

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: November 14, 2012

DATE OF REQUEST: October 26, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2011-1228-RUL. Consideration of the adoption of amendments to Sections 288.1 - 288.5 of 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements.

The adoption would implement Senate Bill (SB) 181 and SB 660, 82nd Legislature, 2011, Regular Session, to require entities that submit water conservation plans to the TCEQ and the Texas Water Development Board (TWDB) to implement sector-based reporting measures for water use. The adopted rulemaking would also require the TCEQ and the TWDB, in consultation with the Water Conservation Advisory Council, to develop a uniform methodology and guidance for calculating water use and conservation. The proposed rules were published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5216). (Scott Swanson, Ron Olson) (Rule Project No. 2011-058-288-OW)

Kim Wilson for L'Oreal Stepney

Deputy Director

Kellye Rila

Division Director

Bruce McAnally

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 26, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2011-1228-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 288, Water Conservation Plans, Drought Contingency Plans,
Guidelines and Requirements
SB 181 and SB 660: Water Conservation and Usage
Rule Project No. 2011-058-288-OW

Background and reason(s) for the rulemaking:

The 82nd Legislature passed Senate Bill (SB) 181, relating to the calculation and reporting of water usage by municipalities and water utilities for state water planning and other purposes. The legislature also passed SB 660 related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the reporting of municipal water use data.

SB 181 amended Texas Water Code (TWC), Chapter 16, related to provisions generally applicable to water development. SB 660 amended TWC, Chapter 16, and TWC, Chapter 11, related to water rights.

This rulemaking will implement the amendments made by SB 181 and SB 660, §21.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

SB 181 added TWC, §16.403, and SB 660 amended TWC, §16.402 and added §16.403, to require that the TWDB and the TCEQ, in consultation with the Water Conservation Advisory Council (WCAC), develop a uniform, consistent methodology and guidance for calculating and reporting water use and conservation. For a municipality or water utility, the bill requires a method of calculating total water use, a method of calculating total water use in gallons per capita per day, a method of classifying water users within sectors, a method of calculating water use in the non-population dependent sectors, and guidelines on the use of service populations. The methodology and guidance applies to all entities required to submit water conservation plans to the TWDB or the TCEQ. Additionally, the bill requires that the TWDB, the TCEQ, and the WCAC develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

SB 181 added TWC, §16.404, and SB 660, §21, amended TWC, §16.402 and §11.1271, to require entities to report the most detailed level of water use possible, but specifies that entities cannot be required to report at a higher level than their current billing systems

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allow. The bill specifies that the rules may require that new billing systems purchased be capable of reporting water use according to the prescribed methodology.

SB 660 amended TWC, §11.1271 and §16.402, to require the TCEQ or the TCEQ and TWDB to jointly adopt rules by January 1, 2013, requiring the methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in water conservation plans or reports.

SB 181 requires development of the methodology by January 1, 2013. The rulemaking must be completed by January 1, 2013.

B.) Scope required by federal regulations or state statutes:

The rulemaking is required as a result of SB 181 and SB 660, §21.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommended that some dates that have passed be removed from the chapter.

Statutory authority:

TWC, §§5.102, 5.103, 5.105, 11.1271, 16.402, 16.403, and 16.404.

Effect on the:

A.) Regulated community:

Entities that are required to prepare and submit Water Conservation Plans to TCEQ and TWDB will have to comply with the required standardized methodology for reporting water use. There will be no fiscal impact.

B.) Public:

The public will not be affected by this rulemaking.

C.) Agency programs:

Agency Water Conservation staff will need training to learn the new methodology and will have to administer the methodology to entities that are required to develop and submit Water Conservation Plans.

Stakeholder meetings:

The WCAC of Texas has a workgroup specifically dedicated to SB 181 implementation. This workgroup has conducted several meetings in 2011 and 2012 to discuss implementation of the bill.

There agency held a public hearing for this rulemaking on August 7, 2012, in Austin, Texas.

Public comment:

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The commission received five comment letters from: the City of Dallas, Dallas Water Utilities; City of Fort Worth Water Department; Tarrant Regional Water District; Texas Water Foundation; and, one individual. Generally, the comments were either specific questions related to implementation of the rule or comments related to definitions that are outside the scope of the rulemaking. Several commenters also commented on the water use methodology that SB 181 required the commission, the TWDB, and the WCAC to develop. This rulemaking is to implement SB 181 and 660. The WCAC accepted comments on the methodology through September 14, 2012.

The Texas Water Foundation commented on the definition of "Residential gallons per capita per day" which is included within the scope of this rulemaking. The commission made a change based on this comment to clarify the definition of "residential gallons per capita per day."

Significant changes from proposal:

The commission did not make any substantive changes from proposal to adoption.

Potential controversial concerns and legislative interest:

The rulemaking implements statutory changes to agency processes and controversial concerns are not anticipated.

Does this rulemaking affect any current policies or require development of new policies?

No. This rulemaking implements the statutory changes made by SB 181 and SB 660 and does not require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rulemaking does not go forward, the commission's rules will be inconsistent with statute. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: July 13, 2012

Anticipated Texas Register publication date: November 30, 2012

Anticipated effective date: December 6, 2012

Six-month Texas Register filing deadline: January 13, 2013

Agency contacts:

Scott Swanson, Rule Project Manager, 239-0703, Water Availability Division

Ron Olson, Staff Attorney, 239-0608

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

SB 181

Commissioners
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Re: Docket No. 2011-1228-RUL

SB 660

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Scott Swanson
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§288.1 - 288.5.

Section 288.1 is adopted *with change* to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5216). Sections 288.2 - 288.5 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2011, the 82nd Legislature passed Senate Bill (SB) 181, relating to the calculation and reporting of water usage by municipalities and water utilities for state water planning and other purposes. The 82nd Legislature also passed SB 660, related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the reporting of municipal water use data.

SB 181 amended Texas Water Code (TWC), Chapter 16, related to provisions generally applicable to water development. SB 660 amended TWC, Chapter 16, and TWC, Chapter 11, related to water rights.

SB 181 added TWC, §16.403, and SB 660 amended TWC, §16.402 and added TWC, §16.403, to require that the TWDB and the TCEQ, in consultation with the Water

Conservation Advisory Council (WCAC), develop a uniform, consistent methodology and guidance for calculating and reporting water use and conservation. For a municipality or water utility, the bills require a method of calculating total water use, a method of calculating total water use in gallons per capita per day (GPCD), a method of classifying water users within sectors, a method of calculating water use in the non-population dependent sectors, and guidelines on the use of service populations. The methodology and guidance applies to all entities required to submit water conservation plans to the TWDB or the TCEQ. Additionally, the bills require that the TWDB, the TCEQ, and the WCAC develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

SB 181 added TWC, §16.404, and SB 660, §21, amended TWC, §16.402 and §11.1271, to require entities to report the most detailed level of water use possible, but specified that entities cannot be required to report at a higher level than their current billing systems allow. SB 181 specifies that the rules may require that new billing systems purchased be capable of reporting water use according to the prescribed methodology.

SB 660 amended TWC, §11.1271 and §16.402, to require the TCEQ, or the TCEQ and TWDB, to jointly adopt rules by January 1, 2013, requiring the methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in water conservation plans or reports.

This adopted rulemaking will implement the amendments made by SB 181 and §21 of SB 660.

Section by Section Discussion

The commission adopts the amendment to §288.1, Definitions, by adding definitions for commercial use, institutional use, residential use, residential GPCD, total use, total GPCD, and wholesale use, and to renumber the paragraphs to accommodate the addition of definitions. The adopted definitions for commercial use in §288.1(5), institutional use in §288.1(8), and wholesale use in §288.1(25) were derived from the identified definitions of these uses by the American Water Works Association. The adopted definitions for residential use in §288.1(16) and residential GPCD in §288.1(17) were derived from TWC, §16.403(b)(4), as added by SB 181, which requires a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in GPCD. In response to a comment, the commission modified the definition in §288.1(17) to clarify that the numerator in the calculation is residential gallons sold. The adopted definition for total use in §288.1(21) was derived from TWC, §16.403(b)(1), as added by SB 181, which requires a method of calculating total use by a municipality or water utility, including water billed and nonrevenue water used. The adopted definition for total GPCD in §288.1(22) was derived from TWC, §16.403(b)(2), as added by SB 181, which requires a method of calculating total water use by a municipality or water utility in GPCD.

The commission adopts the definitions for industrial use, irrigation use, and municipal use. The definition of industrial use in §288.1(7) was amended to remove commercial fish production (aquaculture) which was defined as an agricultural use by the 82nd Legislature in HB 2694, which amended TWC, §11.002(12)(G). The commission adopts the definition of irrigation use in §288.1(9) to change "through a municipal distribution system" to "from a public water supplier" to be consistent with the terminology used throughout the remainder of Chapter 288. The commission adopts the definition of municipal use in §288.1(12) to remove the various listed examples of municipal uses and instead list the sectors of water use required by SB 181 and SB 660, §21.

The commission deleted the definitions for municipal per capita water use in §288.1(10) and municipal use in GPCD in §288.1(12). These definitions are no longer needed because SB 181 and SB 660, §21 require municipal use to be reported in the adopted definitions for residential use in §288.1(16); residential GPCD in §288.1(17); total use in §288.1(21); and, total GPCD in §288.1(22). The commission renumbered the paragraphs to accommodate the deletion of the definitions.

The definitions that were added, amended, or deleted are necessary to implement SB 181 and SB 660, §21.

The commission adopts the amendment to §288.2, Water Conservation Plans for

Municipal Uses by Public Water Suppliers, to implement the requirements of SB 181 and SB 660, §21.

The commission adopts the amendment to §288.2(a)(1) by deleting the word "drinking" from "public drinking water suppliers" to ensure consistency of terms throughout Chapter 288.

The commission adopts the amendment to §288.2(a)(1)(A) by adding "in accordance with the Texas Water Use Methodology" to the requirements for utility profiles of water conservation plans. This uniform methodology, required by the bills, is currently being developed by the TWDB, TCEQ, and WCAC. This amendment also adds "(including total GPCD and residential GPCD)" with respect to the water use data provided in these utility profiles. SB 181 and SB 660, §21 require that municipalities or water utilities report GPCD values in both total GPCD and residential GPCD.

The commission adopts §288.2(a)(1)(B) to require the sector-based water use reporting as required by SB 181 and SB 660, §21. This new requirement also specifies that water suppliers do not need to purchase new software immediately, but will need to purchase the appropriate software when upgrading.

The commission deleted existing §288.2(a)(1)(B). The May 1, 2005 date was originally

added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003.

Because this deadline has passed, it is no longer needed in the current rule language.

The commission adopts the amendment to §288.2(a)(1)(C) to remove the date reference "beginning May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning. The commission specifies that the goals for municipal use be in total GPCD and residential GPCD. This change is adopted to ensure that the water use data in §288.2(a)(1)(A) and this subparagraph are consistent.

The commission adopts the amendment to §288.2(a)(1)(F) by removing the term "unaccounted-for uses of" and add "loss" to the word "water." The term "water loss" is the appropriate semantic for reporting.

The commission adopts the amendment to §288.2(a)(2)(A) by removing "in order to control unaccounted-for uses of water" because this is an inappropriate semantic for referring to water loss.

The commission deleted existing §288.2(a)(2)(B) which, previous to SB 181 and SB 660, was an additional content requirement for reporting by sectors and to re-letter the subparagraphs that follow. The sector-based reporting requirement was added in adopted §288.2(a)(1)(B).

The commission adopts the amendment to §288.2(c) to remove the date references "Beginning May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663 passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rule based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted §288.3(a)(2) and renumbered the paragraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for industrial water users to submit water conservation goals for water conservation plans are now located in adopted §288.3(a)(2).

The commission adopts the amendment to renumbered §288.3(a)(2) to remove the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission adopts the amendment to §288.3(b) to remove the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663 passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rules based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language, as well as "after that date", are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted current §288.4(a)(1)(B) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no

longer needed in the current rule language. The requirements for individual agricultural users to submit water conservation goals for water conservation plans are now located in re-lettered §288.4(a)(1)(B).

The commission adopts the amendment to re-lettered §288.4(a)(1)(B) to remove the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted current §288.4(a)(2)(D) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because these deadlines have passed, they are no longer needed in the current rule language. The requirements for individual irrigation users to submit water conservation goals for water conservation plans are now located in adopted §288.4(a)(2)(D).

The commission adopts the amendment to re-lettered §288.4(a)(2)(D) by removing the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because

these deadlines have passed, they are no longer needed in the current rule language.

The amendment does not alter the requirements for entities to submit revised water conservation plans for every five years to coincide with regional water planning.

The commission deleted current §288.4(a)(3)(B) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for systems providing agricultural water to more than one user to submit water conservation goals for water conservation plans are now located in adopted §288.4(a)(3)(B).

The commission adopts the amendment to re-lettered §288.4(a)(3)(B) by removing the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission adopts the amendment to §288.4(c) by removing the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the

78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rule based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted current §288.5(1)(B) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for wholesale water suppliers to submit water conservation goals for water conservation plans are now in adopted §288.5(1)(B).

The commission adopts the amendment to re-lettered §288.5(1)(B) by removing the date reference "beginning, May 1, 2005." This date was originally added to implement HB 2660 and HB 2663, as passed by the 78th Legislature in 2003. Because the deadline has passed it is no longer needed in the current rule language. This amendment does not alter the requirement for entities to submit revised water conservation plans every five years to coincide with regional water planning. The commission also removed the term "unaccounted for" and added "loss" to the word "water" because the term "water

loss" is the appropriate semantic for reporting.

The commission adopts the amendment to §288.5(3) to remove the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rules based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the

state or a sector of the state.

This adopted rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule amendments to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by SB 181 and SB 660, which require public water suppliers to utilize the uniform methodology and guidance for calculating water use and conservation developed under TWC, §16.403 to be used in the water conservation plans and reports that must be submitted to the TCEQ.

