

APPEAL OF A DESIRED FUTURE CONDITION

under HB 200

§36.1083, Texas Water Code

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- Under §36.108(d-4) all GCDs within the GMA must adopt the DFCS adopted by the GMA asap after the GCD receives the GMA's DFC resolution and explanatory report under §36.108(d-3) that applies to that GCD.

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- Within 120 days of a GCD adopting the applicable GMA DFC resolution and explanatory report, an affected person may file a petition with a GCD within the GMA that approved the DFC.
- The petition must provide evidence that the GCD did not establish a reasonable DFC

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- The act of filing a petition with a GCD appealing the reasonableness of a DFC automatically triggers the GCD to contract with SOAH to conduct the hearing.

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- Within 60 days of receiving the petition, the petitioned GCD must contract with SOAH to conduct the contested case hearing and submit to SOAH a copy of the petition.

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- Within 10 days of receiving the petition, the GCD is required to submit a copy of the petition to the TWDB.
- The TWDB must then complete a study to be delivered to SOAH.
- The TWDB study shall be based on an administrative review determination of whether the desired future condition meets the Section 36.108(d), Texas Water Code, criteria.
- The TWDB study must contain scientific and technical analysis of the desired future condition, including consideration of: aquifer hydrology; the Section 108(d-3), Texas Water Code, explanatory report and factors; and any relevant groundwater availability models, published studies, estimates of total recoverable storage capacity, average annual amounts of recharge, inflows, and discharge of groundwater, or information provided in the petition and available to the TWDB.

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- During the period between the filing of the petition and TWDB delivering its study to SOAH, the GCD may seek mediation assistance for the issues raised in the petition from the Center for Public Policy Dispute Resolution, the TWDB, or other alternative dispute resolution.



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- Before SOAH conducts the contested case hearing, it must follow notice, payment, and prehearing requirements.
- The notice must be consistent with the GCD and SOAH rules, including a general hearing notice, and individual notice to the petitioner, persons requesting notice, nonparty GCDs and regional water planning groups in the same management area, TWDB and the TCEQ.



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- The ALJ may consolidate hearings that affect two or more GCDs.
- At the prehearing conference, SOAH must determine preliminary matters, including whether the petition should be dismissed for failure to state a claim for which relief can be granted or whether a person seeking to participate in the hearing is an affected person who is eligible to participate.



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- The contested case hearing shall be held at the GCD's office or regular meeting location of the GCD's board, unless the GCD's board provide for meetings to be held in other locations.

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- Initially, the petitioner is required to pay the costs associated with the SOAH contract and to deposit a sufficient amount with the district so that the district may pay the contract amount prior to hearing.
- However, after the conclusion of the hearing, SOAH may assess costs to one or more participatory parties and the district shall refund any excess money to the petitioner.
- SOAH's decision to apportion the contract costs must take into consideration who requesting the hearing, who prevailed, who is financially able to pay, how much a party participated, and any other relevant factors for a just and reasonable assessment of costs.

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- The contested case hearing shall be held in accordance with the Texas Administrative Procedures and Practice Act and SOAH rules: DISCOVERY

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- In conducting the hearing, SOAH is required to consider the TWDB study in response to the petition and the desired future condition explanatory report submitted to TWDB under Section 36.108(d-3).
- The TWDB must make its relevant staff available to SOAH as expert witnesses, if requested by SOAH or a party to the hearing.

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- The ALJ must prepare separate findings of fact and conclusions of law for each GCD that is party to the same contested case hearing.

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- When the GCD receives SOAH's ALJ's findings of fact and conclusions of law in a proposal for decision, including a dismissal of the petition, the GCD is required to issued a final order stating the district's decision on the contested case matter the GCD's findings of fact and conclusions of law.

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- In accordance with the Administrative Procedures and Practice Act, the GCD may change a finding of fact or conclusion of law issued by the ALJ, or may vacate or modify an ALJ's order.
- If the GCD modifies or vacates the proposal for decision, the GCD must issue a report detailing its reasons for disagreement, which shall provide policy, scientific, and technical justifications for the GCD's decision.

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- If the petitioned GCD, in its final order, finds that the DFC is unreasonable, the GCDs in the same GMA shall meet in a joint planning meeting to revise the petitioned GCD's DFCs.

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- The revision meeting shall be conducted within 60 days of the GCD's final order and follow the DFC adoption procedure of Section 36.108.
- Only the unreasonable DFC for the petitioned GCD must be amended.

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- The petitioned GCD's final order deeming the condition unreasonable does not affect the DFCs for the other GCDs in the GMA that did not participate in the contested case hearing.

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- Within 45 days of the petitioned GCD issuing a final order, the order may be appealed to a district court with jurisdiction over any part of that district's territory.

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- The standard of review for the district court appeal is substantial evidence review.

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- If the district court rules that the appealed DFC is unreasonable, the court shall strike the DFC and order the management area districts to reconvene within 60 days of the court order, to have a joint planning meeting and amend the struck desired future condition under Section 36.108, Water Code.
- The court's findings do not apply to other DFCs that were not before the court.