PART XIII. CAPITAL AREA GROUNDWATER CONSERVATION DISTRICT

§3071. Legislative finding; purpose

A. The orderly utilization of groundwater resources is hereby found and declared to be a matter of public interest.

B. It is the purpose of this part to provide for the efficient administration, conservation, orderly development and supplementation of groundwater resources by the establishment of a groundwater conservation district composed of the parishes of Ascension, East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, and West Feliciana.

Added by Acts 1974, No. 678, §1; Acts 2019, No. 200, §1.

§3072. District and board; creation

A. There is hereby created the Capital Area Groundwater Conservation District, hereinafter called "district," which shall be a body politic and corporate and a political subdivision of the state of Louisiana and shall be composed of the parishes of Ascension, East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, and West Feliciana.

B. There is hereby created a board of commissioners for the Capital Area Groundwater Conservation District who shall administer the affairs of the district. The membership of the board shall be as provided by R.S. 38:3074.

Added by Acts 1974, No. 678, §1. Amended by Acts 1976, No. 231, §1; Acts 2019, No. 200, §1.

§3073. Definitions

Unless the context otherwise requires, the following terms shall have the following meanings for purposes of this Part:

(1) "Beneficial purpose" or "beneficial use" means the use of groundwater for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes or any other advantageous use.

(2) "Board" means the board of commissioners of the district formed in accordance with this part.

(3) "Commissioner" means a commissioner of the district who has been appointed or elected in accordance with this part.

(4) "Department of Public Works" means the Department of Public Works of the city of Baton Rouge and parish of East Baton Rouge.

(5) "District" means the groundwater conservation district formed in accordance with this part.

(6) "Governing body" means the police jury, commission, council, or other governing body of the parish.

(7) "Groundwater" is water suitable for any beneficial purpose percolating below the earth's surface.

(8) "Just and equitable share" of the groundwater underlying a tract within an area subject to an order limiting pumping rates means that portion of the recoverable groundwater within an aquifer which is to be apportioned to such tract on the basis of demonstrable geologic and hydrologic data taking into consideration the volume of groundwater in storage, the maximum perennial recharge potential, and any groundwater use priorities established by the board.

(9) "Mississippi River alluvial aquifer" occurs beneath the flood plain of the Mississippi River and includes the sand and gravel units of the Mississippi River alluvial valley deposits.

(10) "Person" means any individual, partnership, corporation, association, governmental board, commission, district, political subdivision, or public or private organization of any character, including any agency, corporation, and quasi-public corporation of the federal, state, municipal, or local government.

(11) "Premises" as used herein, means a tract or tracts of land, whether or not contiguous, operated by a single person and used principally for bona fide agricultural or horticultural purposes or the production of aquatic life for human consumption.

(12) "User" means any person who produces groundwater in the district for any beneficial use, in excess of fifty thousand gallons for any day during any calendar year from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.

(13) "Well" or "water well" shall mean any well drilled or constructed for the principal purpose of producing groundwater.

Added by Acts 1974, No. 678, §1. Amended by Acts 1976, No. 231, §1; Acts 1980, No. 738, §1; Acts 2014, No. 795, §1.

§3074. Board of commissioners; appointments; tenure; replacement; compensation

A. Members of the board of commissioners shall be appointed by the governor. Each appointment by the governor shall be submitted to the Senate for confirmation. The members shall be appointed as follows:

(1) One member shall be appointed from each parish composing the district with the representative of each parish to be nominated by the governing authority of such parish.

(2) Three members shall be appointed from nominations by the industrial users in the district.

(3) Three members shall be appointed from nominations by privately or publicly owned entities that furnish water for rural or municipal use within the district. One of the three members shall be from nominations by privately owned users furnishing a municipal water supply.

(4) One member shall be a person nominated by the mayor-president of East Baton Rouge Parish who shall be a registered professional engineer employed on the staff of the Department of Environmental Services, the Department of Transportation and Drainage, or the Department of Development, within the Department of Public Works.

(5) One member shall be the commissioner of conservation, or his designee, who shall be a member of his staff and be a professional geologist licensed by the Louisiana Board of Professional Geoscientists or be a registered professional engineer with experience in groundwater resource management or a person with experience in groundwater resource management.