Further, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted amendments is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "major

environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet the four applicability requirements, because the adopted amendments: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the rules; and 4) are not an adoption of a rule solely under the general powers of the commission as the rules are required by SB 181 and SB 660.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission adopted this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The adopted rulemaking amends §§288.1 - 288.5. The commission's analysis revealed that amending these rule sections would achieve consistency with TWC, §§11.1271(f), 16.402, 16.403, and 16.404 as added or amended in 2011 by SB 181 and SB 660. The adopted rulemaking would create new definitions and amend or delete other definitions in §288.1. The adopted definitions define the different categories of water use that must be reported by public water suppliers in their water conservation plans; and are consistent with the terms used by the Legislature in SB 181 and SB 660. The adopted rulemaking would also require public water suppliers to utilize the uniform methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in the water conservation plans and reports that must be submitted to the TCEQ as required by the TWC.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and

reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by creating, amending, or deleting the definitions as adopted or requiring public water suppliers to utilize the uniform methodology and guidance in producing the water conservation plans, the commission has determined that promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the adopted rulemaking. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory

Committee and determined that the adopted rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission did not receive any comment regarding this part of the preamble.

Public Comment

The commission held a public hearing on August 7, 2012, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. No one requested to speak at the public hearing. The commission received written comments from the City of Dallas, Dallas Water Utilities (Dallas Water Utilities), City of Fort Worth Water Department (City of Fort Worth), Tarrant Regional Water District (TRWD), Texas Water Foundation (TWF) and one individual.

Dallas Water Utilities, City of Fort Worth, TRWD and TWF suggested changes to the rule as noted in the Response to Comments section of this preamble. One commenter expressed concerns about city growth and water quality issues.

Response to Comments

General

One individual commented that the City of Cypress continues to grow in an unsustainable way and noted that the bacteria in the waterways are a side effect of unsustainable growth. The commenter also suggested that action needs to be taken to reduce runoff from the homes, parking lots, and streets in order to reduce the amount of polluted runoff into our waterways as well as suggesting several additional ways to reduce runoff. The commenter stated that retention ponds currently function only as flood basins and mosquito breeding grounds and suggested requiring neighborhoods to convert these areas to more natural environments. The commenter also suggested that permeable alternatives to concrete for pathways be encouraged and promoted. The commenter also expressed concern with surface water quality and suggested that watershed awareness is necessary.

The commission acknowledges these comments; however, notes that these comments fall outside of the scope of this rulemaking. This rulemaking is to implement SB 181 and SB 660 which require sector based water use reporting for entities that are required to submit water conservation plans to the TCEQ or the TWDB. No changes were made in response to these comments.

The City of Fort Worth commented that the "Texas Water Use Methodology" is still being developed but that the proposed rule includes this methodology as a required method of reporting. The City of Fort Worth asked when utilities will have an opportunity to comment on the water use methodology.

This rule includes this methodology as a required method of reporting to ensure a consistent methodology for calculating water use. SB 181 added TWC, §16.403(b), that requires the TWDB and the commission, in consultation with the WCAC, to develop a uniform consistent methodology and guidance for calculating water use and conservation to be used by a municipality or a water utility in developing water conservation plans and preparing reports required under the TWC.

The TWDB, the commission and the WCAC developed the guidance document which is scheduled to be completed and available to the public in early 2013. The WCAC accepted comments on this document through September 14, 2012. No change was made in response to this comment.

The City of Fort Worth asked how sector based water use would be reported.

The guidance and methodology being developed by the commission, the

TWDB, and the WCAC will describe how to report water use by sector. The commission and the TWDB are also in the process of revising the utility profile forms for use by entities that are developing or revising water conservation plans. No changes were made in response to this comment.

The City of Forth Worth stated that it does not have a classification for "institutional" and asked if they would be required to reclassify their accounts, citing concerns about the intensity of labor required to complete this task.

This rulemaking does not require a water system to classify its users as "institutional" or to use an accounting system capable of reporting the sector based water use described in this rulemaking; however, any new software purchases must be capable of reporting detailed water use as described in this rule. This includes the category "institutional." Until a water system purchases new accounting software, a water system may continue to use its existing software. No changes were made in response to this comment.

TRWD commented that the definition of "Nursery Grower" defines a grower as an individual person and suggested a change to this definition. TRWD also commented direct and indirect reuse are important and viable means of extending water supplies

and requested that definitions for direct reuse and indirect reuse be added to Chapter 288 as well as requesting a definition be added for the term "water loss." Additionally, TRWD stated that it does not have the authority to change its rates to seasonal or inclining block rates and recommended this be addressed in the rule or the guidance document. TRWD also commented that references to flat rates or decreasing block rates may not be necessary or appropriate. TRWD also suggested adding some other technologies used in scheduling and measuring the amount of water applied for individual irrigation users such as evapotranspiration/weather based irrigation controllers.

The commission acknowledges these comments; however, notes that these comments fall outside of the scope of this rulemaking. This rulemaking is to implement SB 181 and SB 660 which require sector based water use reporting for entities that are required to submit water conservation plans to the TCEQ or the TWDB. No changes were made in response to these comments.

§288.1, Definitions

Dallas Water Utilities suggested that the definition for "Best management practices" in §288.1(3) be amended to add the words "duplicated and" before the word "implemented."

The purpose of this rulemaking is to implement SB 181 and SB 660 which require sector based water use reporting for entities that are required to submit water conservation plans to the TCEQ or the TWDB. Changing the definition of "Best management practices" is outside of the scope of implementing these bills through this rulemaking. No changes were made in response to this comment.

TRWD commented that the definition of irrigation makes it appear that golf courses and parks are classified as pastureland and suggested a different definition for irrigation.

The commission does not agree that the definition of irrigation in adopted §288.1(9) classifies golf courses and parks as pastureland. In this definition, golf course and parks are included solely as examples of lands that are irrigated. No changes were made in response to this comment.

The City of Fort Worth commented that the calculation for "municipal per capita water use" and the definition for "municipal use in gallons per capita per day" are missing the words "divided by number of days in the year."

The definitions of "municipal per capita water use" and "municipal use in

gallons per capita per day" are being deleted from §288.1. These definitions are no longer needed because SB 181 and SB 660, §21, require municipal use to be reported in the adopted definitions for residential use in §288.1(16); residential GPCD in §288.1(17); total use in §288.1(21); and, total GPCD in §288.1(22). No changes were made in response to these comments.

TWF requested that the commission modify the definition of "residential GPCD" to clarify that the numerator in the calculation is residential gallons sold. TWF commented that the definition, as it is written now, implies that the numerator is total gallons sold.

The commission agrees with the comment and has modified the definition of "Residential gallons per capita per day" in §288.1(17) to read, as suggested by the commenter: "The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year."

SUBCHAPTER A: WATER CONSERVATION PLANS

§§288.1 - 288.5

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; §5.105, which establishes the commission's authority to set policy by rule; §11.1271, which requires the commission to adopt rules regarding the methodology and guidance for calculating water use and conservation developed under §16.403 to be used in the water conservation plans; §16.402, which requires the commission to adopt rules regarding the methodology and guidance for calculating water use and conservation developed under §16.403; and §16.404, which requires the commission to adopt rules and standards as necessary to implement TWC, Subchapter K.

The adopted rules implement TWC, §§11.1271, 16.402, 16.403, and 16.404.

§288.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural or Agriculture--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Best management practices--Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) Commercial use--The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) [(5)] Drought contingency plan--A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) [(6)] Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, [commercial fish production,] and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) Institutional Use--The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) [(7)] Irrigation--The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier [through a municipal distribution system].

(10) [(8)] Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) [(9)] Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

[(10) Municipal per capita water use--The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.]

(12) [(11)] Municipal use--The use of potable water provided by a public water supplier [within or outside a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity] as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses [certain purposes, including the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools,

the use of potable water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens].

[(12) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals.]

(13) Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

(17) Residential gallons per capita per day--The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year. ~~The calculation is made by dividing the number of gallons of water sold by the residential population served divided by the number of days in the year.~~

(18) [(16)] Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(19) [(17)] Retail public water supplier--An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) [(18)] Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) Total use--The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.

(22) Total gallons per capita per day (GPCD)--The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) [(19)] Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(24) [(20)] Wholesale public water supplier--An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(25) Wholesale use--Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

§288.2. Water Conservation Plans for Municipal Uses by Public Water Suppliers.

(a) A water conservation plan for municipal water use by public water suppliers must provide information in response to the following. If the plan does not provide information for each requirement, the public water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for municipal uses by public [drinking] water suppliers must include the following elements:

(A) a utility profile in accordance with the Texas Water Use Methodology, including, but not limited to, information regarding population and customer data, water use data (including total gallons per capita per day (GPCD) and residential GPCD), water supply system data, and wastewater system data;

(B) a record management system which allows for the classification of water sales and uses into most detailed level of water use data currently available to it, including, if possible, the sectors listed in clauses (i) - (vi) of this subparagraph. Any new billing system purchased by a public water supplier must be capable of reporting detailed water use data as described in clauses (i) - (vi) of this subparagraph;

(i) residential;

(I) single family;

(II) multi-family;

(ii) commercial;

(iii) institutional;

(iv) industrial;

(v) agricultural; and,

(vi) wholesale.

[(B) until May 1, 2005, specification of conservation goals including, but not limited to, municipal per capita water use goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

(C) [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total GPCD and residential GPCD[, in gallons per capita per day]. The

goals established by a public water supplier under this subparagraph are not enforceable;

(D) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(E) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(F) measures to determine and control [unaccounted-for uses of] water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections; abandoned services; etc.);

(G) a program of continuing public education and information regarding water conservation;

(H) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(I) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(J) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(K) documentation of coordination with the regional water planning groups for the service area of the public water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next ten years subsequent to the effective date of the plan must include the following elements:

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system [in order to control unaccounted-for uses of water];

[(B) a record management system to record water pumped, water deliveries, water sales, and water losses which allows for the desegregation of water sales and uses into the following user classes:]

[(i) residential;]

[(ii) commercial;]

[(iii) public and institutional; and]

[(iv) industrial;]

(B) [(C)] a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer

intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements in paragraphs (1) and (2) of this subsection, if they are necessary to achieve the stated water conservation goals of the plan. The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or graywater;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) A water conservation plan prepared in accordance with 31 TAC §363.15 (relating to Required Water Conservation Plan) of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable

commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and the Texas Water Development Board.

(c) A [Beginning May 1, 2005, a] public water supplier for municipal use shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The public water supplier for municipal use shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.3. Water Conservation Plans for Industrial or Mining Use.

(a) A water conservation plan for industrial or mining uses of water must provide information in response to each of the following elements. If the plan does not provide information for each requirement, the industrial or mining water user shall include in the plan an explanation of why the requirement is not applicable.

(1) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water

consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

~~(2)~~ until May 1, 2005, specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

~~(2)~~ ~~(3)~~ beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals. The goals established by industrial or mining water users under this paragraph are not enforceable;

~~(3)~~ ~~(4)~~ a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

~~(4)~~ ~~(5)~~ leak-detection, repair, and accounting for water loss in the water distribution system;

~~(5)~~ ~~(6)~~ application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(6) [(7)] any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) An [Beginning May 1, 2005, an] industrial or mining water user shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The industrial or mining water user shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.4. Water Conservation Plans for Agricultural Use.

(a) A water conservation plan for agricultural use of water must provide information in response to the following subsections. If the plan does not provide information for each requirement, the agricultural water user must include in the plan an explanation of why the requirement is not applicable.

(1) For an individual agricultural user other than irrigation:

(A) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

[(B) until May 1, 2005, specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

(B) [(C) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals. The goals established by agricultural water users under this subparagraph are not enforceable;

(C) [(D)] a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

(D) [(E)] leak-detection, repair, and accounting for water loss in the water distribution system;

(E) [(F)] application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(F) [(G)] any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(2) For an individual irrigation user:

(A) a description of the irrigation production process which shall include, but is not limited to, the type of crops and acreage of each crop to be irrigated, monthly irrigation diversions, any seasonal or annual crop rotation, and soil types of the land to be irrigated;

(B) a description of the irrigation method, or system, and equipment including pumps, flow rates, plans, and/or sketches of the system layout;

(C) a description of the device(s) and/or methods, within an accuracy of plus or minus 5.0%, to be used in order to measure and account for the amount of water diverted from the source of supply;

[(D)] until May 1, 2005, specification of conservation goals including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan;]

(D) [(E)] beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan. The goals established by an individual irrigation water user under this subparagraph are not enforceable;

(E) [(F)] water-conserving irrigation equipment and application system or method including, but not limited to, surge irrigation, low pressure sprinkler, drip irrigation, and nonleaking pipe;

(F) [(G)] leak-detection, repair, and water-loss control;

(G) [(H)] scheduling the timing and/or measuring the amount of water applied (for example, soil moisture monitoring);

(H) [(I)] land improvements for retaining or reducing runoff, and increasing the infiltration of rain and irrigation water including, but not limited to, land leveling, furrow diking, terracing, and weed control;

(I) [(J)] tailwater recovery and reuse; and

(J) [(K)] any other water conservation practice, method, or technique which the user shows to be appropriate for preventing waste and achieving conservation.

(3) For a system providing agricultural water to more than one user:

(A) a system inventory for the supplier's:

(i) structural facilities including the supplier's water storage, conveyance, and delivery structures;

(ii) management practices, including the supplier's operating rules and regulations, water pricing policy, and a description of practices and/or devices used to account for water deliveries; and

(iii) a user profile including square miles of the service area, the number of customers taking delivery of water by the system, the types of crops, the types of irrigation systems, the types of drainage systems, and total acreage under irrigation, both historical and projected;

[(B)] until May 1, 2005, specification of water conservation goals, including maximum allowable losses for the storage and distribution system;]

(B) [(C)] beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including maximum allowable losses for the storage and distribution system. The goals established by a system providing agricultural water to more than one user under this subparagraph are not enforceable;

(C) [(D)] a description of the practice(s) and/or device(s) which will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) [(E)] a monitoring and record management program of water deliveries, sales, and losses;

(E) [(F)] a leak-detection, repair, and water loss control program;

(F) [(G)] a program to assist customers in the development of on-farm water conservation and pollution prevention plans and/or measures;

(G) [(H)] a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(H) [(I)] official adoption of the water conservation plan and goals, by ordinance, rule, resolution, or tariff, indicating that the plan reflects official policy of the supplier;

(I) [(J)] any other water conservation practice, method, or technique which the supplier shows to be appropriate for achieving conservation; and

(J) [(K)] documentation of coordination with the regional water planning groups, in order to ensure consistency with appropriate approved regional water plans.

