

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: February 8, 2012

DATE OF REQUEST: January 20, 2012

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

CAPTION: Docket No. 2011-1223-RUL. Consideration for publication of, and hearing on, proposed repeal of Section 291.7 and amendment to Section 291.22 of 30 TAC Chapter 291, Utility Regulations; amendment to Section 293.94 of 30 TAC Chapter 293, Water Districts; and amendment to Section 297.1 of 30 TAC Chapter 297, Water Rights, Substantive.

The proposed rulemaking would implement House Bill (HB) 2694, HB 3002, and Senate Bill 1361, 82nd Legislature, 2011, Regular Session, relating to water district audit report exemptions; the addition of the definition of aquaculture; utility application filing fees; and delivery of notice for certain utility applications. The proposed rulemaking would also correct the spelling of the word "willfully;" amend the rule to reflect that the "Water District Financial Management Guide" is the only manual currently in use for the accounting and auditing of water districts; and, make other non-substantive changes to comply with grammar, sequencing and formatting requirements. (Justin Taack, Ruth Takeda) (Rule Project No. 2011-039-293-OW)

Linda Brookins
Division Director

Kelly Rila
Division Director

L'Oreal Stepney, P.E.
Deputy Director

Bruce McAnally
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 20, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

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

Docket No.: 2011-1223-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 291, Utility Regulations;
Chapter 293, Water Districts; and
Chapter 297, Water Rights, Substantive
HB 2694 (Sections 4.23, 5.01, 6.04 and Art. 9), HB 3002, SB 1361:
Aquaculture Definition, Water Fee Repealer, Water District Financial
Reporting, and Water Rate Notice
Rule Project No. 2011-039-293-OW

Background and reason(s) for the rulemaking:

In 2011, the 82nd Legislature passed House Bill (HB) 2694, HB 3002, and Senate Bill (SB) 1361.

HB 3002, SB 1361, and HB 2694, §4.23, increase certain exemption thresholds for water districts filing financial reports in lieu of financial audits.

HB 2694, §5.01 adds aquaculture to the definition of agriculture in Texas Water Code (TWC), §11.002(12).

HB 2694, §6.04 repeals TWC, Chapter 13, Subchapter L, Commission Financing, eliminating fees currently collected and deposited to the Water Resource Management Account (WRMA), specifically the fees for rate change applications, certificate of public convenience and necessity (CCN) applications, and CCN sale, transfer, or merger (STM) requests.

HB 2694, §9.01 amends TWC, §13.043(i) to give municipalities and political subdivisions such as districts 60 days, rather than 30 days, to provide individual written notice to ratepayers eligible to appeal a ratemaking decision who reside outside of municipal or district boundaries. This section also allows a municipality or a district to provide notice electronically to the ratepayers if they have access to a ratepayer's e-mail address.

HB 2694, §9.02 amends TWC, §13.187(b) to add that the statement of intent to change rates can be sent by e-mail to affected municipalities and other affected persons.

Re: Docket No. 2011-1223-RUL

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

HB 3002, SB 1361, and HB 2694, §4.23, require a rule change to §293.94 to reflect the increase to certain exemption thresholds from \$100,000 to \$250,000 for water districts filing financial reports in lieu of full audits.

HB 2694, §5.01 adds "Aquaculture," to the definition of "Agriculture" in §297.1, and removes aquaculture from the definition of "Industrial Use," also in §297.1.

HB 2694, §6.04 provides for the repeal of §291.7, eliminating CCN and rate change application filing fees.

HB 2694, §9.01 and §9.02 provides for the amendment to §291.22 to add e-mail as an acceptable method of: allowing a utility to provide notice of a proposed rate change to all affected utility customers; allowing the governing body of a municipality or a political subdivision that provides retail water or sewer service to customers residing outside the boundaries of the municipality or political subdivision to provide individual written notice to each affected ratepayer eligible to appeal a rate change; allowing a utility to deliver notice of a proposed rate change; and allowing a utility to deliver a statement of intent to change rates to the appropriate officer of each affected municipality. HB 2694, §9.01 and §9.02 also add e-mail as an acceptable delivery method in the proof of notice affidavit required as part of a rate change application.

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

The proposed rulemaking is required as a result of HB 2694, §§4.23, 5.01, 6.04, 9.01 and 9.02; HB 3002; and SB 1361.

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

None.

Statutory authority:

This rulemaking is proposed under the TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and TWC, §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

Effect on the:

A.) Regulated community:

This rulemaking is not expected to have a significant effect on the regulated community.

Re: Docket No. 2011-1223-RUL

B.) Public:

This rulemaking is not expected to have significant effect on the public.

C.) Agency programs:

The repeal of §291.7 is expected to decrease agency revenue in Account 153 - WRMA - by \$30,000 per year. However, the repeal of application fees currently collected from investor-owned utilities for rate change applications, applications for CCNs, and applications for CCN STM approval is not expected to have a significant fiscal impact on the agency.

Stakeholder meetings:

There are no proposed stakeholder meetings associated with this rulemaking.

Potential controversial concerns and legislative interest:

There are no controversial concerns with this rulemaking. HB 2694 was the Texas Commission on Environmental Quality's Sunset bill.

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

Although this rulemaking affects certain aspects of the Office of Water's Water Availability and Water Supply Divisions, this rulemaking would not have a significant effect on current policies or require the development of new policies.

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

If the 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 proposal rulemaking schedule:

Anticipated proposal date:	February 8, 2012
Anticipated <i>Texas Register</i> publication date:	February 24, 2012
Public hearing date (if any):	March 20, 2012
Public comment period:	February 24, 2012 through March 26, 2012
Anticipated adoption date:	August 8, 2012

Agency contacts:

Justin Taack, Rule Project Manager, 239-1122, Water Supply Division
Ruth Takeda, Staff Attorney, 239-6635
Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

HB 2694, §§ 4.23, 5.01, 6.04, and Art. 9
HB 3002
SB 1361

Commissioners
Page 4
January 20, 2012

Re: Docket No. 2011-1223-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Justin Taack
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to repeal §291.7 and amend §291.22.

Background and Summary of the Factual Basis for the Proposed Rules

Section 291.7 sets forth the filing fees required for a rate change application; an application for a certificate of public convenience and necessity (CCN); and an application for sale, assignment, or lease of a CCN, or notice of intent to sell, assign, lease, or rent a water or sewer system. This rule was promulgated based on Texas Water Code (TWC), Chapter 13, Subchapter L. House Bill (HB) 2694 was passed during the 82nd Legislature, 2011. HB 2694, §6.04 repealed TWC, Chapter 13, Subchapter L, thus eliminating the commission's ability to collect application fees for rate change requests; applications for CCNs; applications for sale, transfer or merger (STM) requests; and notices of intent to sell, assign, lease, or rent a water or sewer system. Therefore, the commission proposes to repeal §291.7 and not require any filing fees for a rate change application; an application for a CCN; an application for sale, assignment, or lease of a CCN; or a notice of intent to sell, assign, lease, or rent a water or sewer system.

