

**SUBJECT:**           Appealing the desired future conditions of groundwater resources

**COMMITTEE:**       Natural Resources — committee substitute recommended

**VOTE:**             11 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, T. King,  
Larson, Lucio, Nevárez, Workman

                          0 nays

**WITNESSES:**       For — Ed McCarthy, Electro Purification; Alan Cockerell, Schertz/Seguin  
Local Government Corporation; Stephen Minick, Texas Association of  
Business; (*Registered, but did not testify*: Julie Williams, Chevron; Albert  
Cortez, Coastal Water Regional Supply Company; Stan Casey, COG  
Operating LLC; Scott Gilmore, Hays Caldwell Public Utility Agency;  
David Holt, Permian Basin Petroleum Association; Wendy Foster,  
SJWTX and Texas Water Alliance; Mike Nasi, South Texas Electric  
Cooperative, Water-Energy Nexus for Texas Coalition; Bill Stevens,  
Texas Alliance of Energy Producers; CJ Tredway, Texas Oil and Gas  
Association; Buster Brown)

                          Against — Dirk Aaron, Clearwater Underground Water Conservation  
District; Janet Guthrie, Hemphill Underground Water Conservation  
District; Paul Weatherby, Middle Pecos Groundwater Conservation  
District; Ty Embrey, Panola County Groundwater Conservation District,  
Middle Trinity Groundwater Conservation District; (*Registered, but did  
not testify*: Lowell Raun, Coastal Bend Groundwater Conservation  
Districts, Texas Rice Producers Legislative Group; Dee Vaughan, Corn  
Producers Association of Texas; Drew Miller, Hemphill County  
Underground Water Conservation District; Harvey Everheart, Mesa  
Underground Water Conservation District; Tom Forbes, North Plains  
Groundwater Conservation District; Robert Howard, South Texans’  
Property Rights Association; Jason Skaggs, Texas and Southwestern  
Cattle Raisers Association; Billy Howe, Texas Farm Bureau; Joey Park,  
Texas Wildlife Association; Teresa Beckmeyer )

                          On — Russell Johnson, End Op L.P.; Michele Gangnes, League of

Independent Voters of Texas; C.E. Williams, Panhandle Groundwater Conservation District; Stacey Steinbach, Texas Alliance of Groundwater Districts; Patricia Hayes, Texas Association of Groundwater Owners and Producers; Doug Shaw, Upper Trinity Groundwater Conservation District; (*Registered, but did not testify*: Joe Reynolds, Robert Mace, and Les Trobman, Texas Water Development Board)

**BACKGROUND:** Groundwater conservation districts in groundwater management areas meet every five years to establish the desired future conditions of the aquifers they regulate. Desired future conditions are a description of what the aquifer level should be in 50 years.

Under Texas Water Code, sec. 36.1083 a person with a legally defined interest may file a petition with the Texas Water Development Board (TWDB) appealing the approval of the desired future conditions of the groundwater resources. TWDB is required to review the petition, hold at least one hearing, and follow other procedures outlined in statute, which could lead to the issuance of revised conditions.

**DIGEST:** CSHB 200 would remove TWDB's petition process for desired future conditions and instead allow an affected person to file a petition with a groundwater conservation district requiring that the district contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing appealing the reasonableness of a desired future condition. The bill would place the final decision on adopting the desired future condition with the district and would provide a process for district court appeal and for a suit against a district after all administrative appeals to the district were final.

**Administrative appeal of desired future conditions.** The bill would remove TWDB's reasonableness petition process for desired future conditions and instead allow an affected person to petition a district to contract with SOAH to hear the challenge.

An affected person would have to file a hearing petition with the groundwater conservation district within 120 days of the district's adoption of the desired future condition.

Within 10 days of receiving the petition, the district would have to submit a copy to TWDB so it could conduct an administrative review of the desired future condition and a scientific and technical analysis. TWDB would have 120 days to deliver the scientific and technical analysis to SOAH. Within 60 days of receiving a petition, a district would be required to contract with SOAH to conduct the contested case hearing and submit any related petitions.

*Dispute resolution.* The district could seek the assistance of the Center for Public Policy Dispute Resolution, TWDB, or other dispute resolution systems to mediate the issued raised in the petition. If the issue could not be resolved, SOAH would proceed with the hearing.

*Hearing location and notice.* A hearing would have to be held in accordance with SOAH rules at the district office or regular meeting location of the district board. The district would have to provide general notice of the hearing as well as individual notice of the hearing to the petitioner, any other party to the hearing, each nonparty district and regional planning group within the same management area, TWDB, and the Texas Commission on Environmental Quality.

*Prehearing conference.* SOAH would have to hold a prehearing conference to determine preliminary matters, including:

- whether the petition should be dismissed for failure to state a claim on which relief could be granted;
- whether a person seeking to participate was an affected person; and
- naming parties to the hearing.

*Hearing costs.* The petitioner would be required to pay the costs associated with the contract for the hearing. The petitioner would have to deposit with the district an amount sufficient to pay the contract. After the hearing, SOAH could assess costs to other parties of the hearing and refund any excess to the petitioner.

*Final order.* On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district would have to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law.

The district could change a finding of fact or conclusion of law made by the administrative law judge or could vacate or modify an order issued by the administrative law judge if the district determined that the administrative law judge did not properly apply or interpret applicable law, if a prior administrative decision on which the administrative law judge relied was incorrect or should be changed, or if a technical error in a finding of fact should be changed.

If the district vacated or modified the administrative law judge's proposal for decision, the district would have to report, in detail, the reasons for disagreement, including the policy, scientific, and technical justifications for the district's decision.

*Finding of unreasonable desired future condition.* If the district found that a desired future condition was unreasonable, the other districts in the management area would have to reconvene within 30 days in a joint planning meeting to revise the desired future condition. A district's final order finding that a desired future condition was unreasonable would not invalidate the desired future condition for a district that did not participate as a party in the hearing.

**Court appeal of desired future conditions to a district court.** A final district order could be appealed under the substantial evidence standard of review. The venue for appeal would be a district court with jurisdiction over any part of the territory of the district that issued the order.

*Finding of unreasonable desired future condition.* If the court found that a desired future condition was unreasonable, the court would be required to strike the desired future condition and order the districts in the same management area that did not participate as a party to the hearing to

reconvene in a joint planning meeting within 30 days of the court's decision to revise the desired future condition.

**Suit against a district.** After all administrative appeals to the district were final, an affected party who was dissatisfied with the desired future condition would be entitled to file suit against the district or its directors to challenge the reasonableness of the desired future condition. The suit would have to be filed in a court of competent jurisdiction in any county in which the district was located.

The bill would take effect September 1, 2015, and would apply only to a desired future condition adopted on or after that date.

**SUPPORTERS  
SAY:**

CSHB 200 would protect private property rights and maintain local control by creating a meaningful appeals process to allow a property owner to challenge the establishment of a desired future condition of an aquifer that could result in unreasonable restrictions on the owner's right to produce groundwater.

The current process for questioning the reasonableness of a desired future condition at the Texas Water Development Board (TWDB) does not provide a meaningful final resolution because it lacks the necessary administrative processes to ensure a clear, fair resolution. For this reason, the State Office of Administrative Hearings (SOAH) would be a better venue for these hearings.

Setting the desired future conditions is the first step in groundwater management. Therefore, it is important that landowners and other groundwater users are able to dispute the desired future condition. The bill would offer due process and a system of checks and balances and would place the proper emphasis on the role of science while allowing groundwater conservation districts to achieve their primary purpose of properly managing the groundwater resources.

While the bill would remove TWDB's petition process for desired future conditions, it would maintain the important role of TWDB through an

administrative review of the desired future condition as well as a scientific and technical analysis. TWDB's administrative and technical review would provide a record for an entity to challenge the adoption of the desired future condition in district court.

Concerns that the bill would result in lawsuits being decided by people without knowledge of the water issues involved are unfounded because SOAH's specialized teams and administrative law judges have the expertise to handle these kinds of contested case hearings.

**OPPONENTS  
SAY:**

Replacing the process for challenging the reasonableness of a desired future condition at TWDB with an appeals process involving a contested case hearing at SOAH could lead to more lawsuits that would be decided by people without knowledge of the water issues involved. TWDB is better informed and better able to make decisions regarding desired future conditions than SOAH.