(b) A water conservation plan prepared in accordance with the rules of the United States Department of Agriculture Natural Resource Conservation Service, the Texas State Soil and Water Conservation Board, or other federal or state agency and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and that agency.

(c) An [Beginning May 1, 2005, an] agricultural water user shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. An agricultural water user shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.5. Water Conservation Plans for Wholesale Water Suppliers.

A water conservation plan for a wholesale water supplier must provide information in response to each of the following paragraphs. If the plan does not

provide information for each requirement, the wholesale water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for wholesale water suppliers must include the following elements:

(A) a description of the wholesaler's service area, including population and customer data, water use data, water supply system data, and wastewater data;

[(B) until May 1, 2005, specification of conservation goals including, where appropriate, target per capita water use goals for the wholesaler's service area, maximum acceptable unaccounted-for water, the basis for the development of these goals, and a time frame for achieving these goals;]

(B) [(C) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including, where appropriate, target goals for municipal use in gallons per capita per day for the wholesaler's service area, maximum acceptable [unaccounted-for] water loss, and the basis for the development of these goals. The goals established by wholesale water suppliers under this subparagraph are not enforceable;

(C) [(D)] a description as to which practice(s) and/or device(s) will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) [(E)] a monitoring and record management program for determining water deliveries, sales, and losses;

(E) [(F)] a program of metering and leak detection and repair for the wholesaler's water storage, delivery, and distribution system;

(F) [(G)] a requirement in every water supply contract entered into or renewed after official adoption of the water conservation plan, and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements of this chapter. If the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(G) [(H)] a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin. The reservoir systems operations plans shall include optimization of water supplies as one of the significant goals of the plan;

(H) [(I)] a means for implementation and enforcement, which shall be evidenced by a copy of the ordinance, rule, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(I) [(J)] documentation of coordination with the regional water planning groups for the service area of the wholesale water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional conservation strategies. Any combination of the following strategies shall be selected by the water wholesaler, in addition to the minimum requirements of paragraph (1) of this section, if they are necessary in order to achieve the stated water conservation goals of the plan. The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the conservation plan to be achieved:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) a program to assist agricultural customers in the development of conservation pollution prevention and abatement plans;

(C) a program for reuse and/or recycling of wastewater and/or graywater; and

(D) any other water conservation practice, method, or technique which the wholesaler shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(3) Review and update requirements. The [Beginning May 1, 2005, the] wholesale water supplier shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. A wholesale water supplier shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2011-1228-RUL

On November 14, 2012, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 TAC Chapter 288, concerning Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements. The proposed rules were published for comment in the July 13, 2012, issue of the Texas Register (37 TexReg 5216).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with Texas Register requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

30 TAC §285.90, §285.91

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.012, concerning Declaration of Policy; TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also proposed under Texas Health and Safety Code (THSC), §366.001, concerning Policy and Purpose; THSC, §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; THSC, §366.051, concerning Permits; THSC, §366.052, concerning Permit Not Required for On-Site Sewage Disposal on Certain Single Residences; THSC, §366.053, concerning Permit Application; THSC, §366.054, concerning Notice From Installer; THSC, §366.056, concerning Approval of On-Site Sewage Disposal System; THSC, §366.057, concerning Permit Issuance; THSC, §366.058, concerning Permit Fee; and THSC, §366.059, concerning Permit Fee Paid to Department of Authorized Agent.

These proposed amendments implement TWC, §§5.012, 5.013, 5.102, 5.103, and THSC, §§366.001, 366.011, 366.012, 366.051, 366.052, 366.053, 366.054, 366.056, 366.057, 366.058, and 366.059.

§285.90. Figures.

The following figures are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Figure 1. Maximum Application Rates for Surface Application of Treated Effluent in Texas.
Figure: 30 TAC §285.90(1) (No change.)

(2) Figure 2. Model Affidavit to the Public.
Figure: 30 TAC §285.90(2) (No change.)

(3) Figure 3. Sample Testing and Reporting Record.
Figure: 30 TAC §285.90(3)
[Figure: 30 TAC §285.90(3)]

(4) Figure 4. Typical Drainfields - Sectional View.
Figure: 30 TAC §285.90(4) (No change.)

(5) Figure 5. Typical Drainfields.
Figure: 30 TAC §285.90(5) (No change.)

(6) Figure 6. Two Compartment Septic Tank.
Figure: 30 TAC §285.90(6) (No change.)

(7) Figure 7. Two Septic Tanks in Series.
Figure: 30 TAC §285.90(7) (No change.)

(8) Figure 8. Intermittent Sand Filters.
Figure: 30 TAC §285.90(8) (No change.)

(9) Figure 9. Intermittent Sand Filter Underdrain and Pumpwell.
Figure: 30 TAC §285.90(9) (No change.)

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Table I. Effluent Loading Requirements Based on Soil Classification.
Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing.
Figure: 30 TAC §285.91(2)

[Figure: 30 TAC §285.91(2)]

(3) Table III. Wastewater Usage Rate.
Figure: 30 TAC §285.91(3) (No change.)

(4) Table IV. Required Testing and Reporting.
Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.
Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.
Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).
Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).
Figure: 30 TAC 285.91(8) (No change.)

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)
[Figure: 30 TAC §285.91(10)]

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).
Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.
Figure: 30 TAC §285.91(12) (No change.)

(13) Table XIII. Disposal and Treatment Selection Criteria.
Figure: 30 TAC §285.91(13) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2012.

TRD-201203437

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2012

For further information, please call: (512) 239-0779



CHAPTER 288. WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS SUBCHAPTER A. WATER CONSERVATION PLANS

30 TAC §§288.1 - 288.5

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §§288.1 - 288.5.

Background and Summary of the Factual Basis for the Proposed Rules

In 2011, the 82nd Legislature passed Senate Bill (SB) 181, relating to the calculation and reporting of water usage by municipalities and water utilities for state water planning and other purposes. The 82nd Legislature also passed SB 660, related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the reporting of municipal water use data.

SB 181 amended Texas Water Code (TWC), Chapter 16, related to provisions generally applicable to water development. SB 660 amended TWC, Chapter 16, and TWC, Chapter 11, related to water rights.

SB 181 added TWC, §16.403, and SB 660 amended TWC, §16.402 and added TWC, §16.403, to require that the TWDB and the TCEQ, in consultation with the Water Conservation Advisory Council (WCAC), develop a uniform, consistent methodology and guidance for calculating and reporting water use and conservation. For a municipality or water utility, the bills require a method of calculating total water use, a method of calculating total water use in gallons per capita per day (GPCD), a method of classifying water users within sectors, a method of calculating water use in the non-population dependent sectors, and guidelines on the use of service populations. The methodology and guidance applies to all entities required to submit water conservation plans to the TWDB or the TCEQ. Additionally, the bills require that the TWDB, the TCEQ, and the WCAC develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

SB 181 added TWC, §16.404, and SB 660, §21, amended TWC, §16.402 and §11.1271, to require entities to report the most detailed level of water use possible, but cannot require entities to report at a higher level than their current billing systems allow. SB 181 specifies that the rules may require that new billing systems purchased be capable of reporting water use according to the prescribed methodology.

SB 660 amended TWC, §11.1271 and §16.402, to require the TCEQ, or the TCEQ and TWDB, to jointly adopt rules by January 1, 2013, requiring the methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in water conservation plans or reports.

This proposed rulemaking will implement the amendments made by SB 181 and §21 of SB 660.

Section by Section Discussion

The commission proposes to amend §288.1, Definitions, by adding definitions for commercial use, institutional use, residential use, residential GPCD, total use, total GPCD, and wholesale use, and to renumber the paragraphs to accommodate the addition of definitions. The proposed definitions for commercial use in §288.1(5), institutional use in §288.1(8), and wholesale use in §288.1(25) were derived from the identified definitions of these uses by the American Water Works Association. The proposed definitions for residential use in §288.1(16) and residential GPCD in §288.1(17) were derived from TWC, §16.403(b)(4), as added by SB 181, which requires a method of calculating water use in the residential sector that includes both single-family and multi-family residences, in GPCD. The proposed definition for total use in §288.1(21) was derived from TWC, §16.403(b)(1), as added by SB 181, which requires a method of calculating total use by a municipality or water utility, including water billed and nonrevenue water used. The proposed definition for total GPCD in §288.1(22) was derived from TWC, §16.403(b)(2), as

added by SB 181, which requires a method of calculating total water use by a municipality or water utility in GPCD.

The commission proposes to amend the definitions for industrial use, irrigation use, and municipal use. The definition of industrial use in §288.1(7) was amended to remove commercial fish production (aquaculture) which was defined as an agricultural use by the 82nd Legislature in HB 2694, which amended TWC, §11.002(12)(G). The commission proposes to amend the definition of irrigation use in §288.1(9) to change "through a municipal distribution system" to "from a public water supplier" to be consistent with the terminology used throughout the remainder of Chapter 288. The commission proposes to amend the definition of municipal use in §288.1(12) to remove the various listed examples of municipal uses and instead list the sectors of water use required by SB 181 and SB 660, §21.

The commission proposes to delete the definitions for municipal per capita water use in §288.1(10) and municipal use in gallons per capita per day in §288.1(12). These definitions are no longer needed because SB 181 and SB 660, §21 require municipal use to be reported in the proposed definitions for residential use in §288.1(16); residential GPCD in §288.1(17); total use in §288.1(21); and, total GPCD in §288.1(22). The commission proposes to renumber the paragraphs to accommodate the deletion of the definitions.

The definitions proposed to be added, amended, or deleted are necessary to implement SB 181 and SB 660, §21.

The commission proposes to amend §288.2, Water Conservation Plans for Municipal Uses by Public Water Suppliers, to implement the requirements of SB 181 and SB 660, §21.

The commission proposes to amend §288.2(a)(1) by deleting the word "drinking" from "public drinking water suppliers" to ensure consistency of terms throughout Chapter 288.

The commission proposes to amend §288.2(a)(1)(A) by adding "in accordance with the Texas Water Use Methodology" to the requirements for utility profiles of water conservation plans. This uniform methodology, required by the bills, is currently being developed by the TWDB, TCEQ, and WCAC. This amendment also adds "(including total GPCD and residential GPCD)" with respect to the water use data provided in these utility profiles. SB 181 and SB 660, §21 require that municipalities or water utilities report GPCD values in both total GPCD and residential GPCD.

The commission proposes to add §288.2(a)(1)(B) to require the sector-based water use reporting as required by SB 181 and SB 660, §21. This new requirement also specifies that water suppliers do not need to purchase new software immediately, but will need to purchase the appropriate software when upgrading.

The commission proposes to delete existing §288.2(a)(1)(B). The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language.

The commission proposes to amend §288.2(a)(1)(C) to remove the date reference "beginning May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning. The commission also proposes to specify that the goals for municipal use be in

total GPCD and residential GPCD. This change is proposed to ensure that the water use data in §288.2(a)(1)(A) and this subparagraph are consistent.

The commission proposes to amend §288.2(a)(1)(F) by removing the term "unaccounted-for uses of" and add "loss" to the word "water." The term "water loss" is the appropriate semantic for reporting.

The commission proposes to amend §288.2(a)(2)(A) by removing "in order to control unaccounted-for uses of water" because this is an inappropriate semantic for referring to water loss.

The commission proposes to delete existing §288.2(a)(2)(B) which, previous to SB 181 and SB 660, was an additional content requirement for reporting by sectors and to reletter the subparagraphs that follow. The sector-based reporting requirement was added in proposed §288.2(a)(1)(B).

The commission proposes to amend §288.2(c) to remove the date references "Beginning May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663 passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rule based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission proposes to delete §288.3(a)(2) and renumber the paragraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for industrial water users to submit water conservation goals for water conservation plans are now located in proposed §288.3(a)(2).

The commission proposes to amend renumbered §288.3(a)(2) to remove the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission proposes to amend §288.3(b) to remove the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663 passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rules based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language, as well as "after that date", are no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission proposes to delete current §288.4(a)(1)(B) and reletter the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for individual agricultural users to submit

water conservation goals for water conservation plans are now located in relettered §288.4(a)(1)(B).

The commission proposes to amend relettered §288.4(a)(1)(B) to remove the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission proposes to delete current §288.4(a)(2)(D) and reletter the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because these deadlines have passed, they are no longer needed in the current rule language. The requirements for individual irrigation users to submit water conservation goals for water conservation plans are now located in proposed §288.4(a)(2)(D).

The commission proposes to amend relettered §288.4(a)(2)(D) by removing the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because these deadlines have passed, they are no longer needed in the current rule language. The amendment does not alter the requirements for entities to submit revised water conservation plans for every five years to coincide with regional water planning.

The commission proposes to delete current §288.4(a)(3)(B) and reletter the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for systems providing agricultural water to more than one user to submit water conservation goals for water conservation plans are now located in proposed §288.4(a)(3)(B).

The commission proposes to amend relettered §288.4(a)(3)(B) by removing the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission proposes to amend §288.4(c) by removing the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rule based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission proposes to delete current §288.5(1)(B) and reletter the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language.

The requirements for wholesale water suppliers to submit water conservation goals for water conservation plans are now in proposed §288.5(1)(B).

The commission proposes to amend relettered §288.5(1)(B) by removing the date reference "beginning, May 1, 2005." This date was originally added to implement HB 2660 and HB 2663, as passed by the 78th Legislature in 2003. Because the deadline has passed it is no longer needed in the current rule language. This amendment does not alter the requirement for entities to submit revised water conservation plans every five years to coincide with regional water planning. The commission also proposes to remove the term "unaccounted for" and add "loss" to the word "water" because the term "water loss" is the appropriate semantic for reporting.

The commission proposes to amend §288.5(3) to remove the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rules based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The proposed amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will use currently available resources to implement the proposed rulemaking. Other units of state and local government are not expected to experience fiscal implications as a result of the proposed rules since provisions to upgrade billing software are optional.