Section 291.22 allows a governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside their respective boundaries to mail or hand deliver individual written notice to each affected ratepayer eligible to appeal a rate change within 30 days after the date of the final decision. HB 2694, §9.01

amended TWC, §13.043(i) by increasing this time frame from 30 to 60 days and by allowing the written notice to be e-mailed if the municipality or political subdivision has access to a ratepayer's e-mail address. The commission therefore proposes an amendment to §291.22 to increase the time frame for delivery of notice of a final rate decision by a municipality or political subdivision, and allow the notice to be e-mailed if the municipality or political subdivision has access to a ratepayer's e-mail address in order to achieve consistency with HB 2694, §6.04.

Section 291.22 also requires a utility to mail or hand deliver the statement of intent to change rates to the appropriate officer of each affected municipality. HB 2694, §9.02 amended TWC, §13.187(b), by allowing a utility to e-mail the statement of intent to change rates. Therefore, the commission proposes to amend §291.22 by allowing the statement of intent to change rates to be e-mailed in order to achieve consistency with HB 2694, §9.02. The commission also proposes an amendment to §291.22 to allow e-mail as an acceptable delivery method for the noticing of utility rate change applications in order to maintain internal consistency in commission rules regarding rate change notification.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 293, Water Districts, and 30 TAC Chapter 297, Water Rights, Substantive.

Section by Section Discussion

§291.7, Filing Fees

The commission proposes to repeal §291.7 and not require any filing fees for a rate change application; an application for a CCN; an application for sale, assignment, or lease of a CCN; or a notice of intent to sell, assign, lease, or rent a water or sewer system. The commission proposes to repeal this section because HB 2694, 82nd Legislature, 2011, repealed TWC, Chapter 13, Subchapter L, which was the statutory basis for the rule. The repeal of the rule will ensure consistency with the statutory change.

§291.22, Notice of Intent To Change Rates

The commission proposes to amend §291.22(a) by allowing a utility to provide notice of a proposed rate change to all affected utility customers by e-mail, in addition to delivery by mail or hand delivery. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission proposes to amend §291.22(b) by allowing the governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision to e-mail individual written notice of a final decision on a rate change to each affected ratepayer eligible to appeal it, if the municipality or political subdivision has access to a ratepayer's e-mail address. The commission also proposes to amend this subsection by changing the number of days from 30 to 60 that the municipality or political subdivision has to provide such notice.

These amendments ensure consistency with HB 2694, §9.01. The commission proposes to amend §291.22(c) by allowing a utility to deliver notice of a proposed rate change by e-mail, in addition to mailing notices separately or with customer billings. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission proposes to amend §291.22(d) by allowing a utility to deliver a statement of intent to change rates by e-mail to the appropriate officer of each affected municipality, in addition to the options of mailing or delivering a copy of the statement of intent. The amendment ensures consistency with HB 2694, §9.02. The commission proposes to amend §291.22(e) by clarifying that the proof of notice in the form of an affidavit allows delivery by e-mail in addition to mail or personal delivery to customers and affected municipalities. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission proposes these amendments to implement TWC, §13.043(i) and §13.187(b), as amended by HB 2694, 82nd Legislature, 2011.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rulemaking. The agency will experience a decrease, although not significant, in fee revenue. Units of local

government could experience some cost savings as a result of reduced fees and e-mailing of notices.

The proposed rulemaking would revise Chapter 291 to implement certain provisions of HB 2694. The proposed rulemaking would repeal application fees currently collected from investor owned utilities for rate change requests; fees for applications for CCNs; fees for applications for STM requests; and fees for notice of intent to sell, assign, lease, or rent a water or sewer system. The proposed rulemaking also increases the time frame that municipalities or political subdivisions providing retail water or sewer service to customers outside their boundaries have when providing notice of a final rate change decision from 30 to 60 days. However, these municipalities or political subdivisions would be allowed to e-mail rate change notices to affected customers if e-mail addresses are available. In addition, an investor owned retail water or sewer utility would be allowed to e-mail a statement of intent to change rates and notice of utility rate change applications (instead of mailing or delivering such notices) to the appropriate office of municipalities served by the utility.

Agency Revenue

The proposed rulemaking is expected to decrease agency revenue in Account 153 - Water Resource Management Account by \$30,000 per year. The repeal of application fees currently collected from investor owned utilities for rate change requests, fees for

applications for CCNs, fees for applications for STM requests, and fees for notice of intent to sell, assign, lease, or rent a water or sewer system are not expected to have a significant fiscal impact on the agency.

Impact on Units of Local Government

Municipalities or political subdivisions providing retail water or sewer service to customers outside their boundaries will be required to give those customers notice of a final decision to change rates within 60 days, rather than 30 days. The proposed rules will allow these municipalities or political subdivisions to e-mail rate change notices to affected customers if e-mail addresses are available. Staff does not expect the additional number of days to result in significant increases in the number of appeals for these units of local government. If units of local government are able to obtain e-mail addresses for affected customers and provide notice by e-mail for rate changes, there may be decreased postage and delivery costs. Any cost savings for postage and delivery services is not expected to be significant.

Units of local government that plan to file a CCN or STM application should experience additional, although not significant, cost savings under the proposed rulemaking since they will no longer be required to pay filing fees for a CCN or STM application. Current application fees are \$100 per CCN application and \$50 to \$500 (depending on the number of connections being acquired) per STM application and per notice of intent to

sell, assign, lease, or rent a water or sewer system.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rulemaking is not expected to have a significant fiscal impact on individuals since savings under the proposed rulemaking is not expected to significantly reduce the cost of providing water or sewer service. However, the proposed rulemaking allows for delivery of notice of rate changes to be e-mailed which some affected individuals may prefer as a delivery option.

The proposed rulemaking repeals fees paid by investor owned utilities for rate change requests; fees for applications for CCNs; fees for applications for STM requests; and fees for notices of intent to sell, assign, lease, or rent a water or sewer system. Current application fees are \$100 per CCN application and \$50 to \$500 (depending on the number of connections being acquired) per STM application and per notice of intent to sell, assign, lease, or rent a water or sewer system. Current application fees for rate change requests are \$50 to \$500 depending on the number of connections. The elimination of these fees is not expected to significantly reduce the operating costs of

retail water or sewer providers.

