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Priority Groundwater Management Areas and Groundwater Conservation Districts

Report to the 87th Texas Legislature

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Prepared by

Texas Commission on Environmental Quality

Texas Water Development Board

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Contents

I. Executive Summary	1
II. Acts of the 86th Legislature Affecting Groundwater Conservation Districts	4
Changes to Texas Water Code, Chapter 36.....	4
Legislative Amendments for Specific GCDs	6
III. Priority Groundwater Management Areas	10
Agency Collaboration.....	10
Status and TCEQ Actions 2019-2020.....	10
Hill Country PGMA	11
Reagan, Upton, Midland County PGMA	11
North-Central Texas Trinity and Woodbine Aquifers PGMA.....	11
IV. District Management Plans and Joint Planning Activities	14
Adoption and Approval of DMPs, 2019-2020 Biennium (11/1/18 to 10/31/20)	14
Table 1. Management Plan Approvals (11/1/18 to 10/31/20).....	15
Table 2. Management Plans Due and Not Approved (11/1/18 to 10/31/20).....	16
Table 3. Management Plan Amendment Approvals (11/1/18 to 10/31/20).....	16
Table 4. Management Plans Due in the 2021-2022 Reporting Period (11/1/20 to 10/31/22)	17
Groundwater Management Areas.....	18
Joint Planning Activities.....	20
Table 5. Number of Joint Planning Meetings in GMAs during the 2019-2020 Biennium (9/1/18 through 8/31/20).....	20
Total Estimated Recoverable Storage.....	21
Modeled Available Groundwater.....	21
V. District Management Plan Performance Review	22
Performance Review	22
Management Plan Deadlines.....	22
State Auditor’s Office Reviews.....	23
Petitions for GCD Inquiry.....	23
VI. Groundwater Management Issues	25
GCD Creations in PGMA’s	25
Petition for GCD Inquiry Review Panel	25
VII. Recommendations	28
Texas Water Code, Chapters 35 and 36.....	28

Figures

Figure 1. Map of Texas Groundwater Conservation Districts.....	9
Figure 2. Map of Priority Groundwater Management Areas.....	13
Figure 3. Map of Groundwater Management Areas.....	19

I. Executive Summary

This report provides information to executive and legislative leadership on activities undertaken during the preceding two years relating to the creation and operation of groundwater conservation districts (GCDs, or districts) and the study and designation of priority groundwater management areas (PGMAs). The Texas Commission on Environmental Quality and the Texas Water Development Board prepared the report to fulfill the requirements of Texas Water Code (TWC), Section 35.018. This biennial report describes state agency efforts to implement the groundwater management provisions of chapters 35 and 36 of the TWC.

Acts of 86th Legislature and Groundwater Conservation Districts

Two acts passed by the 86th Legislature made changes to the TWC, Chapter 36. House Bill (HB) 722 amended TWC Chapter 36 by adding new Section 36.1015 for the development of brackish groundwater in certain GCDs. HB 1066 added four new subsections to existing Section 36.122 and amended Subsection 36.122(k) for extensions of an expired permit for the transfer of groundwater from a GCD.

Five acts passed by the 86th Legislature made changes to authorities and responsibilities of existing GCDs. These acts amended the Special District Local Laws Code (SDLLC) or the district's enabling legislation for those GCDs that were changed in some manner.

1. HB 2729 amended the Edwards Aquifer Authority Act (Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993) to revise and update provisions relating to the Edwards Aquifer Authority (EAA).
2. HB 3656 amended the Edwards Aquifer Authority Act to authorize an owner of historically irrigated land to sever all or a portion of the remaining water rights for that land if certain criteria are met.
3. HB 4705 amended SDLLC Section 8886.051 to provide for expanding the Sutton County UWCD boundary to be coextensive with the boundaries of Sutton County.
4. Senate Bill (SB) 669 amended SDLLC Subsections 8871.024(a) and (e) by changing the latest date for an election to confirm the Southwestern Travis County GCD from the uniform election date in May 2018 to the uniform election date in November 2019.
5. SB 872 amended SDLLC Subsection 8839.051(a) to allow equal representation on the board of directors for all the counties within the Gateway GCD.

Priority Groundwater Management Areas

During 2019-2020, legislative and local action was taken that led to confirming the creation of the Southwestern Travis County GCD within the Hill Country PGMA and electing directors. No local, legislative, or TCEQ administrative action was taken in 2019-2020 for the creation of a GCD in the Reagan, Upton, Midland PGMA territory in Upton and Midland counties or the North-Central Texas Trinity and Woodbine Aquifers

PGMA territory in Dallas County. No further TCEQ action is authorized or required in the other PGMA's.

Joint Planning

Eighty-nine GMA meetings were held between September 1, 2018 and August 31, 2020. During this current round, all GMA's must propose desired future conditions (DFCs) by May 1, 2021. After a period of public review and comment on the proposed DFCs, districts are required to reconvene and finally adopt them by January 5, 2022.

District Management Plan Performance Review

During the 2019-2020 biennium 50 GCDs were required to submit management plans to the TWDB for determination of administrative completeness. Forty-six of those plans had due dates during the 2019-2020 biennium and four plans had been due during the 2017-2018 biennium. Twenty groundwater management plans have due dates during the next (2021-2022) biennium.

As of December 2020, four GCDs were out of compliance for missing statutory deadlines for re-adoption of their management plans. Culberson County GCD had asked for an extension and now, along with Starr County GCD, Brewster County GCD and Coastal Plains GCD, are working through COVID-19 public meeting delays to get the plans approved and then submitted to the TWDB Executive Administrator.

In the 2019-2020 biennium, the TWDB Executive Administrator (EA) approved the management plans for 45 GCDs, 21 of which achieved compliance prior to their due date. The TWDB EA approved management plans for 27 GCDs after the due dates for the plans due to the late submittals. Santa Rita UWCD achieved compliance after entering a compliance agreement with the TCEQ Executive Director (ED) and 11 other districts achieved compliance within 60 days of their due date. The Lone Star GCD plan was determined to not be administratively complete by the TWDB EA in May 2019. Lone Star GCD revised and resubmitted the plan and it was determined to be administratively complete in June 2020. Three other GCDs achieved compliance over 200 days late but came into compliance with guidance by TCEQ and TWDB staff.

Petition for GCD Inquiry

On August 5, 2019, eight GCDs within GMA 16 petitioned TCEQ for an inquiry of the Starr County GCD. The petition alleged that Starr County GCD failed to: (1) participate in the GMA 16 joint planning process under TWC Section 36.108; (2) adopt the desired future conditions (DFCs) adopted by the GMA 16 GCDs; and (3) update its management plan within two years of the GMA 16 adopting new DFCs.

On September 20, 2019, the Executive Director filed a response to the commission recommending the petition be granted and that the commission appoint a review panel to review the petition, GCD responses, and any other existing evidence; meet at least twice to consider the matter and to develop a report; and produce a final report of evidence considered, list of findings, and recommended actions for the commission to take under TWC Sections 36.303 and agency rules. The commission granted the petition and appointed a review panel as per TWC Section 36.3011 and Title 30, Texas Administrative Code (30 TAC) Section 293.23.

The review panel convened two public meetings to gather evidence, receive public comments, and adopt a report to file with the commission. On February 13, 2020, the panel submitted its report, which included the evidence collected on the petition, a list of findings and recommended actions, and a negotiated settlement agreement between the Starr County GCD and GMA 16. On March 25, 2020, the commission adopted an order incorporating the review panel's recommendations, the ED's draft order, and the requested changes from Starr County GCD. The order became final on April 27, 2020. Starr County GCD is now working under the April 27 TCEQ order ("An Order Implementing Recommendations of the Starr County Groundwater Conservation District Review Panel's Report on the Petition for Inquiry by Districts Within Groundwater Management Area 16 and Resulting Negotiated Settlement") and the district is making progress in addressing the provisions outlined in it.