The proposed rules would implement provisions in SB 181 and SB 660 regarding: the establishment of a uniform, consistent methodology and guidance for calculating and reporting water use and conservation; the development of a data collection and reporting program for municipalities and water utilities with more than 3,300 connections; and the requirement to use sector based water usage when submitting water conservation plans to the TWDB and the TCEQ. The proposed rules would also comply with legislative mandates to require public water suppliers to report the most detailed level of water use possible and to require that new billing systems purchased after September 1, 2011, be capable of reporting detailed water use data as required by adopted rules and standards. The legislation does not require public water suppliers to report at a higher level than their current billing systems allow nor would the proposed rules require a public water supplier to purchase a new billing system. There are an estimated 200 public water suppliers that are required to submit water conservation plans that would be affected by the proposed rules.

To implement legislative requirements, the proposed rules amend and add definitions and terminology, remove definitions and terminology that are no longer valid, and remove dates that are no longer needed. The agency estimates that there may be as many as 100 municipalities that are public water suppliers that would be affected by the proposed rules. The proposed

rules would not have a fiscal impact on these units of local government. The purchase of a billing system would remain an option under the proposed rules, and governmental entities could use their current billing systems as long as they wish.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be to allow public water suppliers to better identify potential areas for water conservation methods, to allow for better comparisons of water usage among the various sectors that are served by public water suppliers, and to comply with state law.

The agency estimates that the proposed rules could affect as many as 100 public water supply systems that are owned by large and small businesses. However, since the purchase of new billing software would remain optional, the proposed rules are not expected to have a fiscal impact on business entities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Since the purchase of new billing software would remain optional, the proposed rules are not expected to have a fiscal impact on small businesses that are public water suppliers.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule amendments to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by SB 181 and SB 660, which require public water suppliers to utilize the uniform methodology and guidance for calculating water use and conservation developed under TWC, §16.403 to be used in the water conservation plans and reports that must be submitted to the TCEQ.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed amendments is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements, because the proposed amendments: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rules; and 4) are not an adoption of a rule solely under the general powers of the commission as the proposed rules are required by SB 181 and SB 660.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposed this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The proposed rulemaking amends §§288.1 - 288.5. The commission's analysis revealed that amending these rule sections would achieve consistency with TWC, §§11.1271(f), 16.402, 16.403, and 16.404 as added or amended in 2011 by SB 181 and SB 660. The rulemaking would create new definitions and amend or delete other definitions in §288.1. The new and amended definitions define the different categories of water use that must be reported by public water suppliers in their water conservation plans; and are consistent with the terms used by the Legislature in SB 181 and SB 660. The proposed rulemaking would also require public water suppliers to utilize the uniform methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in the water conservation plans and reports that must be submitted to the TCEQ as required by the TWC.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a man-

ner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by creating, amending, or deleting the definitions as proposed or requiring public water suppliers to utilize the uniform methodology and guidance in producing the water conservation plans, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2012, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-058-288-OW. The comment period closes August 13, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Scott Swanson, Water Rights Permitting and Availability Section, at (512) 239-0703.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; §5.105, which establishes the commission's authority to set policy by rule; §11.1271, which requires the commission to adopt rules regarding the methodology and guidance for calculating water use and conservation developed under §16.403 to be used in the water conservation plans; §16.402, which requires the commission to adopt rules regarding the methodology and guidance for calculating water use and conservation developed under §16.403; and §16.404, which requires the commission to adopt rules and standards as necessary to implement TWC, Subchapter K.

The proposed rules implement TWC, §§11.1271, 16.402, 16.403, and 16.404.

§288.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural or Agriculture--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Best management practices--Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) Commercial use--The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) [(5)] Drought contingency plan--A strategy or combination of strategies for temporary supply and demand management re-

sponses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) [(6)] Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, [~~commercial fish production,~~] and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) Institutional Use--The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) [(7)] Irrigation--The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier [~~through a municipal distribution system~~].

(10) [(8)] Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) [(9)] Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

[(10) Municipal per capita water use--The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.]

(12) [(11)] Municipal use--The use of potable water provided by a public water supplier [~~within or outside a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity~~] as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses. [~~certain purposes, including the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of potable water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens.~~]

[(12) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals.]

(13) Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

(17) Residential gallons per capita per day--The total gallons sold for residential use by a public water supplier. The calculation is made by dividing the number of gallons of water sold by the residential population served divided by the number of days in the year.

(18) [(46)] Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(19) [(47)] Retail public water supplier--An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) [(48)] Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) Total use--The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.

(22) Total gallons per capita per day (GPCD)--The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) [(49)] Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(24) [(20)] Wholesale public water supplier--An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(25) Wholesale use--Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

§288.2. *Water Conservation Plans for Municipal Uses by Public Water Suppliers.*

(a) A water conservation plan for municipal water use by public water suppliers must provide information in response to the following. If the plan does not provide information for each requirement, the public water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for municipal uses by public ~~[drinking]~~ water suppliers must include the following elements:

(A) a utility profile in accordance with the Texas Water Use Methodology, including, but not limited to, information regarding population and customer data, water use data (including total gallons per capita per day (GPCD) and residential GPCD), water supply system data, and wastewater system data;

(B) a record management system which allows for the classification of water sales and uses into most detailed level of water use data currently available to it, including, if possible, the sectors listed in clauses (i) - (vi) of this subparagraph. Any new billing system purchased by a public water supplier must be capable of reporting detailed water use data as described in clauses (i) - (vi) of this subparagraph:

(i) residential;

(I) single-family;

(II) multi-family;

(ii) commercial;

(iii) institutional;

(iv) industrial;

(v) agricultural; and

(vi) wholesale.

[(B) until May 1, 2005, specification of conservation goals including, but not limited to, municipal per capita water use goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

(C) [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total GPCD and residential GPCD[; in gallons per capita per day]. The goals established by a public water supplier under this subparagraph are not enforceable;

(D) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(E) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(F) measures to determine and control ~~[unaccounted-for uses of]~~ water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections; abandoned services; etc.);

(G) a program of continuing public education and information regarding water conservation;

(H) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(I) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(J) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(K) documentation of coordination with the regional water planning groups for the service area of the public water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next ten years subsequent to the effective date of the plan must include the following elements:

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system [in order to control unaccounted-for uses of water];

~~{(B) a record management system to record water pumped, water deliveries, water sales, and water losses which allows for the desegregation of water sales and uses into the following user classes:}~~

~~{(i) residential;}~~

~~{(ii) commercial;}~~

~~{(iii) public and institutional; and}~~

~~{(iv) industrial;}~~

(B) ~~{(C)}~~ a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements in paragraphs (1) and (2) of this subsection, if they are necessary to achieve the stated water conservation goals of the plan. The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or gray-water;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) A water conservation plan prepared in accordance with 31 TAC §363.15 (relating to Required Water Conservation Plan) of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and the Texas Water Development Board.

(c) A ~~[Beginning May 1, 2005, a]~~ public water supplier for municipal use shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The public water supplier for municipal use shall review and update the next revision of its water conservation plan ~~[not later than May 1, 2009, and]~~ every five years ~~[after that date]~~ to coincide with the regional water planning group.

§288.3. *Water Conservation Plans for Industrial or Mining Use.*

(a) A water conservation plan for industrial or mining uses of water must provide information in response to each of the following elements. If the plan does not provide information for each requirement, the industrial or mining water user shall include in the plan an explanation of why the requirement is not applicable.

(1) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

~~{(2) until May 1, 2005, specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;}~~

~~{(3) [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals. The goals established by industrial or mining water users under this paragraph are not enforceable;}~~

~~{(4) [a] description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;}~~

~~{(5) [leak-detection, repair, and accounting for water loss in the water distribution system;}~~

~~{(6) application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and}~~

(6) [(7)] any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) An [Beginning May 1, 2005, an] industrial or mining water user shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The industrial or mining water user shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.4. *Water Conservation Plans for Agricultural Use.*

(a) A water conservation plan for agricultural use of water must provide information in response to the following subsections. If the plan does not provide information for each requirement, the agricultural water user must include in the plan an explanation of why the requirement is not applicable.

(1) For an individual agricultural user other than irrigation:

(A) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

~~[(B) until May 1, 2005, specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]~~

(B) [(C)] [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals. The goals established by agricultural water users under this subparagraph are not enforceable;

(C) [(D)] a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

(D) [(E)] leak-detection, repair, and accounting for water loss in the water distribution system;

(E) [(F)] application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(F) [(G)] any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(2) For an individual irrigation user:

(A) a description of the irrigation production process which shall include, but is not limited to, the type of crops and acreage of each crop to be irrigated, monthly irrigation diversions, any seasonal or annual crop rotation, and soil types of the land to be irrigated;

(B) a description of the irrigation method, or system, and equipment including pumps, flow rates, plans, and/or sketches of the system layout;

(C) a description of the device(s) and/or methods, within an accuracy of plus or minus 5.0%, to be used in order to measure and account for the amount of water diverted from the source of supply;

~~[(D) until May 1, 2005, specification of conservation goals including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan;]~~

(D) [(E)] [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan. The goals established by an individual irrigation water user under this subparagraph are not enforceable;

(E) [(F)] water-conserving irrigation equipment and application system or method including, but not limited to, surge irrigation, low pressure sprinkler, drip irrigation, and nonleaking pipe;

(F) [(G)] leak-detection, repair, and water-loss control;

(G) [(H)] scheduling the timing and/or measuring the amount of water applied (for example, soil moisture monitoring);

(H) [(I)] land improvements for retaining or reducing runoff, and increasing the infiltration of rain and irrigation water including, but not limited to, land leveling, furrow diking, terracing, and weed control;

(I) [(J)] tailwater recovery and reuse; and

(J) [(K)] any other water conservation practice, method, or technique which the user shows to be appropriate for preventing waste and achieving conservation.

(3) For a system providing agricultural water to more than one user:

(A) a system inventory for the supplier's:

(i) structural facilities including the supplier's water storage, conveyance, and delivery structures;

(ii) management practices, including the supplier's operating rules and regulations, water pricing policy, and a description of practices and/or devices used to account for water deliveries; and

(iii) a user profile including square miles of the service area, the number of customers taking delivery of water by the system, the types of crops, the types of irrigation systems, the types of drainage systems, and total acreage under irrigation, both historical and projected;

~~[(B) until May 1, 2005, specification of water conservation goals, including maximum allowable losses for the storage and distribution system;]~~

(B) [(C)] [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including maximum allowable losses for the storage and distribution system. The goals established by a system providing agricultural water to more than one user under this subparagraph are not enforceable;

(C) [(D)] a description of the practice(s) and/or device(s) which will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) [(E)] a monitoring and record management program of water deliveries, sales, and losses;

(E) [(F)] a leak-detection, repair, and water loss control program;

(F) [(G)] a program to assist customers in the development of on-farm water conservation and pollution prevention plans and/or measures;

(G) [(H)] a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract

extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(H) [(H)] official adoption of the water conservation plan and goals, by ordinance, rule, resolution, or tariff, indicating that the plan reflects official policy of the supplier;

(I) [(I)] any other water conservation practice, method, or technique which the supplier shows to be appropriate for achieving conservation; and

(J) [(K)] documentation of coordination with the regional water planning groups, in order to ensure consistency with appropriate approved regional water plans.

(b) A water conservation plan prepared in accordance with the rules of the United States Department of Agriculture Natural Resource Conservation Service, the Texas State Soil and Water Conservation Board, or other federal or state agency and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and that agency.

(c) An ~~[Beginning May 1, 2005, an]~~ agricultural water user shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. An agricultural water user shall review and update the next revision of its water conservation plan ~~[not later than May 1, 2009, and]~~ every five years ~~[after that date]~~ to coincide with the regional water planning group.

§288.5. *Water Conservation Plans for Wholesale Water Suppliers.*

A water conservation plan for a wholesale water supplier must provide information in response to each of the following paragraphs. If the plan does not provide information for each requirement, the wholesale water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for wholesale water suppliers must include the following elements:

(A) a description of the wholesaler's service area, including population and customer data, water use data, water supply system data, and wastewater data;

~~[(B) until May 1, 2005, specification of conservation goals including, where appropriate, target per capita water use goals for the wholesaler's service area, maximum acceptable unaccounted-for water, the basis for the development of these goals, and a time frame for achieving these goals;]~~

(B) ~~[(C)] [beginning May 1, 2005,]~~ specific, quantified five-year and ten-year targets for water savings including, where appropriate, target goals for municipal use in gallons per capita per day for the wholesaler's service area, maximum acceptable ~~[unaccounted-for]~~ water loss, and the basis for the development of these goals. The goals established by wholesale water suppliers under this subparagraph are not enforceable;

(C) ~~[(D)]~~ a description as to which practice(s) and/or device(s) will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

~~(D) [(E)]~~ a monitoring and record management program for determining water deliveries, sales, and losses;

~~(E) [(F)]~~ a program of metering and leak detection and repair for the wholesaler's water storage, delivery, and distribution system;

~~(F) [(G)]~~ a requirement in every water supply contract entered into or renewed after official adoption of the water conservation plan, and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements of this chapter. If the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

~~(G) [(H)]~~ a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin. The reservoir systems operations plans shall include optimization of water supplies as one of the significant goals of the plan;

~~(H) [(I)]~~ a means for implementation and enforcement, which shall be evidenced by a copy of the ordinance, rule, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and a description of the authority by which the water supplier will implement and enforce the conservation plan; and

~~(I) [(J)]~~ documentation of coordination with the regional water planning groups for the service area of the wholesale water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional conservation strategies. Any combination of the following strategies shall be selected by the water wholesaler, in addition to the minimum requirements of paragraph (1) of this section, if they are necessary in order to achieve the stated water conservation goals of the plan. The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the conservation plan to be achieved:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) a program to assist agricultural customers in the development of conservation pollution prevention and abatement plans;

(C) a program for reuse and/or recycling of wastewater and/or graywater; and

(D) any other water conservation practice, method, or technique which the wholesaler shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(3) Review and update requirements. ~~The [Beginning May 1, 2005, the]~~ wholesale water supplier shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. A wholesale water supplier shall review and update the next revision of its water conservation plan ~~[not later than May 1, 2009, and]~~ every five years ~~[after that date]~~ to coincide with the regional water planning group.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2012.