The proposed rulemaking will also allow investor owned utilities to provide notice of rate changes by e-mail to affected municipalities instead of mailing or hand delivering the notices. However, any cost savings are not expected to be significant.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses providing retail water or sewer service under the proposed rulemaking. Small businesses that provide retail water or sewer services should experience the same cost reductions as those experienced by a large business. Some small businesses that currently receive mailed or hand delivered notice or rate changes may receive notice via e-mail.

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 rulemaking is required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is 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 rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is 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. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state.

First, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislation enacted in 2011 by the 82nd Legislature, specifically HB 2694, §§6.04, 9.01, and 9.02. HB 2694, §6.04 repealed TWC, Chapter 13, Subchapter L, which covered fees for rate changes and CCNs. The commission rule based upon TWC, Chapter 13, Subchapter L is therefore proposed to be

repealed. HB 2694, §9.01 provides an additional 30 days for a municipality or political subdivision to notify ratepayers of a rate increase, and allows such notice to be delivered by e-mail if the municipality or political subdivision has access to a ratepayer's e-mail address. The proposed rulemaking implements these changes. HB 2694, §9.02 allows a utility to notify ratepayers of its intent to change rates by e-mail. The proposed rule implements this change and also allows a utility to provide e-mail notice to ratepayers of a rate change application.

Second, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rulemaking would not 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 the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rulemaking will be significant with respect to the economy as a whole or with respect to 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.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments 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 repeals §291.7 and amends §291.22. The commission's analysis revealed that repealing §291.7 would achieve consistency with the statutory changes made by HB 2694. The repeal impacts the commission financially, but does not impact private real property financially. The commission's analysis also revealed that amending §291.22 would achieve consistency with TWC, §13.043(i) as amended in 2011 by HB 2694. The rulemaking would require that a municipality or political subdivision provide notice to ratepayers eligible to appeal a rate-making decision by those entities within 60 days, rather than 30 days. The proposed rulemaking would allow the entity to provide electronic notice to ratepayers if the entity has access to a ratepayer's e-mail address. The notice requirement applies to governmental entities rather than to private citizens.

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 amending the definition as proposed, 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 that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

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 March 20, 2012, at 2:00 p.m. in Building E, Room 201 S, 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 2011-039-293-OW. The comment period closes March 26, 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 Justin Taack, Water Supply Division, at (512) 239-1122.

SUBCHAPTER A: GENERAL PROVISIONS

[\$291.7]

Statutory Authority

The repeal is proposed under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

The proposed repeal implements House Bill 2694, §6.04, 82nd Legislature, 2011.

[\$291.7. Filing Fees.]

[Each application, petition, or complaint that is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by Texas Water Code, §5.701 and §13.4521, and costs of mailing notice, if any.]

[(1) A rate change application filed with the commission under Texas Water Code, §13.187, must be accompanied by the appropriate filing fee as follows:]

[(A) fewer than 100 connections - \$50;]

[(B) 100 - 200 connections - \$100;]

[(C) 201 - 500 connections - \$200; or]

[(D) more than 500 connections - \$500.]

[(2) An application for a certificate of public convenience and necessity under Texas Water Code, §13.244, must be accompanied by an application fee of \$100.]

[(3) An application for sale, assignment, or lease of a certificate of convenience and necessity under Texas Water Code, §13.251, or notice of intent to sell, assign, lease, or rent a water or sewer system under Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows (one fee will suffice for both applications):]

[(A) fewer than 100 connections - \$50;]

[(B) 100 - 200 connections - \$100;]

[(C) 201 - 500 connections - \$200; or]

[(D) more than 500 connections - \$500.]

[(4) The fees required in paragraphs (1) - (3) of this section are in lieu of the \$100 filing fee required by Texas Water Code, §5.701, which should accompany all

other applications and petitions. A filing fee is not required for appeals or complaints filed under Texas Water Code, §13.043(b) or §13.187(e).]

SUBCHAPTER B: RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

§291.22

Statutory Authority

The amendment is proposed under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

The proposed amendment implements House Bill 2694, §9.01 and §9.02, 82nd Legislature, 2011.

§291.22. Notice of Intent to [To] Change Rates.

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail, e-mail, or hand delivery to all affected utility customers at least 60 days prior to

the proposed effective date. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests;

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(5) any other information that is required by the executive director in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 [30] days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change.

If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-mailed, or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery [mailing], shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

(f) Standby fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission or executive director may authorize an emergency rate increase under Texas Water Code, §5.508 and §13.4133 and Chapter 35 of this title (relating to

Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

(1) for which a person has been appointed under Texas Water Code, §13.4132; or

(2) for which a receiver has been appointed under Texas Water Code, §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §293.94.

Background and Summary of the Factual Basis for the Proposed Rule

Section 293.94 allows a district to file an annual financial report with the executive director in lieu of an audit if: 1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period; 2) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of \$100,000 during the fiscal period; and, 3) the district's cash and temporary investments were not in excess of \$100,000 at any time during the fiscal period.

During the 82nd Legislature, 2011, House Bill (HB) 2694, HB 3002, and Senate Bill (SB) 1361 were passed that affected the audit report exemption thresholds in Texas Water Code (TWC), §49.198(a). These bills increased the dollar amount of the exemption which allows districts to file an annual financial report in lieu of an annual audit. None of the bills referenced each other. HB 2694, §4.23, did not amend one of the two dollar amounts in the exemption thresholds. Pursuant to Texas Government Code, §311.025(b), the three bills were harmonized based upon the fact that two of the three bills raised both dollar amount thresholds and that the third bill raised one dollar amount threshold to the same level as the other two bills. This harmonization leads to a just and reasonable result, compliant with Texas Government Code, §311.021(3).

Therefore, the commission proposes to amend §293.94(e) to increase the audit report exemption thresholds from \$100,000 to \$250,000 to ensure consistency with HB 2694, §4.23; HB 3002; and SB 1361.

Section 293.94 indicates that there are two manuals, "Water District Accounting Manual" and "Annual Audit Report Requirements," governing the accounting and auditing of water districts. The commission maintains the "Water District Financial Management Guide" as the only manual currently in use for the accounting and auditing of water districts. Therefore, the commission proposes to amend §293.94(b) to reflect that the "Water District Financial Management Guide" is the only manual currently in use for the accounting and auditing of water districts. The commission proposes this amendment to ensure that the regulated community complies with the appropriate manual.

The commission also proposes to amend §293.94(j) to correct a misspelling.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 291, Utility Regulations, and 30 TAC Chapter 297, Water Rights, Substantive.

Section Discussion

§293.94, Annual Financial Reporting Requirements

The commission proposes to amend §293.94(b) to reflect that the "Water District Financial Management Guide" is the only manual currently in use for the accounting and auditing of water districts. The amendment is proposed to ensure that the regulated community complies with the appropriate manual.

The commission proposes to amend §293.94(e)(1)(B) to reflect that if a district is to be considered exempt from filing an annual audit report required under TWC, §49.198, a district must not have had gross receipts from operations, loans, taxes, or contributions in excess of \$250,000 during the fiscal period. The commission also proposes to amend §293.94(e)(1)(C) to reflect that if a district is to be considered exempt from filing an annual audit report required under TWC, §49.198, a district's cash and temporary investments must not have been in excess of \$250,000 at any time during the fiscal period. The commission proposes to amend §293.94(e)(1)(B) and (C) to implement TWC, §49.198, as amended by §4.23 of HB 2694; HB 3002; and SB 1361, to remain consistent with the amended statute.

The commission proposes to amend §293.94(j)(2) to correct the spelling of the word "willfully."

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. Small water districts could see a decrease in audit costs as a result of the proposed rule. Other state agencies or units of local government are not expected to be impacted by the proposed rule.

The proposed rule implements HB 3002 and would exempt certain water districts from the requirement to file an annual audit report with the agency. The proposed rule would increase the current thresholds (in excess of \$100,000) for certain gross receipts and cash and temporary investments to thresholds in excess of \$250,000 when applying the criteria to determine when a water district is required to file an audit report. Instead of filing an audit report, water districts would be allowed to file annual financial reports if they do not exceed the proposed thresholds and do not have bonds or other long term liabilities. The proposed rule also makes minor administrative changes to correct rule terminology and eliminate inaccuracies.

The proposed rule is not expected to have a significant fiscal impact on the agency. The proposed rule would affect water districts but no other forms of local government would be impacted. Water districts that would not be required to file an audit report would

save the cost of an annual audit. Audit costs for small water districts are estimated to range from \$6,000 to \$10,000 per year. The exact amount of savings are expected to vary and would depend on a variety of factors, including the quality of each district's financial controls and records as well as the market rates for audit services in that area of the state.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law and lower administrative costs in exempted water districts.

The proposed rule would allow certain water districts to file an annual financial report instead of an annual audit report. Water districts that would not be required to file an audit under the proposed rule might save as much as \$6,000 to \$10,000 per year. The amount of cost savings would depend on a variety of factors including the quality of the district's financial controls and records as well as the market rates for audit services in that area of the state. Individuals and business customers of an exempted water district are expected to benefit from lower operating costs, but each water district is responsible for determining how to distribute any cost savings to their customers.

Certified Public Accountants (CPAs) that provide audit services to affected water districts could see a decrease in revenue as a result of the proposed rule. The fiscal impact of any decrease will depend on a variety of factors including the economic environment and client base of each CPA or CPA firm.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses that are clients of affected water districts. CPA practices that are considered to be a small business could experience a decrease in revenue as a result of the proposed rule.

Whether the fiscal impact of a revenue decrease is significant will depend on a variety of factors, including the economic environment and client base of each CPA or CPA firm.

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 rule is required to comply with state law. Also, the proposed rule does not adversely affect a small or micro-business that is a customer of an affected water district in a material way for the first five years that the proposed rule is 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state.

First, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislation enacted in 2011 by the 82nd Legislature, specifically HB 2694, §4.23; HB 3002; and SB 1361. These bills increased the dollar amount of the exemption which allows districts to file an annual financial report in lieu of an annual audit. The proposed rule implements this intent.

Second, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule would not 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 the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rule would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendment would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments 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 rule constitutes a taking under Texas Government Code, Chapter 2007.

The commission proposes this rule for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The proposed rule amends §293.94.

The commission's analysis reveals that amending §293.94 would achieve consistency with TWC, §49.198(a), which was amended in 2011 by HB 2694. The rule is a reporting requirement that applies to districts, which are political subdivisions, rather than to private citizens. No private real property will be subject to the rule.

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 will occur by amending the definitions as proposed, the commission has determined that promulgation and enforcement of this proposed rule 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 rule because the proposed rule 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 this rule. Therefore, the proposed rule 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 administrative 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 March 20, 2012, at 2:00 p.m. in Building E, Room 201 S, 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 McNally, 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 2011-039-293-OW. The comment period closes March 26, 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 Justin Taack, Water Supply Division, at (512) 239-1122.

SUBCHAPTER H: REPORTS

§293.94

Statutory Authority

The amendment is proposed under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule.

The proposed amendment implements House Bill 2694, §4.23; House Bill 3002; and Senate Bill 1361, 82nd Legislature, 2011.

§293.94. Annual Financial Reporting Requirements.

(a) Statutory provisions for fiscal accountability. All districts as defined in Texas Water Code, §49.001(a) are required to comply with the provisions of Texas Water Code, §§49.191-49.198 requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manual [manuals]. All districts shall comply with the accounting and auditing manual [manuals] adopted by the executive director. The manual [manuals] shall consist of one [two] publication [publications], "Water District

Financial Management Guide." ["Water District Accounting Manual" and "Annual Audit Report Requirements."] The manual [manuals] may be revised as necessary by the executive director.

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

(e) Audit report exemption.

(1) A district may elect to submit annual financial reports to the executive director in lieu of the district's compliance with Texas Water Code, §49.191 provided:

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of \$250,000 [\$100,000] during the fiscal period; and

(C) the district's cash and temporary investments were not in excess of \$250,000 [\$100,000] at any time during the fiscal period.

(2) The annual financial report must be accompanied by an affidavit, attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(f) Financially dormant districts.

(1) A district may elect to prepare a financial dormancy affidavit rather than an unaudited financial report, as prescribed by subsection (e) of this section, provided:

(A) the district had \$500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(B) the district had \$500 or less of disbursements of funds during the calendar year;

(C) the district had no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(D) the district did not have cash or investments in excess of \$5,000 at any time during the calendar year.

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director and shall be submitted by a duly authorized representative of the district. Financial dormancy affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(g) Annual filing affidavit. Each district shall submit annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that submits an audit report must execute and submit, together with the audit, an annual filing affidavit

when the audit is submitted with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the executive director.

(h) Submitting of audits, financial reports, and affidavits.

(1) Submittal dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. The district's governing board shall approve the audit before a copy of the report is submitted to the executive director; however, the governing board's refusal to approve the audit shall not extend the submittal deadline for the audit report. If the governing board refuses to approve the audit, the board shall submit to the executive director by the prescribed submittal date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits in a format prescribed by the executive director, must be submitted to the executive director as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

(C) Financial dormancy affidavits. Financial dormancy affidavits shall be submitted as prescribed by paragraph (2) of this subsection by January 31 of each year. The calendar year affidavit affirms that the district met the financial dormancy requirements stated in subsection (f) of this section during part or all of the calendar year immediately preceding the January 31 filing date.