(6) One member shall be appointed from nominations by the Louisiana Farm Bureau Federation and the Louisiana Cattlemen's Association.

(7) One member shall be the secretary of the Department of Environmental Quality, or his designee, who shall be a member of his staff and be a professional geologist licensed by the Louisiana Board of Professional Geoscientists or be a registered professional engineer with experience in groundwater resource management or a person with experience in groundwater resource management.

(8) One member shall be appointed from a nomination by the mayor-president of East Baton Rouge Parish who shall be a professional geologist licensed by the Louisiana Board of Professional Geoscientists or a registered professional engineer with experience in groundwater resource management or a person with experience in groundwater resource management.

(9) One member shall be appointed by the governor from nominations submitted by the majority vote of the members of the board. The member shall be a professional geologist licensed by the Louisiana Board of Professional Geoscientists or a technical professional with experience in groundwater resource management who is licensed by the Louisiana Professional Engineering Board or a person with experience in groundwater resource management. For the purposes of this Paragraph "board" shall mean the members appointed pursuant to Paragraphs (1) through (8) of this Subsection.

B. Each member shall serve a term of three years, except that the members representing governmental entities shall serve a term contemporaneous with their office.

C. No commissioner shall be entitled to serve more than two consecutive regular terms, with the exception of members representing governmental entities. Terms shall commence for those initially appointed on the date of implementation of the district. Terms for commissioners subsequently elected shall commence on the anniversary date of the date of implementation.

D. Vacancies shall be filled by appointment by the governor in the manner provided by Subsection A of this Section.

E. Commissioners shall not be compensated for their services, except that the board may, by regulation, provide for the payment of expenses for travel outside the district on official business.

Added by Acts 1974, No. 678, §1. Amended by Acts 1976, No. 231, §1; Acts 1980, No. 738, §1; Acts 2003, No. 774, §10; Acts 2012, No. 601, §1, eff. June 7, 2012; Acts 2012, No. 753, §5; Acts 2014, No. 795, §§1, 2; Acts 2018, No. 625, §1, eff. May 30, 2018; Acts 2019, No. 200, §1.

§3075. Meetings; election of officers

A. Immediately upon passage of this part, the nominations or appointments as appropriate shall commence. Within thirty days of the date of their appointment, the board of commissioners of the district shall meet, and it shall meet at its domicile no less

than quarterly thereafter. At its organizational meeting the board shall: elect a chairman, vice-chairman, and treasurer; establish its domicile within the district; take nominations for the member to be nominated by the board; and it shall begin immediately formulation and consideration of a plan for the conservation of groundwater and where appropriate, prevention or alleviation of damaging or potentially damaging land surface subsidence and groundwater quality degradation. At its second meeting, the board shall nominate, from among the nominees presented at the first meeting, the member to be nominated by the board and shall immediately submit his name to the governor.

Added by Acts 1974, No. 678, §1.

§3076. Powers of the board

A. The board shall work with the commissioner of conservation in his responsibilities to do all things necessary to prevent waste of groundwater resources, and to prevent or alleviate damaging or potentially damaging subsidence of the land surface caused by withdrawal of groundwater within the district. In conjunction with the commissioner of conservation, the board shall have authority to do, as required, the following:

(1) To hold hearings.

(2) To require permits for the drilling or construction of all wells drilled after July 31, 1974, having a capacity in excess of fifty thousand gallons per day.

(3) To require registration with the board of all wells showing the date drilled, the name of the driller, if available, and the current ownership together with such other information as the board may reasonably require to permit it to accomplish the purposes of this legislation. No charge shall be assessed for such registration.

(4) To require that all users of groundwater within the district register with the board showing the number, location, and capacity of wells owned or operated by them or solely for their benefit and designating the beneficial use or uses of that groundwater. The board shall classify each user as an industrial user or as a commercial, rural or municipal user of groundwater upon the basis of such information. The board shall have authority in its discretion to require periodical renewals of registrations to determine alterations in uses of water within the district. Such registrations may be required on an annual basis or such greater periods of time as the board may deem appropriate.

(5) To establish standards for the construction of wells that would come under the jurisdiction of this part drilled after July 31, 1974.

(6) To specify spacing of wells drilled after the effective date of this part in limited areas upon a showing that the water quality, quantity of withdrawal or subsidence in such area threatens the public interest.