Groundwater Management Issues and Recommendation

GCD Creation in PGMA's - Local and legislative actions or TCEQ administrative actions to establish groundwater conservation districts are still required in all or part of three counties in two PGMA's. In the Reagan, Upton, Midland County PGMA, TCEQ will track local and legislative actions to establish a GCD and will continue to evaluate groundwater use data for the Upton and Midland County portions in the PGMA. Since this PGMA was designated in 1990, groundwater use in the PGMA has changed from predominantly irrigation use to oil and gas drilling and exploration operations that are exempt from GCD permitting authority. In the North Central Texas - Trinity & Woodbine Aquifers PGMA, TWC Section 36.0151(f) prohibits TCEQ from attempting to create a GCD in Dallas County before September 1, 2021.

Petition for GCD Inquiry Review Panel - There were lessons learned in fully implementing TWC Section 36.3011 and review panel process for the first time. The statute is clear for TCEQ to get to its decision point to dismiss or appoint the review panel and clear for what the review panel's report must include. The review panel members brought meaningful GCD management experience and expertise to the process - with each member having a unique understanding for what it takes each of them to run their very different GCDs. The subject GCD retained counsel and the GCD's full engagement from that point on was critical. When asked, the subject GCD agreed to post the review panel meeting notices. The review panel facilitated an instrumental negotiated settlement between the petitioners and the GCD.

Some challenges encountered included everyone having legal counsel except the review panel. The parties were only able to provide limited guidance to the review panel regarding matters such as open meeting and open records questions, notice questions, service list questions and others. Further, there was no statutory guidance regarding the purpose and procedures for the review panel's public hearings and notice responsibilities. TCEQ will continue to evaluate potential improvements for review panel processes over the next biennium.

Recommendation - TCEQ does not recommend any statutory changes to TWC, chapters 35 and 36, to facilitate the designation of PGMA's and the creation and operation of GCDs at this time.

II. Acts of the 86th Legislature Affecting Groundwater Conservation Districts

The acts of the 86th Legislature, 2019, affecting groundwater conservation districts are described in this chapter. These acts include legislation amending existing GCDs and legislation that affects the general law authority, and therefore all GCDs. Elections to confirm GCD creation and other pertinent GCD activities are also discussed in this chapter.

Changes to Texas Water Code, Chapter 36

Two acts passed by the 86th Legislature made changes to the Texas Water Code (TWC, or Water Code), Chapter 36, as discussed below. The acts are identified by House Bill (HB) number or Senate Bill (SB) number and by the chapter number for the 86th Legislature, Regular Session Laws, unless noted otherwise.

- **HB 722 (Chapter 1044)** amended TWC Chapter 36 by adding 15 subsections under new Section 36.1015 for the development of brackish groundwater in certain GCDs.

New Subsection 36.1015(a) provides a "designated brackish groundwater production zone" definition consistent with the Texas Water Development Board (TWDB) and adds a definition for the Gulf Coast Aquifer.

New Subsection 36.1015(b) provides that rules for permits in brackish groundwater production zones do not apply to a GCD overlying the Dockum Aquifer and wholly or partly 10 or more counties. High Plains Underground Water Conservation District No. 1 satisfies those two requirements and is exempt from requirements.

New Subsection 36.1015(c) provides that districts must adopt permit rules for the brackish groundwater production zone at least 180 days after receiving a petition from a legally defined interest to adopt such rules. The district may also adopt permit rules without receiving a petition.

New Subsection 36.1015(d)(1)-(2) provides for GCDs to permit use of brackish groundwater production zone resources for municipal drinking water and electric generation projects.

New Subsection 36.1015(e)(1)-(9) provides that GCDs process brackish and freshwater operating permits in the same manner, allows GCDs to permit brackish production consistent with withdrawals amounts and/or rates as identified by the TWDB, allows at a minimum an operating permit term of 30 years, requires a TWDB recommended monitoring system for water levels and water quality in and around the brackish zone, requires subsidence monitoring during the permit term for zones located in the Gulf Coast Aquifer, requires annual reporting of produced brackish groundwater volumes and monthly monitoring of water quality and water levels in and around the brackish zone, provides a simplified brackish operating permit to avoid delays and provide flexibility and savings to permit applicants, and provides that GCDs must specify

all additional information for a brackish operating permit and provide permitting consistent with, and not impair, property rights.

New Subsection 36.1015(f) provides that any GCD-requested additional brackish permitting information must reasonably relate to an issue that the GCD is authorized to consider.

New Subsection 36.1015(g)(1)-(4) provides that the brackish groundwater production permit must include well field design compared to the brackish groundwater production zone, maximum groundwater withdrawal rate, number and locations of monitoring wells needed to determine the effects of the proposed project on water levels and water quality in the brackish or adjacent aquifer, and a report that includes a simulation model that project effects to the brackish or adjacent aquifer from the proposed production, a description of the model, and sufficient information for a technical reviewer to understand parameters and assumptions used in the model.

New Subsection 36.1015(h)(1)-(2) provides that the GCD will submit a brackish permit application to the TWDB for technical review. The TWDB will review the application and send a report with assessment of the project's compatibility with the brackish groundwater production zone and recommendations for the monitoring system to the GCD.

New Subsection 36.1015(i) provides that the GCD may not schedule a hearing on the application until the GCD receives the TWDB report.

New Subsection 36.1015(j)(1-3) provides that the GCDs submit annual reports with the required information to the TWDB. If the TWDB receives a request from a GCD, the TWDB has 120 days to investigate and issue a report on whether production in and around the brackish groundwater production zone is projected to cause an unanticipated significant aquifer level decline, negative effects on groundwater water quality, or land subsidence for a zone overlying the Gulf Coast Aquifer.

New Subsection 36.1015(k)(1-3) allows a GCD, after receiving the TWDB report and notice and hearing, to amend a brackish groundwater permit and production limits and/or approve a mitigation plan that alleviates any negative brackish groundwater production effects identified in the TWDB report.

New Subsection 36.1015(l) provides that rules adopted under this act must provide clarification that the permitted production from the designated brackish groundwater production zone is in addition to the amount of the managed available groundwater (MAG) and that the GCD issue a permit up to the point that the total volume of production from exempt and permitted wells in the brackish zone is accounted, as far as is possible.

New Subsection 36.1015(m) clarifies that a GCD may not adopt rules limiting access to brackish water within a designated brackish groundwater production zone to only uses for municipal and power generation.

New Subsection 36.1015(n) provides that a GCD may grant or deny an application to extend a term under this section only using rules that were in effect at the time the application was submitted.

New Subsection 36.1015(o) provides that a permit application under this section is governed solely by district rules consistent with this section. (Effective 9/1/2019).

- **HB 1066 (Chapter 96)** added four new subsections to existing Section 36.122 and amends Subsection 36.122(k) for extensions of an expired permit for the transfer of groundwater from a GCD.

New Subsection 36.122(j-1)(1-2) provides that the term of a permit to transfer groundwater outside of the district issued under Subsections 36.122 (i) or (j) must be extended before or at the time that the permit expires and the extension term may not be shorter than the term of the existing operating permit to transport groundwater outside of the district and for each additional term that the groundwater transfer permit is renewed under Section 36.1145 or remains in effect under Section 36.1146.

New Subsection 36.122(j-2) provides that a permit to transfer groundwater outside of the district, issued under Subsections 36.122(i) or (j), that is extended under new Subsection (j-1) continues to be subject to the permit conditions as issued before the extension.

Amended Section 36.122 (k) adds reference to new Subsection 36.122 (j-1) to existing Subsections 36.122 (i) and (j) that allows a GCD to periodically review and limit the amount of groundwater transferred under an operating permit and shall consider the groundwater transfer permit in the same manner and consideration as any other GCD permit.

New Subsection 36.122 (r) provides that a GCD may grant or deny an application to extend the term of a permit under existing Subsection 36.122 (i)(2) or existing Subsection 36.122 (j) only by using rules in effect when the application is made.

New Subsection 36.122(s) provides that an application to extend a permit made under existing Subsection 36.122(i)(2) or existing Subsection 36.122(j) is governed solely by district rules that are consistent with new Subsection 36.122(j-1). This act applies only to the term of a permit issued under Subsections 36.122 (i) and (j) that expires after September 1, 2019 (Effective 9/1/2019).

Legislative Amendments for Specific GCDs

Five acts of the 86th Legislature made changes to authorities and responsibilities of existing GCDs and the Edwards Aquifer Authority. These acts amended the Special District Local Laws Code (SDLLC) or the district's enabling legislation.

House Bills:

- **House Bill 2729 (Chapter 1135)** amended the Edwards Aquifer Authority Act (Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993) to revise and update provisions relating to the Edwards Aquifer Authority (EAA). The HB 2729 act explicitly exempts the EAA from statutory GCD provisions and sets out provisions relating to the ineligibility, liability, and immunity of an EAA director. The act authorizes an applicant in a contested or uncontested hearing on an application or a party to a contested hearing to administratively appeal a decision of the EAA's board of directors on an application and sets out related

provisions regarding findings of fact and conclusions of law by the board, a request for a rehearing, and when a board decision on an application is final. The act repealed a requirement that the EAA develop a 20-year plan for providing alternative supplies of water to the region and removed certain provisions and requirements relating to the EAA's critical period management plan. The act prohibits the EAA from increasing aquifer management fees by more than eight percent per year. The act replaces the requirement that the EAA impose a permit application fee with an authorization to impose such fee. The act authorizes the EAA to impose fees to recover administrative costs associated with actions other than the filing and processing of applications and registrations and prohibits the fees from unreasonably exceeding the administrative costs. The act provides for the closing or capping of an open or uncovered well within EAA territory. The act entitles a person, firm, corporation, or association of persons affected by and dissatisfied with any provision or with any rule or order made by the EAA to file a suit against the EAA or its directors to challenge the validity of the law, rule, or order and sets out related provisions. The act requires the EAA to prepare and deliver a biennial report to the Edwards Aquifer Legislative Oversight Committee on the EAA's operations, which must contain a summary of issues related to the EAA's operations that affect the continuing implementation of the EAA's enabling legislation or require an amendment to that legislation. The act amended the Water Code to make a conforming change (Effective 9/1/2019).

- **House Bill 3656 (Chapter 904)** amended the Edwards Aquifer Authority Act to authorize an owner of historically irrigated land in the EAA, subject to EAA approval, to sever all or a portion of the remaining water rights for the historically irrigated land which has become developed land in the same proportion as the proportion of developed land and undeveloped land, or for which the owner of the historically irrigated land has demonstrated that all or a portion of the land is land no longer practicable to farm. The HB 3656 act authorizes water rights used for irrigation tied to a portion of land that cannot be developed because of its topography or its location in a floodplain to be included in the proportion of land considered developed land. The act authorizes water rights for use in irrigation severed under the act's provisions to change in purpose or place of use. The act authorizes the EAA to adopt rules to provide for a holder of an initial regular permit for use in irrigation to lease all or part of the water rights for use in irrigation granted in the initial permit to another person for irrigating land located in the authority and authorizes the rules to allow the holder of an initial regular permit to use the water rights temporarily for irrigation at a location other than the land described in the initial regular permit (Effective 9/1/2019).
- **House Bill 4705 (Chapter 497)** is related to the territory of the Sutton County Underground Water Conservation District (UWCD). The HB 4705 act amended SDLLC Section 8886.051 to provide for expanding the Sutton County UWCD boundary to be coextensive with the boundaries of Sutton County unless the UWCD's territory is modified under SDLLC Section 8886.052, SDLLC Section 8886.053, it's enabling legislation or other law. The act also removed language that excluded Sections of 60, 67, and 90, Block No. A, HE & WT Ry Co Survey from the Sutton County UWCD's original boundaries (Effective 9/1/2019).

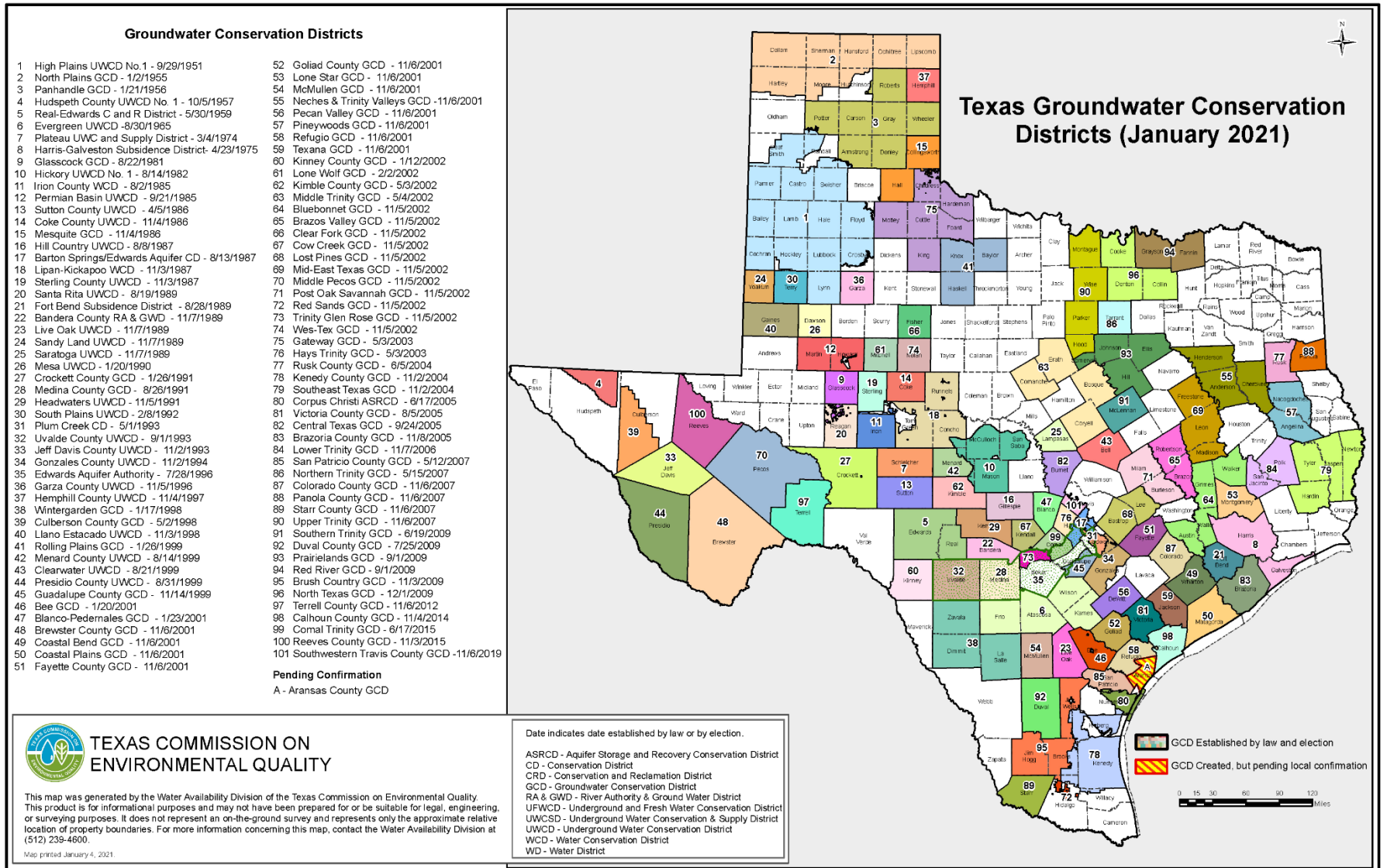
Senate Bills:

- **Senate Bill 669 (Chapter 73)** amended SDLLC Subsections 8871.024(a) and (e) by changing the latest date for an election to confirm the Southwestern Travis County GCD from the uniform election date in May 2018 to the uniform election date in November 2019 (Effective, 5/20/2019).

Local voting on November 5, 2019, resulted in the confirmation of the Southwestern Travis GCD and new Directors were elected.

- **Senate Bill 872 (Chapter 25)** amended SDLLC Subsection 8839.051(a) to allow equal representation by all the counties within the Gateway GCD. The GCD board must be composed of not more than two directors from each county within the district and are appointed by that county commissioners court. The new equal number of Board directors for each county replaces the current board of no fewer than five members, and no more than 11 members. The SB 872 act also provides permissive authority for the Board to change the total number of directors if the district adds territory by the power authorized under the TWC Section 36.051 (Effective 5/7/2019).

Figure 1. Map of Texas Groundwater Conservation Districts



III. Priority Groundwater Management Areas

This section describes the general Priority Groundwater Management Area (PGMA) program activities during 2019 and 2020, the status of GCD creation action in designated PGMAs, and other current and pending PGMA activities.

Currently there are seven PGMAs in Texas, which include all or part of 35 counties (Figure 2). Local, legislative or TCEQ administrative actions to establish GCDs are still authorized in two PGMAs.

Agency Collaboration

TCEQ and TWDB staff met in December 2020 to discuss ongoing PGMA activities and the evaluation of regional water planning and joint GCD planning data. TCEQ staff evaluated this data for 77 counties that are not within the boundaries of a PGMA or a confirmed GCD. TCEQ staff evaluated groundwater pumping data for 2009 - 2018 and compared the pumping to the Modeled Available Groundwater (MAG) values for the aquifers in those counties. TCEQ noted that some counties do not have MAG values assigned to groundwater due to unidentified aquifers or small aquifer extent and that the regional water planning groups occasionally use older MAG values for groundwater planning in counties with no official MAG values. This data comparison identified that:

- 69 counties have use for each aquifer that is less than that aquifer's MAG and the total groundwater used is less than the combined total of all aquifer MAGs;
- 6 counties have at least one aquifer with use exceeding that aquifer's MAG or the total groundwater used is greater than all combined aquifer MAGs; and
- 2 counties have at least one aquifer with use exceeding that aquifer's MAG and the total groundwater used exceeds all combined aquifer MAGs.

The TCEQ Executive Director met with the TWDB Executive Administrator in December 2020. They discussed the completion and delivery of the PGMA/GCD Report to the 87th Legislature; the need to track 87th Session legislation relating to PGMAs and creation of GCDs in PGMAs; and the need for continued data evaluation and coordination for any potential new PGMA studies.

Status and TCEQ Actions 2019–2020

During 2019-2020, one legislative and local action occurred related to GCD creation within the Hill Country PGMA. No local, legislative, or TCEQ administrative action was taken in 2019-2020 for the creation of a GCD in the Reagan, Upton, Midland PGMA territory in Upton and Midland counties or the North-Central Texas Trinity and Woodbine Aquifers PGMA territory in Dallas County. No further TCEQ action is authorized or required in the other designated PGMAs (Figure 2).

Hill Country PGMA

HB 4345, 85th Legislature, Regular Session, 2017 (Effective September 1, 2017), created the new Southwestern Travis County GCD in Travis County with the enactment of SDLLC Chapter 8871. The district was created subject to a confirmation election. Because this election was not held before its statutory deadline of May 2018, the new GCD was not confirmed. SB 669, 86th Legislature, Regular Session, 2019 (Effective May 20, 2019) amended SDLLC Section 8871.024(e) and changed the latest date for an election to confirm the Southwestern Travis County GCD from the uniform election date in May 2018 to the uniform election date in November 2019. The required election was held on November 5, 2019 and resulted in the conformation of the Southwestern Travis GCD and new Directors elected. All areas of the Hill Country PGMA now have GCDs and no further TCEQ actions are required in the Hill Country PGMA.

Reagan, Upton, Midland County PGMA

Within this PGMA, the portions in Upton and Midland counties have not created new nor joined an existing GCD. In October 2014, *The Executive Director's Draft Report for Reagan, Upton, and Midland County Priority Groundwater Management Area - Northeastern Upton and Southeastern Midland Counties* was filed with TCEQ. The report evaluated GCD creation options in the PGMA and solicited stakeholder feedback. The report generated little interest from the stakeholders, and the stakeholder comment period ended on January 30, 2015, with only one comment submitted.

In December 2016, *The Executive Director's Report for Reagan, Upton, and Midland County Priority Groundwater Management Area - Northeastern Upton and Southeastern Midland Counties* was filed with TCEQ. The report evaluated five options for groundwater management and recommended the option to add northeastern Upton County and southeastern Midland County to the Glasscock GCD as the most feasible, practicable, and economic means to achieve groundwater management in the Reagan, Upton, and Midland PGMA. No further action was taken to advance this recommendation.

In 2019 - 2020, TCEQ continued to evaluate groundwater availability and use data for Upton and Midland counties. The Upton PGMA portion occupies roughly one-half of Upton County. From 2000 to 2011, groundwater used for irrigation represented roughly 90 percent of all groundwater used in Upton County. From 2011 to 2018, oil and gas activities began to use more groundwater. From 2016 to 2018, oil and gas activities used more groundwater in the Upton PGMA than the estimated irrigation use from all of Upton County. Groundwater used for oil and gas drilling or exploration operations are exempt from GCD permitting authority. TCEQ will continue to follow local and legislative actions to create additional groundwater management in the Reagan, Upton, and Midland PGMA and continue to evaluate groundwater use data for the Upton and Midland County portions in the PGMA.

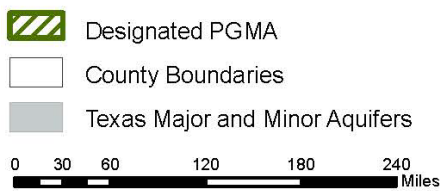
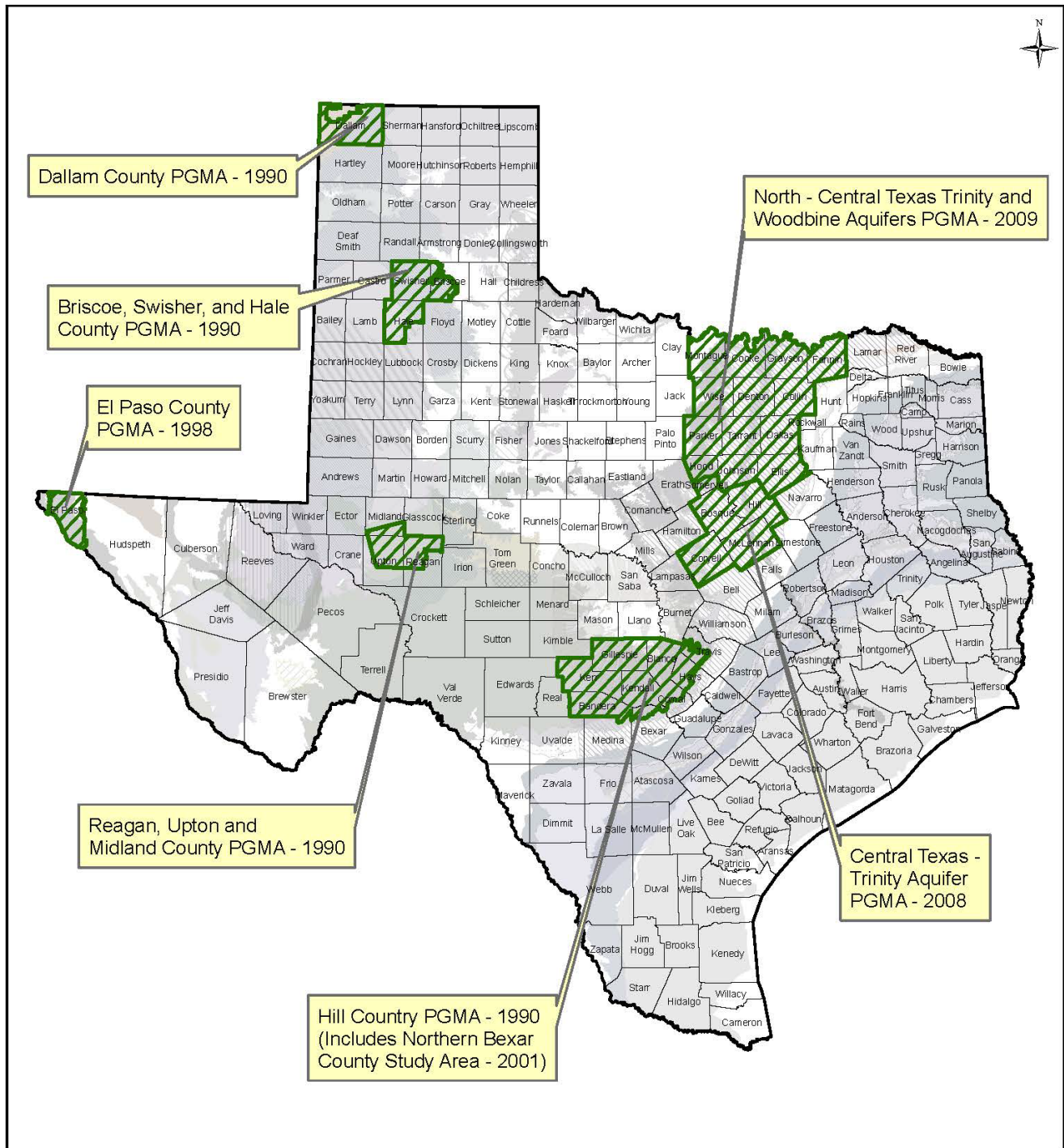
North-Central Texas Trinity and Woodbine Aquifers PGMA

The 13-county North-Central Texas Trinity and Woodbine Aquifers PGMA was designated by TCEQ in February 2009 and subsequently through local and legislative efforts, all of the counties except for Dallas County have been included in a GCD.

Effective September 1, 2015, TWC Section 36.0151 provides that TCEQ may not, before September 1, 2021, create a GCD in a PGMA county with a population greater than 2.3 million in which the annual amount of surface water used is more than 50 times the annual amount of groundwater produced. This provision applies only to Dallas County. TCEQ action regarding Dallas County may be required in accordance with TWC Sections 35.012 and 35.013, and 30 TAC Section 293.19(a) if a GCD is not established through local or legislative efforts before September 1, 2021.

TWC Section 36.0151 also authorizes TCEQ to charge an annual fee not to exceed \$500 to such a county for the purpose of studying compliance and groundwater consumption in that county. To date, TCEQ has relied on the data contained in the State Water Plan for this information and has not had a need to exercise this authority.

Figure 2. Map of Priority Groundwater Management Areas



Texas Commission on Environmental Quality



This map was generated by the Water Availability Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Water Availability Division at (512) 239-4691

Map printed January, 2018.

IV. District Management Plans and Joint Planning Activities

This chapter provides an overview of groundwater conservation district management planning and joint planning activities that occurred in the 2019-2020 biennium. It describes the adoption and approval of Groundwater Conservation District management plans, changes to groundwater management area (GMA) boundaries, joint planning conducted by GCDs, the development of total estimated recoverable storage (TERS), and development of MAG values for planning and permitting purposes.

Adoption and Approval of District Management Plans, 2019-2020 Biennium (November 1, 2018 to October 31, 2020)

As of November 1, 2020, there are 98 confirmed GCDs subject to groundwater management plan requirements. One newly confirmed district, Southwestern Travis County GCD, was required to submit an initial groundwater management plan by the 2023-2024 biennium. However, the district submitted the plan early to the TWDB and the plan was determined to be administratively complete in the current biennium. During the 2019-2020 biennium a total of 50 GCDs were required to submit management plans to the TWDB for determination of administrative completeness. Of those 50, 46 plans had due dates during the 2019-2020 biennium and four plans were due during the 2017-2018 biennium.

As this report was prepared, the TWDB Executive Administrator has received plans from 45 GCDs and determined that these plans are administratively complete (Table 1). Of the 45 administratively complete plans, four were due during the 2017-2018 biennium (November 1, 2016 to October 31, 2018), 38 plans were due during the 2019-2020 biennium, two plans are due during the upcoming 2021-2022 biennium (November 1, 2020 to October 31, 2022), and one plan is due in the 2023-2024 biennium (November 1, 2022 to October 31, 2023). One plan (Lone Star GCD), included in the 2019-2020 biennium count, was determined to not be administratively complete in May 2019, but was revised and resubmitted and determined to be administratively complete in June 2020.

The nine plans due during the 2019-2020 biennium that are currently in the pre-review stage have not yet been submitted for a recommended pre-review, or were not approved are listed in Table 2.

During the 2019-2020 biennium, the TWDB Executive Administrator approved ten amended groundwater management plans that added new modeled available groundwater estimates (Table 3). Table 4 lists the 20 groundwater management plans that have due dates during the 2021-2022 biennium.

Table 1. Management Plan Approvals (November 1, 2018 to October 31, 2020)

District Name	Plan Due Date	Approval Date
Blanco-Pedernales GCD	01/08/19	01/23/19
Brazos Valley GCD	03/12/20	05/13/19
Coastal Bend GCD	01/15/20	01/16/20
Coke County UWCD	08/30/18	03/19/19
Colorado County GCD	11/03/19	01/10/20
Corpus Christi ASRCD	04/12/19	07/12/19
Cow Creek GCD	02/02/20	02/27/20
Crockett County GCD	12/17/18	11/14/18
Fayette County GCD	12/02/18	11/16/18
Garza County UWCD	09/08/19	09/18/19
Glasscock GCD	01/15/20	03/18/20
Gonzales County UWCD	02/18/19	01/29/20
Hickory UWCD No. 1	02/27/19	01/29/19
High Plains UWCD No. 1	09/25/19	10/25/19
Hudspeth County UWCD No. 1	07/05/18	12/28/18
Jeff Davis County UWCD	12/02/18	12/12/18
Kimble County GCD	07/11/19	07/12/19
Live Oak UWCD	09/15/20	09/16/20
Lone Star GCD ¹	05/15/20	06/04/20
Lone Wolf GCD	10/16/19	09/18/19
Lower Trinity GCD	09/30/19	12/20/19
McMullen GCD	08/09/18	01/04/19
Mesa UWCD	03/10/19	03/19/19
Mesquite GCD	03/25/19	12/20/18
Middle Pecos GCD	09/15/20	08/19/20
Mid-East Texas GCD	08/04/19	09/03/19
Neches & Trinity Valleys GCD	08/06/19	09/12/19
Northern Trinity GCD	06/11/20	08/07/20
Panhandle GCD	04/19/22	09/17/19
Pecan Valley GCD	05/07/19	03/15/19
Plateau UWC&SD	03/05/19	05/09/19
Prairielands GCD	02/14/21	05/31/19
Presidio County UWCD	01/15/20	05/08/20
Real-Edwards C&RD	05/30/19	06/04/20
Refugio GCD	08/25/19	06/28/19
Rolling Plains GCD	09/15/20	08/25/20
Rusk County GCD	10/08/20	12/14/18

¹ Approval date is for second of two final plans submitted. First final plan submitted to the TWDB was not administratively complete and not approved (See Table 2).

District Name	Plan Due Date	Approval Date
Sandy Land UWCD	06/06/19	05/15/19
Santa Rita UWCD	05/03/18	05/06/20
Saratoga UWCD	10/16/19	08/31/20
South Plains UWCD	01/13/19	11/14/18
Southwestern Travis County GCD ²	11/05/22	09/15/20
Sutton County UWCD	12/20/18	12/12/18
Upper Trinity GCD	09/15/20	07/06/20
Wes-Tex GCD	02/10/20	03/18/20

**Table 2. Management Plans Due and Not Approved
(November 1, 2018 to October 31, 2020)**

District Name	Plan Due Date	Status
Brewster County GCD	01/05/20	Submitted for pre-review
Clear Fork GCD	10/20/20	No plan submitted
Coastal Plains GCD	05/01/20	Submitted for pre-review
Culberson County GCD	02/12/19	Submitted for pre-review
Gateway GCD	10/08/20	Submitted for pre-review
Llano Estacado UWCD	09/15/20	Submitted for pre-review
Lone Star GCD	12/17/18	Plan not approved, mediated, resubmitted, and approved (see Table 1)
Southern Trinity GCD	09/15/20	Submitted for pre-review
Starr County GCD	07/25/19	Submitted for pre-review

**Table 3. Management Plan Amendment Approvals
(November 1, 2018 to October 31, 2020)**

District Name	Plan Due Date	Approval Date
Central Texas GCD	N/A	04/26/19
Clear Fork GCD	N/A	01/15/20
Hill Country UWCD	N/A	03/05/19
Irion County WCD	N/A	01/02/19
Live Oak UWCD	N/A	04/26/19
Middle Trinity GCD	N/A	02/08/19
North Texas GCD	N/A	06/09/20
Plum Creek CD	N/A	01/23/19
Sterling County UWCD	N/A	01/02/19
Upper Trinity GCD	N/A	12/10/18

² Initial management plan approval for a new district

Table 4. Management Plans Due in the 2021-2022 Reporting Period (November 1, 2020 to October 31, 2022)

District Name	Plan Due Date	Plan
Trinity Glen Rose GCD	01/14/21	Re-approval
Hays Trinity GCD	02/19/21	Re-approval
Clearwater UWCD	02/19/21	Re-approval
Evergreen UWCD	03/16/21	Re-approval
Medina County GCD	06/07/21	Re-approval
Texana GCD	06/13/21	Re-approval
Wintergarden GCD	06/27/21	Re-approval
Uvalde County UWCD	11/03/21	Re-approval
Headwaters GCD	02/15/22	Re-approval
Middle Trinity GCD	04/20/22	Re-approval
San Patricio County GCD	05/08/22	Re-approval
North Texas GCD	05/12/22	Re-approval
Red River GCD	05/12/22	Re-approval
Menard County UWD	05/30/22	Re-approval
Central Texas GCD	05/30/22	Re-approval
Kenedy County GCD	07/18/22	Re-approval
Calhoun County GCD	07/18/22	Re-approval
Southeast Texas GCD	08/03/22	Re-approval
Hemphill County UWCD	08/24/22	Re-approval
Permian Basin UWCD	08/29/22	Re-approval

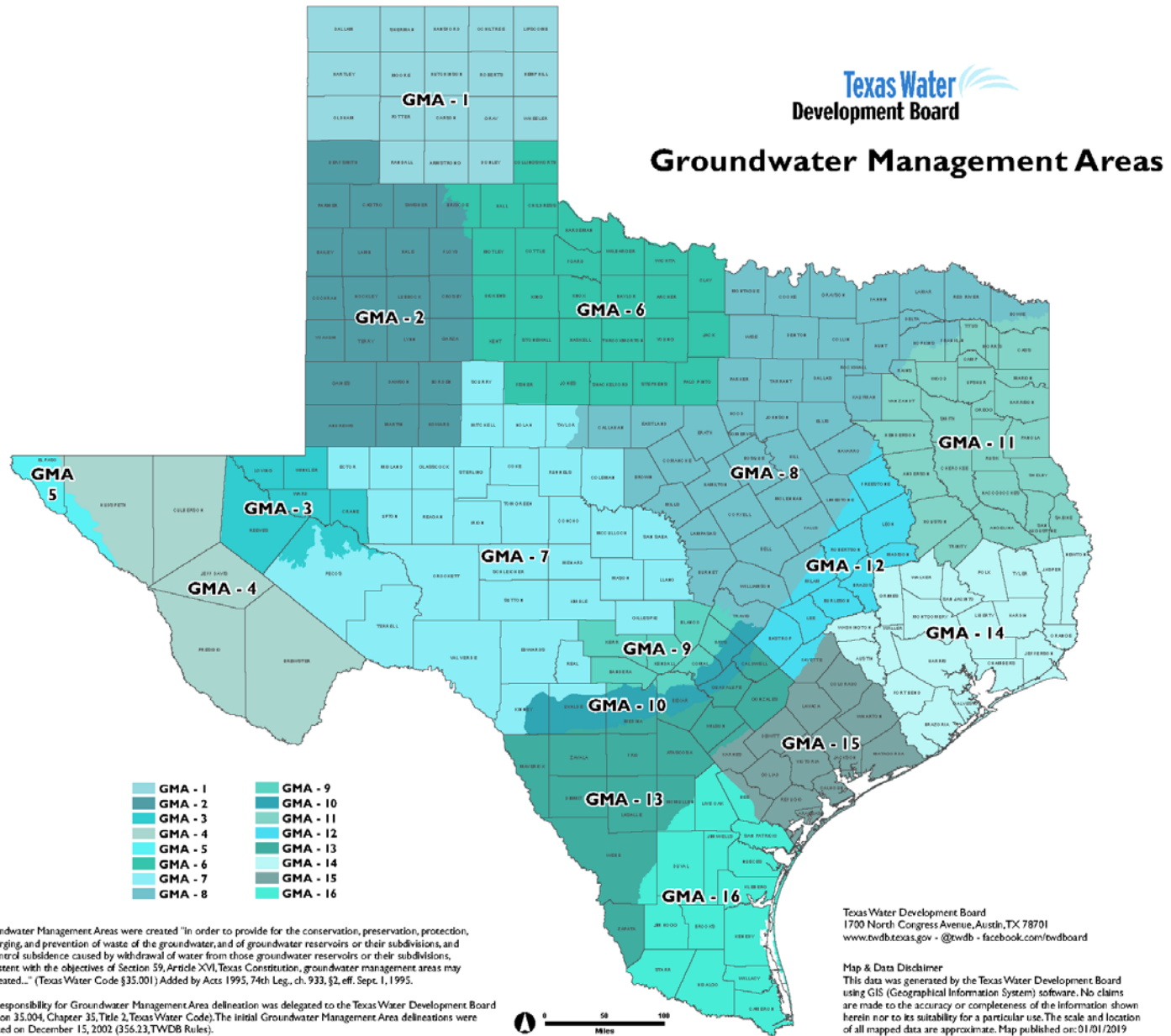
Groundwater Management Areas

A groundwater management area (GMA) is an area delineated by the TWDB as most suitable for managing groundwater resources. The primary purpose for the delineation of GMAs is to facilitate joint planning by GCDs that manage the same aquifer.

In 2002, the TWDB adopted boundaries for 16 GMAs, which cover the entire state (Figure 3). These boundaries were delineated primarily using the boundaries of the major aquifers of Texas. In areas with multiple major aquifers, the TWDB generally placed a preference on the shallowest aquifer. The TWDB divided several of the major aquifers into multiple GMAs. These divisions were made based on variations in hydrogeologic characteristics and current water-use patterns, and they coincided with natural features as much as possible. Where possible, the TWDB aligned GMA boundaries with those of counties and existing GCDs.

Groundwater management areas 9 and 10, on behalf of Medina County GCD, requested a boundary change in Medina County such that the GMA boundary be moved northward to match the northern county boundary, removing Medina County GCD from GMA 10. The TWDB Executive Administrator requested additional geographic and hydrogeologic information to support the proposed boundary change request and has not received the required information from the GMAs.

Figure 3. Map of Groundwater Management Areas



Joint Planning Activities

Joint planning is the process by which groundwater conservation districts are required to meet and coordinate on regional groundwater issues. Districts within each GMA are required to meet at least once per year. Eighty-nine GMA meetings were held between September 1, 2018 and August 31, 2020 (Table 5). This number is more than the previous biennium because the districts in GMAs are approaching deadlines for the third round of joint planning. GCDs participate in joint planning within GMAs to establish DFCs for common, shared aquifers. A DFC is the desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times.

TWDB staff has supported the joint planning process by outlining the overall process and providing reference materials and guidance documents for developing DFCs and modeled available groundwater. TWDB staff attended GMA meetings, presented information, and answered questions from GMA member districts.

The major joint planning task for districts within a GMA is to adopt DFCs. During this current round, all GMAs must propose DFCs by May 1, 2021. After a period of public review and comment on the proposed DFCs, the districts are required to reconvene and finally adopt DFCs by January 5, 2022.

Table 5. Number of Joint Planning Meetings in GMAs during the 2019-2020 Biennium (September 1, 2018 through August 31, 2020)

GMA	Number of Joint Planning Meetings
1	10
2	4
3	2
4	1
6	2
7	5
8	7
9	5
10	6
11	4
12	8
13	10
14	11
15	7
16	7
Total	89

Total Estimated Recoverable Storage

TWDB staff calculated the total estimated recoverable storage (TERS) volume for each aquifer within a GMA, as required by TWC 36.108(d)(3). The TERS volume represents the estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25 percent and 75 percent of the porosity- adjusted aquifer volume. TERS volumes are primarily estimated with groundwater availability models. The TWDB completed 15 initial TERS reports and one supplemental TERS report for GMAs between March 2013 and June 2014. By June 2014, districts in all GMAs had received TERS reports covering the major and minor aquifers in their areas. A supplemental aquifer TERS report for GMA 10 was issued on December 9, 2016. While initial TERS reports have not been updated since 2014 (except for the supplemental TERS report for GMA 10), they are still the best estimates using the best available science. The TERS reports may be viewed on the [TWDB website](#)³.

Modeled Available Groundwater

TWC Section 36.108 requires GCDs to submit the adopted DFCs of the aquifers to the TWDB. Districts in all GMAs must adopt DFCs by January 5, 2022 and then submit the DFCs and explanatory reports to the TWDB Executive Administrator for administrative review. The TWDB will then calculate MAG volumes.

During the second round of joint planning (2016), TWDB staff issued 15 MAG reports based on DFCs adopted during the second round of joint planning. These estimates were provided to GCDs and regional water planning groups.

To view DFCs or modeled available groundwater reports from the previous two round of joint planning, please visit the [TWDB website](#)⁴, select the GMA of interest, and then query the table at the bottom of the web page.

³ www.twdb.texas.gov/groundwater/management_areas/TERS.asp

⁴ www.twdb.texas.gov/groundwater/management_areas/index.asp

V. District Management Plan Performance Review

This chapter describes noncompliance issues related to groundwater conservation district management plans that were initiated by the Executive Director of TCEQ, reported by the State Auditor's Office, or petitioned to TCEQ from September 1, 2018 through August 31, 2020.

Performance Review

In accordance with TWC Sections 36.301–36.303, TCEQ is responsible for GCD performance review and action if any of the following occur:

- a GCD management plan is not adopted, readopted, or submitted to the Executive Administrator of the TWDB within statutory deadlines;
- the TWDB Executive Administrator denies approval of a submitted management plan and the GCD either does not address and obtain management plan approval within statutory deadlines or has exhausted all appeals of the denial;
- the State Auditor determines that a GCD is not operational; or
- a review panel has submitted a report and recommendation to TCEQ in response to a petition for inquiry of a GCD.

TCEQ rules that pertain to GCD management plan performance review actions are contained in 30 TAC Section 293.22.

Management Plan Deadlines

As of December 2020, four GCDs were out of compliance for missing statutory deadlines for readoption of their management plans. Culberson County GCD had asked for an extension and now, along with Starr County GCD, Brewster County GCD and Coastal Plains GCD are working through COVID-19 public meeting delays to get the plans approved and then submitted to the TWDB Executive Administrator.

In FY2019, the TWDB Executive Administrator approved management plans for 27 GCDs, 16 of which achieved compliance prior to their due date. The TWDB Executive Administrator approved management plans for 11 GCDs after the plan due dates had passed, but none required a compliance agreement with the TCEQ Executive Director.

In FY2020, the TWDB Executive Administrator approved 21 GCD management plans, and five of those GCDs achieved compliance prior to their due date. The TWDB Executive Administrator approved management plans for 16 GCDs after the plan due dates had passed. Santa Rita UWCD achieved compliance after entering a compliance agreement with the TCEQ Executive Director and 11 other districts achieved compliance within 60 days of their due date. The Lone Star GCD plan was determined to not be administratively complete by the TWDB Executive Administrator in May 2019. Lone Star

GCD revised and resubmitted the plan and it was determined to be administratively complete in June 2020. Three other GCDs achieve compliance over 200 days late but came into compliance with guidance from TCEQ and TWDB staff.

State Auditor's Office Reviews

GCDs are subject to review by the SAO under TWC Section 36.302. This review is to determine if the GCD is actively engaged in achieving the objectives of its management plan. Under Section 36.302, TCEQ must take appropriate action if the SAO determines that a district is not operational. Such action, described in TWC Section 36.303, includes:

- requiring a district to take or refrain from certain actions;
- dissolving the GCD's board and calling for the election to form a new board;
- requesting that the Office of the Attorney General appoint a receiver for the district to collect the GCD's assets and perform the GCD's business; or
- dissolving the district.

The commission may also make recommendations to the legislature for actions that it deems necessary to accomplish comprehensive management in the district.

Since 1999, SAO has filed 13 reports with TCEQ including audit reviews for 120 GCDs with some audited multiple times. SAO did not file any GCD audit review reports with TCEQ in the 2019-2020 biennium.

Petitions for GCD Inquiry

TWC Section 36.3011 allows an affected person within a groundwater management area (GMA) to file a petition with TCEQ to request a review of any of nine specific GCD actions.

On August 5, 2019, eight GCDs within GMA 16 petitioned TCEQ for an inquiry of the Starr County GCD. The petitioners included the Bee GCD, Brush Country GCD, Live Oak County UWCD, McMullen County GCD, Kenedy County GCD, Corpus Christi Aquifer Storage and Recovery Conservation District, San Patricio GCD, and Duval County GCD. The petition alleged that Starr County GCD failed to:

1. participate in the GMA 16 joint planning process under TWC Section 36.108;
2. adopt the desired future conditions (DFCs) adopted by the GMA 16 GCDs; and
3. update its management plan within two years of the GMA 16 adopting new DFCs.

From August 29, 2019 to September 13, 2019, TCEQ staff solicited nominations for volunteers to serve on a five-member review panel to consider the petition of inquiry.

On September 20, 2019, the TCEQ Executive Director filed a response to the commission recommending the petition be granted because the issues raised in the petition were within the scope of TWC Section 36.3011(b) and were supported by the evidence submitted with the petition. The Executive Director recommended appointing review panel members and a TCEQ staff person as the disinterested, non-voting, record keeping secretary. Further, the Executive Director recommended the commission issue an order appointing the review panel to:

1. review the petition, GCD responses, and any other existing evidence;
2. meet no fewer than two times in GMA 16 or in a statewide central location to consider the matter and to develop a report; and
3. produce within 120 days a finalized report with a summary of evidence considered, list of findings, and recommended actions appropriate for the commission to take under TWC Section 36.303 and 30 TAC Section 293.22.

On October 22, 2019, Counsel for the Starr County GCD filed the District's agreed and unopposed motion to grant the petition and appoint the review panel. The commission granted the petition and appointed the review panel on October 23, 2019, in accordance with TWC Section 36.3011 and 30 TAC Section 293.23.

The review panel convened two public meetings. The first meeting was held in Starr County on January 7, 2020, for the purpose of gathering evidence and taking public comments. The review panel held its second meeting in Austin on February 13, 2020, for the purpose of adopting a report to file with the commission. The review panel submitted its report and recommendations to the commission on February 13, 2020. The report included:

1. a summary of all evidence taken on the petition;
2. a list of findings and recommended actions appropriate for the commission to take and reasons it found those actions appropriate; and
3. a negotiated settlement agreement between the Starr County GCD and the GCDs from GMA 16 which addressed the issues raised in the petition pursuant to TWC Section 36.3011.

On March 25, 2020, the commission considered the matter and adopted an order incorporating the review panel's recommendations, the Executive Director's draft order, and the requested and unopposed changes from Starr County GCD. The order became final on April 27, 2020.

The Starr County GCD is now working under the April 27 TCEQ order ("An Order Implementing Recommendations of the Starr County Groundwater Conservation District Review Panel's Report on the Petition for Inquiry by Districts Within Groundwater Management Area 16 and Resulting Negotiated Settlement") and is making progress in addressing the provisions outlined in the order.

VI. Groundwater Management Issues

GCD Creations in PGMAs

TCEQ recognizes and acknowledges that crafting local groundwater management solutions for non-GCD areas in the PGMAs is generally preferred by citizens over TCEQ administrative orders to create a new or join an existing GCD as the statute authorizes. To date, TCEQ has had mixed results when fully exercising this authority and the results have been tied to support, or lack thereof, from residents and locally elected officials. Examples include:

- TCEQ exercised its full administrative authority to have three portions of Dallam County PGMA added to the North Plains GCD. After one failed effort and subsequent statutory changes, this action was approved by the elected Directors of the North Plains GCD and the areas were added to the district.
- TCEQ exercised its full administrative authority to have the PGMA portion of Briscoe County added to the High Plains GCD. This action was not approved by the elected Directors of the High Plains GCD and the area is not in a GCD.

Local and legislative actions or TCEQ administrative actions to establish groundwater conservation districts are still authorized in all or part of three counties in two PGMAs.

- Southeast Midland County and Northeast Upton County in the Reagan, Upton, Midland County PGMA
- Dallas County in the North Central Texas - Trinity & Woodbine Aquifers PGMA

In the Reagan, Upton, Midland County PGMA, TCEQ will track local and legislative actions to establish a GCD and will continue to evaluate groundwater use data for the Upton and Midland County portions in the PGMA. Since this PGMA was designated in 1990, groundwater use in the PGMA has changed from predominantly irrigation use to use for oil and gas drilling and exploration operations that are exempt from GCD permitting authority.

In the North Central Texas - Trinity & Woodbine Aquifers PGMA, TCEQ may not create a GCD before September 1, 2021, in Dallas County. In accordance with the September 1, 2015, amendment of TWC, Section 36.0151(f), TCEQ may not create a GCD before September 1, 2021, in areas in which the annual amount of surface water used is more than 50 times the annual amount of groundwater produced; that is located in a priority groundwater management area; and that has a population greater than 2.3 million. In practice, this amendment applies only to Dallas County in the North-Central Texas Trinity and Woodbine Aquifers PGMA.

Petition for GCD Inquiry Review Panel

Texas Water Code, Sections 36.301 - 36.310, provide TCEQ authority for groundwater conservation district (GCD) performance review and dissolution. In Section 36.3011, an affected person may file a petition with TCEQ requesting an inquiry of a GCD for any of

nine reasons regarding required groundwater management responsibilities of the GCD. If TCEQ approves the petition, they appoint a review panel that reviews the petition and any evidence relevant to the petition and, in a public meeting, considers and adopts a report to be submitted to TCEQ. Review panel membership is limited to GCD directors or general managers of districts located outside the management area that is the subject of the petition.

TCEQ appointed the first review panel in October 2019 consisting of five GCD managers and one non-voting TCEQ staff recording secretary. The review panel conducted public hearings in January and February 2020, negotiated a settlement between the petitioners and the subject GCD, and filed their report and recommendations with TCEQ on February 14, 2020. TCEQ considered the matter on March 25, 2020, and approved an order implementing most of the review panel recommendations. The subject GCD is currently operating to implement the provisions of the order and providing milestone updates to TCEQ.

Members of the 2019-2020 review panel were volunteers who were solicited by the TCEQ Executive Director. The review panel members served at the expense of each member's GCD. The members of the panel estimate they provided between 100 to 300 hours of service each.

There were lessons learned in fully implementing this statute and process for the first time. Some of the items that worked well included the following.

- The statute is clear for TCEQ to get to its decision point to dismiss or appoint the review panel.
- The statute is clear for what the review panel's report must include.
- The review panel members brought meaningful GCD management experience and expertise to the process - with each member having a unique understanding for what it takes each of them to run their very different districts.
- The subject GCD retained counsel and the GCD's full engagement from that point on was critical. When asked, the subject GCD agreed to post the review panel meeting notices.
- The review panel facilitated a negotiated settlement between the petitioners and the GCD.

Some of the challenges encountered included everyone having legal counsel except the review panel. As parties, legal counsel for the Executive Director, the TCEQ Office of Public Interest Counsel (OPIC), the petitioners and the subject GCD were only able to provide limited guidance to the review panel regarding matters such as open meeting and open records questions, notice questions, service list questions and others. Further, there was no statutory guidance regarding the purpose and procedures for the review panel's public hearings and notice responsibilities. Not having clear statutory guidance resulted in high levels of uncertainty for the review panel members.

Through the process, the review panel did a great job working through procedural matters without much guidance, communicating with all of the parties and trying to be inclusive and transparent, working through the information and evidence, negotiating a

settlement and adopting and submitting a concise report to TCEQ. The TCEQ Commissioners, OPIC, and Executive Director all expressed gratitude for the time committed and excellent service of the review panel members. TCEQ will continue to evaluate potential improvements for review panel processes over the next biennium.

VII. Recommendations

Texas Water Code, Chapters 35 and 36

Texas Water Code, Section 35.018, requires this report to include recommendations for changes to chapters 35 and 36 that would facilitate the creation of PGMAs and the creation and operation of GCDs. TCEQ does not recommend any additional statutory changes to TWC, chapters 35 and 36 to facilitate the designation of PGMAs and the creation and operation of GCDs at this time.