(2) Submittal locations. Copies of the audit, financial report, or financial dormancy affidavit described in subsections (c), (e) and (f) of this section shall be submitted annually to the executive director, and within the district's office.

(i) Review by executive director.

(1) The executive director may review the audit report of each district, and if the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, he shall notify the governing board of the district.

(2) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this section, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director. The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report, financial report, or financial dormancy affidavit.

(j) Penalties for Noncompliance.

(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(2) A district that fails to comply with the filing provisions of Texas Water Code, Chapter 49, may be subject to a civil penalty of up to \$100 per day for each day the district willfully [wilfully] continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §297.1.

Background and Summary of the Factual Basis for the Proposed Rule

During the 82nd Legislature, 2011, House Bill (HB) 2694 was passed. Section 5.01 of HB 2694 amends the definition of "Agriculture" under Texas Water Code (TWC), §11.002(12) by adding that "Agriculture" includes aquaculture as defined in Texas Agriculture Code, §134.001. Texas Agriculture Code, §134.001 states, "'Aquaculture' or 'fish farming' means the business of producing and selling cultured species raised in private facilities. Aquaculture or fish farming is an agricultural activity."

The commission proposes to amend §297.1 to implement HB 2694, §5.01, by adding the activity of aquaculture under the definition of "Agriculture or agricultural" in §297.1(1). The proposed amendment to §297.1(1) defines aquaculture as it is defined in the Texas Agriculture Code. The commission also proposes an amendment to §297.1 to remove commercial fish and shellfish production, i.e. aquaculture, from the term "Industrial use" in §297.1(24) in recognition of the fact that the term "Agriculture" now includes the activity of aquaculture.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 291, Utility Regulations, and 30

TAC Chapter 293, Water Districts.

Section Discussion

§297.1, Definitions

The commission proposes to amend §297.1(1) by adding subparagraph (G) concerning aquaculture to the list of activities that define the term "Agriculture or agricultural" and also defining aquaculture as it is defined in the Texas Agriculture Code. Because subparagraph (G) is proposed to be added, the commission also proposes to delete the word "and" from current subparagraph (E) and amend current subparagraph (F) in order to maintain the proper sequence of the subparagraphs and conform with grammatical and rulemaking form requirements. The commission also proposes to amend §297.1(24) by removing "commercial fish and shellfish production and" from the definition of "Industrial use" in recognition of the fact that the term "Agriculture" now includes the activity of aquaculture. The commission proposes this amendment to implement TWC, §11.002(12), as amended by HB 2694, 2011.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state and local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement sections of HB 2694 to modify the term of "Agriculture" in Chapter 297 to include aquaculture and define aquaculture as it is defined in the Texas Agriculture Code. The definition of "Industrial use" would no longer include aquaculture under the proposed rule.

The proposed rule is not expected to have a significant fiscal impact on the agency or other units of state or local government. The agency has issued 45 water rights permits for aquaculture and does not expect to see a significant increase or decrease in the number of applications for aquaculture water rights permits as a result of the implementation of the proposed rule. Of the 45 water rights permits issued, there are currently three state agencies and one city that have water right permits for aquaculture. The application fee for an aquaculture operation will not change under the proposed rule.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law.

The proposed rule is administrative in nature and is not expected to have a fiscal impact

on individuals or businesses. The proposed rule does not change application fees for aquaculture operations. The proposed rule defines aquaculture as it is defined in the Texas Agriculture Code and moves the definition from the term "Industrial Use" to "Agriculture" in Chapter 297. The number of applications for aquaculture permits is not expected to change significantly. Currently, ten businesses and 31 individuals have water right permits for aquaculture. The agency does not track data concerning business size and is not able to determine whether any of the ten businesses are small businesses.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Application fees for aquaculture operations would not change under the proposed rule.

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 rule is required to comply with state law. Also, the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state.

First, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislation enacted in 2011 by the 82nd Legislature, specifically HB 2694, §5.01. HB 2694, §5.01 added the term "aquaculture" as defined by the Texas Agriculture Code to the definitions in TWC, §11.002(12). The

proposed rule defines the term "aquaculture" consistently with the amended statute.

Second, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule would not 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 the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rule would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments 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 rule constitutes a taking under Texas Government Code, Chapter 2007.

The commission proposed the rule for the specific purpose of implementing legislation

enacted by the 82nd Legislature in 2011. The proposed rule amends definitions in Chapter 297. First, the term "aquaculture" as defined in Texas Agriculture Code, §134.001 is proposed to be added to the definition of "Agriculture" in §297.1. Second, the phrase "commercial fish and shellfish production" is proposed to be deleted from the definition of "Industrial use" in §297.1.

The commission's analysis reveals that amending the definitions in Chapter 297 will achieve consistency with TWC, §11.002(12), as amended in 2011 by HB 2694 and with Texas Agriculture Code, §134.001, regarding aquaculture.

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 will occur by amending the definitions as proposed, the commission has determined that promulgation and enforcement of the proposed rule 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 rule because the proposed rule 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 rule. Therefore, the proposed rule 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 (CMP), and will, therefore, require that goals and policies of the 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 administrative 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 March 20, 2012, at 2:00 p.m. in Building E, Room 201 S, 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 2011-039-293-OW. The comment period closes March 26, 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 Justin Taack, Water Supply Division, at (512) 239-1122.

SUBCHAPTER A: DEFINITIONS AND APPLICABILITY

§297.1

Statutory Authority

The amendment is proposed under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule.

The proposed amendment implements House Bill 2694, §5.01, 82nd Legislature, 2011.

§297.1. Definitions.

The following words and terms, when used in this chapter and in Chapters 288 and 295 of this title (relating to Water Conservation Plans, [and] Drought Contingency Plans, Guidelines and Requirements; and Water Rights, Procedural, respectively), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agriculture or agricultural--means 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; and [.]

(G) aquaculture as defined in Texas Agriculture Code, §134.001, which reads "'aquaculture' or 'fish farming' means the business of producing and selling cultured species raised in private facilities. Aquaculture or fish farming is an agricultural

activity."

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

(3) Appropriations--The process or series of operations by which an appropriative right is acquired. A completed appropriation thus results in an appropriative right; the water to which a completed appropriation in good standing relates is appropriated water.

(4) Appropriative right--The right to impound, divert, store, take, or use a specific quantity of state water acquired by law.

(5) Aquifer Storage and Retrieval Project--A project with two phases that anticipates the use of a Class V aquifer storage well, as defined in §331.2 of this title (relating to Definitions), for injection into a geologic formation, group of formations, or part of a formation that is capable of underground storage of appropriated surface water for subsequent retrieval and beneficial use. Phase I of the project requires commission authorization by a temporary or term permit to determine feasibility for ultimate storage and retrieval for beneficial use. Phase II of the project requires commission authorization by permit or permit amendment after the commission has determined

that Phase I of the project has been successful.

(6) Baseflow or normal flow--The portion of streamflow uninfluenced by recent rainfall or flood runoff and is comprised of springflow, seepage, discharge from artesian wells or other groundwater sources, and the delayed drainage of large lakes and swamps. (Accountable effluent discharges from municipal, industrial, agricultural, or other uses of ground or surface waters may be included at times.)

(7) Beneficial inflows--Freshwater inflows providing for a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(8) Beneficial use--Use of the amount of water which is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.

(9) Certificate of adjudication--An instrument evidencing a water right

issued to each person adjudicated a water right in conformity with the provisions of Texas Water Code, §11.323, or the final judgment and decree in State of Texas v. Hidalgo County Water Control and Improvement District No. 18, 443 S.W.2d 728 (Texas Civil Appeals - Corpus Christi 1969, writ ref. n.r.e.).

(10) Certified filing--A declaration of appropriation or affidavit which was filed with the State Board of Water Engineers under the provisions of the 33rd Legislature, 1913, General Laws, Chapter 171, §14, as amended.

(11) Claim--A sworn statement filed under Texas Water Code, §11.303.

(12) Commencement of construction--An actual, visible step beyond planning or land acquisition, which forms the beginning of the on-going (continuous) construction of a project in the manner specified in the approved plans and specifications, where required, for that project. The action must be performed in good faith with the bona fide intent to proceed with the construction.

(13) Conservation--Those practices, techniques, and technologies that will 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.

(14) Conserved water--That amount of water saved by a water right holder through practices, techniques, or technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from the storage, transportation, distribution, or application of the water. Conserved water does not mean water made available simply through its non-use without the use of such practices, techniques, or technologies.

(15) Dam--Any artificial structure, together with any appurtenant works, which impounds or stores water. All structures which are necessary to impound a single body of water shall be considered as one dam. A structure used only for diverting water from a watercourse by gravity is a diversion dam.

(16) Diffused surface water--Water on the surface of the land in places other than watercourses. Diffused water may flow vagrantly over broad areas coming to rest in natural depressions, playa lakes, bogs, or marshes. (An essential characteristic of diffused water is that its flow is short-lived.)

(17) District--Any district or authority created by authority of the Texas Constitution, either Article III, §52, (b), (1) and (2), or Article XVI, §59.

(18) Domestic use--Use of water by an individual or a household to

support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; for watering of domestic animals; and for water recreation including aquatic and wildlife enjoyment. If the water is diverted, it must be diverted solely through the efforts of the user. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold.

(19) Drought of record--The historic period of record for a watershed in which the lowest flows were known to have occurred based on naturalized streamflow.

(20) Firm yield--That amount of water, that the reservoir could have produced annually if it had been in place during the worst drought of record. In performing this simulation, naturalized streamflows will be modified as appropriate to account for the full exercise of upstream senior water rights is assumed as well as the passage of sufficient water to satisfy all downstream senior water rights valued at their full authorized amounts and conditions as well as the passage of flows needed to meet all applicable permit conditions relating to instream and freshwater inflow requirements.

(21) Groundwater--Water under the surface of the ground other than underflow of a stream and underground streams, whatever may be the geologic

structure in which it is standing or moving.

(22) Habitat Mitigation--Actions taken to off-set anticipated adverse environmental impacts from a proposed project. Such actions and their sequence include:

(A) avoiding the impact altogether by not taking a certain action or parts of an action or pursuing a reasonably practicable alternative;

(B) minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(C) rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project; and

(E) compensating for the impact by replacing or providing substitute resources or environments.

(23) Hydropower use--The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(24) 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, including [commercial fish and shellfish production and] the development of power by means other than hydroelectric, but does not include agricultural use.

(25) Instream use--The beneficial use of instream flows for such purposes including, but not limited to, navigation, recreation, hydropower, fisheries, game preserves, stock raising, park purposes, aesthetics, water quality protection, aquatic and riparian wildlife habitat, freshwater inflows for bays and estuaries, and any other instream use recognized by law. An instream use is a beneficial use of water. Water necessary to protect instream uses for water quality, aquatic and riparian wildlife habitat, recreation, navigation, bays and estuaries, and other public purposes may be reserved from appropriation by the commission.

(26) Irrigation--The use of water for the irrigation of crops, trees, and pasture land, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

(27) Irrigation water 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 and salinity management and leaching requirements associated with irrigation.

(28) Livestock use--The use of water for the open-range watering of livestock, exotic livestock, game animals or fur-bearing animals. For purposes of this definition, the terms livestock and exotic livestock are to be used as defined in §142.001 of the Agriculture Code, and the terms game animals and fur-bearing animals are to be used as defined in §63.001 and 71.001, respectively, of the Parks and Wildlife Code.

(29) Mariculture--The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water.

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

(31) 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.

(32) Municipal use--The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(A) the application site is land owned or leased by the Chapter 26 permit holder; or

(B) the application site is within an area for which the commission has adopted a no-discharge rule.

(33) Navigable stream--By law, Natural Resources Code, §21.001(3), any stream or streambed as long as it maintains from its mouth upstream an average width of 30 feet or more, at which point it becomes statutorily nonnavigable.

(34) 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.

(35) One-hundred-year flood--The flood peak discharge of a stream, based upon statistical data, which would have a 1.0% chance of occurring in any given year.

(36) Permit--The authorization by the commission to a person whose application for a permit has been granted. A permit also means any water right issued, amended, or otherwise administered by the commission unless the context clearly indicates that the water right being referenced is being limited to a certificate of adjudication, certified filing, or unadjudicated claim.

(37) 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 or detrimental to humans, animal life, vegetation, or property, or the public health, safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

(38) Priority--As between appropriators, the first in time is the first in right, Texas Water Code, §11.027, unless determined otherwise by an appropriate court or state law.

(39) Reclaimed water--Municipal or industrial wastewater or process water that is under the direct control of the treatment plant owner/operator, or agricultural tailwater that has been collected for reuse, and which has been treated to a quality suitable for the authorized beneficial use.

(40) Recreational use--The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course, or similar development.

(41) Register--The Texas Register.

(42) Reservoir system operations--The coordinated operation of more than one reservoir or a reservoir in combination with a direct diversion facility in order to optimize available water supplies.

(43) Return water or return flow--That portion of state water diverted from a water supply and beneficially used which is not consumed as a consequence of that use and returns to a watercourse. Return flow includes sewage effluent.

(44) 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.

(45) River basin--A river or coastal basin designated by the Texas Water Development Board as a river basin under Texas Water Code, §16.051. The term does not include waters originating in bays or arms of the Gulf of Mexico.

(46) Runoff--That portion of streamflow comprised of surface drainage or rainwater from land or other surfaces during or immediately following a rainfall.

(47) Secondary use--The reuse of state water for a purpose after the original, authorized use.

(48) Sewage or sewage effluent--Water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places,

together with any groundwater infiltration and surface waters with which it may be commingled.

(49) Spreader dam--A levee-type embankment placed on alluvial fans or within a flood plain of a watercourse, common to land use practices, for the purpose of overland spreading of diffused waters and overbank flows.

(50) State water--The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the stormwater, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state. Additionally, state water injected into the ground for an aquifer storage and recovery project remains state water. State water does not include percolating groundwater; nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(51) Stormwater or floodwater--Water flowing in a watercourse as the result of recent rainfall.

(52) Streamflow--The water flowing within a watercourse.

(53) Surplus water--Water taken from any source in excess of the initial or continued beneficial use of the appropriator for the purpose or purposes authorized by law. Water that is recirculated within a reservoir for cooling purposes shall not be considered to be surplus water.

(54) Unappropriated water--The amount of state water remaining in a watercourse or other source of supply after taking into account complete satisfaction of all existing water rights valued at their full authorized amounts and conditions.

(55) Underflow of a stream--Water in sand, soil, and gravel below the bed of the watercourse, together with the water in the lateral extensions of the water-bearing material on each side of the surface channel, such that the surface flows are in contact with the subsurface flows, the latter flows being confined within a space reasonably defined and having a direction corresponding to that of the surface flow.

(56) Waste--The diversion of water if the water is not used for a beneficial purpose; the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose. Waste may include, but not be

limited to, the unreasonable loss of water through faulty design or negligent operation of a water delivery, distribution or application system, or the diversion or use of water in any manner that causes or threatens to cause pollution of water. Waste does not include the beneficial use of water where the water may become polluted because of the nature of its use, such as domestic or residential use, but is subsequently treated in accordance with all applicable rules and standards prior to its discharge into or adjacent to water in the state so that it may be subsequently beneficially used.

(57) Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for preventing or 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 planning document or may be contained within another water management document(s).

(58) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the

jurisdiction of the state.

(59) Watercourse--A definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. (The water may flow continuously or intermittently, and if the latter with some degree of regularity, depending on the characteristics of the sources.)

(60) Water right--A right or any amendment thereto acquired under the laws of this state to impound, divert, store, convey, take, or use state water.

(61) Watershed--A term used to designate the area drained by a stream and its tributaries, or the drainage area upstream from a specified point on a stream.

(62) Water supply--Any body of water, whether static or moving, either on or under the surface of the ground, available for beneficial use on a reasonably dependable basis.

(63) Wetland--An area (including a swamp, marsh, bog, prairie pothole, playa, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of

hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include:

(A) irrigated acreage used as farmland;

(B) man-made wetlands of less than one acre; or

(C) man-made wetlands not constructed with wetland creation as a stated objective, including, but not limited to, impoundments made for the purpose of soil and water conservation which have been approved or requested by soil and water conservation districts. This definition does not apply to man-made wetlands described under this subparagraph constructed or created on or after August 28, 1989. If this definition conflicts with the federal definition in any manner, the federal definition prevails.

1 AN ACT
2 relating to the continuation and functions of the Texas Commission
3 on Environmental Quality and abolishing the On-site Wastewater
4 Treatment Research Council.

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

6 ~~ARTICLE 1. GENERAL PROVISIONS~~

7 SECTION 1.01. The heading to Chapter 5, Water Code, is
8 amended to read as follows:

9 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON
10 ENVIRONMENTAL QUALITY

11 SECTION 1.02. Section 5.014, Water Code, is amended to read
12 as follows:

13 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~
14 ~~Conservation~~] Commission on Environmental Quality is subject to
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued
16 in existence as provided by that chapter, the commission is
17 abolished and this chapter expires September 1, 2023 [~~2011~~].

18 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is
19 amended by adding Section 5.061 to read as follows:

20 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN
21 CONTRIBUTIONS. A member of the commission may not accept a
22 contribution to a campaign for election to an elected office. If a
23 member of the commission accepts a campaign contribution, the
24 person is considered to have resigned from the office and the office

- ~~1 (1) compliance history of the applicant and related
2 entities under the method for using [evaluating] compliance history
3 developed by the commission under Section 5.754 and in accordance
4 with the provisions of Subsection (d) of this section;
5 (2) whether there is a practical, economic, and
6 feasible alternative to a subsurface area drip dispersal system
7 reasonably available; and
8 (3) any other factor the commission considers
9 relevant.~~

10 SECTION 4.23. Section 49.198(a), Water Code, is amended to
11 read as follows:

12 (a) A district may elect to file annual financial reports
13 with the executive director in lieu of the district's compliance
14 with Section 49.191 provided:

15 (1) the district had no bonds or other long-term (more
16 than one year) liabilities outstanding during the fiscal period;

17 (2) the district did not have gross receipts from
18 operations, loans, taxes, or contributions in excess of \$250,000
19 [~~\$100,000~~] during the fiscal period; and

20 (3) the district's cash and temporary investments were
21 not in excess of \$100,000 at any time during the fiscal period.

22 ~~SECTION 4.24. Sections 361.089(a), (e), and (f), Health and
23 Safety Code, are amended to read as follows:~~

24 (a) ~~The commission may, for good cause, deny or amend a
25 permit it issues or has authority to issue for reasons pertaining to
26 public health, air or water pollution, or land use, or for having a
27 compliance history that is classified as unsatisfactory according~~

1 ~~Water Code, as amended by this article, apply only to a violation~~
2 that occurs on or after the effective date of this Act. For
3 purposes of this section, a violation occurs before the effective
4 date of this Act if any element of the violation occurs before that
5 date. A violation that occurs before the effective date of this Act
6 is covered by the law in effect on the date the violation occurred,
7 and the former law is continued in effect for that purpose.

8 (c) The change in law made by Section 26.3467(d), Water
9 Code, as added by this article, applies only to a delivery of a
10 regulated substance to an underground storage tank made on or after
11 the effective date of this Act.

