

Understanding Texas Groundwater Conservation Districts

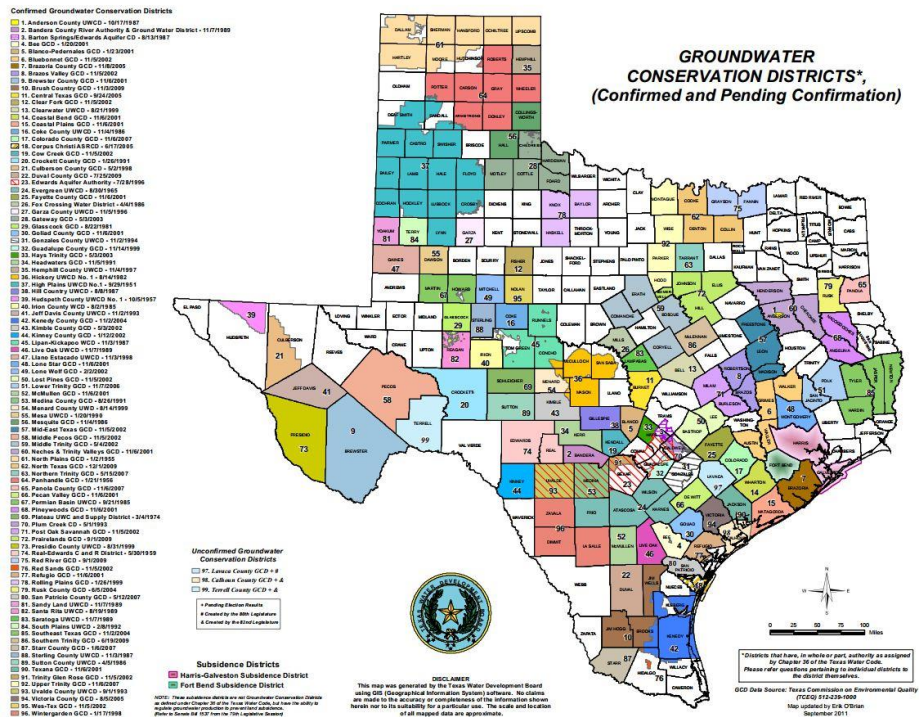
The Texas Legislature has tasked local Groundwater Conservation Districts (“GCDs”) with the duty of managing Texas’ groundwater. The majority of Texas the land is subject to GCD regulation, making it critical that landowners understand the authority of the applicable GCD.

What is a GCD?

GCDs are regulatory bodies charged with conserving groundwater. These entities are governed by Texas Water Code Chapter 36. The purposes of GCDs are “to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater and of groundwater reservoirs or their subdivisions and are to control subsidence.” See Texas Water Code Section 36.0015.

How many GCDs are there?

As of August 2013, there are 99 GCDs in Texas, and there are 4 additional GCDs pending confirmation. GCDs cover all or portions of 173 counties and regulate 85% of the groundwater in Texas. Groundwater districts are generally based upon county lines, rather than based upon the aquifers over which they lie. Each groundwater district is part of a Groundwater Management Area along with all other districts overlying an aquifer, and each of the 16 GMAs in Texas work together to develop water plans.



How are GCDs created?

A GCD may be created in one of three ways. The first, and most common, is by legislative action. The Texas Legislature may pass a bill that identifies the area included in the GCD, sets forth the powers granted to the district, and explains procedures for appointing board members of the new district. The second way a GCD may be created is by petition from landowners. Landowners may file a petition with the Texas Commission on Environmental Quality (TCEQ) requesting the creation of a GCD. The TCEQ must then find that the boundaries of the proposed district provide for effective management and that the proposed district can be adequately funded. The third option is that the TCEQ may initiate the creation of a GCD, but the local voters still elect the director and determine whether the GCD will be funded by taxes. For each of these three methods, a local election is held for voters to determine whether to approve a GCD and whether to approve a tax to fund the GCD. The majority of voters in each county sought to be included in the GCD must approve the creation of a district.

Why do GCDs Exist?

In 1917, the Conservation Amendment to the Texas constitution was passed. That amendment requires the state to engage in the preservation and conservation of all resources, including water, and authorizes the Texas Legislature to pass laws that may be necessary and appropriate to conserve water.

The Texas Legislature determined the best way to conserve groundwater in Texas was to create and utilize Groundwater Conservation Districts throughout the state. In 1949, the use of GCDs was recognized, and the first GCD was created in 1951. Since that time, the state has made clear that GCDs are the preferred method of groundwater regulation in Texas. *See* Texas Water Code Section 36.0015. GCDs vest groundwater management in local decision makers, which has the benefit of allowing decisions to be made that are in the best interest of the different climates and areas of Texas. This local approach, however, makes it difficult to have a uniform system of groundwater management in place across the state.

How are GCDs governed?

GCDs are governed by a board of directors who are appointed or elected. *See* Texas Water Code Section 36.051. The Boards hold at least quarterly meetings, which are open to the public and for which notice must be given. *See* Texas Water Code Section 36.064. The Board may also employ a General Manager to operate the affairs of the district subject to orders given by the board. *See* Texas Water Code Section 36.051.

Can the public obtain information from GCDs?

The Texas Water Development board website contains information about each Groundwater Conservation District, including contact information, legislation, and current rules.

GCDs are public bodies, and, as such, they are subject to the Texas Open Meetings Act and the Public Information Act. These laws allow persons to obtain information from GCDs in the same manner as obtaining information from any other state agency.

What can GCDs do?

GCDs are granted broad power by the Texas Legislature to accomplish their purposes. GCDs develop both plans and rules and have eminent domain power.

Plans

All GCDs develop a groundwater management plan that outlines the GCD's goals to provide the most efficient use of groundwater, controlling and preventing groundwater waste, controlling and preventing subsidence, addressing conjunctive surface water management issues, addressing natural resource issues, drought conditions, conservation, recharge, and desired future aquifer conditions. *See* Texas Admin. Code Section 356.52. These plans are submitted by each GCD to the Texas Water Development Board for approval. *See* Texas Water Code Section 36.1072. These management plans are updated at least every 5 years.

Additionally, GCDs must also participate in joint planning groups (GMAs), which are comprised of all GCDs in a particular geographic area. These joint planning groups develop a "desired future condition" plan for each aquifer in its area and submit that plan to the Texas Water Development Board. Once approved by the Texas Water Development Board, districts must adopt rules consistent with the management plan and may issue permits only up to the point where the desired future condition may be met for the area. *See* Texas Water Code Section 36.1071; 36.108.

Rules

GCDs are given the power to enact a variety of rules, which will be discussed in detail below. In adopting such rules, a GCD must consider several factors including all groundwater needs and uses in the district to ensure fair and impartial rules, the private right of groundwater ownership, the public interest in conservation, and the goals of the GCD's management plan. *See* Texas Water Code Section 36.101.

By law, a GCD generally **must** require a permit for the drilling, equipping, operating, or completing of wells, or for substantially altering the size of existing wells or pumps. *See* Texas Water Code 36.113. GCDs each develop their own rules related to when permits are necessary, what information must be included in a permit, and whether a permit will be subject to a hearing. When a permit is filed, a GCD must determine whether the permit should be granted and makes that decision based on whether the proposed usage unreasonably affects existing groundwater and surface water resources or existing permit holders, whether the water will be put to beneficial use, whether the applicant has agreed to avoid waste and practice conservation, and

whether a proposed use is consistent with the district's management plan. *See Texas Water Code Section 36.113.*

Certain types of wells are statutorily exempt from the permitting process, and GCDs may not require that a permit be obtained. These include wells for domestic use, providing water to livestock or poultry located on a tract larger than 10 acres and if such well is incapable of producing more than 25,000 gallons a day; a well drilled solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well, and water used in the permitted production of mining pursuant to the Natural Resources Code. *See Texas Water Code 36.117.* Although no permit is required for such wells, it is required that wells be registered, and drilling rules are applicable.

GCDs **may** require that records and reports be kept of the drilling of wells and the production and use of groundwater, *see Texas Water Code Section 36.111*, **must** require that drillers' logs be kept of water wells and that the logs are filed with the GCD, *see Texas Water Code Section 36.112*, and **may** regulate spacing of wells and production of groundwater, *see Texas Water Code Section 36.116.*

Finally, GCDs are given the power to pass emergency rules without notice of hearing if the board finds that there is substantial likelihood of immediate peril to the public health, safety, or welfare, or a state or federal law requires adoption of a rule on less than 20 days notice, and the board prepares a written statement of these circumstances. Any such emergency rule is effective for no longer than 90 days, unless notice of hearing on the final rule is given within that 90 day period, in which case, the rule is effective for an additional 90 days. *See Texas Water Code Section 36.1011.*

Eminent Domain

A GCD has eminent domain power to acquire property within district bounds if necessary for conservation purposes. This power does not, however, allow the GCD to condemn land for the purpose of obtaining water rights or in order to produce, sell, or distribute water. *See Texas Water Code Section 36.105.*

How can GCDs control groundwater pumping when groundwater is the private property of a landowner?

Although Texas does recognize that a landowner owns the groundwater below the surface of his land, this ownership does not entitle the landowner the right to capture any certain amount of groundwater from below the surface of his or her land. *See Texas Water Code Section 36.002.* Thus, GCDs are allowed to impose reasonable limitations upon the production of groundwater and may do so by setting spacing and tract size requirements, regulating production, and allocating a given share of water in an aquifer to a landowner on a proportionate basis. *See Texas Water Code Section 36.002.* A recent decision from the San Antonio Court of Appeal in *Bragg*

v. Edwards Aquifer Authority, makes clear that if a GCD's regulations go too far, however, a landowner may recover just compensation for the taking of his private property.