TRD-201203429

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2012

For further information, please call: (512) 239-2141



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER K. INSCRIPTION ON VEHICLES

37 TAC §1.151

The Texas Department of Public Safety (the department) proposes amendments to §1.151, concerning Exemption of Inscription. Texas Transportation Code, Chapter 721 requires state agency vehicles to have inscriptions printed on each side of the vehicle identifying the agency that has custody of the vehicle. Section 721.003 provides that the governing bodies of certain state agencies, including the Department of Public Safety, may exempt vehicles from the inscription requirement by rule. Transportation Code, §721.003(c) provides that a rule exempting vehicles must specify the purpose served by not printing the required inscription and the primary use of the motor vehicle. Amendments to §1.151 clarify the existing grounds for exemption and also add an additional basis for exemption for situations where department vehicles may need to be operated in areas where identification as a department vehicle may create risks to the safety of department personnel as determined by the director.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure public knowledge of the existing grounds for exemptions to Texas Transportation Code, Chapter 721.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a

rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Susan Estringel, Legal Assistant, Texas Department of Public Safety, P.O. Box 4087 (MSC 0140), Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §721.003 which allows the governing body by rule to exempt the department from the requirements of §721.002.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 721 are affected by this proposal.

§1.151. Exemption of Inscription.

The director of the Texas Department of Public Safety is authorized to exempt certain vehicles from having printed on them the inscription set out in Texas Transportation Code, §721.002. In order to further law enforcement capabilities and effectively carry out administrative functions, the following vehicles are exempt from the requirement of having printed inscriptions: [the director exempts from the inscription requirement those department vehicles that will be routinely used by personnel involved in confidential, legal, and personnel investigations which require that personnel go undetected in order to accomplish the task.]

(1) vehicles primarily used for law enforcement and administrative purposes for which confidentiality is necessary; or

(2) vehicles primarily used in areas where agency inscriptions would create an undue risk to department staff operating those vehicles as determined by the director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 28, 2012.

TRD-201203400

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: August 12, 2012

For further information, please call: (512) 424-5848



PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 143. EXECUTIVE CLEMENCY

AN ACT

1
2 relating to the calculation and reporting of water usage by
3 municipalities and water utilities for state water planning and
4 other purposes.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subsection (e), Section 16.053, Water Code, is
7 amended to read as follows:

8 (e) Each regional water planning group shall submit to the
9 development board a regional water plan that:

10 (1) is consistent with the guidance principles for the
11 state water plan adopted by the development board under Section
12 16.051(d);

13 (2) provides information based on data provided or
14 approved by the development board in a format consistent with the
15 guidelines provided by the development board under Subsection (d);

16 (3) identifies:

17 (A) each source of water supply in the regional
18 water planning area, including information supplied by the
19 executive administrator on the amount of managed available
20 groundwater in accordance with the guidelines provided by the
21 development board under Subsections (d) and (f);

22 (B) factors specific to each source of water
23 supply to be considered in determining whether to initiate a
24 drought response;

1 (C) actions to be taken as part of the response;
2 and

3 (D) existing major water infrastructure
4 facilities that may be used for interconnections in the event of an
5 emergency shortage of water;

6 (4) has specific provisions for water management
7 strategies to be used during a drought of record;

8 (5) includes but is not limited to consideration of
9 the following:

10 (A) any existing water or drought planning
11 efforts addressing all or a portion of the region;

12 (B) approved groundwater conservation district
13 management plans and other plans submitted under Section 16.054;

14 (C) all potentially feasible water management
15 strategies, including but not limited to improved conservation,
16 reuse, and management of existing water supplies, conjunctive use,
17 acquisition of available existing water supplies, and development
18 of new water supplies;

19 (D) protection of existing water rights in the
20 region;

21 (E) opportunities for and the benefits of
22 developing regional water supply facilities or providing regional
23 management of water supply facilities;

24 (F) appropriate provision for environmental
25 water needs and for the effect of upstream development on the bays,
26 estuaries, and arms of the Gulf of Mexico and the effect of plans on
27 navigation;

1 (G) provisions in Section 11.085(k)(1) if
2 interbasin transfers are contemplated;

3 (H) voluntary transfer of water within the region
4 using, but not limited to, regional water banks, sales, leases,
5 options, subordination agreements, and financing agreements; and

6 (I) emergency transfer of water under Section
7 11.139, including information on the part of each permit, certified
8 filing, or certificate of adjudication for nonmunicipal use in the
9 region that may be transferred without causing unreasonable damage
10 to the property of the nonmunicipal water rights holder;

11 (6) identifies river and stream segments of unique
12 ecological value and sites of unique value for the construction of
13 reservoirs that the regional water planning group recommends for
14 protection under Section 16.051;

15 (7) assesses the impact of the plan on unique river and
16 stream segments identified in Subdivision (6) if the regional water
17 planning group or the legislature determines that a site of unique
18 ecological value exists; ~~and~~

19 (8) describes the impact of proposed water projects on
20 water quality; and

21 (9) includes information on:

22 (A) projected water use and conservation in the
23 regional water planning area; and

24 (B) the implementation of state and regional
25 water plan projects, including water conservation strategies,
26 necessary to meet the state's projected water demands.

27 SECTION 2. Subchapter K, Chapter 16, Water Code, is amended

1 by adding Sections 16.403 and 16.404 to read as follows:

2 Sec. 16.403. WATER USE REPORTING. (a) The legislature
3 finds that:

4 (1) tracking water use over time and evaluating the
5 effects of water conservation programs or strategies are vital
6 components of planning for and managing the state's water resources
7 to estimate and meet future water demand requirements;

8 (2) gallons per capita per day, the common metric used
9 by municipalities and water utilities for water supply planning and
10 the calculation of water use, is not an accurate measure of water
11 use or water conservation because a uniform, consistent methodology
12 for the calculation of gallons per capita per day has not been
13 established;

14 (3) using a single gallons per capita per day metric to
15 compare the water use of municipalities and water utilities does
16 not produce a reliable comparison because water use is dependent on
17 several variables, including differences in the amount of water
18 used for commercial and industrial sector activities, power
19 production, permanent versus temporary service populations, and
20 agricultural sector production;

21 (4) if valid water use comparisons and evaluations of
22 a municipality's or water utility's water conservation programs are
23 to be made over time for statewide resource management and water
24 supply planning and permitting purposes, the methodology used to
25 calculate gallons per capita per day must be uniform for all water
26 suppliers;

27 (5) a municipality's or water utility's industrial and

1 agricultural sector's gallons per capita per day figures are not an
2 accurate measure of actual water use and conservation by entities
3 within those sectors because water use in the industrial and
4 agricultural sectors is not population-dependent and therefore not
5 accurately calculated using a population-based metric; and

6 (6) a sector-based water use metric, adjusted for
7 variables in water use by municipalities and water utilities, is
8 necessary in order to provide an accurate comparison of water use
9 and water conservation among municipalities and water utilities.

10 (b) The board and the commission, in consultation with the
11 Water Conservation Advisory Council, shall develop a uniform,
12 consistent methodology and guidance for calculating water use and
13 conservation to be used by a municipality or water utility in
14 developing water conservation plans and preparing reports required
15 under this code. At a minimum, the methodology and guidance must
16 include:

17 (1) a method of calculating total water use by a
18 municipality or water utility, including water billed and
19 nonrevenue water used, and a method of calculating water use for
20 each sector of water users served by a municipality or water
21 utility;

22 (2) a method of calculating total water use by a
23 municipality or water utility in gallons per capita per day;

24 (3) a method of classifying water users within
25 sectors;

26 (4) a method of calculating water use in the
27 residential sector that includes both single-family and

1 multifamily residences, in gallons per capita per day;

2 (5) a method of calculating water use in the
3 industrial, agricultural, commercial, and institutional sectors
4 that is not dependent on a municipality's population or the number
5 of customers served by a water utility; and

6 (6) guidelines on the use of service populations by a
7 municipality or water utility in developing a per-capita-based
8 method of calculation, including guidance on the use of permanent
9 and temporary populations in making calculations.

10 (c) The board or the commission, as appropriate, shall use
11 the methodology and guidance developed under Subsection (b) in
12 evaluating a water conservation plan, program of water
13 conservation, survey, or other report relating to water
14 conservation submitted to the board or the commission under:

15 (1) Section 11.1271;

16 (2) Section 13.146;

17 (3) Section 15.106;

18 (4) Section 15.607;

19 (5) Section 15.975;

20 (6) Section 15.995;

21 (7) Section 16.012(m);

22 (8) Section 16.402;

23 (9) Section 17.125;

24 (10) Section 17.277;

25 (11) Section 17.857; or

26 (12) Section 17.927.

27 (d) The board, in consultation with the commission and the

1 Water Conservation Advisory Council, shall develop a data
2 collection and reporting program for municipalities and water
3 utilities with more than 3,300 connections.

4 (e) Not later than January 1 of each odd-numbered year, the
5 board shall submit to the legislature a report that includes the
6 most recent data relating to:

7 (1) statewide water usage in the residential,
8 industrial, agricultural, commercial, and institutional sectors;
9 and

10 (2) the data collection and reporting program
11 developed under Subsection (d).

12 Sec. 16.404. RULES AND STANDARDS. The commission and the
13 board, as appropriate, shall adopt rules and standards as necessary
14 to implement this subchapter. At a minimum, the rules adopted under
15 this subchapter must require an entity to report the most detailed
16 level of water use data currently available to the entity. The
17 commission may not adopt a rule that requires an entity to report
18 water use data that is more detailed than the entity's billing
19 system is capable of producing. The rules may require that billing
20 systems purchased after September 1, 2011, be capable of reporting
21 detailed water use data described in this subchapter.

22 SECTION 3. (a) Not later than January 1, 2013, the Texas
23 Water Development Board and the Texas Commission on Environmental
24 Quality, in consultation with the Water Conservation Advisory
25 Council, shall develop the water use and conservation calculation
26 methodology and guidance and the data collection and reporting
27 program required by Subsections (b) and (d), Section 16.403, Water

1 Code, as added by this Act.

2 (b) Not later than January 1, 2015, the Texas Water
3 Development Board shall submit to the legislature the first report
4 required by Subsection (e), Section 16.403, Water Code, as added by
5 this Act.

6 SECTION 4. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 181 passed the Senate on March 23, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 26, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 181 passed the House, with amendments, on May 23, 2011, by the following vote: Yeas 146, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to the review and functions of the Texas Water Development Board, including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SECTION 6.013, Water Code, is amended to read as follows:

Sec. 6.013. SUNSET PROVISION. The Texas Water Development Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2023 [~~2011~~] and every 12th year after 2023 [~~2011~~] are reviewed.

SECTION 2. Subchapter D, Chapter 6, Water Code, is amended by adding Sections 6.113, 6.114, and 6.115 to read as follows:

Sec. 6.113. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's

1 jurisdiction.

2 (b) The board's procedures relating to alternative dispute
3 resolution must conform, to the extent possible, to any model
4 guidelines issued by the State Office of Administrative Hearings
5 for the use of alternative dispute resolution by state agencies.

6 (c) The board shall:

7 (1) coordinate the implementation of the policy
8 adopted under Subsection (a);

9 (2) provide training as needed to implement the
10 procedures for negotiated rulemaking or alternative dispute
11 resolution; and

12 (3) collect data concerning the effectiveness of those
13 procedures.

14 Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT,
15 REMEDIES, AND ENFORCEMENT. (a) In this section:

16 (1) "Default" means:

17 (A) default in payment of the principal of or
18 interest on bonds, securities, or other obligations purchased or
19 acquired by the board;

20 (B) failure to perform any covenant related to a
21 bond, security, or other obligation purchased or acquired by the
22 board;

23 (C) a failure to perform any of the terms of a
24 loan, grant, or other financing agreement; or

25 (D) any other failure to perform an obligation,
26 breach of a term of an agreement, or default as provided by any
27 proceeding or agreement evidencing an obligation or agreement of a

1 recipient, beneficiary, or guarantor of financial assistance
2 provided by the board.

3 (2) "Financial assistance program recipient" means a
4 recipient or beneficiary of funds administered by the board under
5 this code, including a borrower, grantee, guarantor, or other
6 beneficiary.

7 (b) In the event of a default and on request by the board,
8 the attorney general shall seek:

9 (1) a writ of mandamus to compel a financial
10 assistance program recipient or the financial assistance program
11 recipient's officers, agents, and employees to cure the default;
12 and

13 (2) any other legal or equitable remedy the board and
14 the attorney general consider necessary and appropriate.

15 (c) A proceeding authorized by this section shall be brought
16 and venue is in a district court in Travis County.

17 (d) In a proceeding under this section, the attorney general
18 may recover reasonable attorney's fees, investigative costs, and
19 court costs incurred on behalf of the state in the proceeding in the
20 same manner as provided by general law for a private litigant.

21 Sec. 6.115. RECEIVERSHIP. (a) In this section, "financial
22 assistance program recipient" has the meaning assigned by Section
23 6.114.

24 (b) In addition to the remedies available under Section
25 6.114, at the request of the board, the attorney general shall bring
26 suit in a district court in Travis County for the appointment of a
27 receiver to collect the assets and carry on the business of a

1 financial assistance program recipient if:

2 (1) the action is necessary to cure a default by the
3 recipient; and

4 (2) the recipient is not:

5 (A) a municipality or county; or

6 (B) a district or authority created under Section
7 52, Article III, or Section 59, Article XVI, Texas Constitution.

8 (c) The court shall vest a receiver appointed by the court
9 with any power or duty the court finds necessary to cure the
10 default, including the power or duty to:

11 (1) perform audits;

12 (2) raise wholesale or retail water or sewer rates or
13 other fees;

14 (3) fund reserve accounts;

15 (4) make payments of the principal of or interest on
16 bonds, securities, or other obligations purchased or acquired by
17 the board; and

18 (5) take any other action necessary to prevent or to
19 remedy the default.

20 (d) The receiver shall execute a bond in an amount to be set
21 by the court to ensure the proper performance of the receiver's
22 duties.

23 (e) After appointment and execution of bond, the receiver
24 shall take possession of the books, records, accounts, and assets
25 of the financial assistance program recipient specified by the
26 court. Until discharged by the court, the receiver shall perform
27 the duties that the court directs and shall strictly observe the

1 final order involved.

2 (f) On a showing of good cause by the financial assistance
3 program recipient, the court may dissolve the receivership.

4 SECTION 3. Section 6.154, Water Code, is amended to read as
5 follows:

6 Sec. 6.154. COMPLAINT FILE. (a) The board shall maintain
7 a system to promptly and efficiently act on complaints [~~file on each~~
8 ~~written complaint~~] filed with the board. The board shall maintain
9 information about parties to the complaint, [~~file must include:~~

- 10 ~~[(1) the name of the person who filed the complaint;~~
11 ~~[(2) the date the complaint is received by the board;~~
12 ~~[(3)] the subject matter of the complaint, [+~~
13 ~~[(4) the name of each person contacted in relation to~~
14 ~~the complaint;~~

15 ~~[(5)] a summary of the results of the review or~~
16 ~~investigation of the complaint, and the complaint's disposition[+~~
17 ~~and~~

18 ~~[(6) an explanation of the reason the file was closed,~~
19 ~~if the agency closed the file without taking action other than to~~
20 ~~investigate the complaint].~~

21 (b) The board shall make information available describing
22 its [~~provide to the person filing the complaint and to each person~~
23 ~~who is a subject of the complaint a copy of the board's policies~~
24 ~~and] procedures for [~~relating to~~] complaint investigation and
25 resolution.~~

26 SECTION 4. Section 6.155, Water Code, is amended to read as
27 follows:

1 Sec. 6.155. NOTICE OF COMPLAINT. The board[~~, at least~~
2 ~~quarterly until final disposition of the complaint,~~] shall
3 periodically notify the [~~person filing the~~] complaint parties [~~and~~
4 ~~each person who is a subject of the complaint~~] of the status of the
5 complaint until final disposition [~~investigation unless the notice~~
6 ~~would jeopardize an undercover investigation~~].

7 SECTION 5. Section 11.1271, Water Code, is amended by
8 amending Subsection (f) and adding Subsection (g) to read as
9 follows:

10 (f) The commission shall adopt rules:

11 (1) establishing criteria and deadlines for
12 submission of water conservation plans, including any required
13 amendments, and for submission of implementation reports; and

14 (2) requiring the methodology and guidance for
15 calculating water use and conservation developed under Section
16 16.403 to be used in the water conservation plans required by this
17 section.

18 (g) At a minimum, rules adopted under Subsection (f)(2) must
19 require an entity to report the most detailed level of municipal
20 water use data currently available to the entity. The commission
21 may not adopt a rule that requires an entity to report municipal
22 water use data that is more detailed than the entity's billing
23 system is capable of producing.

24 SECTION 6. Section 16.021, Water Code, is amended by
25 amending Subsections (c), (d), and (e) and adding Subsections (d-1)
26 and (g) to read as follows:

27 (c) The executive administrator shall designate the

1 director of the Texas Natural Resources Information System to serve
2 as the state geographic information officer. The state geographic
3 information officer shall:

4 (1) coordinate the acquisition and use of
5 high-priority imagery and data sets;

6 (2) establish, support, and disseminate authoritative
7 statewide geographic data sets;

8 (3) support geographic data needs of emergency
9 management responders during emergencies;

10 (4) monitor trends in geographic information
11 technology; and

12 (5) support public access to state geographic data and
13 resources [~~The Texas Geographic Information Council (TGIC) is~~

14 ~~created to provide strategic planning and coordination in the~~
15 ~~acquisition and use of geo-spatial data and related technologies in~~
16 ~~the State of Texas. The executive administrator and the executive~~
17 ~~director of the Department of Information Resources shall designate~~
18 ~~entities to be members of the TGIC. The chief administrative~~
19 ~~officer of each member entity shall select one representative to~~
20 ~~serve on the TGIC. The duties of the TGIC shall include providing~~
21 ~~guidance to the executive administrator in carrying out the~~
22 ~~executive administrator's duties under this section and guidance to~~
23 ~~the Department of Information Resources for development of rules~~
24 ~~related to statewide geo-spatial data and technology standards].~~

25 (d) Not later than December 1, 2016, and before the end of
26 each successive five-year period after that date, the board shall
27 submit to the governor, lieutenant governor, and speaker of the

1 house of representatives a report that contains recommendations
2 regarding:

3 (1) statewide geographic data acquisition needs and
4 priorities, including updates on progress in maintaining the
5 statewide digital base maps described by Subsection (e)(6);

6 (2) policy initiatives to address the acquisition,
7 use, storage, and sharing of geographic data across the state;

8 (3) funding needs to acquire data, implement
9 technologies, or pursue statewide policy initiatives related to
10 geographic data; and

11 (4) opportunities for new initiatives to improve the
12 efficiency, effectiveness, or accessibility of state government
13 operations through the use of geographic data [~~Member entities of~~
14 ~~the TCIC that are state agencies shall, and member entities that are~~
15 ~~not state agencies may, provide information to the TCIC about their~~
16 ~~investments in geographic information and plans for its use. Not~~
17 ~~later than November 1 of each even-numbered year, the TCIC shall~~
18 ~~prepare and provide to the board, the Department of Information~~
19 ~~Resources, the governor, and the legislature a report that:~~

20 [~~(1) describes the progress made by each TCIC member~~
21 ~~entity toward achieving geographic information system goals and in~~
22 ~~implementing geographic information systems initiatives; and~~

23 [~~(2) recommends additional initiatives to improve the~~
24 ~~state's geographic information systems programs].~~

25 (d-1) The board shall consult with stakeholders in
26 preparing the report required by Subsection (d).

27 (e) The [~~Under the guidance of the TCIC, the~~] executive

1 administrator shall:

2 (1) further develop the Texas Natural Resources
3 Information System by promoting and providing for effective
4 acquisition, archiving, documentation, indexing, and dissemination
5 of natural resource and related digital and nondigital data and
6 information;

7 (2) obtain information in response to disagreements
8 regarding names and name spellings for natural and cultural
9 features in the state and provide this information to the Board on
10 Geographic Names of the United States Department of the Interior;

11 (3) make recommendations to the Board on Geographic
12 Names of the United States Department of the Interior for naming any
13 natural or cultural feature subject to the limitations provided by
14 Subsection (f);

15 (4) make recommendations to the Department of
16 Information Resources to adopt and promote standards that
17 facilitate sharing of digital natural resource data and related
18 socioeconomic data among federal, state, and local governments and
19 other interested parties;

20 (5) acquire and disseminate natural resource and
21 related socioeconomic data describing the Texas-Mexico border
22 region; and

23 (6) coordinate, conduct, and facilitate the
24 development, maintenance, and use of mutually compatible statewide
25 digital base maps depicting natural resources and man-made
26 features.

27 (g) The board may establish one or more advisory committees

1 to assist the board or the executive administrator in implementing
2 this section, including by providing information in connection with
3 the preparation of the report required by Subsection (d). In
4 appointing members to an advisory committee, the board shall
5 consider including representatives of:

- 6 (1) state agencies that are major users of geographic
7 data;
- 8 (2) federal agencies;
- 9 (3) local governments; and
- 10 (4) the Department of Information Resources.

11 SECTION 7. Subsection (b), Section 16.023, Water Code, is
12 amended to read as follows:

13 (b) The account may be appropriated only to the board to:

14 (1) develop, administer, and implement the strategic
15 mapping program;

16 (2) provide grants to political subdivisions for
17 projects related to the development, use, and dissemination of
18 digital, geospatial information; and

19 (3) administer, implement, and operate other programs
20 of the Texas Natural Resources Information System, including:

21 (A) the operation of a Texas-Mexico border region
22 information center for the purpose of implementing Section
23 16.021(e)(5);

24 (B) the acquisition, storage, and distribution
25 of historical maps, photographs, and paper map products;

26 (C) the maintenance and enhancement of
27 information technology; and

1 (D) the production, storage, and distribution of
2 other digital base maps, as determined by the executive
3 administrator [~~or a state agency that is a member of the Texas~~
4 ~~Geographic Information Council~~].

5 SECTION 8. Section 16.051, Water Code, is amended by adding
6 Subsections (a-1) and (a-2) to read as follows:

7 (a-1) The state water plan must include:

8 (1) an evaluation of the state's progress in meeting
9 future water needs, including an evaluation of the extent to which
10 water management strategies and projects implemented after the
11 adoption of the preceding state water plan have affected that
12 progress; and

13 (2) an analysis of the number of projects included in
14 the preceding state water plan that received financial assistance
15 from the board.

16 (a-2) To assist the board in evaluating the state's progress
17 in meeting future water needs, the board may obtain implementation
18 data from the regional water planning groups.

19 SECTION 9. Subsections (c) and (e), Section 16.053, Water
20 Code, are amended to read as follows:

21 (c) No later than 60 days after the designation of the
22 regions under Subsection (b), the board shall designate
23 representatives within each regional water planning area to serve
24 as the initial coordinating body for planning. The initial
25 coordinating body may then designate additional representatives to
26 serve on the regional water planning group. The initial
27 coordinating body shall designate additional representatives if

1 necessary to ensure adequate representation from the interests
2 comprising that region, including the public, counties,
3 municipalities, industries, agricultural interests, environmental
4 interests, small businesses, electric generating utilities, river
5 authorities, water districts, and water utilities. The regional
6 water planning group shall maintain adequate representation from
7 those interests. In addition, the groundwater conservation
8 districts located in each management area, as defined by Section
9 36.001, located in the regional water planning area shall appoint
10 one representative of a groundwater conservation district located
11 in the management area and in the regional water planning area to
12 serve on the regional water planning group. In addition,
13 representatives of the board, the Parks and Wildlife Department,
14 and the Department of Agriculture shall serve as ex officio members
15 of each regional water planning group.

16 (e) Each regional water planning group shall submit to the
17 development board a regional water plan that:

18 (1) is consistent with the guidance principles for the
19 state water plan adopted by the development board under Section
20 16.051(d);

21 (2) provides information based on data provided or
22 approved by the development board in a format consistent with the
23 guidelines provided by the development board under Subsection (d);

24 (2-a) is consistent with the desired future conditions
25 adopted under Section 36.108 for the relevant aquifers located in
26 the regional water planning area as of the date the board most
27 recently adopted a state water plan under Section 16.051 or, at the

1 option of the regional water planning group, established subsequent
2 to the adoption of the most recent plan;

3 (3) identifies:

4 (A) each source of water supply in the regional
5 water planning area, including information supplied by the
6 executive administrator on the amount of modeled [~~managed~~]
7 available groundwater in accordance with the guidelines provided by
8 the development board under Subsections (d) and (f);

9 (B) factors specific to each source of water
10 supply to be considered in determining whether to initiate a
11 drought response;

12 (C) actions to be taken as part of the response;
13 and

14 (D) existing major water infrastructure
15 facilities that may be used for interconnections in the event of an
16 emergency shortage of water;

17 (4) has specific provisions for water management
18 strategies to be used during a drought of record;

19 (5) includes but is not limited to consideration of
20 the following:

21 (A) any existing water or drought planning
22 efforts addressing all or a portion of the region;

23 (B) approved groundwater conservation district
24 management plans and other plans submitted under Section 16.054;

25 (C) all potentially feasible water management
26 strategies, including but not limited to improved conservation,
27 reuse, and management of existing water supplies, conjunctive use,

1 acquisition of available existing water supplies, and development
2 of new water supplies;

3 (D) protection of existing water rights in the
4 region;

5 (E) opportunities for and the benefits of
6 developing regional water supply facilities or providing regional
7 management of water supply facilities;

8 (F) appropriate provision for environmental
9 water needs and for the effect of upstream development on the bays,
10 estuaries, and arms of the Gulf of Mexico and the effect of plans on
11 navigation;

12 (G) provisions in Section 11.085(k)(1) if
13 interbasin transfers are contemplated;

14 (H) voluntary transfer of water within the region
15 using, but not limited to, regional water banks, sales, leases,
16 options, subordination agreements, and financing agreements; and

17 (I) emergency transfer of water under Section
18 11.139, including information on the part of each permit, certified
19 filing, or certificate of adjudication for nonmunicipal use in the
20 region that may be transferred without causing unreasonable damage
21 to the property of the nonmunicipal water rights holder;

22 (6) identifies river and stream segments of unique
23 ecological value and sites of unique value for the construction of
24 reservoirs that the regional water planning group recommends for
25 protection under Section 16.051;

26 (7) assesses the impact of the plan on unique river and
27 stream segments identified in Subdivision (6) if the regional water

1 planning group or the legislature determines that a site of unique
2 ecological value exists; and

3 (8) describes the impact of proposed water projects on
4 water quality.

5 SECTION 10. Section 16.402, Water Code, is amended by
6 amending Subsection (e) and adding Subsection (f) to read as
7 follows:

8 (e) The board and commission jointly shall adopt rules:

9 (1) identifying the minimum requirements and
10 submission deadlines for the annual reports required by Subsection
11 (b); ~~and~~

12 (2) requiring the methodology and guidance for
13 calculating water use and conservation developed under Section
14 16.403 to be used in the reports required by Subsection (b); and

15 (3) providing for the enforcement of this section and
16 rules adopted under this section.

17 (f) At a minimum, rules adopted under Subsection (e)(2) must
18 require an entity to report the most detailed level of municipal
19 water use data currently available to the entity. The board and
20 commission may not adopt a rule that requires an entity to report
21 municipal water use data that is more detailed than the entity's
22 billing system is capable of producing.

23 SECTION 11. Subchapter K, Chapter 16, Water Code, is
24 amended by adding Sections 16.403 and 16.404 to read as follows:

25 Sec. 16.403. WATER USE REPORTING. (a) The board and the
26 commission, in consultation with the Water Conservation Advisory
27 Council, shall develop a uniform, consistent methodology and

1 guidance for calculating water use and conservation to be used by a
2 municipality or water utility in developing water conservation
3 plans and preparing reports required under this code. At a minimum,
4 the methodology and guidance must include:

5 (1) a method of calculating water use for each sector
6 of water users served by a municipality or water utility;

7 (2) a method of classifying water users within
8 sectors;

9 (3) a method of calculating water use in the
10 residential sector that includes both single-family and
11 multifamily residences, in gallons per capita per day;

12 (4) a method of calculating water use in the
13 industrial, agricultural, commercial, and institutional sectors
14 that is not dependent on a municipality's population or the number
15 of customers served by a water utility; and

16 (5) guidelines on the use of service populations by a
17 municipality or water utility in developing a per-capita-based
18 method of calculation, including guidance on the use of permanent
19 and temporary populations in making calculations.

20 (b) The board or the commission, as appropriate, shall use
21 the methodology and guidance developed under Subsection (a) in
22 evaluating a water conservation plan, program of water
23 conservation, survey, or other report relating to water
24 conservation submitted to the board or the commission under:

25 (1) Section 11.1271;

26 (2) Section 13.146;

27 (3) Section 15.106;

- 1 (4) Section 15.607;
- 2 (5) Section 15.975;
- 3 (6) Section 15.995;
- 4 (7) Section 16.012(m);
- 5 (8) Section 16.402;
- 6 (9) Section 17.125;
- 7 (10) Section 17.277;
- 8 (11) Section 17.857; or
- 9 (12) Section 17.927.

10 (c) The board, in consultation with the commission and the
11 Water Conservation Advisory Council, shall develop a data
12 collection and reporting program for municipalities and water
13 utilities with more than 3,300 connections.

14 (d) Not later than January 1 of each odd-numbered year, the
15 board shall submit to the legislature a report that includes the
16 most recent data relating to:

17 (1) statewide water usage in the residential,
18 industrial, agricultural, commercial, and institutional sectors;
19 and

20 (2) the data collection and reporting program
21 developed under Subsection (c).

22 (e) Data included in a water conservation plan or report
23 required under this code and submitted to the board or commission
24 must be interpreted in the context of variations in local water use.
25 The data may not be the only factor considered by the commission in
26 determining the highest practicable level of water conservation and
27 efficiency achievable in the jurisdiction of a municipality or

1 water utility for purposes of Section 11.085(1).

2 Sec. 16.404. RULES AND STANDARDS. The commission and the
3 board, as appropriate, shall adopt rules and standards as necessary
4 to implement this subchapter.

5 SECTION 12. Section 17.003, Water Code, is amended by
6 adding Subsections (c), (d), (e), and (f) to read as follows:

7 (c) Water financial assistance bonds that have been
8 authorized but have not been issued are not considered to be state
9 debt payable from the general revenue fund for purposes of Section
10 49-j, Article III, Texas Constitution, until the legislature makes
11 an appropriation from the general revenue fund to the board to pay
12 the debt service on the bonds.

13 (d) In requesting approval for the issuance of bonds under
14 this chapter, the executive administrator shall certify to the bond
15 review board whether the bonds are reasonably expected to be paid
16 from:

17 (1) the general revenues of the state; or

18 (2) revenue sources other than the general revenues of
19 the state.

20 (e) The bond review board shall verify whether debt service
21 on bonds to be issued by the board under this chapter is state debt
22 payable from the general revenues of the state, in accordance with
23 the findings made by the board in the resolution authorizing the
24 issuance of the bonds and the certification provided by the
25 executive administrator under Subsection (d).

26 (f) Bonds issued under this chapter that are designed to be
27 paid from the general revenues of the state shall cease to be

1 considered bonds payable from those revenues if:

2 (1) the bonds are backed by insurance or another form
3 of guarantee that ensures payment from a source other than the
4 general revenues of the state; or

5 (2) the board demonstrates to the satisfaction of the
6 bond review board that the bonds no longer require payment from the
7 general revenues of the state and the bond review board so certifies
8 to the Legislative Budget Board.

9 SECTION 13. Section 17.9022, Water Code, is amended to read
10 as follows:

11 Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL
12 SUBDIVISION; DEFAULT; VENUE. [~~(a)~~] The board may make a loan or
13 grant available to a political subdivision in any manner the board
14 considers economically feasible, including purchase of bonds or
15 securities of the political subdivision or execution of a loan or
16 grant agreement with the political subdivision. The board may not
17 purchase bonds or securities that have not been approved by the
18 attorney general and registered by the comptroller.

19 [~~(b)~~ ~~In the event of a default in payment of the principal of~~
20 ~~or interest on bonds or securities purchased by the board, or any~~
21 ~~other default as defined in the proceedings or indentures~~
22 ~~authorizing the issuance of bonds, or a default of any of the terms~~
23 ~~of a loan agreement, the attorney general shall seek a writ of~~
24 ~~mandamus or other legal remedy to compel the political subdivision~~
25 ~~or its officers, agents, and employees to cure the default by~~
26 ~~performing the duties they are legally obligated to perform. The~~
27 ~~proceedings shall be brought and venue is in a district court in~~

1 ~~Travis County. This subsection is cumulative of any other rights or~~
2 ~~remedies to which the board may be entitled.]~~

3 SECTION 14. Section 36.001, Water Code, is amended by
4 adding Subdivision (30) to read as follows:

5 (30) "Desired future condition" means a quantitative
6 description, adopted in accordance with Section 36.108, of the
7 desired condition of the groundwater resources in a management area
8 at one or more specified future times.

9 SECTION 15. Section 36.063, Water Code, is amended to read
10 as follows:

11 Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided
12 by Subsections (b) and (c), notice [~~Notice~~] of meetings of the board
13 shall be given as set forth in the Open Meetings Act, Chapter 551,
14 Government Code. Neither failure to provide notice of a regular
15 meeting nor an insubstantial defect in notice of any meeting shall
16 affect the validity of any action taken at the meeting.

17 (b) At least 10 days before a hearing under Section
18 36.108(d-2) or a meeting at which a district will adopt a desired
19 future condition under Section 36.108(d-4), the board must post
20 notice that includes:

21 (1) the proposed desired future conditions and a list
22 of any other agenda items;

23 (2) the date, time, and location of the meeting or
24 hearing;

25 (3) the name, telephone number, and address of the
26 person to whom questions or requests for additional information may
27 be submitted;

1 (4) the names of the other districts in the district's
2 management area; and

3 (5) information on how the public may submit comments.

4 (c) Except as provided by Subsection (b), notice of a
5 hearing described by Subsection (b) must be provided in the manner
6 prescribed for a rulemaking hearing under Section 36.101(d).

7 SECTION 16. Subsections (a) and (e), Section 36.1071, Water
8 Code, are amended to read as follows:

9 (a) Following notice and hearing, the district shall, in
10 coordination with surface water management entities on a regional
11 basis, develop a comprehensive management plan which addresses the
12 following management goals, as applicable:

- 13 (1) providing the most efficient use of groundwater;
- 14 (2) controlling and preventing waste of groundwater;
- 15 (3) controlling and preventing subsidence;
- 16 (4) addressing conjunctive surface water management
17 issues;
- 18 (5) addressing natural resource issues;
- 19 (6) addressing drought conditions;
- 20 (7) addressing conservation, recharge enhancement,
21 rainwater harvesting, precipitation enhancement, or brush control,
22 where appropriate and cost-effective; and
- 23 (8) addressing [~~in a quantitative manner~~] the desired
24 future conditions adopted by the district under Section 36.108 [~~of~~
25 ~~the groundwater resources~~].

26 (e) In the management plan described under Subsection (a),
27 the district shall:

1 (1) identify the performance standards and management
2 objectives under which the district will operate to achieve the
3 management goals identified under Subsection (a);

4 (2) specify, in as much detail as possible, the
5 actions, procedures, performance, and avoidance that are or may be
6 necessary to effect the plan, including specifications and proposed
7 rules;

8 (3) include estimates of the following:

9 (A) modeled [~~managed~~] available groundwater in
10 the district based on the desired future condition established
11 under Section 36.108;

12 (B) the amount of groundwater being used within
13 the district on an annual basis;

14 (C) the annual amount of recharge from
15 precipitation, if any, to the groundwater resources within the
16 district;

17 (D) for each aquifer, the annual volume of water
18 that discharges from the aquifer to springs and any surface water
19 bodies, including lakes, streams, and rivers;

20 (E) the annual volume of flow into and out of the
21 district within each aquifer and between aquifers in the district,
22 if a groundwater availability model is available;

23 (F) the projected surface water supply in the
24 district according to the most recently adopted state water plan;
25 and

26 (G) the projected total demand for water in the
27 district according to the most recently adopted state water plan;

1 and

2 (4) consider the water supply needs and water
3 management strategies included in the adopted state water plan.

4 SECTION 17. Subchapter D, Chapter 36, Water Code, is
5 amended by amending Section 36.108 and adding Sections 36.1081
6 through 36.1086 to read as follows:

7 Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In
8 this section:

9 (1) "Development [,"development] board" means the
10 Texas Water Development Board.

11 (2) "District representative" means the presiding
12 officer or the presiding officer's designee for any district
13 located wholly or partly in the management area.

14 (b) If two or more districts are located within the
15 boundaries of the same management area, each district shall prepare
16 a comprehensive management plan as required by Section 36.1071
17 covering that district's respective territory. On completion and
18 approval of the plan as required by Section 36.1072, each district
19 shall forward a copy of the new or revised management plan to the
20 other districts in the management area. The boards of the districts
21 shall consider the plans individually and shall compare them to
22 other management plans then in force in the management area.

23 (c) The district representatives [~~presiding officer, or the~~
24 ~~presiding officer's designee, of each district located in whole or~~
25 ~~in part in the management area]~~ shall meet at least annually to
26 conduct joint planning with the other districts in the management
27 area and to review the management plans, the [~~and~~] accomplishments

1 of ~~for~~ the management area, and proposals to adopt new or amend
2 existing desired future conditions. In reviewing the management
3 plans, the districts shall consider:

4 (1) the goals of each management plan and its impact on
5 planning throughout the management area;

6 (2) the effectiveness of the measures established by
7 each management plan for conserving and protecting groundwater and
8 preventing waste, and the effectiveness of these measures in the
9 management area generally;

10 (3) any other matters that the boards consider
11 relevant to the protection and conservation of groundwater and the
12 prevention of waste in the management area; and

13 (4) the degree to which each management plan achieves
14 the desired future conditions established during the joint planning
15 process.

16 (d) Not later than September 1, 2010, and every five years
17 thereafter, the districts shall consider groundwater availability
18 models and other data or information for the management area and
19 shall propose for adoption ~~[establish]~~ desired future conditions
20 for the relevant aquifers within the management area. Before
21 voting on the proposed ~~[In establishing the]~~ desired future
22 conditions of the aquifers under Subsection (d-2) ~~[this section]~~,
23 the districts shall consider:

24 (1) aquifer uses or conditions within the management
25 area, including conditions that differ substantially from one
26 geographic area to another;

27 (2) the water supply needs and water management

1 strategies included in the state water plan;

2 (3) hydrological conditions, including for each
3 aquifer in the management area the total estimated recoverable
4 storage as provided by the executive administrator, and the average
5 annual recharge, inflows, and discharge;

6 (4) other environmental impacts, including impacts on
7 spring flow and other interactions between groundwater and surface
8 water;

9 (5) the impact on subsidence;

10 (6) socioeconomic impacts reasonably expected to
11 occur;

12 (7) the impact on the interests and rights in private
13 property, including ownership and the rights of management area
14 landowners and their lessees and assigns in groundwater as
15 recognized under Section 36.002;

16 (8) the feasibility of achieving the desired future
17 condition; and

18 (9) any other information relevant to the specific
19 desired future conditions [~~uses or conditions of an aquifer within~~
20 ~~the management area that differ substantially from one geographic~~
21 ~~area to another~~].

22 (d-1) The districts may establish different desired future
23 conditions for:

24 (1) each aquifer, subdivision of an aquifer, or
25 geologic strata located in whole or in part within the boundaries of
26 the management area; or

27 (2) each geographic area overlying an aquifer in whole

1 or in part or subdivision of an aquifer within the boundaries of the
2 management area.

3 (d-2) [~~(d-1)~~] The desired future conditions proposed
4 [~~established~~] under Subsection (d) must provide a balance between
5 the highest practicable level of groundwater production and the
6 conservation, preservation, protection, recharging, and prevention
7 of waste of groundwater and control of subsidence in the management
8 area. This subsection does not prohibit the establishment of
9 desired future conditions that provide for the reasonable long-term
10 management of groundwater resources consistent with the management
11 goals under Section 36.1071(a). The desired future conditions
12 proposed under Subsection (d) must be approved [~~adopted~~] by a
13 two-thirds vote of all the district representatives for
14 distribution to the districts in the management area. A period of
15 not less than 90 days for public comments begins on the day the
16 proposed desired future conditions are mailed to the districts.
17 During the public comment period and after posting notice as
18 required by Section 36.063, each district shall hold a public
19 hearing on any proposed desired future conditions relevant to that
20 district. During the public comment period, the district shall
21 make available in its office a copy of the proposed desired future
22 conditions and any supporting materials, such as the documentation
23 of factors considered under Subsection (d) and groundwater
24 availability model run results. After the public hearing, the
25 district shall compile for consideration at the next joint planning
26 meeting a summary of relevant comments received, any suggested
27 revisions to the proposed desired future conditions, and the basis

1 for the revisions [~~present at a meeting.~~

2 ~~[(1) at which at least two-thirds of the districts~~
3 ~~located in whole or in part in the management area have a voting~~
4 ~~representative in attendance, and~~

5 ~~[(2) for which all districts located in whole or in~~
6 ~~part in the management area provide public notice in accordance~~
7 ~~with Chapter 551, Government Code.~~

8 ~~[(d-2) Each district in the management area shall ensure~~
9 ~~that its management plan contains goals and objectives consistent~~
10 ~~with achieving the desired future conditions of the relevant~~
11 ~~aquifers as adopted during the joint planning process].~~

12 (d-3) After the earlier of the date on which all the
13 districts have submitted their district summaries or the expiration
14 of the public comment period under Subsection (d-2), the district
15 representatives shall reconvene to review the reports, consider any
16 district's suggested revisions to the proposed desired future
17 conditions, and finally adopt the desired future conditions for the
18 management area. The desired future conditions must be adopted as a
19 resolution by a two-thirds vote of all the district
20 representatives. The district representatives shall produce a
21 desired future conditions explanatory report for the management
22 area and submit to the development board and each district in the
23 management area proof that notice was posted for the joint planning
24 meeting, a copy of the resolution, and a copy of the explanatory
25 report. The report must:

26 (1) identify each desired future condition;

27 (2) provide the policy and technical justifications

1 for each desired future condition;

2 (3) include documentation that the factors under
3 Subsection (d) were considered by the districts and a discussion of
4 how the adopted desired future conditions impact each factor;

5 (4) list other desired future condition options
6 considered, if any, and the reasons why those options were not
7 adopted; and

8 (5) discuss reasons why recommendations made by
9 advisory committees and relevant public comments received by the
10 districts were or were not incorporated into the desired future
11 conditions.

12 (d-4) As soon as possible after a district receives the
13 desired future conditions resolution and explanatory report under
14 Subsection (d-3), the district shall adopt the desired future
15 conditions in the resolution and report that apply to the district.

16 (e) Except as provided by this section, a [A] joint meeting
17 under this section must be held in accordance with Chapter 551,
18 Government Code. Each district shall comply with Chapter 552,
19 Government Code. The district representatives may elect one
20 district to be responsible for providing the notice of a joint
21 meeting that this section would otherwise require of each district
22 in the management area. Notice of a joint [the] meeting must be
23 provided at least 10 days before the date of the meeting by:

24 (1) providing notice to the secretary of state;

25 (2) providing notice to the county clerk of each
26 county located wholly or partly in a district that is located wholly
27 or partly in the management area; and

1 (3) posting notice at a place readily accessible to
2 the public at the district office of each district located wholly or
3 partly in the management area.

4 (e-1) The secretary of state and the county clerk of each
5 county described by Subsection (e) shall post notice of the meeting
6 in the manner provided by Section 551.053, Government Code.

7 (e-2) Notice of a joint meeting must include:

8 (1) the date, time, and location of the meeting;

9 (2) a summary of any action proposed to be taken;

10 (3) the name of each district located wholly or partly
11 in the management area; and

12 (4) the name, telephone number, and address of one or
13 more persons to whom questions, requests for additional
14 information, or comments may be submitted.

15 (e-3) The failure or refusal of one or more districts to
16 post notice for a joint meeting under Subsection (e)(3) does not
17 invalidate an action taken at the joint meeting [~~shall be given in~~
18 ~~accordance with the requirements for notice of district board of~~
19 ~~directors meetings under that Act].~~

20 Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT
21 PLANNING. (a) On request, the commission and the Texas Water
22 Development Board shall make technical staff available to serve in
23 a nonvoting advisory capacity to assist with the development of
24 desired future conditions during the joint planning process under
25 Section 36.108.

26 (b) During the joint planning process under Section 36.108,
27 the district representatives may appoint and convene nonvoting

1 advisory subcommittees who represent social, governmental,
2 environmental, or economic interests to assist in the development
3 of desired future conditions.

4 Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section,
5 "affected person" means, with respect to a management area:

- 6 (1) an owner of land in the management area;
- 7 (2) a district in or adjacent to the management area;
- 8 (3) a regional water planning group with a water
9 management strategy in the management area;
- 10 (4) a person who holds or is applying for a permit from
11 a district in the management area;
- 12 (5) a person who has groundwater rights in the
13 management area; or
- 14 (6) any other person defined as affected by commission
15 rule.

16 (b) An affected person [~~(f) A district or person with a~~
17 ~~legally defined interest in the groundwater within the management~~
18 ~~area] may file a petition with the commission requesting an inquiry
19 for any of the following reasons:~~

- 20 (1) a district fails to submit its management plan to
21 the executive administrator;
- 22 (2) [if] a district fails [or districts refused] to
23 participate [join] in the joint planning process under Section
24 36.108;
- 25 (3) a district fails to adopt rules;
- 26 (4) a district fails to adopt the applicable desired
27 future conditions adopted by the management area at a joint

1 meeting;

2 (5) a district fails to update its management plan
3 before the second anniversary of the adoption of desired future
4 conditions by the management area;

5 (6) a district fails to update its rules to implement
6 the applicable desired future conditions before the first
7 anniversary of the date it updated its management plan with the
8 adopted desired future conditions;

9 (7) [or the process failed to result in adequate
10 planning, including the establishment of reasonable future desired
11 conditions of the aquifers, and the petition provides evidence
12 that:

13 [(1) a district in the groundwater management area has
14 failed to adopt rules;

15 [(2)] the rules adopted by a district are not designed
16 to achieve the desired future conditions adopted by [condition of
17 the groundwater resources in] the [groundwater] management area
18 [established] during the joint planning process;

19 (8) [(3)] the groundwater in the management area is
20 not adequately protected by the rules adopted by a district; or

21 (9) [(4)] the groundwater in the [groundwater]
22 management area is not adequately protected due to the failure of a
23 district to enforce substantial compliance with its rules.

24 (c) [(g)] Not later than the 90th day after the date the
25 petition is filed, the commission shall review the petition and
26 either:

27 (1) dismiss the petition if the commission finds that

1 the evidence is not adequate to show that any of the conditions
2 alleged in the petition exist; or

3 (2) select a review panel as provided in Subsection
4 (d) [~~(h)~~].

5 (d) [~~(h)~~] If the petition is not dismissed under Subsection
6 (c) [~~(g)~~], the commission shall appoint a review panel consisting
7 of a chairman and four other members. A director or general manager
8 of a district located outside the [~~groundwater~~] management area
9 that is the subject of the petition may be appointed to the review
10 panel. The commission may not appoint more than two members of the
11 review panel from any one district. The commission also shall
12 appoint a disinterested person to serve as a nonvoting recording
13 secretary for the review panel. The recording secretary may be an
14 employee of the commission. The recording secretary shall record
15 and document the proceedings of the panel.

16 (e) [~~(i)~~] Not later than the 120th day after appointment,
17 the review panel shall review the petition and any evidence
18 relevant to the petition and, in a public meeting, consider and
19 adopt a report to be submitted to the commission. The commission
20 may direct the review panel to conduct public hearings at a location
21 in the [~~groundwater~~] management area to take evidence on the
22 petition. The review panel may attempt to negotiate a settlement or
23 resolve the dispute by any lawful means.

24 (f) [~~(j)~~] In its report, the review panel shall include:

25 (1) a summary of all evidence taken in any hearing on
26 the petition;

27 (2) a list of findings and recommended actions

1 appropriate for the commission to take and the reasons it finds
2 those actions appropriate; and

3 (3) any other information the panel considers
4 appropriate.

5 (g) [~~(k)~~] The review panel shall submit its report to the
6 commission. The commission may take action under Section 36.3011.

7 Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS. (a) In
8 this section, "development board" means the Texas Water Development
9 Board.

10 (b) [~~(l)~~] A person with a legally defined interest in the
11 groundwater in the [~~groundwater~~] management area, a district in or
12 adjacent to the [~~groundwater~~] management area, or a regional water
13 planning group for a region in the [~~groundwater~~] management area
14 may file a petition with the development board appealing the
15 approval of the desired future conditions of the groundwater
16 resources established under this section. The petition must
17 provide evidence that the districts did not establish a reasonable
18 desired future condition of the groundwater resources in the
19 [~~groundwater~~] management area.

20 (c) [~~(m)~~] The development board shall review the petition
21 and any evidence relevant to the petition. The development board
22 shall hold at least one hearing at a central location in the
23 management area to take testimony on the petition. The development
24 board may delegate responsibility for a hearing to the executive
25 administrator or to a person designated by the executive
26 administrator. If the development board finds that the conditions
27 require revision, the development board shall submit a report to

1 the districts that includes a list of findings and recommended
2 revisions to the desired future conditions of the groundwater
3 resources.

4 (d) [~~(n)~~] The districts shall prepare a revised plan in
5 accordance with development board recommendations and hold, after
6 notice, at least one public hearing at a central location in the
7 [~~groundwater~~] management area. After consideration of all public
8 and development board comments, the districts shall revise the
9 conditions and submit the conditions to the development board for
10 review.

11 Sec. 36.1084. MODELED AVAILABLE GROUNDWATER. (a) The
12 Texas Water Development Board shall require the [~~(e) The~~]
13 districts in a management area to [~~shall~~] submit to the executive
14 administrator not later than the 60th day after the date on which
15 the districts adopted desired future conditions under Section
16 36.108(d-3):

17 (1) the desired future conditions adopted
18 [~~established~~] under Section 36.108;

19 (2) proof that notice was posted for the joint
20 planning meeting; and

21 (3) the desired future conditions explanatory report
22 [~~this section to the executive administrator~~].

23 (b) The executive administrator shall provide each district
24 and regional water planning group located wholly or partly in the
25 management area with the modeled [~~managed~~] available groundwater in
26 the management area based upon the desired future conditions
27 adopted by the districts [~~condition of the groundwater resources~~

1 ~~established under this section].~~

2 Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each
3 district in the management area shall ensure that its management
4 plan contains goals and objectives consistent with achieving the
5 desired future conditions of the relevant aquifers as adopted
6 during the joint planning process.

7 Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT
8 AREA. [~~p~~] Districts located within the same [~~groundwater~~]
9 management areas or in adjacent management areas may contract to
10 jointly conduct studies or research, or to construct projects,
11 under terms and conditions that the districts consider beneficial.
12 These joint efforts may include studies of groundwater availability
13 and quality, aquifer modeling, and the interaction of groundwater
14 and surface water; educational programs; the purchase and sharing
15 of equipment; and the implementation of projects to make
16 groundwater available, including aquifer recharge, brush control,
17 weather modification, desalination, regionalization, and treatment
18 or conveyance facilities. The districts may contract under their
19 existing authorizations including those of Chapter 791, Government
20 Code, if their contracting authority is not limited by Sections
21 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

22 SECTION 18. Section 36.3011, Water Code, is amended to read
23 as follows:

24 Sec. 36.3011. COMMISSION ACTION REGARDING [~~FAILURE OF~~]
25 DISTRICT DUTIES [~~TO CONDUCT JOINT PLANNING~~]. Not later than the
26 45th day after receiving the review panel's report under Section
27 36.1082 [~~36.108~~], the executive director or the commission shall

1 take action to implement any or all of the panel's recommendations.
2 The commission may take any action against a district it considers
3 necessary in accordance with Section 36.303 if the commission finds
4 that:

5 (1) the [~~a~~] district has failed to submit its
6 management plan to the executive administrator;

7 (2) the district has failed to participate in the
8 joint planning process under Section 36.108;

9 (3) the [~~a~~] district has failed to adopt rules;

10 (4) the district has failed to adopt the applicable
11 desired future conditions adopted by the management area at a joint
12 meeting;

13 (5) the district has failed to update its management
14 plan before the second anniversary of the adoption of desired
15 future conditions by the management area;

16 (6) the district has failed to update its rules to
17 implement the applicable desired future conditions before the first
18 anniversary of the date it updated its management plan with the
19 adopted desired future conditions;

20 (7) [~~(3)~~] the rules adopted by the district are not
21 designed to achieve the desired future conditions adopted by
22 [~~condition of the groundwater resources in~~] the [~~groundwater~~]
23 management area during the joint planning process; [~~or~~]

24 (8) [~~(4)~~] the groundwater in the management area is
25 not adequately protected by the rules adopted by the district; [~~7~~]
26 or

27 (9) the groundwater in the management area is not

1 adequately protected because of the district's failure to enforce
2 substantial compliance with its rules.

3 SECTION 19. Sections 15.908 and 17.180, Water Code, are
4 repealed.

5 SECTION 20. As soon as practicable after the effective date
6 of this Act, groundwater conservation districts shall appoint
7 initial representatives to regional water planning groups as
8 required by Subsection (c), Section 16.053, Water Code, as amended
9 by this Act.

10 SECTION 21. Not later than January 1, 2013:

11 (1) the Texas Commission on Environmental Quality
12 shall adopt rules under Subsection (f), Section 11.1271, Water
13 Code, as amended by this Act;

14 (2) the Texas Water Development Board and the Texas
15 Commission on Environmental Quality jointly shall adopt rules under
16 Subsection (e), Section 16.402, Water Code, as amended by this Act;
17 and

18 (3) the Texas Water Development Board and the Texas
19 Commission on Environmental Quality, in consultation with the Water
20 Conservation Advisory Council, shall develop the water use and
21 conservation calculation methodology and guidance and the data
22 collection and reporting program required by Subsections (a) and
23 (c), Section 16.403, Water Code, as added by this Act.

24 SECTION 22. Not later than January 1, 2015, the Texas Water
25 Development Board shall submit to the legislature the first report
26 required by Subsection (d), Section 16.403, Water Code, as added by
27 this Act.

1 SECTION 23. The notice provisions of Subsections (b) and
2 (c), Section 36.063, Water Code, as added by this Act, apply only to
3 a meeting or hearing of a groundwater conservation district or a
4 joint planning meeting of groundwater conservation districts held
5 on or after the effective date of this Act. A meeting or hearing
6 held before the effective date of this Act is subject to the notice
7 provisions in effect at the time of the meeting or hearing, and
8 those provisions are continued in effect for that purpose.

9 SECTION 24. The requirement that a groundwater conservation
10 district's management plan under Subsection (a), Section 36.1071,
11 Water Code, as amended by this Act, include the desired future
12 conditions adopted under Section 36.108, Water Code, as amended by
13 this Act, for submission to the executive administrator of the
14 Texas Water Development Board before the plan is considered
15 administratively complete applies only to a district management
16 plan submitted to the executive administrator on or after the
17 effective date of this Act. A management plan submitted before the
18 effective date of this Act is governed by the law in effect on the
19 date the plan was submitted, and that law is continued in effect for
20 that purpose.

21 SECTION 25. The procedures for the adoption and reporting
22 of desired future conditions of groundwater resources in a
23 management area under Section 36.108, Water Code, as amended by
24 this Act, and Section 36.1084, Water Code, as added by this Act,
25 apply only to the adoption of desired future conditions that occurs
26 on or after the effective date of this Act. Desired future
27 conditions adopted before the effective date of this Act are

1 governed by the law in effect on the date the desired future
2 conditions were adopted, and that law is continued in effect for
3 that purpose.

4 SECTION 26. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 660 passed the Senate on April 20, 2011, by the following vote: Yeas 30, Nays 1; May 27, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2011, House granted request of the Senate; May 29, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 660 passed the House, with amendments, on May 20, 2011, by the following vote: Yeas 143, Nays 4, two present not voting; May 28, 2011, House granted request of the Senate for appointment of Conference Committee; May 29, 2011, House adopted Conference Committee Report by the following vote: Yeas 147, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor