

GMA 8 Joint Planning Process - Path Forward

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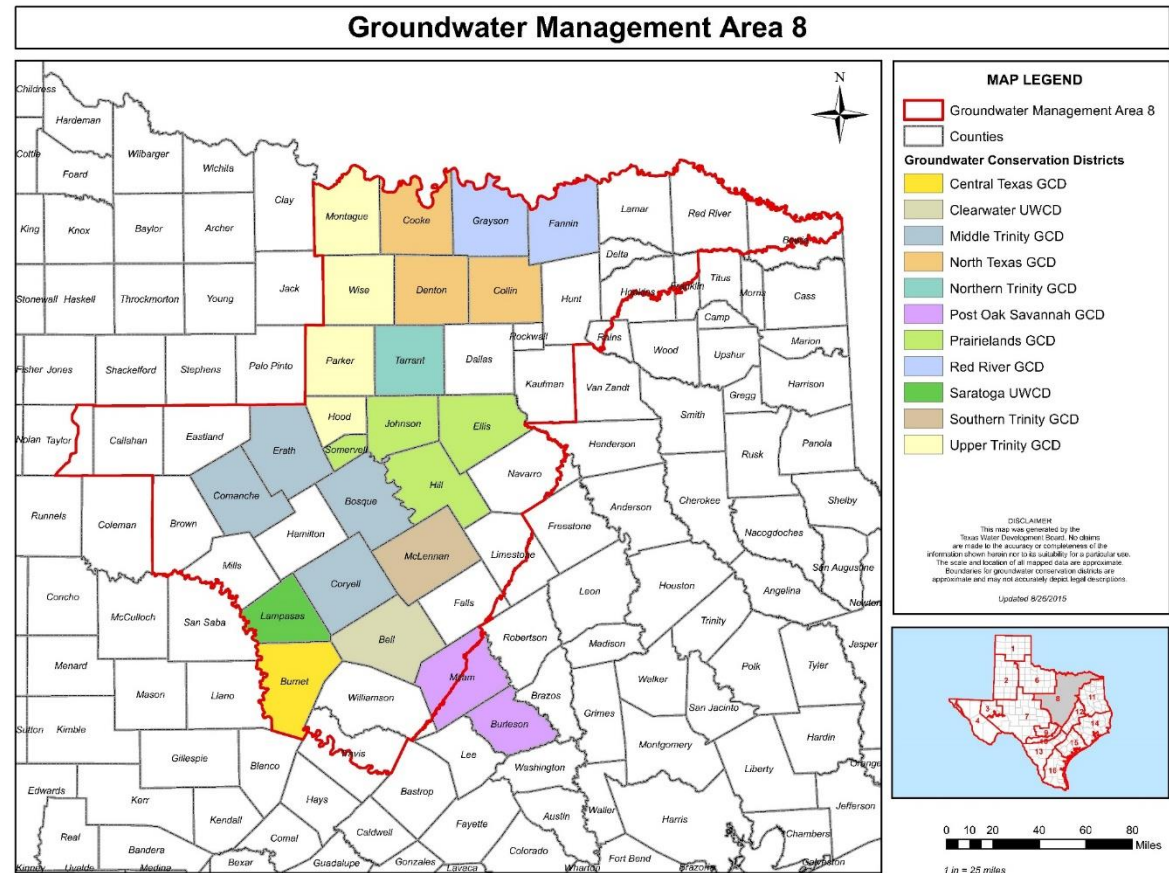


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GMA 8 Joint Planning Process

No later than May 1, 2021, and every 5 years after that, the districts in GMA 8 must consider groundwater availability models and other data or information for the management area, and shall propose for adoption desired future conditions (DFCs) for the aquifers in the GMA.

TWC 36.108(d)



Source: TWDB - [Groundwater Management Area 8](#)

GMA 8 Joint Planning Process

GMA 8 must consider the following nine factors when developing and voting on proposed DFCs:

- 1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
- 2) the water supply needs and water management strategies included in the state water plan;
- 3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
- 4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
- 5) the impact on subsidence;

GMA 8 Joint Planning Process

GMA 8 must consider the following nine factors when developing and voting on proposed DFCs (cont.)

- 6) socioeconomic impacts reasonably expected to occur;
- 7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater;
- 8) the feasibility of achieving the desired future condition; and
- 9) any other information relevant to the specific desired future conditions.

TWC 36.108(d)

Approving Proposed DFCs

- ▶ After developing the proposed DFCs, GMA 8 must hold a joint planning meeting. The *proposed* DFCs must be approved by two-thirds vote of all district representatives for distribution to the individual districts in GMA 8.
- ▶ The DFCs proposed by GMA 8 are required to provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area.

Public Comment Period (90 Days)

- ▶ The proposed DFCs will then be mailed to the individual districts in GMA 8 for review and public comment. The public comment period must last 90 days, and shall begin on the date the proposed DFCs are mailed to the districts.
- ▶ During the public comment period, each individual member-district must hold a public hearing on the proposed DFCs. This hearing must be properly noticed under the Texas Open Meetings Act and Section 36.063 of the Texas Water Code. During the public comment period, all districts must post a copy of the proposed DFCs, the GAM, and any supporting materials at their offices.
- ▶ At the end of the 90 day public comment period, each district must compile a summary of the relevant public comments received and any suggested revisions to the proposed DFCs. These summaries will be considered at the next GMA 8 joint planning meeting.

Public Hearing on Proposed DFCs or Possible Adoption of DFCs

- ▶ At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the district board is required to post notice that includes:
 - ▶ (1) the proposed desired future conditions and a list of any other agenda items;
 - ▶ (2) the date, time, and location of the meeting or hearing;
 - ▶ (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
 - ▶ (4) the names of the other districts in the district's management area; and
 - ▶ (5) information on how the public may submit comments.

TWC 36.063

Public Hearing on Proposed DFCs or Possible Adoption of DFCs

- ▶ Except as provided in Section 36.063(b), notice of a hearing described in Section 36.063(b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).
- ▶ Section 36.101(d) provides that the general manager or board shall:
 - ▶ (1) post notice in a place readily accessible to the public at the district office;
 - ▶ (2) provide notice to the county clerk of each county in the district;
 - ▶ (3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;
 - ▶ (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i); and
 - ▶ (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.

GMA 8 Meeting to Consider Comments / Summaries and to Formally Adopt the DFCs

- ▶ GMA 8 must then hold another joint planning meeting. The district representatives should reconvene to review the public comments and summaries created by each member district, and to consider any possible revisions.
- ▶ The GMA 8 representatives may formally adopt the proposed DFCs at this meeting.
- ▶ The DFCs must be adopted by a resolution adopted by a two-thirds vote of all district representatives. The deadline to complete this is January 5, 2022.

DFC Explanatory Report

- ▶ GMA 8 must then create a DFC explanatory report for the management area to be submitted to the Texas Water Development Board (TWDB). This report should:
 - ▶ identify each desired future condition;
 - ▶ provide the policy and technical justifications for each desired future condition;
 - ▶ include documentation that the factors required by TWC 36.108(d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;
 - ▶ list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
 - ▶ discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

TWC 36.108(d-3(1-5))

TWDB Approval and DFC Adoption

- ▶ After the explanatory report is complete, it should be submitted to the Texas Water Development Board, along with a copy of the resolution approving the DFCs, and proof that notice of the joint planning meeting was posted.
- ▶ After GMA 8 receives notice from TWDB that the explanatory report and resolution are administratively complete, each individual member-district should adopt the applicable approved DFCs at an open board meeting.
- ▶ Each district in GMA 8 should hold a meeting open to the public and adopt the applicable approved DFCs by resolution.

Possible Appeal by Affected Persons

- ▶ No later than 120 days after an individual member-district adopts the approved DFCs for GMA 8, an affected person may file a petition with the district requiring the district to reach out to the State Office of Administrative Hearings (SOAH) to hold a hearing appealing the reasonableness of the DFC.
- ▶ If a member district does receive an appeal petition, within 10 days the district should submit a copy of the petition to TWDB for review.
- ▶ Within 60 days of receiving a petition, a district should also contact SOAH about conducting a contested case hearing, and should submit a copy of the petition to SOAH.

Possible Appeal by Affected Persons

- ▶ TWDB will then conduct a review of the disputed DFC. TWDB will conduct a scientific and technical analysis of the DFC, and will determine whether the DFC meets the criteria in Section 36.108(d). TWDB will deliver a report to the State Office of Administrative Hearings (SOAH) with its findings within 120 days.
- ▶ If a hearing is held before SOAH, the ALJ will consider the following: (1) the petition, (2) the report generated by TWDB, and (3) the explanatory report created by GMA 8 during joint planning. The ALJ will issue findings of fact and conclusions of law in a Proposal for Decision (PFD).
- ▶ The district may seek mediation to resolve the issue with the affected person before the hearing is held before SOAH.
- ▶ After the hearing, the district should issue a final order stating the district's decision on the contested matter. If the district's final order finds that the contested DFC is unreasonable, GMA 8 must reconvene a joint planning meeting to revise the contested DFC.

Judicial Appeal of DFC

- ▶ An individual may appeal the final order issued by the district above in state district court. An appeal to district court must be filed within 45 days after the date the district issued its final order on the contested DFC. The district court may find the DFC unreasonable and strike the DFC. The district court may also order GMA 8 to reconvene in a joint planning meeting for the purpose of revising the contested DFC.