(7) To require well owners who are users, well owners providing water to other users, and users of groundwater who are not well owners to keep and furnish, on request, information necessary to carry out the provisions of this part pertinent to wells, drawdowns, grouting, casing sizes, property descriptions and other pertinent information reasonably required by the board, provided that as to wells in existence on the effective date of this part such information is available.

(8) To collect data; to make investigations and inspections; to examine properties, papers, books, and records relevant to groundwater use or conservation; to examine, survey, check test, and gauge all water wells within the district; to require well owners who are users or well owners providing water to other users, at their own expense, to meter wells to permit accurate determination of rates of use. Metering may be required on a continuous or periodic basis, and the board may require approval by it of metering devices; to provide for the keeping of records and making of reports by owners of water wells providing water to users, and users of groundwater within the district.

(9) To require that authorized representative of the board be enabled to enter property at reasonable times and under reasonable conditions to inspect wells, perform tests and examine records.

(10) To establish standards for the control of existing and future flowing wells and the sealing of abandoned wells.

(11) To require that all abandoned wells be reported and sealed in accordance with such standards.

(12) To establish groundwater use priorities, under conditions supported by research data, which indicate depletion of water subject to this Part.

(13) To acquire by all legal means property or property rights necessary to achieve the purposes of this part and to enter into all contracts necessary to the achievement of such purposes.

(14) To assess against all users within the district a charge based upon the annual rate of use of each user sufficient to meet costs and expenses of operation. Such charges must be uniform as to all users, being assessed on the basis of units of water used, whether a cubic, acre-foot, or other unit be used, and without distinctions or graduations as to total amounts of water produced by individual users or classes of users, except that no charge shall be made against the quantity of water pumped from the Mississippi River alluvial aquifer. Further, such charges shall be assessed and income therefrom used only to defray the costs and expenses of operation of the district assessing them.

(15) To cooperate with and enter into contracts or cooperative agreements with other governmental units and agencies of this state, with governments and agencies of other states and of the United States, and with private agencies or other groundwater conservation districts for the achievement of the purposes of this part.

(16) To receive grants and enter into contracts for groundwater resource development.

(17) To conduct studies and investigations of all problems concerning groundwater resources of the district.

(18) To take all necessary steps to prevent intrusion of salt water or any other form of pollutant into any aquifer or aquifers, including the powers to operate withdrawal wells for the extraction of salt water or water affected by any pollutant and to dispose of such water by injection or otherwise; to operate injection wells to create freshwater barriers against salt water intrusion or the intrusion of any other pollutant; and to control pumping rates by users in any area threatened by intrusion of salt water or other form of pollutant.

(19) Within affected areas, to limit rates of production of water from any aquifer or aquifers, after detailed research, considering both recharge and withdrawal data, when the quality or quantity of the supply of water afforded by such aquifer or aquifers is in danger for any reason or where the danger of damaging subsidence exists.

(20) To use and permit the use of any of its property or facilities for recreational purposes and to operate thereon such concessions as may be appropriate to such recreational use or uses as long as such activities do not increase the net operating expenses to the district.

(21) To sue and be sued as a body corporate.

(22) To expand the district to include adjacent parishes, upon approval by the board, and with the consent of the governing body of the parish involved, said parish to have the same representation on the board, and subject to the same conditions, as provided for the original parishes included in this part.

(23) To hire such personnel and retain such consultants as shall be reasonably necessary to the performance of its functions. Personnel from other agencies shall be used wherever practical and possible.

(24) To advise and consult with the commissioner of conservation and the Water Resources Commission on matters that impact water resources within the board's jurisdiction.

B. No order limiting rates of production as authorized in Subsection A of this section shall have the effect of in any way denying to any owner of the land or any other person holding rights to water derivative from any landowner a reasonable opportunity to produce and beneficially use his just and equitable share of the groundwater supply affected by an order limiting rates of production.

C. Anything herein to the contrary notwithstanding, the board formed hereunder shall have no authority to regulate water produced from formations producing oil or gas or both for commercial purposes or to issue any rule, regulation, or order conflicting with regulation of drilling to and production from or disposition of water from such formations by the commissioner of conservation. Nor shall the board formed hereunder have authority to regulate the production of salt water used for pressure maintenance, secondary recovery operations, or other operations for the production of oil or gas.

D. Anything herein to the contrary notwithstanding, the board shall have no regulatory power over and no authority to assess pumping charges for a well or wells with a total depth of less than four hundred feet or wells in the Mississippi River alluvial aquifer; or wells from which the production is used exclusively for bona fide agricultural or horticultural purposes or for domestic use of persons resident upon the same premises and capable of producing not more than fifty thousand gallons per day in the aggregate.

E. The board shall have authority to make, after notice and hearing and to enforce reasonable rules, regulations, or orders necessary from time to time to achieve the purposes and powers as outlined in this Part, and such rules, regulations and orders shall be effective and enforceable immediately upon promulgation in the official journal of each parish affected.

Added by Acts 1974, No. 678, §1. Amended by Acts 1976, No. 231, §1; Acts 1980, No. 738, §1; Acts 2003, No. 49, §2, eff. July 1, 2003; Acts 2012, No. 471, §2.

§3077. Suits and failure to bring suit

A. Whenever it appears that a person is violating or is threatening to violate any provision of this part or a rule, regulation, or order made hereunder, the board shall bring suit to restrain that person from continuing the violation or from carrying out the threat.

B. Venue shall be in the district court in the parish in which the board is domiciled.

C. In any such suit, the board may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions as the facts warrant.

D. If the board fails to bring suit within ten days to restrain a violation of this part or any rule, regulation, or order issued hereunder, any person in interest adversely affected by the violation who has notified the board in writing of the violation or threat thereof and has requested the board to sue, may bring suit to prevent any or further violations, in the district court of the parish in which the board is domiciled. If the court holds that injunctive relief should be granted, the board shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the board has at all times been the complaining party.

Added by Acts 1974, No. 678, §1.

§3078. Limiting rate of production; notice

Any order limiting rates of production of groundwater, except emergency orders issued as hereinafter provided, shall be issued only after sixty days notice and a public hearing. The board shall give notice by registered mail to all users of groundwater reasonably known to it within the district within which pumping is to be limited. In addition, the board may give notice to such other individual landowners and well owners as it deems appropriate. However, the board shall also give notice by publication as hereinafter provided of the hearing on the prospective order.

Added by Acts 1974, No. 678, §1.

§3079. Pumping charges

A. The pumping charge assessed against each user of groundwater within the district shall be fixed annually upon at least thirty days notice to each user within the district known to the board and general notice by publication; however, the charges assessed against users of groundwater shall not be increased without a public hearing held for the purpose of fixing the pumping charges and opportunity for the submission of all pertinent data concerning total rates of consumption of groundwater within the district, estimated rates of consumption by users within the district, the costs and expenses which must be met during the coming year, costs and expenses which must be met by the pumping charge, and the manner in which the computation of the pumping charge is made. Any user within the district shall have the right to make a presentation by testimony and adduction of evidence and exhibits, and any other interested person shall have the right to be heard by making a personal statement of reasonable length. Any user intending to make a presentation at the hearing resulting in the assessment of pumping charges shall so advise the board at least five days in advance of

the hearing and shall indicate the estimated time to be consumed by his presentation. When necessary, in its discretion, the board may limit the time allotted users for their presentations. Further, no pumping charge shall be made against the quantity of water pumped from wells screened in the Mississippi River alluvial aquifer, wells with a total depth of less than four hundred feet, wells used exclusively for bona fide agricultural or horticultural purposes, or wells not capable of producing fifty thousand gallons or more per day.

B. Pumping charges may be made payable by users monthly or on any other reasonable basis set by the board.

Added by Acts 1974, No. 678, §1. Amended by Acts 1976, No. 231, §1.

§3080. Administrative procedure

A. Except as it may be inconsistent with the express provisions of this part, the board formed hereunder shall be governed by the Administrative Procedure Law.

B. At hearings conducted by the board, it shall be proper for members of the board or members of its staff to testify and present exhibits or other evidence.

C. Notice of hearings by the board must be given by publication in the official journal, or by publication in a journal of general circulation in the parish or parishes to be affected. Notice of hearings by the board must be given by publication in a journal of general circulation in the parishes included in the district. The board may designate one of its members to conduct public hearings in its behalf.

D. The chairman of the board may subpoena witnesses and require their attendance and the giving of testimony before the board. He may require the production of any books, papers, or records material to the questions lawfully before him. Subpoenas shall be served by any agent of the board, by the sheriff, or by any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying or producing books, papers, or records, or from obeying the subpoena of the board or of a court of record on the ground that the testimony or evidence required by him may tend to incriminate him or subject him to penalty or forfeiture. Nothing in this section shall be construed as requiring any person to produce books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the board or a court for determination. No natural person shall be subject to criminal prosecution or to any penalty or forfeiture on account of anything concerning which he may be required to testify or produce as evidence before the board or a court. However, no person testifying shall be exempt from prosecution and punishment for perjury.

E. In the case of failure or refusal of a person to comply with a subpoena issued by the chairman of the board, or in the case of the refusal of a witness to testify or answer as to a matter regarding which he may be lawfully interrogated, any district court on the application of the board may, in term time or in vacation, issue an attachment for the person to compel him to comply with the subpoena and to attend before the board with

the desired documents and to give testimony upon whatever matters are lawfully required. The court may punish for contempt those disobeying its orders as in the case of disobedience of a subpoena issued by the court or refusal to testify therein.

F. The board shall make a record of all hearings which shall be available for public inspection at the office of the board during reasonable office hours. In the event of a suit contesting any rule, regulation, or order of the board, as hereinafter provided, the board shall cause a transcript of the record to be made at its cost. In the event the party contesting any rule, regulation, or order in any such suit is ordered to pay costs, he shall be required also to reimburse the board for the cost of making the transcript of the hearing in question.

Added by Acts 1974, No. 678, §1.

§3081. Court review and injunctive relief

A. Any aggrieved person of the district may, within thirty days after the adoption of any rule, regulation, order or taking of other action by the board, file suit in the district court in which the board is domiciled, to contest the said rule, regulation, order or other action taken. The court may affirm the decision of the board or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the board;

(3) Made upon lawful procedure;

(4) Affected by other error of law;

(5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(6) Manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In the application of the rule, where the board has the opportunity to judge of the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the board's determination of credibility issues.

On institution of any such suit, the court shall issue an order setting the matter for trial, as by summary process, and such suit shall be tried in term time, or in vacation, with the greatest possible dispatch. Pending a hearing, the court may grant a temporary restraining order suspending the action of the board upon a showing of immediate and irreparable injury in accordance with the provisions of Louisiana Code of Civil Procedure Article 3603.

Added by Acts 1974, No. 678, §1.

§3082. Falsification of documents to evade regulations; penalty

A. No person shall for the purpose of evading this part, or any rule, regulation, or order made thereunder:

(1) Make or cause to be made any false entry or statement of fact in any report required to be made by this part or by any rule, regulation, or order made hereunder; or

(2) Make or cause to be made any false entry or omit an entry in an account, record, or memorandum kept by any person in connection with the provisions of this part or of any rule, regulation, or order made thereunder; or

(3) Remove out of the jurisdiction of the state, or destroy or mutilate, alter, or by any other means falsify any book, record or other paper, pertaining to the matters regulated by this part or by any rule, regulation, or order made thereunder.

B. Whoever violates this section shall be fined not more than five thousand dollars, or imprisoned not more than six months, or both.

Added by Acts 1974, No. 678, §1.

§3083. Violations; penalty; jurisdiction; attorney general to conduct suit; complicity

A. Whoever knowingly and willfully violates a provision of this part or a rule, regulation, or order of the board made hereunder, shall be subject to a civil penalty of not more than one thousand dollars a day for each day of violation and for each act of violation, if a penalty for the violation is not otherwise provided in this part.

(1) The place of suit to recover this penalty shall be selected by the board, as may be appropriate, in the district court of the parish of the residence of any one of the defendants, or in the district court of the parish where the violation took place.

(2) Suit shall be at the direction of the board, and shall be instituted and conducted in its name by the attorney general or by the district attorney of the district under the direction of the attorney general.

Added by Acts 1974, No. 678, §1.

§3084. Aiding and abetting violation

Whoever knowingly and willfully aids or abets a person in the violation of a provision of this part, or any rule, regulation, or order made hereunder, shall be subject to the same penalties provided herein for the principal violator.

Added by Acts 1974, No. 678, §1.