12 (d) The fee applicable to a delivery in Section 26.3574(b),
13 Water Code, as that subsection existed immediately before the
14 effective date of this Act, remains in effect until the Texas
15 Commission on Environmental Quality adopts and implements a fee
16 applicable to that delivery under Section 26.3574(b-1), Water Code,
17 as added by this article.

18 SECTION 4.32. Section 49.198(a), Water Code, as amended by
19 this article, applies to a district that files its annual financial
20 report on or after the effective date of this Act. A district that
21 files its annual financial report before the effective date of this
22 Act is governed by the law in effect on the date the report is filed,
23 ~~and that law is continued in effect for that purpose.~~

24 ARTICLE 5. WATER RIGHTS

25 SECTION 5.01. Section 11.002(12), Water Code, is amended to
26 read as follows:

27 (12) "Agriculture" means any of the following

1 activities:

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

5 (B) the practice of floriculture, viticulture,
6 silviculture, and horticulture, including the cultivation of
7 plants in containers or nonsoil media, by a nursery grower;

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

11 (D) raising or keeping equine animals;

12 (E) wildlife management; ~~and~~

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

17 (G) aquaculture, as defined by Section 134.001,
18 Agriculture Code.

19 ~~SECTION 5.02. Section 11.031, Water Code, is amended by~~
20 ~~adding Subsections (d), (e), and (f) to read as follows:~~

21 ~~(d) Each person who has a water right issued by the~~
22 ~~commission or who impounds, diverts, or otherwise uses state water~~
23 ~~shall maintain water use information required under Subsection (a)~~
24 ~~on a monthly basis during the months a water rights holder uses~~
25 ~~permitted water. The person shall make the information available~~
26 ~~to the commission on the commission's request.~~

27 ~~(e) Except as provided by Subsection (a), the commission may~~

- 1 ~~(1) Subsection (b), to the extent those fees are paid~~
2 ~~by water districts, and Subsections (e), (f), and (n);~~
3 ~~(2) [Sections 13.4521 and 13.4522; or~~
4 ~~[(3)] Section 54.037(c); or~~
5 ~~(3) Section 367.010, Health and Safety Code.~~

6 SECTION 6.04. Subchapter L, Chapter 13, Water Code, is
7 repealed.

8 ~~SECTION 6.05. The changes in law made by Section 5.701~~
9 ~~Water Code, as amended by this article, apply only to a fee assessed~~
10 ~~on or after January 1, 2012. A fee assessed before January 1, 2012,~~
11 ~~is governed by the law in effect at the time the fee was assessed,~~
12 ~~and the former law is continued in effect for that purpose.~~

13 ARTICLE 7. WATER AND SEWER UTILITIES

14 SECTION 7.01. Subchapter E, Chapter 13, Water Code, is
15 amended by adding Section 13.1325 to read as follows:

16 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On
17 request, the state agency with jurisdiction over rates charged by
18 water and sewer utilities shall provide, at a reasonable cost,
19 electronic copies of all information provided to the agency under
20 Sections 13.016, 13.043, and 13.187 to the extent that the
21 information is available and is not confidential. Copies of all
22 information provided to the agency shall be provided to the Office
23 of Public Utility Counsel, on request, at no cost to the office.

24 ARTICLE 8. ABOLITION OF THE ON-SITE WASTEWATER TREATMENT RESEARCH
25 COUNCIL

26 SECTION 8.01. The heading to Chapter 367, Health and Safety
27 Code, is amended to read as follows:

1 ~~Research Council on the effective date of this Act, including all~~
2 ~~rights and obligations associated with the contracts.~~

3 ARTICLE 9. RATE NOTIFICATION

4 SECTION 9.01. Section 13.043(i), Water Code, is amended to
5 read as follows:

6 (i) The governing body of a municipally owned utility or a
7 political subdivision, within 60 ~~[30]~~ days after the date of a final
8 decision on a rate change, shall provide individual written notice
9 to each ratepayer eligible to appeal who resides outside the
10 boundaries of the municipality or the political subdivision. The
11 notice must include, at a minimum, the effective date of the new
12 rates, the new rates, and the location where additional information
13 on rates can be obtained. The governing body of a municipally owned
14 utility or a political subdivision may provide the notice
15 electronically if the utility or political subdivision has access
16 to a ratepayer's e-mail address.

17 SECTION 9.02. Section 13.187(b), Water Code, is amended to
18 read as follows:

19 (b) A copy of the statement of intent shall be mailed, sent
20 by e-mail, or delivered to the appropriate offices of each affected
21 municipality, and to any other affected persons as required by the
22 regulatory authority's rules.

23 ~~ARTICLE 10. CONTESTED CASE HEARINGS~~

24 ~~SECTION 10.01. Section 5.115(b), Water Code, is amended to~~
25 ~~read as follows:~~

26 ~~(b) At the time an application for a permit or license under~~
27 ~~this code is filed with the executive director and is~~

AN ACT

relating to certain conservation and reclamation districts
exempted from filing a full audit.

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

SECTION 1. Section 49.198(a), Water Code, is amended to
read as follows:

(a) A district may elect to file annual financial reports
with the executive director in lieu of the district's compliance
with Section 49.191 provided:

(1) the district had no bonds or other long-term (more
than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross receipts from
operations, loans, taxes, or contributions in excess of \$250,000
~~[\$100,000]~~ during the fiscal period; and

(3) the district's cash and temporary investments were
not in excess of \$250,000 ~~[\$100,000]~~ during the fiscal period.

SECTION 2. Section 49.198(a), Water Code, as amended by
this Act, applies to a district that files its annual financial
report on or after the effective date of this Act. A district that
files its annual financial report before the effective date of this
Act is governed by the law in effect on the date the report is filed,
and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as

H.B. No. 3002

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 3002 was passed by the House on May 5, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3002 on May 25, 2011, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3002 was passed by the Senate, with amendments, on May 24, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the audit report exemption for certain general and special law districts.

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

SECTION 1. Section 49.198, Water Code, is amended to read as follows:

Sec. 49.198. AUDIT REPORT EXEMPTION. (a) A district may elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of \$250,000 [~~\$100,000~~] during the fiscal period; and

(3) the district's cash and temporary investments were not in excess of \$250,000 [~~\$100,000~~] at any time during the fiscal period.

(b) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by a duly authorized representative of the district.

(c) The annual financial report and affidavit in a format prescribed by the executive director must be on file with the executive director within 45 days after the close of the district's

1 fiscal year.

2 (d) Districts governed by this section are subject to
3 periodic audits by the executive director.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1361 passed the Senate on April 13, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1361 passed the House on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor