Texas Ground Water Association
Affiliate of the National Ground Water Association

FOUNTAINHEAD

2nd Quarter 2007

Water issues achieve high-profile during 80th Session

Surface water dominates the headlines, but groundwater issues remain important

JACE A. HOUSTON
General Counsel
Harris-Galveston Subsidence District

Single-digit bill numbers are almost always reserved for legislation that is a top priority of the speaker of the house and lieutenant governor. Appropriations bills are usually designated SB 1 or HB 1. Other issues often receiving "Top 10" status are taxes, education, crime and health care.

This session, three bills in the top 10 for both houses were related to water - SB 3, HB 3, and HB 4. Clearly water was a priority for the leadership this session… but it was surface water that flooded the halls of the capitol while groundwater issues percolated beneath the surface.

Both SB 3 and HB 3 included broadly supported language establishing a procedure for determining and ensuring minimal flows of surface water needed to support aquatic wildlife and habitats in Texas rivers, bays, and estuaries. SB 3 and HB 4 included nearly identical language designed to promote water conservation. SB 3 also addressed the highly controversial issue of designating unique reservoir sites. The debate and fallout over this single issue nearly resulted in the demise of all three bills, but Rep. Robert Puente, chairman of the House Natural Resources Committee, successfully shepherded the bills through the House despite two points of order and one motion that failed by a single vote in the final few hours of the session.

Dean Robbins, deputy executive secretary of TGWA, Sen. Mike O'Day (R - Pearland), and Leroy Goodson, executive secretary of TGWA, discuss groundwater during a short break at the capitol. The 80th Legislature shaped up to be the biggest session for water in 10 years.

So how did groundwater issues fair in the 80th Legislature?

While environmental flows and reservoir designations dominated debate, groundwater issues remain a vital component of Texas water planning, as evidenced by SB 3's encouragement of public participation in Groundwater Management Areas without groundwater conservation districts. The lack of major legislation addressing groundwater issues is not a sign that groundwater's importance has declined or that there aren't still critical groundwater issues that need to be addressed. For example, groundwater marketing and export projects are still ongoing in many areas of Texas, and the laws governing how groundwater conservation districts can regulate will probably be a topic of debate forever… and there's always the rule of capture.

There are two basic reasons that groundwater issues were less visible this session.

Please see 80th Session, page 3

From the top of the rig

Perspectives of Division Presidents

Jerry Browning
Contractors & Drillers

Joe Dobry
Manufacturers & Suppliers

John Waugh
Ground Water Science

More voices

Instead of hearing only from the C&D president, you now have the opportunity to hear from the groundwater science and manufacturer/supplier folks, too. This new three-column format gives each division president a platform to share news and views. We welcome your thoughts and concerns—let us know what you're thinking!

The 80th regular session of the legislature ended just a few weeks ago and we're still digesting the new laws that came out. In fact, it appears that very little legislation passed that directly affects our industry – and that may be good. Several bills involving licensing requirements could have increased our members' administrative burden, but they died before the session ended. Bills that may have reduced our business opportunities either died or were significantly modified by session end.

We will continue to monitor the Groundwater Management Area process of estimating available groundwater. See pages 6 - 7 and 9 for the latest on GMA efforts to develop "Desired Future Conditions."

We'll keep you posted on GMA developments, especially in light of the Dec. 1 deadline for groundwater estimates to be submitted if they are to be included in regional water plans.

Support and education is Job #1

I'm sure the members in the Manufacturers & Suppliers Division will agree with me when I say our role in the association is dedicated to understanding your challenges and making a bottom-line impact on your business. We believe the annual convention this year was another good opportunity to hear about the latest needs and challenges of members in the other divisions, and the excellent turnout was gratifying.

Over the coming two years, I believe our members will face growing challenges in continuing education. State law governing groundwater is evolving, and we must keep ourselves current with the newest developments that affect our business.

This spring our division members did just that. We attended distributor open houses, which provide an avenue for learning more about the needs of our customers as well as the overall industry. We are always ready and willing to lend a hand to support the variety of CEU courses offered by TGWA throughout the year. Information on products, best practices and new technologies help everyone improve the quality of services they provide. So you can count on the M&S Division members to continue to support continuing education initiatives.

Manufacturers & Suppliers will continue to leverage our expertise, product knowledge and experience to help you extract more value from your assets and reduce your costs. Still, we must also work together to find more effective ways to get up to speed on the latest legislative and regulatory requirements so that we can stay one step ahead of the coming changes.

Continuing education is key

The Groundwater Science Division serves the entire membership of the TGWA, primarily by organizing and running the continuing education program at the annual meeting. Our board is made up of dedicated geologists and engineers who strive to do our part to assist you all in providing sufficient quantities of clean, safe water to the citizens of Texas.

To help improve our industry, we are constantly looking for new areas of interest in the groundwater business, and the need for education for the membership. For example, we are currently discussing possibly coordinating educational courses with the National Groundwater Association, both for our drillers and pump installers, as well as our groundwater scientists and engineers, who also need CEU's to maintain their state certification. In addition, we provide articles on important topics affecting groundwater and the well drilling industry for this newsletter.

I have been active in the association for a number of years, serving first as a GWS board member, then as Secretary/Treasurer and Vice-president, prior to being elected to serve as President for 2007. I am employed as a Senior Hydrogeologist with the San Antonio Water System, and have been working as a professional geologist for the past 30 years. I have met many of you at the annual meetings over the past several years, as well as at the NGWA national meetings. I hope to continue meet more of you in the coming year.

80th session, continued from page 1

State lawmakers hotly debated water bills in the final days of the 80th Legislature, which ended on May 28. Frank and open exchanges went on for hours in a session called the biggest for water in 10 years.

First, the surface water issues mentioned above were long overdue for legislative action, and because of their complex and sometimes controversial nature, legislative leaders made what I believe was a wise decision to focus exclusively on tackling those issues without muddying the waters by inserting major groundwater issues into the debate.

Second, groundwater issues have received extensive and unprecedented attention in the previous five legislative sessions beginning with SB 1 in 1997. With the possible exception of the 76th Legislative Session in 1999, each session since 1997 has resulted in major changes to how groundwater is managed in Texas. It was simply time to shift the focus onto important surface water issues while previous changes in groundwater law were given time to be implemented.

As mentioned above, groundwater will always be an important issue.

Below is a brief summary of groundwater-related bills that passed during the 80th Legislative Session.

SB 3 (Averitt/Puente) - States that it is the policy of the state of Texas to encourage public participation in the groundwater management process by areas not represented by a groundwater conservation district. Increases the authority of groundwater districts located within the Hill County Priority Groundwater Management Area to restrict the pumping of groundwater into lakes or "vanity ponds." Creates the Tablerock Groundwater Conservation District in Coryell County, including a provision stating that the district will be dissolved by the TCEQ if the district's boundaries have not been expanded to include at least one adjacent county by September 1, 2011. Amends the enabling act of the Edwards Aquifer Authority by raising the permit cap and making changes to

Please see 80th session, page 4

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80th session, continued from page 3

Rep. Robert Puente (D – San Antonio), chair of the Natural Resources Committee, successfully defended SB3 during heated debate in the House. He also sponsored key water bills HB3 and HB4.

the Authority's critical period plan and means of protecting endangered species. Expands the boundaries of the Culberson County Groundwater Conservation District to include all of Culberson County.

SB 714 (Fraser/Puente) - Clarifies the authority of groundwater conservation districts to require groundwater withdrawal reports from all well owners even if the well is exempt from permitting, except for wells used only for domestic and livestock purposes and exempt under Section 36.117(b)(1).

SB 1383 (Seliger/Smithee) - Clarifies the existing citizen suit provisions in Chapter 36, Water Code, which authorize an adjacent landowner, or a person who has a right to produce groundwater within one-half mile, to bring a civil suit against a well owner who drills or operates a well without a required permit or otherwise violates a local groundwater district's rules. Requires the filing of a complaint with the local district prior to filing suit.

SB 1983 (Estes/Phil King) - Creates the Upper Trinity Groundwater Conservation District in Hood, Montague, Parker, and Wise counties.

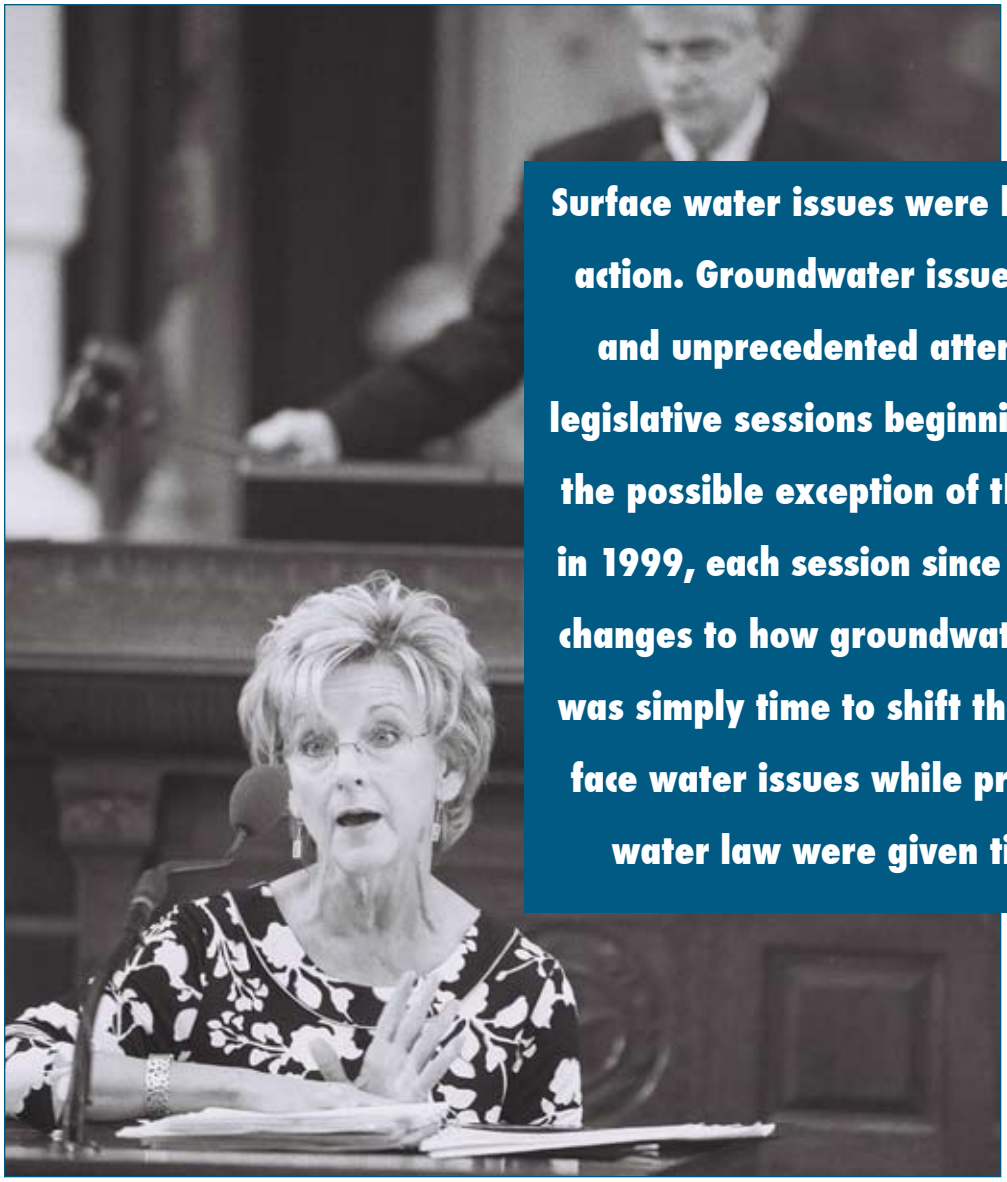
SB 1985 (Averitt/Dunnam) - Creates the McLennan County Groundwater Conservation District, including a provision stating that the district will be dissolved by the TCEQ if the district's boundaries have not been expanded to include at least one adjacent county by September 1, 2011.

HB 1314 (Bailey/Jackson) - Allows Harris County (only) to prohibit the

SB 1383 allows civil suits to be brought against a well owner who drills or operates a well without a required permit. The law requires the filing of a complaint with the local district prior to filing suit.

Please see 80th session, page 5

80th session, continued from page 4



Surface water issues were long overdue for legislative action. Groundwater issues have received extensive and unprecedented attention in the previous five legislative sessions beginning with SB 1 in 1997. With the possible exception of the 76th Legislative Session in 1999, each session since 1997 has resulted in major changes to how groundwater is managed in Texas. It was simply time to shift the focus onto important surface water issues while previous changes in groundwater law were given time to be implemented.

Rep. Geanie Morrison (R - Victoria) supported compromise language for SB3 during divisive debate on the omnibus water bill. House Speaker Tom Craddick backed the bill.

installation of a water well or septic system in certain areas if the area (1) has access to service from a water or sewer utility system and (2) is defined as economically distressed or listed on a state or federal listing related to groundwater contamination.

HB 1498 (Hopson/Eltife) - Creates the Panola County Groundwater Conservation District.

HB 2654 (Puente/Duncan) - Authorizes the TCEQ to issue a general permit for the use of a Class I injection well to inject non-hazardous brine from a desalination operation or to inject non-hazardous drinking water residuals.

HB 3837 (Gonzalez Toureilles/Hegar) - Makes numerous changes to the Texas Uranium, Surface Mining, and Reclamation Act, particularly related to exploration wells associated with in situ mining activities. Monitor wells and rig supply wells used in conjunction with exploration are subject to certain requirements of groundwater conservation districts when the cumulative amount of water produced at one facility in any one year exceeds 40 acre-feet.

HB 4028 (Geren/Brimer) - Creates the Northern Trinity Groundwater Conservation District in Tarrant County. No confirmation election is required.

HB 4029 (Morrison/Hegar) - Creates the Lavaca County Groundwater Conservation District.

HB 4032 (Robby Cook/Hegar) - Creates the Colorado County Groundwater Conservation District.

Balancing the Groundwater

by RIMA PETROSSIAN
CINDY RIDGEWAY
ANDY DONNELLY
Texas Water Development Board

In 2005, the Texas Legislature changed the accounting procedures for groundwater management. The objective of this change was to establish a "desired future condition" of aquifers in the state. The new law states that districts have until September 1, 2010, to determine a desired future condition. The desired future condition will serve as the basis for determining how much groundwater is available for planning purposes and permitting, referred to as managed available groundwater. However, if districts want the managed available groundwater estimates to be part of the next regional and state water plans, their desired future condition must be submitted earlier—much earlier. Districts really have only until the end of this year to determine their desired future condition in order to have the resulting managed available groundwater estimates included in the next regional and state water plans. If districts wait until the legislatively mandated deadline, managed available groundwater estimates will not be part of the regional water plans until 2016 and will not be part of the state water plan until 2017.

A Desired Future Condition results from an emerging management process.

So what is a desired future condition? TWDB has assembled some suggestions on what it is and how to put it in words. Decision makers can consider water levels, amount of water in storage, discharge to springs, or base flow to streams and rivers, to name a few options. Each aquifer may have a separate desired future condition for specific parts of the aquifer; however, simpler conditions are easier to quantify. To use a checkbook analogy, the desired future condition of your checkbook may be that you maintain a certain minimum balance (water level), some money in savings (storage), or have enough funds to cover your annual service fee (spring discharge or base flow to streams and rivers).

If a statement is not a condition of the aquifer, for example recharge, then it cannot be a desired future condition. Recharge and pumpage are the means of achieving a desired future condition of an aquifer, but they are not a desire future condition. In the checkbook analogy, recharge is equivalent to deposits made to your account. If the desired future condition of the bank account is to maintain a certain balance, this could be accomplished by either writing fewer checks or making more deposits.

A desired future condition also needs to include a time component. For example, a desired future condition might stipulate that water levels never drop below a certain amount or that, on average, water levels are maintained at a certain level for 50 years. Since managed-available-groundwater estimates will be used by both the regional water planning groups and the districts, it is advisable to consider a 50-year planning horizon.

GMAs should communicate with TWDB regularly about their approach to developing Desired Future Conditions.

Some districts want to use "sustainability" as a desired future condition. This requires developing and using groundwater in a manner than can be maintained for an indefinite time without causing unacceptable environmental, economic or social consequences. Therefore, a key part of using sustainability as a desired future condition is to identify clearly the unacceptable consequences.

Another consideration in defining the desired future condition of an aquifer is that they have to be physically possible, both individually and collectively. Some GMA members may be under the impression that if the groundwater management area is subdivided into smaller and smaller units (either counties, groundwater conservation districts, or even smaller) this will make the process simpler and more accurate. However, the opposite is true.

Subdividing increases the likelihood that the desired future conditions in adjacent areas are not

Desired Future Condition statements may look like this:

- "Using current water levels as a baseline, we do not want the average water level to decline more than 50 feet over the next 50 years in aquifer X."
- "We do not want the amount of groundwater from aquifer X discharging to rivers and streams to decline more than 25 percent over the next 50 years."
- "We want the amount of groundwater in storage in aquifer X to decline no more than 1.25 percent per year for the next 50 years starting with 1998."

Checking Account

Defining a desired future condition is not a one-time event.

HB 1763 requires districts to revisit their desired future condition at least every five years. This means that as our tools, such as groundwater availability models, improve and our understanding of the aquifers expands, districts have the opportunity to refine and change their statements.

Estimates of managed available groundwater will be determined in most cases, but not all, by groundwater availability models. If a groundwater availability model exists, analyzing how the aquifer would respond if historical pumpage continues into the future is a good starting point. TWDB has already run the models using water level measurements that were taken in the late 1990s, so one option is to see what would happen if we continue to pump groundwater like we did in the late 1990s. The advantage to this approach is that districts may get a better understanding of how existing pumpage in other districts affects aquifer conditions in their own districts, or how pumpage within their districts affects other areas. Communicating with TWDB is highly recommended to help expedite the process, especially for complex or geographically subdivided scenarios.

GMAs should know the amount of Managed Available Groundwater that will result from their management approach before they officially adopt their Desired Future Conditions.

Some GMAs plan to have a consultant prepare their desired future condition statement and managed available groundwater estimates. This is acceptable; however, TWDB will have to verify the approach and calculations for the managed available groundwater amounts. All relevant information must be submitted, including details of all aspects of the model run(s) and calculations used to develop the managed available groundwater. This includes the data used, the assumptions made, detailed documentation of recharge and pumpage files, all files used in the models runs, and anything else that may be relevant to how the model runs were done.

TWDB also encourages the consultant to coordinate their work with TWDB. The model runs that will be done for this process may be very complicated, and the consultant must use the same process and assumptions that TWDB will use.

If not, it is likely that the managed available groundwater the consultant develops will be different from that of TWDB and will not be acceptable because they do not meet TWDB standards.

TWDB's process of reviewing the desired future condition of an aquifer and making model runs is projected to be fairly complicated and time consuming. TWDB has stated that if managed available groundwater values are to be included in the next regional and state water plans, then a physically possible desired future condition statement has to be submitted by December 1, 2007.

If the condition submitted at that time is not physically possible, it will be rejected and sent back to the GMA for re-evaluation and re-submittal. In that case, there is no guarantee that TWDB will be able to evaluate the desired future condition in time to include the managed available groundwater estimates in the next regional and state water plans. The sooner the desired future condition statements are submitted to TWDB, the better the likelihood of reaching a managed available groundwater estimate in a timely manner.

See a Status Report on GMAs on page 9.

THE AUTHORS: All with the Texas Water Development Board (TWDB)

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Penalties & Sanctions

1/31/07 to 5/18/07

A listing of the enforcement actions handed down recently by the Texas Department of Licensing and Regulation for violations of water well industry regulations.

5/18/07

• **A $2,000 administrative penalty** against a TEXARKANA man, plus eight hours of continuing education, for drilling a well without a state license, failing to submit the required reports to the Department within 60 days and faillling to include annular cement on one water well drilled.

5/16/07

• **A $3,500 administrative penalty** against a AMARILLO man for drilling three water wells without a license.

5/16/07

• **A $14,000 administrative penalty** to a KEMP man for failing to submit a state report to the land owner within 60 days after drilling, faillling to provide proper surface completion and making false, misleading or deceptive representations.

3/23/07

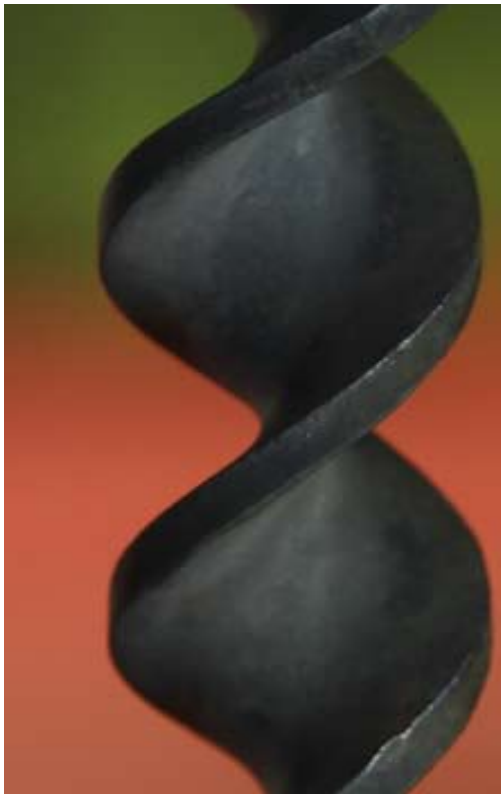
• **$1,500 administrative penalty** against a GONZALES man who drilled one water well and failed to provide an accurate report to the TDLR, the Texas Natural Resource Conservation Commission, and the person for whom the well was drilled. He also failed to select the proper slot size for the manufactured screen, failed to properly cement the annular space of the well and drilled less than 50 feet from the property line.

1/31/07

• **$1,000 administrative penalty** on a FLOYDADA area man who capped a water well with an improper cap that could be easily removed by hand and had a hole that allowed surface pollutants to enter the well.

1/31/07

• **$5,000 administrative penalty** on an AMARILLO man who failed to select the proper slot size for the manufactured screen and drill less than 50 feet from the property line.



Upcoming Topics and Courses:

- **July 12, 2007 Cook's Point, Texas**
  3:00 p.m. – 8:00 p.m., 4 hours
- **July 14, 2007 Plainview, Texas**
  8:00 a.m. – 12:00 noon. 4 hours
- **July 28, 2007 Conroe, Texas 8:00 a.m. – 12:00 noon, 4 hours**
- **August 2, 2007 Ozona, Texas**
  9:00 a.m. – 2:00 p.m., 4 hours
- **August 18, 2007 San Antonio, Texas**
  8:00 a.m. – 12:00 noon, 4 hours
- **October 13, 2007 Houston, Texas**
  8:00 a.m. – 12:00 noon, 4 hours
- **October 27, 2007 Weatherford, Texas**
  8:00 a.m. – 12:00 noon, 4 hours

NOTE:
All C.E. courses will offer the required annual
1 hr. of TDLR's
Water Well Driller/Pump Installer Statutes and Rules Course, WDPI #001 (J)

The complete educational program lineup, along with detailed descriptions, will be posted in mid-June. For more information, visit www.ngwa.org.

GMAs at various stages in developing "Desired Future Conditions"

By RIMA PETROSSIAN, *Texas Water Development Board*

By GREG ELLIS, *Executive Director, Texas Alliance of Groundwater Districts*

By LAURA WILLIAMSON, *Laura Raun Public Relations*

The state's 16 Groundwater Management Areas are at various stages in developing their "desired future conditions" for groundwater availability, with at least four aiming to meet the initial deadline of Dec. 1, 2007.

GMAs wanting their data – and resulting managed available groundwater estimates - included in the 2011 regional water plans must submit it to the Texas Water Development Board by Dec. 1. If they wait until the statutory deadline of Sept. 1, 2010, the data will be included in the 2016 regional water plans.

As seen in the table below, GMAs range from having submitted baseline data to TWDB to not having met at all.

Public Participation

SB3, the omnibus water bill passed in the recent legislative session, encourages public participation in GMAs where no groundwater conservation district exists (sometimes referred to as unprotected areas).

Most GMAs are finding that the unprotected areas have very little interest in participating in the DFC process. Typically, notices about GMA meetings are sent to the county judges in counties without a groundwater conservation district. Public input is being directly sought in GMAs 8 and 9 through meetings designed to elicit stakeholder comment on a desired future condition.

TWDB encourages all regional water planning groups to attend the GMA meetings and stay involved in the DFC process. Most GMAs plan to meet in the next few months, now that the legislative session has ended.

GMA Status Report*

GMA	Status	GMA	Status
1	Investigating different desired future conditions based on what individual districts require. Hemphill UWCD is using 1% per year decline in saturated thickness; North Plains GCD is using a 2% decline, with Panhandle GCD and High Plains UWCD No. 1 using the 1.25% annual decline. Their goal is to meet the earlier TWDB deadline of Dec. 1, 2007, to allow for use of the managed available groundwater in the next regional water plan. The date for the next meeting is Aug. 27, 2007.	9	Has received help from University of Texas at Austin students for a class project. The GMA has held public meetings and plans to submit desired future conditions by the Dec. 1, 2007, deadline.
2	Working to meet the statutory deadline of September 1, 2010. They will schedule their next meeting after resolution of the legislative session.	10	Was on hold waiting for possible legislative changes affecting the Edwards Aquifer Authority.
3	Contains only one GCD, Middle Pecos; coordinating efforts with GMA 7.	11	Waiting on GAM runs and working toward Sept. 1, 2010, deadline. The next meeting was scheduled for June 25, 2007, as the newsletter went to print.
4	Has submitted a request for GAM runs and for aquifer analyses for the Rustler, Capitan, and Marathon aquifers. This group is waiting for these results before scheduling the next joint planning meeting.	12	Member GCDs have consultants working on the background scenario for a model run. They are planning to meet the Dec. 1 deadline.
5	No report available.	13	Working with TWDB's GAM staff to create a desired future condition model run.
6	No meeting currently planned that TWDB has been notified about.	14	Has not submitted a request for a model run.
7	Submitted model runs to TWDB and waiting for results.	15	Holding joint meetings with GMA 16 pending a boundary change between the two GMAs.
8	Proceeding with plans to submit desired future conditions by December 2007. They are working with a consultant and have a timeline for meeting this deadline. They have four new districts in the area that will now have a vote on their desired future condition. The date for the next meeting is August 9, 2007.	16	Holding joint meetings with GMA 15 pending a boundary change between the two GMAs. Currently working with TWDB's GAM staff to create a baseline model run to start working on the desired future condition.

* Courtesy of the Texas Water Development Board

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❑ Individual registered driller or technician (Must be an employee of a company member)	$30
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