production of wells.
- Enforce rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- Acquire land to erect dams or to drain lakes, draws, and depressions; construct dams; drain lakes, depressions, draws, and creeks; install pumps and other equipment necessary to recharge the groundwater reservoir; and provide facilities for the purchase, sale, transportation, and distribution of water.



- Make surveys of the groundwater reservoir or subdivision and facilities for development, production, transportation, distribution, and use of groundwater.
- Purchase, sell, transport, and distribute surface water or groundwater for any purpose.
- Exercise the power of eminent domain to acquire by condemnation a fee simple (property of which the district has unqualified ownership and power of disposition) or other interest in property located inside the district. The property interest must be necessary to the exercise of the authorized duties of the district as conferred by Chapter 36 of the Texas Water Code.
- Carry out research projects and collect information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir.
- Promulgate rules to require permits for transferring groundwater out of the district.
- Require the owner or lease holder of land on which an open or uncovered well is located to keep the well permanently closed or capped.
- Levy taxes on an annual basis to pay bonds, operation and maintenance expenses.
- Set fees for administrative acts of the district and services provided outside of the district.
- Make or accept grants or donations from local, state or federal agencies, private individuals, companies or corporations.
- Issue and sell bonds and notes in the name of the district.

Creation of Groundwater Conservation Districts

Groundwater conservation districts (GCDs) can be created by one of four procedures as discussed below. However, most districts have been created through the Legislature, where often the local senator or representative introduces and carries the bill on the district. All GCD creations with authority to levy ad valorem (property) taxes are subject to a confirmation election by voters within the proposed district. Voters also elect directors and approve the ad valorem tax rate to finance the district.

Action of the Legislature — New groundwater conservation districts can be established through special legislation. While the specifics of the legislation may vary in each case, the legislation generally authorizes district powers and duties, appoints temporary directors, and establishes procedures for the elections and voter approval. The legislation may give the district additional authority or responsibilities above those provided in Chapter 36 of the Texas Water Code or alternatively limit the district's powers.

Petition by Property Owners — A GCD can be created through landowner petition (Subchapter B, Chapter 36 of the Texas Water Code). The first step is that a petition and application are filed by property owners within the proposed district area. The next step is completion of a detailed study and consideration by the TNRCC to deter-

mine appropriate boundaries for the management area and whether a district should be established. If the TNRCC approves the petition, temporary directors are named and a confirmation election is held. Details of the petition process are included in Appendix A.

Initiated by the Texas Natural Resource Conservation Commission — A GCD can be created by the TNRCC in a designated priority groundwater management area (PGMA).

The procedure is initiated by soliciting comments from the area's water stakeholders and conducting detailed studies by the Texas Water Development Board (TWDB), Texas Parks and Wildlife Department (TPWD), and TNRCC. The commission may also consult with a local advisory committee. After allowing time for local action to create a district, the TNRCC can propose district creation and have temporary directors appointed by the county commissioners' courts to conduct a confirmation election. Details on the process for TNRCC creation of a PGMA is provided in Appendix B.

Adding Territory to an Existing District — An alternative to creating a new groundwater conservation district is to add territory to an existing district, if an existing district is near enough to be practical and is willing to accept the new ter-



ritory. Annexation begins with a petition from an individual landowner directly to the district's board. The board decision is sufficient to include the property. For larger areas, groups of landowners or entire counties can petition a district's board for inclusion. Following hearings

and the district's acceptance of the petition, a confirmation election is held. Annexation of territory to an existing groundwater conservation district is governed by the Texas Water Code, Chapter 36, Subchapter J. More details on the annexation process are given in Appendix C.

Issues

The 1949 Texas Groundwater Districts Act and succeeding laws and regulations give groundwater conservation districts the responsibility for conservation and preservation of underground water supplies and the development of more efficient methods of water use. The size, duties, and level of responsibility of the districts vary widely. Some districts do not choose to use many of the statutory powers available to them.

Single-county districts are common, with nearly half of the districts (24) encompassing the territory of a single county or less. Single-county districts are sometimes viewed as too small in size to encompass an aquifer, to have a sufficient tax base that is not burdensome, to effectively perform services and regulatory functions, or to coordinate well with other districts and state agencies. On the other hand, single-county districts may be able to deal effectively with specific groundwater management and use issues, particularly in areas where most groundwater withdrawals support a common industry or activity.

Some groundwater conservation districts have established successful and well-funded conservation programs that have helped preserve groundwater resources while providing valuable technical

assistance and education programs for groundwater users in the districts. Other districts have limited their regulatory strategies primarily to that of well spacing requirements. A few have chosen to only perform the minimum requirements under state law and regulations

The rationale supporting the local creation and control of groundwater districts is related to the large diversity of climatic conditions, water use patterns, growth projections and aquifer characteristics across the state. This diversity would make it difficult to formulate and administer uniform laws and regulations to govern the development and use of groundwater statewide.

Locally controlled groundwater conservation districts, with rules, programs and activities specifically addressing the local problems and opportunities, have worked well in some portions of the state.

In the Edwards Aquifer region, however, the situation existed wherein the groundwater district was ineffective in managing and conserving the resource because of a number of reasons, including the complexity of the water issues and competing interests. The result was the replacement of the district with a regulatory authority.

References

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Appendix A: Summary of Petition Process for Creation of Groundwater Conservation Districts

The petition process involves two steps: the delineation of a groundwater management area and the consideration of district creation. The process is governed by Chapters 35 and 36 of the Water Code and TNRCC rules (Chapter 293, Administrative Code). Under Chapter 36, a district proposed for creation by the TNRCC must coincide or be contained within a management area.

Delineation of Groundwater Management Area

A petition for the designation of a groundwater management area must be filed with the Executive Director of the TNRCC. The petition must be accompanied by a \$100 filing fee and a petition recording fee of \$1 per page. The petition should identify the area and aquifer of concern and request the TNRCC to delineate a groundwater management area. The petition requires the signature of the majority of the landowners in the proposed area, or at least 50 landowners if there are more than 50 landowners in the proposed area. The petition to be signed by landowners must include a map that shows the location of the proposed management area and may include any other information desired by the petitioners concerning the proposed management area. The petitioners shall supply any additional information requested by the TNRCC or the Executive Director. A petition for the designation of a management area is subject to procedures applicable to rule making under the Administrative Procedure Act.

Upon receipt, the Executive Director will review the petition. If it is found to be sufficient, the Executive Director will prepare evidence and the request may be used to propose rules delineating the management area for adoption by the TNRCC. Notice of the proposed rules will be published in the *Texas Register* and comments will be taken, including comments received at a public meeting.

Creation of Groundwater Conservation District

The TNRCC will entertain a petition for the creation of a groundwater conservation district within a groundwater management area if:

- 1) the TNRCC adopts rules delineating the boundaries of the groundwater management area; or
- 2) petitioners provide sufficient information to show that the proposed district is located within a designated groundwater management area or priority groundwater management area.

District creation petitions must be filed with the Executive Director of the TNRCC. A petition for the creation of a district must be signed by the majority of the landowners in the proposed district, or by at least 50 landowners if there are more than 50 landowners in the proposed district. The petition must contain:

- 1) the name of the proposed district;
- 2) the area and boundaries, including a map of the general boundaries of the proposed district;
- 3) the purpose or purposes of the proposed district;
- 4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the petitioners' estimated cost of those projects if the projects are to be funded by the issuance of bonds or notes; and
- 5) any additional terms or conditions that limit the powers of the proposed district from those authorized in Chapter 36, Texas Water Code.

Information required to accompany applications (petitions) for creation of a district are found in Title 30 of the Texas Administrative Code [§293.11 (a) and (b) for general and specific requirements, respectively]. An application to create a groundwater conservation district requires a detailed geologic/hydrologic report that describes the existing area, conditions, economic endeavors, groundwater resources and groundwater usage. The application must include justification for creation of the district supported by evidence that the district is feasible, practical and necessary. It also must contain a summary of how proposed district projects will address



identified issues in the groundwater management area. An application requires financial information such as the projected tax rate, proposed budget of revenues and expenses, and an evaluation on how the district will affect the total tax assessments on land within the proposed district. The financial information must demonstrate that the proposed tax rate and budget will adequately fund the proposed district's activities. In addition, an application must include the certification of petition signatures by the county tax assessor, affidavits of qualifications for temporary directors, and any other information as required by the Executive Director. The application must be accompanied by a \$700 non-refundable filing fee.

Upon receipt, the Executive Director will review the petition and application for administrative and technical sufficiency and will prepare evidence relating to the feasibility, practicability, and benefit of the district. This evidence, along with the petition and application, will be presented to the TNRCC in an evidentiary public hearing. If the TNRCC finds that the district is feasible and practicable, that it would benefit the land in the district, and that it would be a public benefit or utility, the TNRCC will grant the petition and appoint temporary directors of the district. The temporary directors of the district are responsible for scheduling and holding the confirmation election for the district.



Appendix B: Priority Groundwater Management Area (PGMA) Process Summary

- 1) The executives of the TNRCC and TWDB hold an annual meeting to discuss areas of the state that currently face or are expected to face within the next 25 years, critical groundwater problems. They discuss the need for studies and actions to be initiated in these areas.
- 2) Upon the TNRCC Executive Director's request, a PGMA study may be initiated. Prior to initiating the process, the TNRCC must provide notice to county governments, municipalities, river authorities, adjacent groundwater conservation districts (GCD), regional water planning groups, and water districts and/or other entities that supply public drinking water. The notice is provided to solicit comments, data, existing studies, and any pertinent information about water supply, groundwater availability, aquifer water level trends and groundwater quality. Notice recipients are allowed 45 days to provide comments.
- 3) The PGMA process time line begins with TNRCC requesting studies from the TWDB and TPWD. These agencies are given 180 days to submit reports to the TNRCC.
- 4) Following the TWDB/TPWD deadline, the Executive Director is provided 90 days to prepare a report. The TNRCC Executive Director's report provides:
 - a recommendation on the proposed delineation of the PGMA boundaries (in the form of an order if warranted);
 - the reasons and supporting information for or against designating the area;
 - a recommendation to either create a district in the PGMA or add the PGMA to an existing district;
 - a recommendation on the actions that should be considered to conserve natural resources;
 - an evaluation of the information or studies submitted by those receiving the initial notice; and
 - any other information that may be considered helpful to the commission.

The Executive Director's final report must be supplied to at least one public library in the area, each county clerk in the area, adjacent GCD, and applicable TNRCC regional offices.

- 5) If the Executive Director recommends designation, an evidentiary hearing is called and held within the PGMA study area to consider the designation of a PGMA, whether a district should be created over all or part of a PGMA, and whether all or part of the land in the PGMA should be added to an existing district. The commission considers the Executive Director's report and supporting information and testimony and evidence received at the hearing. If the commission considers that further information is necessary, the commission may request such information from any source.
- 6) Following the evidentiary hearing, the Executive Director has the issue placed on the commission's agenda for decision. Following the hearing and considerations, the commission issues an order stating its findings and conclusions.

District Creation Path

If the commission finds that the land in the PGMA would benefit from the creation of one or more districts, the commission so states in its order. Following the issuance of the order, the landowners in the PGMA may form one or more districts under Chapter 36, petition to have the area annexed to an existing district that adjoins the area, or create one or more districts through the legislative process.

The commission identifies areas in the PGMA that have not been incorporated into a district and delineates proposed boundaries of a district to include those areas. The Texas Agricultural Extension Service (TAEX) begins an educational program within the area to inform residents of the status of the area's water resources and management options, including possible formation of a district. Following the TAEX educational program, district creation proceedings are initiated as provided in Subchapter B, Chapter 36, Water Code.



Following district creation proceedings, the appointed temporary directors are charged with scheduling and holding an election for the confirmation of the district. Costs of the election are borne by the commission if the district fails to be confirmed or by the newly confirmed district if the confirmation passes.

PGMA Annexation Path

If the commission finds that the land in the PGMA would benefit by annexation into an existing, adjoining district, the commission so recommends in its order. The commission provides notice to the board of the recommended, existing district (and any other adjacent existing districts) to possibly serve the area and submits a copy of the order to the recommended district's board. The recommended district's board votes on the addition of the PGMA and advises the commission of the outcome.

If the recommended district's board votes to accept the addition of the PGMA into the district, the board may request the Texas Agricultural Extension Service to begin an educational program

within the area to inform residents of the status of the area's water resources and management options. The recommended district's board calls an election in the PGMA for annexation into the district. If the voters approve the annexation, the district's board provides reasonable representation on the board for the annexed area. Costs of the election are borne by the commission if the voters fail to annex the PGMA into the district. A subsequent annexation election may not be held for 1 year.

Under Senate Bill 1 (S.B. 1), confirmed districts or annexations may receive financial assistance from the state (under Chapter 17 of the Water Code). Such funds are to be used to address issues identified in the PGMA report.

S.B. 1 also changed previous law regarding the failure at a confirmation election in such cases. S.B. 1 removed the penalty of denying financial assistance to the failed area from the state under Chapter 15, 16 and 17 of the Water Code. Instead, the TNRCC and the TWDB (in their joint legislative report) are to present options to the Legislature for alternative groundwater management in the failed area.

Appendix C: Adding Territory to an Existing District

There are currently three methods used to annex territory to an existing groundwater conservation district.

- 1) Landowners within territory adjoining a district may petition directly to the district's board of directors to consider inclusion of their land into the district. In this case, all landowners involved must sign the petition. The board's decision to annex is sufficient and no further action is necessary. This process is provided for in Subchapter J, Sections 36.321 through 36.324 of the Texas Water Code.
- 2) Landowners within a defined area of territory, whether or not that area is contiguous to the existing district, may file a petition with the district's board of directors requesting inclusion into the district, as described in Subchapter J, Sections 36.325 through 36.331, Texas Water Code. If it is not contiguous, the territory must be within the same groundwater management area. The petition must be signed by a majority of the landowners in the territory, at least 50 landowners if the number of landowners is more than 50, or the commissioners' court of a county in which the area is located if the area is a designated priority groundwater management area or includes the entire county.

A hearing must be held both within the existing district and within the territory proposed for annexation. If the board of the existing district finds, after the hearings, that the addition would benefit both the territory and the district, it may add the territory described in the petition. The board may change the boundaries of the territory to be added, if it finds that the change is necessary or desirable. If the board approves annexation, the board calls an election within the territory to ratify the annexation. Costs of the election are the

responsibility of the district. A decision by the district board not to annex territory is final.

- 3) As part of the priority groundwater management critical area designation process, following a public hearing, the TNRCC may recommend that a PGMA be added to an existing district (Section 35.013 of the Texas Water Code). The TNRCC may issue an order recommending the addition to an adjacent, existing district if there is a benefit to land and other property in both the PGMA and the existing district, if there is a public need for the annexation, and if the annexation will further the public welfare.

The board of the existing district then votes on the annexation. If the board decides not to annex the territory, the board advises the TNRCC of its final decision.

If the board approves the annexation, an election is held within the territory to ratify the annexation. If annexation is ratified by a majority of those voting, the board declares that the PGMA is added to the district and shall provide the PGMA with reasonable representation. The newly added area must assume its pro rata share of the existing district's indebtedness as a part of its annexation and agree to the ad valorem tax if the district has one.

If the annexation proposition is defeated, the board declares that the PGMA is not added to the district and another election on the issue may not be held for 1 year. If the proposal is defeated, the TNRCC and TWDB must provide recommendations to the Texas Legislature for the future management of the PGMA.

Costs of the election are paid by the existing district if the annexation passes or by the TNRCC if the election fails.

Produced by Agricultural Communications, The Texas A&M University System

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Issued in furtherance of Cooperative Extension Work in Agriculture and Home Economics, Acts of Congress of May 8, 1914, as amended, and June 30, 1914, in cooperation with the United States Department of Agriculture. Chester P. Fehlis, Deputy Director, Texas Agricultural Extension Service, The Texas A&M University System.

10M, Revision

E&NR 5