

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: July 25, 2012

DATE OF REQUEST: July 6, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2011-1224-RUL. Consideration of the adoption of amendments to 30 TAC Chapter 293, Water Districts, Sections 293.19, 293.20, 293.22 and 293.23, and Chapter 294, Priority Groundwater Management Areas, Sections 294.30 and 294.40 - 294.44.

The adoption would implement Senate Bills 313 and 660 from the 82nd Legislature, 2011, Regular Session, relating to the creation of groundwater conservation districts in priority groundwater management areas that were designated before September 1, 1997; the study and designation of new priority groundwater management areas; the creation of groundwater conservation districts in new priority groundwater management areas; the definition of an affected person; and, the reasons that an affected person may petition the commission for an inquiry of a groundwater conservation district in a groundwater management area. The proposed rules were published in the March 23, 2012 issue of the Texas Register (37 TexReg 2026). (Michael Chadwick, James Aldredge) (Rule Project No. 2011-054-294-OW)

L'Oreal Stepney, P.E.

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Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 6, 2012

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

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

Docket No.: 2011-1224-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 293, Water Districts
Chapter 294, Priority Groundwater Management Areas
SB 313 and SB 660 (Sections 17 and 18): Groundwater Management
Rule Project No. 2011-054-294-OW

Background and reason(s) for the rulemaking:

In 2011, the 82nd Legislature passed Senate Bill (SB) 313 and SB 660.

SB 313 amended Texas Water Code (TWC), §35.007 to change the 25-year evaluation period that the executive director and executive administrator of the Texas Water Development Board (TWDB) use to identify areas of the state for a priority groundwater management area (PGMA) study to a 50-year evaluation period.

SB 313 amended TWC, §35.008 to validate and authorize the commission adoption of rules regarding the creation of a groundwater conservation district (GCD) over all or part of a PGMA that was designated as a critical area under TWC, Chapter 35, as that chapter existed prior to September 1, 1997, or other prior law. Further amendments to TWC, §35.008, validate and authorize the adoption of rules regarding the addition of all or part of the land in such a PGMA as an existing GCD.

SB 313 amended TWC, §35.012 to clarify the commission's process to create GCDs within a PGMA after the time frame for landowner action has expired and to authorize the commission to combine territory in separate PGMAs during the process to create a GCD to provide for more effective or efficient groundwater management.

SB 313 amended TWC, §35.013 to change the 180-day time frame to 120 days for a GCD board of directors to vote on adding a commission order recommended PGMA to the GCD and advising the commission of the outcome. If a GCD's board of directors vote not to pursue the addition of a PGMA as recommended by the commission, the further amendments to TWC, §35.013, clarify and authorize continued commission action to either create a GCD or recommend the PGMA be added to another GCD.

SB 313 amended TWC, §36.0151 to clarify that the commission may amend territory if the commission is required to issue a subsequent GCD creation order for a PGMA, or a subsequent order to recommend a PGMA be added to a GCD. The change allows the

Re: Docket No. 2011-1224-RUL

commission to consider the actions taken since the original order that have resulted in part of the PGMA being included in a GCD.

SB 660 added new TWC, §36.1082, which adds a definition for an affected person in a groundwater management area and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking implements statutory changes made by SB 313 and SB 660. The adopted rules clarify the commission's process to establish GCDs in PGMAs designated before September 1, 2001 in §293.19; remove a redundant GCD reporting provision in §293.20; streamline and clarify the commission's processes for review of GCD management plan adoption, readoption, and implementation compliance in §293.22; and update the commission's processes in §293.23 to agree with statutory changes relating to petitions requesting an inquiry of a GCD in a groundwater management area.

The adopted rules remove language that is no longer necessary in §294.30; clarify and update definitions in §294.40; clarify the commission's process for the evaluation of and recommendation for designation of PGMAs in §294.41; clarify the commission's process and considerations to designate a PGMA in §294.42; clarify the commission's process to create a GCD in a PGMA in §294.43; and update the commission's process in §294.44 to agree with statutory changes related to recommendations for adding a PGMA to an existing GCD.

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

The adopted rulemaking is required as a result of SB 313 and SB 660, §17 and §18.

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

None.

Statutory authority:

This rulemaking is adopted under TWC, §5.103, which establishes the commission's general authority to adopt rules.

Effect on the:

A.) Regulated community:

The rulemaking is not expected to have a significant impact on any GCD.

B.) Public:

The rulemaking is not expected to have a significant impact on the public.

Re: Docket No. 2011-1224-RUL

C.) Agency programs:

This rulemaking will impact the agency's groundwater program; however, the impact should be minimal since the rulemaking is only updating processes already carried out by the program.

Stakeholder meetings:

The commission held a public hearing for this rulemaking on April 17, 2012 in Austin, Texas.

Public comment:

The commission held a public hearing for this rulemaking on April 17, 2012. The public comment period ended on April 23, 2012. The commission received comments from two individuals, two GCDs, and one county department official. Three of the five commenters supported the rule; one commenter did not support the rule; and one commenter suggested changes. The commenter that suggested changes wanted to restructure, restyle, and add additional language to commission processes regarding GCD management plan noncompliance review and commission action on petitions for GCD inquiry.

Significant changes from proposal:

Several changes were made to the proposal language. Most of the changes were to improve grammar or make wording changes to clarify meaning. The most significant changes were to conform references to the term "management plan" with statutory changes made during the 82nd Legislature outside of SB 660; to add suggested time frames for GCDs to distribute newly adopted management plans to other water planning stakeholders; and, to allow 60 days instead of 30 days for a GCD to reconsider and enter a voluntary compliance agreement proposed by the executive director.

Potential controversial concerns and legislative interest:

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

There may be legislative interest in the PGMA's designated before September 1, 2001 that have not yet established a GCD. These areas include parts of Briscoe, Comal, Dallam, Midland, Travis, and Upton Counties.

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

No. This rulemaking implements the statutory changes made by SB 313 and SB 660 and does not require the development of new policies.

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

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

Commissioners

Page 4

July 6, 2012

Re: Docket No. 2011-1224-RUL

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: March 23, 2012

Anticipated Texas Register publication date: August 10, 2012

Anticipated effective date: August 16, 2012

Six-month Texas Register filing deadline: September 23, 2012

Agency contacts:

Michael Chadwick, Rule Project Manager, 239-4517, Water Availability Division

James Aldredge, Staff Attorney, 239-2496

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

SB 313

SB 660, Sections 17 and 18

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Mike Chadwick
Michael Parrish

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§293.19, 293.20, 293.22, and 293.23.

Sections 293.20, 293.22, and 293.23 are adopted *with changes* to the proposed text as published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 2026). Section 293.19 is adopted *without change* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2011 the 82nd Legislature passed Senate Bill (SB) 313 related to priority groundwater management areas (PGMAs). The legislature also passed SB 660 related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

SB 313 amended Texas Water Code (TWC), Chapter 35, which relates to the creation of groundwater conservation districts (GCDs) in PGMAs. Specifically, SB 313 amended TWC, §35.008, to validate and authorize the commission adoption of rules regarding the creation of a GCD over all or part of a PGMA that was designated as a critical area under TWC, Chapter 35, as that chapter existed prior to September 1, 1997, or other prior law. Further amendments to TWC, §35.008, validate and authorize the adoption of rules regarding the addition of all or part of the land in such a PGMA as an existing

GCD.

SB 660 amended TWC, Chapter 36, which relates to GCDs. Specifically, SB 660 added TWC, §36.1082, which adds a definition for affected person in a groundwater management area and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area.

The commission adopts amendments to 30 TAC Chapter 293 to implement new TWC, §36.1082, and amendments to TWC, §35.008.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts amendments to 30 TAC Chapter 294, Priority Groundwater Management Areas, to implement SB 313 and SB 660, §17 and §18.

Section by Section Discussion

The commission adopts the amendment to §293.19, Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area, to clarify the responsibilities of the executive director when the executive director petitions the commission for a GCD creation order for a PGMA designated before September 1, 2001, or when the executive director petitions the commission for a recommendation order to add a PGMA designated before September 1, 2001 to an existing GCD. In

§293.19(b) the commission deletes the word "report" and replace it with the term "mailing list" to clarify that the executive director's petition report to the commission and the executive director's mailing list of identified water stakeholders are separate items. The commission re-numbers §293.19(b)(3) - (8) to accommodate the changes adopted in this subsection. The adopted amendment to re-numbered §293.19(b)(6) clarifies that the executive director, if so directed, shall refer the petition to the State Office of Administrative Hearings (SOAH) on behalf of the commission. The commission adopts this amendment to implement TWC, §35.008, as amended by SB 313, §2.

The commission adopts the amendment to §293.20, Records and Reporting, by deleting existing §293.20(c)(3), that requires GCDs to submit new, existing, or amended management plans to the executive director. Under TWC, §§36.1071, 36.1072, and 36.1073, and 31 TAC Chapter 356, Subchapter A, Groundwater Management Plan Approval, GCDs are required to submit the management plan to the executive administrator of the TWDB. This change removes a redundancy for GCDs to submit the plans to two separate state agencies. In response to comments, the commission adopts amendments to §293.20(c) to improve grammar; conform a reference to the term "management plan;" set a 60-day time frame for a GCD to send a copy of its approved management plan to the regional water planning group or groups for the regional water planning region or regions in which the GCD is located; and, set a 60-day time frame for

a GCD to send a copy of its approved management plan to other GCDs that are wholly or partially located in the same groundwater management areas. In response to comment, the commission also adopts changes to §293.20(c) by removing the requirement for a GCD to provide confirmation of management plan distribution to the executive director and instead requiring a GCD to maintain records that the management plan was distributed. The commission also adopts the amendment to §293.20(d) to add a citation to new TWC, §36.1082, and to add for clarity the citation to the commission rule for petitions requesting an inquiry of a GCD in a groundwater management area. The commission adopts this amendment to implement TWC, §36.1082, as amended by SB 660, §17.

The commission adopts the amendment to §293.22, Noncompliance Review and Commission Action, to streamline and clarify processes relating to commission review of GCD management plan adoption, readoption, and implementation compliance. Subsection (a) outlines the instances when commission action is required related to a GCD's management plan. The adopted amendment to §293.22(a)(1) and (3) clarifies that a GCD must submit to the executive administrator of the TWDB within the three- and five-year time frames required by TWC, §36.1071 and §36.1072, respectively, a management plan for review and approval. The adopted amendment to §293.22(a)(2) clarifies that a GCD must receive, within 60 days of submittal, written approval of the management plan from the executive administrator of the TWDB. This adopted change

mirrors requirements in 31 TAC Chapter 356, Subchapter A, Groundwater Management Plan Approval. However, the adopted change is necessary in the commission's rules to clarify commission authority and streamline the implementation of TWC, §36.1072. If a GCD does not receive the executive administrator's approval of a management plan within the 60-day period, TWC, §36.1072(f), provides that the GCD may, not later than the 180th day of receiving written notice from the executive administrator, submit a revised management plan for the executive administrator's review and approval, or appeal the executive administrator's decision to the TWDB. TWC, §36.1072(f), provides that the commission shall not take action against a GCD until the expiration of the 180-day period for the GCD to submit a revised management plan to the executive administrator for review and approval or the date the TWDB has taken final action to withhold approval of a management plan that is upheld by a district court. The adopted amendment clarifies when commission action is required. The adopted amendment to §293.22(a)(4) deletes GCD distribution of management plans to the other GCDs in a common management area from the list of items that require commission action. TWC, §36.108, requires GCDs to forward a copy of new or revised management plans to the other GCDs in the management area. Commission action to compel this GCD responsibility is not cited in TWC, Chapter 36, Subchapter I, Performance Review and Dissolution. The adopted change clarifies the commission rule, and subsequent paragraphs are re-numbered. The adopted amendment to re-numbered §293.22(a)(5) clarifies that commission action may be necessary if a GCD, as evidenced in a report

prepared by a commission-appointed review panel in accordance with new TWC, §36.1082, does not adopt, implement, or enforce district management plans and rules to protect the groundwater resource. This change also updates and conforms the citation to new TWC, §36.1082. In response to comment, the commission adopts changes throughout §293.22(a) to conform references to the term "management plan" with the present statutory language. In response to comments, the adopted amendment to §293.22(b) clarifies the process for the executive director to investigate and attempt to voluntarily resolve management plan noncompliance issues with a GCD; provides a 30-day time frame for a GCD to request an amendment of an offered compliance agreement schedule; and, maintains a 60-day time frame for a GCD to enter a compliance agreement with the executive director. In response to comments, the adopted amendment of §293.22(d) clarifies language to closely mirror the statute related to notice of referral by the commission to the Office of the Attorney General to request the placement of a GCD into receivership. The adopted amendment to §293.22(e) adds the citation to new TWC, §36.1082 and removes the citation to TWC, §36.108. The commission adopts this amendment to implement TWC, §36.1082, as amended by SB 660, §17.

The commission adopts the amendment to §293.23, Petition Requesting Inquiry in Groundwater Management Area, including re-titling the section as "Petition Requesting Commission Inquiry" to more accurately reflect the changes to new TWC, §36.1082.

The adopted amendment to §293.23(a) adds a new definition of an affected person that may petition the commission and follow statutory requirements of new TWC, §36.1082.

Upon further review of the rule, the commission also amended the definition of "affected person" in §293.23(a) to replace the article "a" with the article "the" to more accurately reflect the new definition of an affected person in TWC, §36.1082.

Additionally, the commission added a citation to TWC, §36.1082 and removed the citation to TWC, §36.108. The adopted amendment to §293.23(b) clarifies that an affected person may file a petition with the commission to request an inquiry in accordance with TWC, §36.1082, and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area in accordance with TWC, §36.1082. Existing subsections have been re-lettered. In response to comments, the commission made a grammatical change to §293.23(b). The changes to adopted §293.23(c) and (d) are to modify the petition requirement so that these subsections agree with the new requirement of TWC, §36.1082. The changes to adopted §293.23(c) require a petition to include supporting documentation for each of the individual reasons the affected person identifies to demonstrate that a commission inquiry is necessary and the changes to adopted §293.23(d) require a certified statement of such from the affected person. The amendment to adopted §293.23(e) and (f) adds the petition service requirement to GCDs that are adjacent to the groundwater management area to conform to the definition of affected person in TWC, §36.1082.

The amendment to adopted §293.23(g) clarifies that the commission and the executive

director will review the petition, updates rule citations, clarifies that a director or general manager of a GCD serving on a review panel may not be an affected person, and adds a citation to TWC, §36.1082 and removes the citation to TWC, §36.108. The amendment to adopted §293.23(i) provides conforming language changes and citations. The commission adopts this amendment to implement TWC, §36.1082, as amended by SB 660, §17.

Final Regulatory Impact Determination

The commission has reviewed these adopted amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of §2001.0225. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Here, the adopted amendments do not meet those qualifications where the primary purposes of this rulemaking initiative are to clarify commission rule language in §§293.1 *et seq.* to conform with the statutory changes made to TWC, Chapters 35 and 36, and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in SBs 313 and 660. As to these

enacted bills, this rulemaking initiative modifies rules within Chapter 293 to accomplish changes related to designation of affected persons, designation of PGMAs, creation of GCDs in PGMAs, and GCD management plans. Therefore, the adopted rulemaking project does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination but did not receive any comments.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purposes of this rulemaking are to clarify commission rule language in §§293.1 *et seq.* to conform with the statutory changes made to TWC, Chapters 35 and 36, and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in SBs 313 and 660. The adopted rules would substantially advance these stated purposes because the changes in designation of affected persons and their rights under the rules, designation of PGMAs, creation of GCDs in PGMAs, and maintaining GCD management plans directly implement enacted requirements in that legislation.

Promulgation and enforcement of these adopted rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Updating commission rules to remain consistent with statutory changes to TWC, Chapters 35 and 36 as set forth in SBs 313 and 660, does not impact private real property rights. Specifically, private real property rights do not pertain to designation of affected persons and their rights under the rules, designation of PGMAs, creation of GCDs in PGMAs, and maintaining GCD management plans. Thus, these adopted rules do not impose a burden on private real property, but instead benefit society by providing the process for districts to operate and for the commission's oversight, which should ultimately improve the quality of service that is provided to their residents. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period but did not receive any comments related to the CMP.

Public Comment

The commission held a public hearing on April 17, 2012. The comment period closed on April 23, 2012. The commission received comments from two individuals, the Kenedy County Groundwater Conservation District (Kenedy County GCD), the Middle Pecos Groundwater Conservation District (Middle Pecos GCD), and Travis County Transportation and Natural Resources Department (Travis County).

The Middle Pecos GCD, Travis County, and one individual support the rule. One individual was against the rule. Kenedy County GCD suggested changes to the rule as noted in the Response to Comment section of this preamble.

Response to Comments

General

One individual is supportive of managing the state's water supplies.

The commission acknowledges this comment. The commission made no change to the rules in response to this comment.

One individual commented that SB 313 was passed illegally and is unconstitutional because the legislature did not provide an opportunity for a hearing after SB 313 was amended by the Texas House of Representatives. The individual commented that this denied people due process as provided by the 14th amendment of the United States Constitution. The individual also commented that the laws enacted by SB 313 are contrary to Article 16, §59, of the Texas Constitution. Finally, the individual also objected to the proposed rules as an extension of SB 313.

The commission presumes the statute is constitutional because, according to the Code Construction Act, Texas Government Code, §311.021, it is presumed that when the legislature enacts a statute it intends that the statute complies with the Texas and United States Constitutions. A statute is presumed constitutional unless declared unconstitutional by a court of competent jurisdiction and that decision becomes final. The commission

made no change to the rules in response to this comment.

One individual commented that an ongoing SOAH hearing on a commission recommendation for GCD creation in Comal County should grandfather the county from any laws passed during the last legislative session.

The legislature did not exclude any area of the state from the provisions of SB 313 or SB 660. An ongoing contested case hearing does not constitute a final administrative action by the commission which might alter the characteristics of a GCD such that it is no longer subject to the provisions of otherwise applicable statutes resulting from recent legislative action. The commission made no change to the rules in response to this comment.

The Middle Pecos GCD noted full support for the proposed rules and commented that the implementation of SB 313 through the proposed rules would benefit Groundwater Management Areas 3 and 7 to facilitate designation of PGMA and creation of GCDs in West Texas. Further, Middle Pecos GCD commented that implementation of the proposed rules will also benefit other areas of the state that need groundwater management attention.

The changes made by SB 313 will cause new PGMA evaluations to be

initiated and will streamline processes to establish new GCDs in PGMAs.

The commission made no change to the rules in response to this comment.

Travis County commented that the proposed rules should lead to the establishment of effective GCDs for the Trinity Aquifer for western Travis and western Comal Counties within the Hill Country PGMA.

The commission acknowledges this comment and responds that the implementation of SB 313 through the rules will facilitate commission actions to recommend or establish effective GCDs for all PGMAs. Further, the changes by SB 313 place renewed encouragement for local actions to create a GCD in a PGMA or to add a PGMA to an existing GCD over and above state actions. The commission made no change to the rules in response to the comments.

Public Benefit and Costs

One individual commented that public benefits from the proposed rules do not meet state or federal law because the legislature did not provide an opportunity for hearing after SB 313 was amended by the Texas House of Representatives which denied due process.

The comment implies that this rulemaking should not go forward because SB 313 violates constitutional due process clauses. The commission presumes the statute is constitutional because, according to the Code Construction Act, Texas Government Code, §311.021, it is presumed that when the legislature enacts a statute it intends that the statute complies with the Texas and United States Constitutions. A statute is presumed constitutional unless declared unconstitutional by a court of competent jurisdiction and that decision becomes final. The commission made no change to the rules in response to this comment.

Small Business and Micro-Business Assessment

One individual commented that SB 313 and the rules will adversely impact individuals and small businesses.

The proposed rules will not adversely affect individuals or small businesses because the proposed rules are procedural in nature and do not provide the TCEQ any authority to assess penalties or fee collections on individuals or businesses of any size. Further, these rules provide additional details to businesses or any person interested in filing a petition to request an inquiry into the activities of a GCD and the procedures for filing such an inquiry which may save the individual or business filing the inquiry time or money.

The commission made no change to the rules in response to this comment.

Local Employment Impact Statement

One individual commented that the proposed rulemaking should have included a local employment impact statement because TCEQ could place Comal County into a GCD or neighboring GCD without an election and taxes could be implemented or water could be bought or sold and escalate local water problems.

Texas Government Code, §2001.022, Local Employment Impact Statements, provides that "{i}f a state agency determines that a proposed rule may affect a local economy, the agency shall prepare a local employment impact statement for the proposed rule." The commission reviewed the proposed rules and determined these rules do not affect a local economy in a material way for the first five years that the proposed rules are in effect because the proposed rules implement only procedural changes. Further, these rules do not provide TCEQ any authority to assess penalties or fee collections on state or local government, businesses, or individuals.

The commission is proposing these procedural changes to ensure that its rules conform to the changes made to the TWC by SB 313 and SB 660. The rules clarify commission processes relating to: the creation of GCDs in the

PGMAs that were designated before September 1, 1997; the study and designation of new PGMAs; the creation of GCDs in new PGMAs; and the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area. These rules also amend the definition of an affected person in a groundwater management area so that the commission's rules agree with changes made to the TWC by SB 660. The commission made no change to the rules in response to this comment.

Takings Impact Assessment

One individual commented that the designation of a PGMA is a "taking" of private property and negatively affects people in a PGMA. The commenter further stated that if a private well owner is told to cut back on his production by a GCD that that is also a taking.

The mere designation of a PGMA is not a regulatory action that impacts ownership or use of private property. Actions taken by a GCD that potentially restrict a private well owner's use of groundwater are made pursuant to direct authorizations by the legislature. The TCEQ has no regulatory authority over permitting decisions made by a GCD. The TCEQ has no authority to make determinations with respect to possible takings of property by a GCD. The commission made no change to the rules in

response to this comment.

Chapter 293

The Kenedy County GCD commented that a GCD may face an inquiry if the management plan is not updated within two years of adoption of desired future conditions and suggested that §293.20(c) be amended to include the language.

The commission agrees that a GCD may face an inquiry if the management plan is not updated within two years of adoption of new desired future conditions, adopted after September 1, 2011. The commission respectfully does not agree that the proposed language in §293.20(c) should be changed.

The commission is authorized to serve a technical advisory role in the development of desired future conditions if requested to do so. However, the commission does not have a role or jurisdiction for the adoption of or approval of desired future conditions, or the approval of management plans. The guidance and schedules to maintain compliance for these activities should be addressed in TWDB regulations. No changes were made to the rule in response to this comment.

The Kenedy County GCD commented that the proposed amendment to §293.20(c) should include 60-day time frames for a GCD to send copies of its approved

management plan to the regional water planning group and to the other GCDs in a groundwater management area and suggested language changes. They commented that many GCDs are located in more than one regional water planning area and more than one groundwater management area and suggested language changes. They commented the rule was too vague to be enforced and suggested changes.

The commission acknowledges and partially agrees with these comments. The commission agrees that a 60-day time frame for a GCD to distribute its approved management plan is reasonable and has made this suggested change. The commission agrees that many GCDs are located in more than one regional water planning area and more than one groundwater management area and has made the suggested change. The commission agrees the proposed rule requirement to provide confirmation to the executive director that the management plan was distributed by the GCD is not an enforceable action. Instead of providing confirmation of management plan distribution to the executive director, the commission has changed the rule to require the GCD to maintain records that the management plan was distributed. If the executive director needs to ascertain for any reason if the GCD distributed the management plan according to the statute, he may request the records from the GCD in accordance with TWC, §36.120 or §36.306.

The Kenedy County GCD commented that certain references to a "comprehensive" management plan or a "groundwater" management plan were no longer accurate because of other statutory changes made outside of SB 660 by the 82nd Legislature, 2011.

The commission agrees with this comment. The commission notes that Chapter 17, Acts of the 82nd Legislature, 2011 (SB 727) made changes to TWC, Chapter 36, to make references to the term "management plan" consistent. The commission has made this conforming change to the rules where applicable in §293.20(c) and §293.22(a) to remove the unnecessary terms "comprehensive" and "groundwater" in front of the term "management plan."

The Kenedy County GCD agreed with the proposed deletion of §293.20(c)(3) that required a GCD to provide a copy of its approved management plan to the executive director.

The commission acknowledges this comment. The commission made no change to the rule in response to the comment.

The Kenedy County GCD commented that §293.20(d) should be moved elsewhere in the rule and that §293.20(e) was redundant.

The commission respectfully disagrees that §293.20(d) is more appropriately located elsewhere in the rule and that §293.20(e) is redundant. The commission responds that the title of §293.20 is Records and Reporting, and identifying the types of GCD records the commission or the executive director may require upon request is appropriate for this section of the rule. The commission responds that subsections (d) and (e) are not redundant because an executive director request under subsection (d) is related strictly to management plan adoption and implementation and an executive director request under subsection (e) would be for any other type of GCD documentation or record. The commission did not make any changes to the rule in response to this comment.

The Kenedy County GCD commented that the proposed changes to §§293.20, 293.22, and 293.23 do not clarify agency procedures to implement SB 660, §17 and §18, do not reflect current or anticipated agency practices due to the new legislation, and adversely impact staff and stakeholders' ability to understand and follow the procedures outlined in the rules. Kenedy County GCD suggested that changes to §293.17 were necessary to implement SB 660, suggested language with significant stylistic and grammatical

changes throughout §§293.20, 293.22, and 293.23, and suggested that §293.22 be broken down into four separate rule sections. Kenedy County GCD commented that the commission should delay adoption of the proposed amendments to incorporate the suggested changes.

The commission respectfully disagrees that the proposed rules do not clarify agency procedures to implement SB 660, §17 and §18. The proposed rules consider and reflect present and projected agency practices due to the new statute and do not present or introduce unclear processes for staff or stakeholders to understand or follow.

The commission respectfully disagrees that it is necessary to make changes to §293.17 to implement SB 660, §17 and §18. The existing language in §293.17 provides clear guidance on the general purpose of Subchapter C, Special Requirements for Groundwater Conservation Districts.

The commission respectfully does not agree that stylistic changes and creating new rule sections would improve the rule readability. However, the commission agrees that several of the grammatical and clarifying language changes suggested by the Kenedy County GCD would benefit the proposed rules. These suggested language changes are addressed

individually.

The commission respectfully does not agree that adoption of the proposed amendments should be delayed. The proposed rules, with some improvements as suggested by the Kenedy County GCD, are adequate to fully implement SB 660, §17 and §18, and should move forward at this time.

The Kenedy County GCD suggested that §293.22 be broken out into separate sections to address separate regulatory review actions by the commission. They suggested full or partial language for newly styled sections entitled Regulatory Review and Commission Action, Executive Director Investigation, Dissolution or Receivership, and Commission Action on State Auditor's Report.

The commission respectfully disagrees that a major restructuring of the rule is needed. The proposed amendment to §293.22 follows a reasonable progression to identify when commission action may be required, for the actions of the executive director to attempt to help a GCD achieve voluntary compliance, and for notice, hearing, commission action, all the way through to appeal, if voluntary compliance is not achieved by a GCD. The commission did not make any restructuring changes to the rule in response to the comment.

The Kenedy County GCD commented that the time frame for a GCD to consider and agree to the terms and schedule of a compliance agreement proposed by the executive director under §293.22(b) should remain 60 days instead of the proposed 30 days, suggested the time frame for a GCD to request changes to a compliance agreement be changed from 10 days of receipt of the compliance agreement to 30 days of receipt, and suggested other grammatical changes in the subsection. The Kenedy County GCD suggested these changes would be more reasonable for some GCDs that do not have a general manager and easier to understand.

The commission agrees that the requested time frame changes are reasonable and the grammatical language changes make the rule easier to read. The commission has made the suggested changes in §293.22(b).

The Kenedy County GCD provided clarifying language for §293.22(c) and suggested the actions of the executive director should be outlined in greater detail if a GCD cannot or will not voluntarily enter a compliance agreement with the executive director or otherwise achieve and demonstrate compliance on its own motion.

The commission respectfully disagrees that the role and procedures of the executive director are unclear in this process and did not make any changes

to the rule in response to this comment.

The Kenedy County GCD suggested language changes for §239.22(d) to clarify the required notice if the executive director's report recommends referral of a matter to the Office of the Attorney General requesting the placement of a district into receivership.

The commission agrees that this suggested clarification improves the rule language and has amended §293.22(d) accordingly.

The Middle Pecos GCD supported the rule clarifications on who can petition for an inquiry into the management and planning activities of a GCD, the circumstance for when a petition can be made, and the requirements of the petition.

The commission acknowledges this comment. The commission made no change to the rule in response to the comment.

The Kenedy County GCD commented that petitions to the commission now contemplate the actions or inactions of a single GCD and only that GCD should be authorized to respond to the petition.

The commission agrees with Kenedy County GCD that petitions to the

commission are directed at the actions or inactions of a single GCD in a groundwater management area. The commission interpreted the statute prior to the SB 660 changes the same way. The commission respectfully disagrees that only the GCD that is subject to the petition should be allowed to respond to the commission. Doing such would wholly eliminate other GCDs in the groundwater management area from providing any input into the process whatsoever, that is, unless they are the petitioner. Specifically, the other GCDs in the groundwater management area have vested concerns for proper groundwater management to achieve the desired future conditions they helped to adopt. Their input could prove meaningful for the commission to determine if the petition should be granted or denied. Further, if the petition were granted, the directors or managers of the other GCDs in the groundwater management area would be ineligible to serve on a commission-appointed review panel. No changes to the rule amendments were made in response to this comment.

The Kenedy County GCD suggested language with significant stylistic changes throughout §293.23, suggested the rule provide time frames where the statute is silent for certain GCD actions such as adoption of initial rules and adoption of desired future condition resolutions, and suggested many grammatical changes throughout the section.

The commission responds that the proposed amendment to §293.23, specifically the definition of affected person and the reasons an affected person may petition the commission, closely mirror the statutory language provided by SB 660 in TWC, §36.1082. The commission did not make any stylistic changes to the rule in response to the comment.

The commission dismisses the suggestion to add deadlines for GCD actions where the statute is silent. The commission responds that this section of the rule speaks predominantly to an affected person in a groundwater management area who seeks an inquiry for inaction of a GCD to meet specific statutory requirements. On their own motion and independent from this rule, the GCDs are responsible to meet the management plan, joint management planning, and the rule adoption, implementation, and enforcement provisions of TWC, Chapter 36. That authority and responsibility is vested to the GCDs, not the commission, and should not be addressed by a commission rule.

The commission has made one change in response to this comment. The Kenedy County GCD commented that a groundwater management area is not a legal entity so it does not take action. Accordingly, the commission

has amended language in §293.23(b)(7) to clarify that an affected person may request an inquiry if the rules adopted by a district are not designed to achieve the applicable desired future conditions adopted "for" the management area during the joint planning process, not "by" the management area during the joint planning process.

The Kenedy County GCD commented that commission review of a petition for inquiry under §293.23(g) is unclear.

The commission respectfully does not agree with the Kenedy County GCD that the process for review of a petition for inquiry is unclear. The proposed amendment and rule language identify what is subject to review by the commission, when the commission review must be accomplished, and outcomes of the commission review. The commission did not make any changes to the proposed amendment in response to this comment.

**SUBCHAPTER C: SPECIAL REQUIREMENTS FOR GROUNDWATER
CONSERVATION DISTRICTS**

§§293.19, 293.20, 293.22, 293.23

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §5.103, Rules.

§293.19. Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area.

(a) In priority groundwater management areas (PGMAs) designated after September 1, 2001 under §294.42 of this title (relating to Commission Action Concerning PGMA [Priority Groundwater Management Area] Designation), where no groundwater conservation district (GCD) has been created, the executive director shall, after identifying the applicable areas under §294.43(d) and (e) of this title (relating to Actions Required After PGMA [Priority Groundwater Management Area] Designation), recommend district creation for commission action.

(1) The recommendation shall be based on and consistent with the commission's designation order under §294.42 of this title. The executive director's recommendation, in the form of a proposed order, must provide for the purpose, boundary description, minimum financing, and the number of temporary directors for each county for the district.

(2) The executive director's proposed order shall be filed with the chief clerk for commission consideration. The executive director shall prepare a notice and include a mailing list of:

(A) water stakeholders that include the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission and each irrigation district located either in whole or in part in the proposed district; and

(B) any other persons identified in the PGMA designation hearing.

(3) The chief clerk shall give notice of the executive director's recommendation and proposed order and the date of the agenda when the commission will act on the district creation to the water stakeholders and other persons identified in

the PGMA designation hearing. The commission shall not hold an evidentiary hearing on the district creation.

(b) In PGMAAs designated before September 1, 2001, the executive director, after identifying the areas in the PGMA that have not created a district, shall petition the commission for the creation of a district by preparing a report and filing the report with the chief clerk.

(1) The report shall identify the areas not included in a district and evaluate and recommend whether one or more districts should be created in the identified areas, whether the identified areas should be added to an existing district, or whether a combination of these actions should be taken.

(2) The report shall include the following:

(A) the purpose or purposes of the recommended district creation action or actions;

(B) the name of the recommended district or districts or the name of the existing district if the recommendation is to add the identified areas to an existing district;

(C) the area and boundaries of the recommended district or districts or the recommended area to be added to an existing district, including a map generally outlining the boundaries;

(D) the number of temporary directors for each county in the recommended district or districts; and

(E) the feasibility and practicability of the recommended district creation action.]; and]

(3) [(F)] The executive director shall prepare a mailing list of water stakeholders including the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission and each irrigation district located either in whole or in part in the identified areas.

(4) [(3)] The executive director shall prepare a public notice for publishing and mailing. The public notice shall:

(A) state that the commission has been petitioned by the executive director to create a GCD;

(B) provide notice of the date, time, and location of a contested case hearing to receive evidence on the petition;

(C) provide notice of the availability of the petition and supporting information; and

(D) provide a general map of the proposed district if the area is not a recognizable political subdivision boundary.

(5) [(4)] On receipt of the report and notice, the chief clerk shall:

(A) mail notice of the petition to the water stakeholders identified in the executive director's mailing list [report]; and

(B) publish notice in one or more newspapers of general circulation in the area of the proposed district.

(6) [(5)] The commission, or the executive director on behalf of the commission, shall refer the petition to SOAH for a contested case hearing on the executive director's report and recommendation.

(7) [(6)] The hearing shall be limited to consideration of the executive director's report and recommendation. The administrative law judge may also consider other district creation options evaluated in the executive director's report. To determine the feasibility and practicability of the recommended district creation action, the administrative law judge shall consider:

(A) whether the recommended district creation action can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(B) whether the boundaries of the recommended district creation action provide for the effective management of groundwater resources; and

(C) whether the recommended district creation action can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district operation functions under TWC, Chapter 36.

(8) [(7)] The administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file these findings and conclusions with the chief clerk with a request for the petition be set for commission consideration.

(c) If the commission finds the creation of the district or districts is feasible and practicable, it shall issue an order creating the district or districts. The order shall include the purpose of the district, boundary description, minimum maintenance tax or production fee necessary to support the district, and the number of temporary directors for each county in the district according to TWC, §36.0161. The commission order shall direct the commissioners court of the county or counties that are within the district to appoint temporary directors. The commission order shall direct the temporary directors to call and schedule an election to authorize the district to assess taxes and to elect permanent directors.

(1) The commissioners court of the county or counties within the district shall, within 90 days after receiving notification from the commission, appoint temporary directors for the district and notify the commission of the appointments. The commissioners court shall not make any appointments after the expiration of the 90-day

period. If fewer temporary directors have been appointed at the expiration of the period than required, the commission shall appoint the additional directors.

(2) If the district contains two or more counties, the commission shall apportion the number of temporary directors to each county based on each county's proportionate amount, to the nearest whole number, of the total estimated groundwater use within the district. The total estimated groundwater usage within the district for each county shall be based on information and data contained in the most current version of the Texas State Water Plan as adopted by the Texas Water Development Board and other information developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation).

(3) If a temporary director appointed by the commissioners court fails to qualify according to TWC, §§36.051(b), 36.058, and 36.059(b), or if a vacancy occurs in the office of temporary director, the commissioners court shall appoint an individual to fill the vacancy.

(4) Temporary directors appointed under this subsection shall serve until the initial directors are elected and have qualified for office.

(d) If the commission finds the areas identified in the report provided by subsection (b)(1) of this section should be added to an existing district, the commission shall issue an order recommending the addition of the identified areas to the existing district. The commission and the executive director shall follow the procedures provided under §294.44 of this title (relating to Adding a PGMA to an Existing Groundwater Conservation District).

§293.20. Records and Reporting.

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

(1) a certified copy of the legislative act creating the district within 60 days after the district is created;

(2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);

(3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and

(4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) **A** ~~Each~~ district is required under TWC, §36.1071 to adopt a ~~comprehensive~~ management plan and adopt rules that are necessary to implement the management plan. In accordance with TWC, §36.1072, the management plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required. The management plan is subject to approval by the executive administrator of the Texas Water Development

Board or the Texas Water Development Board upon appeal. After approval, each district must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) **Within 60 days of approval of its management plan, a** ~~Each~~ district must **send** ~~forward~~ a copy of its approved groundwater management plan to the regional water planning group **or groups** for the planning region **or regions** in which the district is located and ~~provide confirmation to the executive director that such action has been taken.~~ **The district shall maintain records of the correspondence.**

(2) **Within 60 days of approval of its management plan, a** ~~Each~~ district must forward a copy of its approved groundwater management plan to the other districts **wholly or partially located in the same** ~~that are included with the district in a common~~ groundwater management area **or areas** and ~~provide confirmation to the executive director that such action has been taken.~~ **The district shall maintain records of the correspondence.**

[(3) Each district must provide a copy of an existing, new, or amended approved groundwater management plan to the executive director.]

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title (relating to Noncompliance Review and Commission Action), and TWC, §36.1082, and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

§293.22. Noncompliance Review and Commission Action.

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. **Management** ~~A groundwater management plan~~ noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a ~~groundwater~~ management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan for review and approval to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) receive within 60 days of submittal, written [achieve] approval from the executive administrator of the Texas Water Development Board for [of] a ~~groundwater~~ management plan, an amended ~~groundwater~~ management plan, or a readopted ~~groundwater~~ management plan [from the executive administrator or the Texas Water Development Board] as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan for review and approval to the executive administrator of the Texas Water Development Board at least once every five years after the date of the most recent management plan approval;

[(4) forward a copy of its approved groundwater management plan to the other GCDs that are included with the district in a common ~~groundwater~~ management area (GMA);]

(4) [(5)] be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the district's performance as provided by TWC, §36.302; or

(5) [(6)] adopt, implement, or enforce district management plans and rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.1082 [§36.108] and §293.23 of this title (relating to Petition Requesting Commission Inquiry [in Groundwater Management Area]).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director shall notify the district and may attempt to resolve any noncompliance set out in subsection (a) of this section with the district.

(2) After review of the facts and identification of noncompliance issues, the executive director shall submit [may propose to resolve the issue with the district through] a compliance agreement to the district. The compliance agreement must

clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(3) [(2)] The [If the executive director proposes a compliance agreement, the] district shall be provided a specified time frame not to exceed **60** ~~30~~ ~~[60]~~ days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to amend [negotiate] the compliance agreement schedule, it must contact the executive director within **30** ~~ten~~ days of receipt of the compliance agreement so that the [final] compliance agreement can be considered and signed by the district and its board of directors within the **60-day** ~~30-day~~ ~~[60-day]~~ time frame.

(4) [(3)] If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of **the** agreement **terms** ~~provisions within the agreed schedule~~. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for

commission enforcement actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement Referrals to SOAH). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Notice of Executive Director's Preliminary Report). If the executive director's report recommends dissolution of a district or of a board of directors or **referral of the matter to the Office of the Attorney General requesting** the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or **referral of the matter to the Office of the Attorney General requesting** the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, §§36.1082 [§§36.108], 36.301, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by TWC, §35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is

located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

§293.23. Petition Requesting Commission Inquiry [in Groundwater Management Area].

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person [a groundwater conservation district (GCD) or a person with a legally defined interest in the groundwater within the groundwater management area (GMA)] requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules [related to joint groundwater management planning in the GMA]; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.1082 [§36.108] and §36.3011. An affected person is a landowner, water well owner, or other user users of groundwater in the a groundwater management area (GMA), a GCD in or adjacent to the a GMA, a regional water planning group with a water management strategy in the a GMA, a person who holds or is applying for a permit from a GCD in the a GMA, or a person who has groundwater rights in the a GMA. Such petitions must be filed following the procedures prescribed by this section.

(b) Petition requesting commission inquiry. An affected person [A GCD or a person with a legally defined interest in the groundwater within the GMA] may file a petition with the commission [executive director] to request an [a commission] inquiry for any of the reasons in paragraphs (1) - (9) of this subsection: [if a district or districts

refused to join in the GMA planning process or the GMA planning process failed to result in adequate planning. After the desired future conditions for the GMA have been adopted, a GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if the GMA planning process does not establish reasonable future desired conditions for the aquifers in the GMA.]

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions by resolution;

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

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

(7) the rules adopted by a district are not designed to achieve the applicable desired future conditions adopted for by the management area during the joint planning process;

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

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

(c) [(1)] The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary. [that demonstrates that joint planning meetings have been conducted by the presiding officers, or their designees, of each district located in whole or in part in the GMA. Documentation shall include:]

[(A) a certified copy of the board resolutions calling for the joint planning between the districts in the GMA;]

[(B) evidence that joint planning meeting notice was received by the districts in the GMA such as a return receipt for certified mail service;]

[(C) publishers' affidavits of joint planning meeting notice; and]

[(D) copies of joint planning meeting minutes and accepted handouts certified by the districts that attended the meetings.]

(d) [(2)] The petition must include a certified statement from the affected person [petitioning district's board of directors or from the person with a legally defined interest in the groundwater within the GMA] that describes why the petitioner believes that a commission inquiry is necessary [adequate planning was not achieved in the GMA].

[(3) The petition must provide evidence that:]

[(A) a district in the groundwater management area has failed to adopt rules;]

[(B) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the GMA established during the joint planning process;]

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

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

(e) [(4)] The petitioner shall provide a copy of the filed petition to all GCDs [groundwater conservation districts] within and adjacent to the GMA [groundwater management area] within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) [(5)] Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in

the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) [(c)] Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) [, (2), or (3)] of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section [located outside the groundwater management area] and is not [that is] the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) In accordance with TWC, §36.1082 [According to TWC, §36.108], the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(h) [(d)] Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) [(e)] Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause [the items] contained in subsection (b)(1) - (9) [(3)] of this section applies [apply]. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) [(e)] of this title.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§294.30 and 294.40 - 294.44.

Section 294.44 is adopted *with change* to the proposed text as published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 2033). Sections 294.20 and 294.40 - 294.43 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2011 the 82nd Legislature passed Senate Bill (SB) 313 related to priority groundwater management areas (PGMAs). The legislature also passed SB 660 related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

SB 313 amended Texas Water Code (TWC), Chapter 35, which relates to the creation of groundwater conservation districts (GCDs) in PGMAs and TWC, Chapter 36, which relates to GCDs. Specifically, SB 313 amended TWC, §§35.007, 35.008, 35.012, 35.013, and 36.0151 which relate to the study and designation of PGMAs and the creation of GCDs in PGMAs.

SB 660 amended TWC, Chapter 36, which relates to GCDs. Specifically, SB 660 added

TWC, §36.1082, which adds a definition for affected person in a groundwater management area and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area.

The commission adopts the amendments to Chapter 294 to implement amendments to TWC, §§35.007, 35.008, 35.012, 35.013, and 36.0151 and new TWC, §36.1082.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts amendments to 30 TAC Chapter 293, Water Districts.

Section by Section Discussion

The commission adopts the amendment to §294.30, Purpose and Applicability, to delete language that is no longer necessary after the amendments to the TWC by SB 313. The commission deletes language to clarify that the boundaries described in the subsequent sections of Chapter 294, Subchapter D only include the boundaries of PGMAs designated prior to September 1, 1997. The commission adopts this amendment to implement TWC, §35.008, as amended by SB 313.

The commission adopts the amendment to §294.40, Definitions, to implement changes to the TWC as amended by SB 313 and SB660, §17. The commission amends §294.40(1) by replacing the old definition of an affected person with a new definition that conforms

the definition of an affected person in a PGMA in TWC, §35.008 with the definition of an affected person in a groundwater management area in TWC, §36.1082, as added by SB 660, §17. The commission amends §294.40(3) by changing 25 years to 50 years to ensure conformity with the definition of PGMA in TWC, §35.007, as amended by SB 313. This amendment extends the PGMA evaluation period from 25 to 50 years. The adopted amendment also replaces the word "or" with the word "and" in the definition to implement TWC, §35.007.

The commission adopts the amendment to §294.41, Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation, to implement TWC, §35.007 and §35.012, as amended by SB 313, and to update an agency name change. The commission amends §294.41(a) to change the 25-year evaluation period that the executive director and the TWDB's executive administrator use to identify areas of the state for a PGMA study to a 50-year evaluation period. The adopted amendment to §294.41(c)(2) updates the name of the Texas Cooperative Extension to the Texas AgriLife Extension Service. The adopted amendment to §294.41(g)(1)(B) clarifies that the executive director's PGMA report may include the reasons and supporting information for or against adding a recommended PGMA to an existing PGMA. The adopted change will allow the commission to fully implement the commission's authority under TWC, §35.012, as amended by SB 313. The commission deletes §294.41(g)(1)(G) because TWC, §35.007(f), requires the executive director to

make a recommendation regarding whether one or more GCDs should be created in the PGMA, whether the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken. The statute does not require the executive director's PGMA report to include an evaluation of groundwater management planning and regulatory functions for the commission. The commission adopts the amendment to the newly re-lettered §294.41(g)(1)(G) to clarify that the executive director's PGMA report will contain an evaluation of the potential funding available under TWC, Chapter 36, for any GCD that is recommended. The commission also re-letters existing subparagraph (I) to subparagraph (H) to accommodate the deletion of the existing subparagraph (G). The adopted amendment to §294.41(h) adds that, upon completion, the executive director's PGMA report will be posted on the commission's Web site for public inspection. The amendment implements TWC, §§35.007, 35.008, and 35.012, as amended by SB 313.

The commission adopts the amendment to §294.42, Commission Action Concerning PGMA Designation, to implement TWC, §35.012, as amended by SB 313. The adopted amendment allows the commission to consider adding an area recommended for PGMA designation by the executive director to an existing PGMA.

The commission adopts the amendment to §294.43, Actions Required After PGMA Designation, to implement TWC, §35.013 and §36.0151, as amended by SB 313 and to

update a reference to a state agency. The adopted amendment to §294.43(a) and (b) updates the name of the Texas Cooperative Extension to the Texas AgriLife Extension Service. The adopted amendment to §294.43(c) changes the time frame for the executive director to review the status of locally-initiated GCD creation in a PGMA from 180 days to 120 days. This adopted change is to ensure agreement with the time frame in TWC, §35.013, for a GCD to vote on adding a recommended PGMA and advising the commission of the outcome. The adopted amendment to add §294.43(f) - (h) implements TWC, §36.0151, as amended by SB 313. The added language clarifies that the commission may amend territory if the commission is required to issue a subsequent GCD creation order, or a subsequent order to recommend a PGMA be added to a GCD. The adopted change allows the commission to consider the actions taken since the original order that have resulted in part of the PGMA being included in a GCD.

The commission adopts the amendment to §294.44, Adding a PGMA to an Existing Groundwater Conservation District, to implement TWC, §35.013, as amended by SB 313. The adopted amendment to §294.44(b) changes the 180-day time frame for a GCD to vote on adding a recommended PGMA and advising the commission of the outcome to 120 days to implement the amendments to TWC, §35.013, made by SB 313. The adopted deletion of existing §294.44(c) implements TWC, §35.013, as amended by SB 313. The amendment to TWC, §35.013, provides that a PGMA is added to a GCD upon the vote of the GCD's board of directors and removes the requirement for a voter

confirmation election to add the PGMA to the GCD. Therefore, the provisions in existing §294.44(c) are no longer needed because voter elections to add a PGMA to a GCD are no longer required. Subsection (d) is re-lettered to subsection (c). The commission adopts the amendment to newly re-lettered §294.44(c) to implement TWC, §35.013, as amended by SB 313. If a GCD's board of directors votes not to pursue addition of a PGMA as recommended by the commission, under newly re-lettered §294.44(c), the commission shall within one year create one or more GCDs or recommend the PGMA be added to another existing GCD. The commission adopted §294.44(d) to clarify that, at the end of the process, if the commission determines that creating a GCD under TWC, Chapter 36, within the boundaries of a PGMA is not appropriate or capable of protecting the groundwater resources, the commission may recommend the legislature create a special law district or amend an existing district's authority to manage the groundwater resources in the PGMA. Adopted subsection (d) implements TWC, §35.008, as amended by SB 313. Upon further review of the rule, the commission also amended the language in this subsection to clarify that a recommendation for legislative action will not be made until all feasible administrative actions by the commission have been pursued. The commission also deleted an extra "of" from the subsection.

Final Regulatory Impact Determination

The commission has reviewed the adopted rules in light of the regulatory analysis

requirements of Texas Government Code, §2001.0225, and has determined that the adopted rules are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that statute. 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 section of the state. These adopted rules implement legislation and do not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety. The designation of an area as a PGMA does not have a regulatory impact on the area. In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. No federal law applies. These adopted rules implement state legislation and do not exceed that legislation.

The commission invited public comment regarding the draft regulatory impact analysis

determination but did not receive any comments.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.43. The purpose of these adopted rules is to implement amendments to TWC, Chapter 35. These amendments to the TWC provide the process for the agency to designate a PGMA. A PGMA designation is simply a designation; the PGMA does not have any regulatory authority. Therefore, the procedure for PGMA designation and maintenance does not impact or burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the CMP during the public comment period but did not receive any comments related to the CMP.

Public Comment

The commission held a public hearing on April 17, 2012. The comment period closed on April 23, 2012. The commission received comments from two individuals, the Kenedy County Groundwater Conservation District (Kenedy County GCD), the Middle Pecos Groundwater Conservation District (Middle Pecos GCD), and Travis County Transportation and Natural Resources Department (Travis County).

The Middle Pecos GCD, Travis County, and one individual support the rule. One individual was against the rule. Kenedy County GCD suggested changes to the rule as noted in the Response to Comment section of this preamble.

Response to Comments

General

One individual is supportive of managing the state's water supplies.

The commission acknowledges this comment. The commission made no change to the rules in response to this comment.

One individual commented that SB 313 was passed illegally and is unconstitutional because the legislature did not provide an opportunity for a hearing after SB 313 was amended by the Texas House of Representatives. The individual commented that this

denied people due process as provided by the 14th amendment of the United States Constitution. The individual also commented that the laws enacted by SB 313 are contrary to Article 16, §59, of the Texas Constitution. Finally, the individual also objected to the proposed rules as an extension of SB 313.

The commission presumes the statute is constitutional because, according to the Code Construction Act, Texas Government Code, §311.021, it is presumed that when the legislature enacts a statute it intends that the statute complies with the Texas and United States Constitutions. A statute is presumed constitutional unless declared unconstitutional by a court of competent jurisdiction and that decision becomes final. The commission made no change to the rules in response to this comment.

One individual commented that an ongoing State Office of Administrative Hearings (SOAH) hearing on a commission recommendation for GCD creation in Comal County should grandfather the county from any laws passed during the last legislative session.

The legislature did not exclude any area of the state from the provisions of SB 313 or SB 660. An ongoing contested case hearing does not constitute a final administrative action by the commission which might alter the characteristics of a GCD such that it is no longer subject to the provisions of

otherwise applicable statutes resulting from recent legislative action. The commission made no change to the rules in response to this comment.

The Middle Pecos GCD noted full support for the proposed rules and commented that the implementation of SB 313 through the proposed rules would benefit Groundwater Management Areas 3 and 7 to facilitate designation of PGMAs and creation of GCDs in West Texas. Further, Middle Pecos GCD commented that implementation of the proposed rules will also benefit other areas of the state that need groundwater management attention.

The changes made by SB 313 will cause new PGMA evaluations to be initiated and will streamline processes to establish new GCDs in PGMAs. The commission made no change to the rules in response to this comment.

Travis County commented that the proposed rules should lead to the establishment of effective GCDs for the Trinity Aquifer for western Travis and western Comal Counties within the Hill Country PGMA.

The commission acknowledges this comment and responds that the implementation of SB 313 through the rules will facilitate commission actions to recommend or establish effective GCDs for all PGMAs. Further,

the changes by SB 313 place renewed encouragement for local actions to create a GCD in a PGMA or to add a PGMA to an existing GCD over and above state actions. The commission made no change to the rules in response to the comment.

Public Benefit and Costs

One individual commented that public benefits from the proposed rules do not meet state or federal law because the legislature did not provide an opportunity for hearing after SB 313 was amended by the Texas House of Representatives which denied due process.

The comment implies that this rulemaking should not go forward because SB 313 violates constitutional due process clauses. The commission presumes the statute is constitutional because, according to the Code Construction Act, Texas Government Code, §311.021, it is presumed that when the legislature enacts a statute it intends that the statute complies with the Texas and United States Constitutions. A statute is presumed constitutional unless declared unconstitutional by a court of competent jurisdiction and that decision becomes final. The commission made no change to the rules in response to this comment.

Small Business and Micro-Business Assessment

One individual commented that SB 313 and the rules will adversely impact individuals and small businesses.

The proposed rules will not adversely affect individuals or small businesses because the proposed rules are procedural in nature and do not provide the TCEQ any authority to assess penalties or fee collections on individuals or businesses of any size. Further, these rules provide additional details to businesses or any person interested in filing a petition to request an inquiry into the activities of a GCD and the procedures for filing such an inquiry which may save the individual or business filing the inquiry time or money. The commission made no change to the rules in response to this comment.

Local Employment Impact Statement

One individual commented that the proposed rulemaking should have included a local employment impact statement because TCEQ could place Comal County into a GCD or neighboring GCD without an election and taxes could be implemented or water could be bought or sold and escalate local water problems.

Texas Government Code, §2001.022, Local Employment Impact Statements, provides that "{i}f a state agency determines that a proposed rule may affect

a local economy, the agency shall prepare a local employment impact statement for the proposed rule." The commission reviewed the proposed rules and determined these rules do not affect a local economy in a material way for the first five years that the proposed rules are in effect because the proposed rules implement only procedural changes. Further, these rules do not provide TCEQ any authority to assess penalties or fee collections on state or local government, businesses, or individuals.

The commission is proposing these procedural changes to ensure that its rules conform to the changes made to the TWC by SB 313 and SB 660. The rules clarify commission processes relating to: the creation of GCDs in the PGMA that were designated before September 1, 1997; the study and designation of new PGMA; the creation of GCDs in new PGMA; and the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area. These rules also amend the definition of an affected person in a groundwater management area so that the commission's rules agree with changes made to the TWC by SB 660. The commission made no change to the rules in response to this comment.

Takings Impact Assessment

One individual commented that the designation of a PGMA is a "taking" of private

property and negatively affects people in a PGMA. The commenter further stated that if a private well owner is told to cut back on his production by a GCD that that is also a taking.

The mere designation of a PGMA is not a regulatory action that impacts ownership or use of private property. Actions taken by a GCD that potentially restrict a private well owner's use of groundwater are made pursuant to direct authorizations by the legislature. The TCEQ has no regulatory authority over permitting decisions made by a GCD. The TCEQ has no authority to make determinations with respect to possible takings of property by a GCD. The commission made no change to the rules in response to this comment.

Chapter 294

The Middle Pecos GCD supported the proposed change to the definition of "affected person" to expressly include a GCD adjacent to a proposed PGMA, supported the proposed change to shorten the time frame from 180 days to 120 days for the executive director to assess local actions to establish a GCD in a PGMA, and supported the proposed change that allows the commission to consider changes that have occurred in a PGMA if amendment of an existing PGMA order becomes necessary.

The commission acknowledges this comment. The commission made no change to the rules in response to the comment.

Travis County supported the proposed rules and specifically supported the extension of the PGMA evaluation period from 25 years to 50 years.

The commission acknowledges this comment. The commission made no change to the rules in response to the comment.

SUBCHAPTER D: PRIORITY GROUNDWATER MANAGEMENT AREAS

§294.30

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §5.103, Rules.

§294.30. Purpose and Applicability.

(a) The purpose of this subchapter is to set out the boundaries of priority groundwater management areas (PGMAs) designated and delineated prior to September 1, 1997 under the Texas Water Code (TWC). [A PGMA under this subchapter is an area designated and delineated by the commission that is experiencing or is expected to experience, based on information available to the commission and the Texas Water Development Board, within the immediately following 25-year period, critical groundwater problems including shortage of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.]

(b) PGMAs designated after September 1, 1997 are delineated by commission order under TWC, Chapter 35, using the process contained in Subchapter E of this chapter (relating to Designation of Priority Groundwater Management Areas).

**SUBCHAPTER E: DESIGNATION OF PRIORITY GROUNDWATER
MANAGEMENT AREAS**

§§294.40 - 294.44

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §5.103, Rules.

§294.40. Definitions.

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

(1) Affected person--A landowner, water well owner, or other user of groundwater in the proposed priority groundwater management area (PGMA), a groundwater conservation district adjacent to the proposed PGMA, a regional water planning group with a water management strategy in the proposed PGMA, or a person who has groundwater rights in the proposed PGMA. [an area that is proposed for

priority groundwater management area designation, or any other person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the designation. An interest common to members of the general public does not qualify as a personal justiciable interest.]

(2) Executive administrator--The executive administrator of the Texas Water Development Board.

(3) Priority groundwater management area (PGMA)--An area designated and delineated by the commission that is experiencing or is expected to experience, within the immediately following 50-year [25-year] period, critical groundwater problems including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, or [and] contamination of groundwater supplies.

(4) Texas Water Development Board (TWDB)--The agency responsible for water planning and administration of financial programs for the planning, design, and construction of water supply, wastewater treatment, flood control, and agricultural water conservation projects.

§294.41. Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation.

(a) The executive director shall confer periodically with the executive administrator according to Texas Water Code (TWC), §35.007 to identify areas of the state that may be experiencing or expected to experience critical groundwater problems within the immediately following 50-year [25-year] period.

(b) If the executive director concludes that an area of the state should be evaluated to determine if it justifies designation as a priority groundwater management area (PGMA), the executive director shall prepare a report and recommendations for consideration by the commission.

(c) The executive director shall provide written notice to groups identified under paragraphs (1) and (2) of this subsection that an area is to be evaluated to determine if it warrants designation as a PGMA according to TWC, §35.007(c). This notice will provide the opportunity for water stakeholders and others identified in paragraph (2) of this subsection to comment or provide studies or other information for use in the executive director's evaluation.

(1) The notice shall be provided to water stakeholders who are the governing body of each county, regional water planning group, adjacent groundwater conservation district (GCD), municipality, river authority, water district, or other entity

that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and each irrigation district, located either in whole or in part in the proposed PGMA study area.

(2) The notice shall also be provided to the Texas Department of Agriculture (TDA), the Texas AgriLife Extension Service [Cooperative Extension], and to the legislators whose districts are included in the proposed PGMA study area.

(3) Not later than the 45th day after the date of the notice, a person who receives notice under paragraph (1) of this subsection may submit to the executive director any existing information, local water supply or quality studies, or site-specific geological information that addresses the shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, or contamination of groundwater supplies.

(4) The executive director shall consider this information in preparing the report and recommendations for the commission.

(d) The executive director shall begin preparation of a PGMA report by requesting a study from the executive administrator. The study must:

(1) include an appraisal of the hydrogeology of the area and other matters within the TWDB's planning expertise relevant to the area;

(2) assess the area's immediate, short-term, and long-term water supply needs and availability; and

(3) be completed and delivered to the executive director within 180 days following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report under this section.

(e) The executive director shall request a study from the executive director of the Texas Parks and Wildlife Department (TPWD) for the purpose of preparing the report required by this section. The study must:

(1) evaluate the potential effects of the designation of a PGMA on an area's natural resources; and

(2) be completed and delivered to the executive director within 180 days following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report under this section.

(f) The executive director shall provide opportunity for TDA to submit information related to the PGMA study as identified in the notice provided under subsection (c) of this section. Information shall be submitted to the executive director within 180 days following the date of the notice.

(g) The executive director must complete the report and file it with the chief clerk within 240 days following the date on which the executive administrator was requested to produce a study.

(1) The executive director's report shall include:

(A) the recommended delineation of the boundaries of any proposed PGMA in the form of a proposed order to be considered for adoption by the commission;

(B) the reasons and supporting information for or against designating the area as a PGMA or adding the designated area to an existing PGMA;

(C) a recommendation of actions to be considered to conserve natural resources;

(D) an evaluation of information or studies submitted to the executive director under this section;

(E) if the designation of a PGMA is recommended, a recommendation regarding whether one or more GCDs should be created in the PGMA, whether the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken;

(F) a recommendation regarding the area and boundaries for any GCD recommended under this subsection;

[(G) an evaluation of required or authorized groundwater management planning and regulatory functions under TWC, Chapter 36 for any GCD recommended under this subsection to address identified critical groundwater problems;]

(G) [(H)] an evaluation of the estimated revenue available [a recommendation regarding adequate funding] to finance [required or authorized] groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36, [including a minimum projected maintenance tax rate or production fee rate] for any GCD recommended under this subsection; and

(H) [(I)] any other information that the executive director considers helpful to the commission.

(2) To prepare the report, the executive director may conduct necessary studies, hold public meetings, solicit and collect information, or use information prepared by the executive director, the executive director of the TPWD, the TDA, or the executive administrator of the TWDB for other purposes.

(h) Concurrent with filing the report with the chief clerk, the executive director shall make the report available for public inspection on the agency website and provide [by providing] a copy of the report to at least one public library and the county clerk's office in each county in which the proposed PGMA is located, and to all GCDs adjacent to the proposed PGMA.

(i) Within 30 days of filing the report with the chief clerk, the executive director may publish notice in the *Texas Register* that this report has been prepared, present a summary of its findings and recommendations, and indicate where copies of the report may be obtained or inspected. If the executive director decides to publish notice, this notice shall also be mailed to the same persons who received notice of the initiation of the PGMA study under subsection (c) of this section.

§294.42. Commission Action Concerning PGMA Designation.

(a) If the executive director concludes in the report that the area studied is not a priority groundwater management area (PGMA), no further action by the executive director or the commission is necessary. However, any person may file a motion to overturn under §50.39 of this title (relating to Motion to Overturn).

(b) If the executive director recommends that the area be designated a PGMA or added to an existing PGMA, or if the commission overturns the executive director's conclusion in subsection (a) of this section, the commission shall consider the executive director's PGMA report and recommendations developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation) using the following procedures.

(1) The commission shall hold an evidentiary hearing. On behalf of the commission, the executive director may refer the evidentiary hearing directly to SOAH. At the evidentiary hearing, the commission or the administrative law judge shall consider:

(A) whether the proposed PGMA should be designated or added to an existing PGMA;

(B) whether one or more groundwater conservation districts (GCDs) should be created within all or part of the proposed PGMA, whether all or part of the land in the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken; and

(C) the feasibility and practicability of each GCD recommendation.

To determine the feasibility and practicability of each GCD recommendation, the commission or the administrative law judge shall consider:

(i) whether the recommended GCD can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(ii) whether the boundaries of the recommended GCD provide for the effective management of groundwater resources; and

(iii) whether the recommended GCD can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36.

(2) The evidentiary hearing shall be held in one of the counties in which the PGMA is proposed to be located or in the nearest convenient location if adequate facilities are not available in those counties.

(3) The chief clerk shall publish notice of the evidentiary hearing in at least one newspaper with general circulation in the area proposed for PGMA designation. The notice must be published no later than 30 days before the first date set for the hearing. Notice of the evidentiary hearing must include:

(A) if applicable, a statement of the general purpose and effect of designating the proposed PGMA;

(B) if applicable, a statement of the general purpose and effect of creating a new GCD in the proposed PGMA;

(C) if applicable, a statement of the general purpose and effect of adding all or part of the land in the proposed PGMA to an existing GCD;

(D) a map generally outlining the boundaries of the area being considered for PGMA designation or notice of the location at which a copy of the map may be examined or obtained;

(E) a statement that the executive director's report on the proposed PGMA is available for inspection during regular business hours at the commission's main office in Austin, Texas, at regional offices of the commission which include territory within the proposed PGMA, and on the agency's website;

(F) the name and address of each public library, each county clerk's office, and each GCD that has been provided copies of the executive director's report;
and

(G) the date, time, and place of the hearing.

(4) The chief clerk shall also mail written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the PGMA or proposed PGMA. This notice shall be mailed at least 30 days before the date set for the hearing.

(5) The evidentiary hearing must be conducted within 75 days of the date that notice was provided under paragraph (3) of this subsection. At the hearing, the commission or the administrative law judge shall hear testimony and receive evidence from affected persons, and consider the executive director's report and supporting information. The commission or the administrative law judge may request additional information from any source if further information is considered necessary to make a decision. If the commission or administrative law judge requests additional information, the parties will be allowed to examine this information and present any necessary evidence related to the additional information.

(6) If the hearing is remanded to SOAH, the administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file findings and conclusions with the chief clerk.

(c) The commission shall consider the findings, conclusions, and recommendations determined from the evidentiary hearing. The commission shall order one or more of the following actions.

(1) Except as provided in paragraph (3) of this subsection, if the commission decides that an area should be designated as a PGMA or adds the area to an

existing PGMA, the commission shall designate and delineate the boundaries of the PGMA.

(2) If the commission designates the area as a PGMA or adds the area to an existing PGMA, the order must recommend that the area be covered by a GCD by either creation of one or more new GCDs, by addition of the land in the PGMA to one or more existing GCDs, or by a combination of these actions. The commission shall give preference to GCD boundaries that are coterminous with the boundaries of the PGMA, but may recommend GCD boundaries based upon existing political subdivision boundaries to facilitate creation of a GCD.

(3) If the commission does not designate the area as a PGMA, the commission shall issue an order stating that the PGMA shall not be designated.

(4) If the commission finds that a GCD created under TWC, Chapter 36 would not be feasible or practicable for the protection of groundwater resources in the PGMA, the commission may recommend in its report to the legislature under TWC, §35.018, the creation of a special district or amendment of an existing district's powers and authorities.

(5) The designation of a PGMA may not be appealed nor may it be challenged under TWC, §5.351 or Texas Government Code, §2001.038.

§294.43. Actions Required After PGMA Designation.

(a) The commission shall provide copies of a priority groundwater management area (PGMA) designation order under §294.42 of this title (relating to Commission Action Concerning PGMA Designation) to the commissioners court of any county that is affected by the designation of the PGMA, the Texas AgriLife Extension Service (TAES) [Cooperative Extension (TCE)], and any existing groundwater conservation districts (GCDs) that are adjacent to the PGMA.

(b) The executive director shall request an educational outreach program under this subsection after the commission designates a PGMA under §294.42 of this title.

(1) The executive director shall notify the TAES [TCE] of the PGMA designation and assist in educational programming developed by the TAES [TCE] under Texas Water Code (TWC), §35.012(c).

(2) The executive director shall notify the commissioners court of each county of the court's educational programming responsibilities in the PGMA under TWC, §35.012(c).

(c) No sooner than 120 [that 180] days after the date the commission designated the PGMA under §294.42 of this title, the executive director shall review the status of locally-initiated GCD creation in the PGMA.

(d) The executive director shall identify the areas of the PGMA that are not within a GCD and develop recommended district boundaries that are consistent with the commission's PGMA designation order under §294.42 of this title.

(e) If landowners do not take actions to create a GCD under TWC, §35.012(b), within two years after the date the commission designated the PGMA, the commission shall initiate creation of one or more GCDs under §293.19 of this title (relating to Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas).

(f) The commission may amend the territory in an order issued for a PGMA under §294.42 of this title to adjust for areas that, in the time between when the order was issued under §294.42 of this title relating to PGMA designation and the order issued

under this section that have been added to an existing district or created as a separate district.

(g) In making a modification under subsection (f) of this section, the commission may recommend:

(1) creation of a new district in the area; or

(2) that the area be added to a different district.

(h) Except as provided by TWC, §35.013(h), a change in the order under subsection (f) of this section does not affect a deadline under TWC, §35.012 or §35.013.

§294.44. Adding a PGMA to an Existing Groundwater Conservation District.

(a) The executive director shall give notice to the board of directors of the existing groundwater conservation district (GCD), if the commission issues an order under §294.42 of this title (relating to Commission Action Concerning PGMA Designation), or under §293.19 of this title (relating to Creation of a Groundwater Conservation District in a Priority Groundwater Management Area) recommending that a priority groundwater management area (PGMA) or a portion of a PGMA be added to an existing

GCD. The executive director shall provide a copy of the order to the board of directors of the existing GCD to which the commission is recommending the PGMA be added and to any other existing GCDs adjacent to the PGMA.

(b) Within 120 days after receipt [180 days] of the notice provided under subsection (a) of this section, the board of directors of the existing GCD shall advise the commission of the outcome of the board of directors vote to add the PGMA or a portion of the PGMA [GCD actions or status of current GCD activities] under Texas Water Code (TWC), §35.013.

[(c) The costs of an election to add a PGMA to an existing GCD that is approved by the voters shall be paid by the existing GCD. The costs of an election to add a PGMA to an existing GCD at which the proposition fails shall be paid by the commission.]

(c) [(d)] If the board of directors of the GCD votes not to pursue addition of the PGMA as recommended by the commission [or, if the proposition to add the PGMA to the GCD is defeated at the election], the commission shall either:

(1) within one year create one or more GCDs according to TWC, §36.0151 and §293.19 of this title; or

(2) recommend the area be added to another existing GCD as provided by this section [recommend to the legislature under TWC, §35.018(c), in its biennial report, whether legislative action should be taken to address the need for groundwater management in the PGMA].

(d) If the commission determines that creating a district under TWC, Chapter 36 within the boundaries of a designated PGMA is not appropriate or capable of protecting the groundwater resources for a particular management area or PGMA and all efforts to add a PGMA to one or more GCDs have failed, the commission may recommend to the legislature under TWC, §35.018(c), in its biennial report, whether legislative action should be taken to create a special law district or amend an existing district's authority to manage the groundwater resources in the PGMA.

ORDER ADOPTING AMENDED RULES

Docket No. 2011-1224-RUL

On July 25, 2012, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 TAC Chapter 293, concerning Water Districts, and 30 TAC Chapter 294, concerning Priority Groundwater Management Areas. The proposed rules were published for comment in the March 23, 2012 issue of the Texas Register (37 TexReg 2026 and 2036).

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

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

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

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 22, 2012
For further information, please call: (512) 239-0779

◆ ◆ ◆
30 TAC §114.313

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The repeal is also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel (LED) as described in the state implementation plan is not required prior to February 1, 2005, and authorizes the commission to consider alternative emission reduction plans to comply with LED requirements.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.313. Designated Alternative Limits.

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

Filed with the Office of the Secretary of State on March 9, 2012.

TRD-201201327
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 22, 2012
For further information, please call: (512) 239-0779

◆ ◆ ◆
**CHAPTER 293. WATER DISTRICTS
SUBCHAPTER C. SPECIAL REQUIREMENTS
FOR GROUNDWATER CONSERVATION
DISTRICTS**

30 TAC §§293.19, 293.20, 293.22, 293.23

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §§293.19, 293.20, 293.22, and 293.23.

Background and Summary of the Factual Basis for the Proposed Rules

In 2011 the 82nd Legislature passed Senate Bill (SB) 313 related to priority groundwater management areas (PGMA). The legislature also passed SB 660 related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

SB 313 amended Texas Water Code (TWC), Chapter 35, which relates to the creation of groundwater conservation districts (GCDs) in PGMAs. Specifically, SB 313 amended TWC, §35.008, to validate and authorize the commission adoption of rules regarding the creation of a GCD over all or part of a PGMA that was designated as a critical area under TWC, Chapter 35, as that chapter existed prior to September 1, 1997, or other prior law. Further amendments to TWC, §35.008, validate and authorize the adoption of rules regarding the addition of all or part of the land in such a PGMA as an existing GCD.

SB 660 amended TWC, Chapter 36, which relates to GCDs. Specifically, SB 660 added TWC, §36.1082, which adds a definition for affected person in a groundwater management area and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area.

The commission proposes to amend 30 TAC Chapter 293 to implement new TWC, §36.1082, and amendments to TWC, §35.008.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes amendments to 30 TAC Chapter 294, Priority Groundwater Management Areas, to implement SB 313 and SB 660, §17 and §18.

Section by Section Discussion

The commission proposes to amend §293.19, Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area, to clarify the responsibilities of the executive director when he petitions the commission for a GCD creation order for a PGMA designated before September 1, 2001, or when he petitions the commission for a recommendation order to add a PGMA designated before September 1, 2001 to an existing GCD. In §293.19(b) the commission proposes to delete the word "report" and replace it with the term "mailing list" to clarify that the executive director's petition report to the commission and the executive director's mailing list of identified water stakeholders are separate items. The commission proposes to re-number §293.19(b)(3) - (8) to accommodate the changes proposed to this subsection. The proposed amendment to re-numbered §293.19(b)(6) clarifies that the executive director, if so directed, shall refer the petition to the State Office of Administrative Hearings on behalf of the commission. The commission proposes this amendment to implement TWC, §35.008, as amended by SB 313, §2.

The commission proposes to amend §293.20, Records and Reporting, by deleting existing §293.20(c)(3), that requires GCDs to submit new, existing, or amended management plans to the executive director. Under TWC, §§36.1071, 36.1072, and 36.1073, and 31 TAC Chapter 356, Subchapter A, Groundwater Manage-

ment Plan Approval, GCDs are required to submit the management plan to the executive administrator of the TWDB. This proposed change removes a redundancy for GCDs to submit the plans to two separate state agencies. The commission also proposes to amend §293.20(d) to add a citation to new TWC, §36.1082, and to add for clarity the citation to the commission rule for petitions requesting an inquiry of a GCD in a groundwater management area. The commission proposes this amendment to implement TWC, §36.1082, as amended by SB 660, §17.

The commission proposes to amend §293.22, Noncompliance Review and Commission Action, to streamline and clarify processes relating to commission review of GCD management plan adoption, readoption, and implementation compliance. Subsection (a) outlines the instances when commission action is required related to a GCD's management plan. The proposed amendment to §293.22(a)(1) and (3) clarifies that a GCD must submit to the executive administrator of the TWDB within the three- and five-year time frames required by TWC, §36.1071 and §36.1072, respectively, a management plan for review and approval. The proposed amendment to §293.22(a)(2) clarifies that a GCD must receive, within 60 days of submittal, written approval of the management plan from the executive administrator of the TWDB. This proposed change mirrors requirements in 31 TAC Chapter 356, Subchapter A, Groundwater Management Plan Approval. However, the proposed change is necessary in the commission's rules to clarify commission authority and streamline the implementation of TWC, §36.1072. If a GCD does not receive the executive administrator's approval of a management plan within the 60-day period, TWC, §36.1072(f), provides that the GCD may, within the 180th day of receiving written notice from the executive administrator, submit a revised management plan for the executive administrator's review and approval, or appeal the executive administrator's decision to the TWDB. TWC, §36.1072(f), provides that the commission shall not take action against a GCD until the expiration of the 180-day period for the GCD to submit a revised management plan to the executive administrator for review and approval or the date the TWDB has taken final action to withhold approval of a management plan that is upheld by a district court. The proposed amendment clarifies when commission action is required. The proposed amendment to §293.22(a)(4) deletes GCD distribution of management plans to the other GCDs in a common management area from the list of items that require commission action. TWC, §36.108, requires GCDs to forward a copy of new or revised management plans to the other GCDs in the management area. Commission action to compel this GCD responsibility is not cited in TWC, Chapter 36, Subchapter I, Performance Review and Dissolution. The proposed change clarifies the commission rule, and subsequent paragraphs are re-numbered. The proposed amendment to re-numbered §293.22(a)(5) clarifies that commission action may be necessary if a GCD, as evidenced in a report prepared by a commission-appointed review panel in accordance with new TWC, §36.1082, does not adopt, implement, or enforce district management plans and rules to protect the groundwater resource. This change also updates and conforms the citation to new TWC, §36.1082. The proposed amendment to §293.22(b) clarifies and streamlines the process for the executive director to investigate and attempt to voluntarily resolve management plan noncompliance issues with GCDs. The proposed amendment to §293.22(e) adds the citation to new TWC, §36.1082 and removes the citation to TWC, §36.108. The commission proposes this amendment to implement TWC, §36.1082, as amended by SB 660, §17.

The commission proposes to amend §293.23, Petition Requesting Inquiry in Groundwater Management Area, including re-titling the section as "Petition Requesting Commission Inquiry" to more accurately reflect the changes to new TWC, §36.1082. The proposed amendment to §293.23(a) adds a new definition of an affected person that may petition the commission and follow statutory requirements of new TWC, §36.1082. The commission also added a citation to TWC, §36.1082 and removed the citation to TWC, §36.108. The proposed amendment to §293.23(b) clarifies that an affected person may file a petition with the commission to request an inquiry in accordance with TWC, §36.1082, and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area in accordance with TWC, §36.1082. Existing subsections have been re-lettered. The changes to proposed §293.23(c) and (d) are to modify the petition requirement so that these subsections agree with the new requirement of TWC, §36.1082. The changes to proposed §293.23(c) require a petition to include supporting documentation for each of the individual reasons the affected person identifies to demonstrate that a commission inquiry is necessary and the changes to proposed §293.23(d) require a certified statement of such from the affected person. The amendment to proposed §293.23(e) and (f) adds the petition service requirement to GCDs that are adjacent to the groundwater management area to conform to the definition of affected person in TWC, §36.1082. The amendment to proposed §293.23(g) clarifies that the commission and the executive director will review the petition, updates rule citations, clarifies that a director or general manager of a GCD serving on a review panel may not be an affected person, and adds a citation to TWC, §36.1082 and removes the citation to TWC, §36.108. The amendment to proposed §293.23(i) provides conforming language changes and citations. The commission proposes this amendment to implement TWC, §36.1082, as amended by SB 660, §17.

Fiscal Note: Costs to State and Local Government

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

The proposed rules amend Chapter 293 to implement portions of SB 313 and SB 660, which are procedural in nature or clarify requirements with regard to GCDs and PGMA. The proposed rules clarify requirements with regard to the responsibilities of the executive director when petitioning for the creation of a GCD in a PGMA designated before September 1, 2001 or for adding a PGMA designated before September 1, 2001 to an existing GCD. The proposed rules also: modify definitions to clarify their meaning; simplify reporting requirements for GCD's so that management plans or amended management plans only have to be submitted to TWDB; contain more specific requirements regarding the approval of GCD management plans; clarify agency responsibilities and procedures concerning noncompliance reviews of groundwater management plans; clarify who can petition for an inquiry into the management and planning activities of a GCD; and, specify the circumstances under which such a petition can be made and what a petition must include.

The proposed rules would require the agency to modify current practices and procedures, but these procedural changes are not

expected to have a significant fiscal impact on the agency. The proposed rules are not expected to have a fiscal impact on GCDs or PGMAs, but these entities should have more clarity regarding reporting requirements, procedures, and interaction with the agency and the TWDB. Other units of local government will not experience fiscal impacts as a result of the proposed rules.

Public Benefits and Costs

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

The proposed rules are not expected to have a fiscal impact on individuals or businesses that reside in a PGMA or GCD. However, individuals and businesses that meet the definition of an affected person under the proposed rules would have more details regarding the reasons under which they could petition to request an inquiry of the activities of a GCD and the procedures for filing such an inquiry.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. However, small businesses would have more details under the proposed rules regarding the filing of a petition to request an inquiry of the activities of a GCD and the procedures for filing such an inquiry.

Small Business Regulatory Flexibility Analysis

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

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission has reviewed these proposed amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of §2001.0225. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Here, the proposed amendments do not meet those qualifications where the primary purposes of this rulemaking initiative are to clarify commission rule language in §§293.1 *et seq.* to conform with the statutory changes made to TWC, Chapters 35 and 36, and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in SBs 313 and 660. As to these enacted bills, this rulemaking initiative proposes to modify rules within Chapter 293 to accomplish changes related to designation of affected persons, designation of PGMAs, cre-

ation of GCDs in PGMAs, and GCD management plans. Therefore, the proposed rulemaking project does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

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

Takings Impact Assessment

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purposes of this rulemaking are to clarify commission rule language in §§293.1 *et seq.* to conform with the statutory changes made to TWC, Chapters 35 and 36, and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in SBs 313 and 660. The proposed rules would substantially advance these stated purposes because the changes in designation of affected persons and their rights under the rules, designation of PGMAs, creation of GCDs in PGMAs, and maintaining GCD management plans directly implement enacted requirements in that legislation.

Promulgation and enforcement of these proposed rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The proposed regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Updating commission rules to remain consistent with statutory changes to TWC, Chapters 35 and 36 as set forth in SBs 313 and 660, does not impact private real property rights. Specifically, private real property rights do not pertain to designation of affected persons and their rights under the rules, designation of PGMAs, creation of GCDs in PGMAs, and maintaining GCD management plans. Thus, these proposed rules do not impose a burden on private real property, but instead benefit society by providing the process for districts to operate and for the commission's oversight, which should ultimately improve the quality of service that is provided to their residents. Therefore, the proposed amendments do 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 procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on April 17, 2012, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Michael Parrish, 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 2011-054-294-OW. The comment period closes April 23, 2012. Copies of the proposed rule-making 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 Michael Chadwick, Groundwater Planning and Assessment Team, at (512) 239-4517.

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement TWC, §5.103, Rules.

§293.19. Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area.

(a) In priority groundwater management areas (PGMAs) designated after September 1, 2001 under §294.42 of this title (relating to Commission Action Concerning PGMA [~~Priority Groundwater Management Area~~] Designation), where no groundwater conservation district (GCD) has been created, the executive director shall, after identifying the applicable areas under §294.43(d) and (e) of this title (relating to Actions Required After PGMA [~~Priority Groundwater Management Area~~] Designation), recommend district creation for commission action.

(1) The recommendation shall be based on and consistent with the commission's designation order under §294.42 of this title. The executive director's recommendation, in the form of a proposed order, must provide for the purpose, boundary description, minimum financing, and the number of temporary directors for each county for the district.

(2) The executive director's proposed order shall be filed with the chief clerk for commission consideration. The executive director shall prepare a notice and include a mailing list of:

(A) water stakeholders that include the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission and each irrigation district located either in whole or in part in the proposed district; and

(B) any other persons identified in the PGMA designation hearing.

(3) The chief clerk shall give notice of the executive director's recommendation and proposed order and the date of the agenda when the commission will act on the district creation to the water stakeholders and other persons identified in the PGMA designation hearing. The commission shall not hold an evidentiary hearing on the district creation.

(b) In PGMAs designated before September 1, 2001, the executive director, after identifying the areas in the PGMA that have not created a district, shall petition the commission for the creation of a district by preparing a report and filing the report with the chief clerk.

(1) The report shall identify the areas not included in a district and evaluate and recommend whether one or more districts should be created in the identified areas, whether the identified areas should be added to an existing district, or whether a combination of these actions should be taken.

(2) The report shall include the following:

(A) the purpose or purposes of the recommended district creation action or actions;

(B) the name of the recommended district or districts or the name of the existing district if the recommendation is to add the identified areas to an existing district;

(C) the area and boundaries of the recommended district or districts or the recommended area to be added to an existing district, including a map generally outlining the boundaries;

(D) the number of temporary directors for each county in the recommended district or districts; and

(E) the feasibility and practicability of the recommended district creation action. [; and]

(3) ~~[(F)]~~ The executive director shall prepare a mailing list of water stakeholders including the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission and each irrigation district located either in whole or in part in the identified areas.

(4) ~~[(3)]~~ The executive director shall prepare a public notice for publishing and mailing. The public notice shall:

(A) state that the commission has been petitioned by the executive director to create a GCD;

(B) provide notice of the date, time, and location of a contested case hearing to receive evidence on the petition;

(C) provide notice of the availability of the petition and supporting information; and

(D) provide a general map of the proposed district if the area is not a recognizable political subdivision boundary.

(5) ~~[(4)]~~ On receipt of the report and notice, the chief clerk shall:

(A) mail notice of the petition to the water stakeholders identified in the executive director's mailing list ~~[report]~~; and

(B) publish notice in one or more newspapers of general circulation in the area of the proposed district.

(6) [(5)] The commission, or the executive director on behalf of the commission, shall refer the petition to SOAH for a contested case hearing on the executive director's report and recommendation.

(7) [(6)] The hearing shall be limited to consideration of the executive director's report and recommendation. The administrative law judge may also consider other district creation options evaluated in the executive director's report. To determine the feasibility and practicability of the recommended district creation action, the administrative law judge shall consider:

(A) whether the recommended district creation action can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(B) whether the boundaries of the recommended district creation action provide for the effective management of groundwater resources; and

(C) whether the recommended district creation action can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district operation functions under TWC, Chapter 36.

(8) [(7)] The administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file these findings and conclusions with the chief clerk with a request for the petition be set for commission consideration.

(c) If the commission finds the creation of the district or districts is feasible and practicable, it shall issue an order creating the district or districts. The order shall include the purpose of the district, boundary description, minimum maintenance tax or production fee necessary to support the district, and the number of temporary directors for each county in the district according to TWC, §36.0161. The commission order shall direct the commissioners court of the county or counties that are within the district to appoint temporary directors. The commission order shall direct the temporary directors to call and schedule an election to authorize the district to assess taxes and to elect permanent directors.

(1) The commissioners court of the county or counties within the district shall, within 90 days after receiving notification from the commission, appoint temporary directors for the district and notify the commission of the appointments. The commissioners court shall not make any appointments after the expiration of the 90-day period. If fewer temporary directors have been appointed at the expiration of the period than required, the commission shall appoint the additional directors.

(2) If the district contains two or more counties, the commission shall apportion the number of temporary directors to each county based on each county's proportionate amount, to the nearest whole number, of the total estimated groundwater use within the district. The total estimated groundwater usage within the district for each county shall be based on information and data contained in the most current version of the Texas State Water Plan as adopted by the Texas Water Development Board and other information developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation).

(3) If a temporary director appointed by the commissioners court fails to qualify according to TWC, §§36.051(b), 36.058, and 36.059(b), or if a vacancy occurs in the office of temporary director, the commissioners court shall appoint an individual to fill the vacancy.

(4) Temporary directors appointed under this subsection shall serve until the initial directors are elected and have qualified for office.

(d) If the commission finds the areas identified in the report provided by subsection (b)(1) of this section should be added to an existing district, the commission shall issue an order recommending the addition of the identified areas to the existing district. The commission and the executive director shall follow the procedures provided under §294.44 of this title (relating to Adding a PGMA to an Existing Groundwater Conservation District).

§293.20. *Records and Reporting.*

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

(1) a certified copy of the legislative act creating the district within 60 days after the district is created;

(2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);

(3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and

(4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) Each district is required under TWC, §36.1071 to adopt a comprehensive management plan and adopt rules that are necessary to implement the management plan. In accordance with TWC, §36.1072, the management plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required. The management plan is subject to approval by the executive administrator of the Texas Water Development Board or the Texas Water Development Board upon appeal. After approval, each district must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) Each district must forward a copy of its approved groundwater management plan to the regional water planning group for the planning region in which the district is located and provide confirmation to the executive director that such action has been taken.

(2) Each district must forward a copy of its approved groundwater management plan to the other districts that are included with the district in a common groundwater management area and provide confirmation to the executive director that such action has been taken.

[(3) Each district must provide a copy of an existing, new, or amended approved groundwater management plan to the executive director.]

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title (relating to Noncompliance Review and Commission Action), and TWC, §36.1082, and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

§293.22. *Noncompliance Review and Commission Action.*

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. A groundwater management plan noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a groundwater management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan for review and approval to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) receive within 60 days of submittal, written [achieve] approval from the executive administrator of the Texas Water Development Board for [of] a groundwater management plan, an amended groundwater management plan, or a readopted groundwater management plan [from the executive administrator or the Texas Water Development Board] as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan for review and approval to the executive administrator of the Texas Water Development Board at least once every five years after the date of the most recent management plan approval;

[(4) forward a copy of its approved groundwater management plan to the other GCDs that are included with the district in a common groundwater management area (GMA);]

(4) [(5)] be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the district's performance as provided by TWC, §36.302; or

(5) [(6)] adopt, implement, or enforce district management plans and rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.1082 [§36.108] and §293.23 of this title (relating to Petition Requesting Commission Inquiry [in Groundwater Management Area]).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director shall notify the district and may attempt to resolve any noncompliance set out in subsection (a) of this section with the district.

(2) After review of the facts and identification of noncompliance issues, the executive director shall submit [may propose to resolve the issue with the district through] a compliance agreement to the district. The compliance agreement must clearly identify the non-

compliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(3) [(2)] The [If the executive director proposes a compliance agreement, the] district shall be provided a specified time frame not to exceed 30 [60] days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to amend [negotiate] the compliance agreement schedule, it must contact the executive director within ten days of receipt of the compliance agreement so that the [final] compliance agreement can be considered and signed by the district and its board of directors within the 30-day [60-day] time frame.

(4) [(3)] If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of agreement provisions within the agreed schedule. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for commission enforcement actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement Referrals to SOAH). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Notice of Executive Director's Preliminary Report). If the executive director's report recommends dissolution of a district or of a board of directors or the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, §§36.1082 [§§36.108], 36.301, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by

TWC, §36.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

§293.23. Petition Requesting Commission Inquiry [in Groundwater Management Area].

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person [a groundwater conservation district (GCD) or a person with a legally defined interest in the groundwater within the groundwater management area (GMA)] requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules [related to joint groundwater management planning in the GMA]; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.1082 [§36.108] and §36.3011. An affected person is a landowner, water well owner, or other users of groundwater in a groundwater management area (GMA), a GCD in or adjacent to a GMA, a regional water planning group with a water management strategy in a GMA, a person who holds or is applying for a permit from a GCD in a GMA, or a person who has groundwater rights in a GMA. Such petitions must be filed following the procedures prescribed by this section.

(b) Petition requesting commission inquiry. An affected person [A GCD or a person with a legally defined interest in the groundwater within the GMA] may file a petition with the commission [executive

director] to request an [a commission] inquiry for any of the reasons in paragraphs (1) - (9) of this subsection: [if a district or districts refused to join in the GMA planning process or the GMA planning process failed to result in adequate planning. After the desired future conditions for the GMA have been adopted, a GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if the GMA planning process does not establish reasonable future desired conditions for the aquifers in the GMA.]

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions by resolution;

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

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

(7) the rules adopted by a district are not designed to achieve the applicable desired future conditions adopted by the management area during the joint planning process;

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

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

(c) [(4)] The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary. [that demonstrates that joint planning meetings have been conducted by the presiding officers, or their designees, of each district located in whole or in part in the GMA. Documentation shall include:]

[(A) a certified copy of the board resolutions calling for the joint planning between the districts in the GMA;]

[(B) evidence that joint planning meeting notice was received by the districts in the GMA such as a return receipt for certified mail service;]

[(C) publishers' affidavits of joint planning meeting notice; and]

[(D) copies of joint planning meeting minutes and accepted handouts certified by the districts that attended the meetings.]

(d) [(2)] The petition must include a certified statement from the affected person [petitioning district's board of directors or from the person with a legally defined interest in the groundwater within the GMA] that describes why the petitioner believes that a commission inquiry is necessary [adequate planning was not achieved in the GMA].

[(3) The petition must provide evidence that:]

[(A) a district in the groundwater management area has failed to adopt rules;]

~~[(B) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the GMA established during the joint planning process;]~~

~~[(C) the groundwater in the management area is not adequately protected by the rules adopted by a district; or]~~

~~[(D) the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.]~~

~~(e) [(4)] The petitioner shall provide a copy of the filed petition to all GCDs [groundwater conservation districts] within and adjacent to the GMA [groundwater management area] within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.~~

~~(f) [(5)] Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.~~

~~(g) [(e)] Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) [(2), or (3)] of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.~~

~~(1) The review panel shall consist of five members.~~

~~(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.~~

~~(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not [located outside the groundwater management area that is] the subject of the petition may be appointed to the review panel.~~

~~(C) The commission may not appoint more than two members of the review panel from any one district.~~

~~(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.~~

~~(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.~~

~~(4) In accordance with TWC, §36.1082 [According to TWC, §36.108], the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.~~

~~(h) [(d)] Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the~~

review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) [(e)] Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause [the items] contained in subsection (b)(1) - (9) [(3)] of this section applies [apply]. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) [(e)] of this title.

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

Filed with the Office of the Secretary of State on March 9, 2012.

TRD-201201320

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 22, 2012

For further information, please call: (512) 239-2548

CHAPTER 294. PRIORITY GROUNDWATER MANAGEMENT AREAS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§294.30 and 294.40 - 294.44.

Background and Summary of the Factual Basis for the Proposed Rules

In 2011 the 82nd Legislature passed Senate Bill (SB) 313 related to priority groundwater management areas (PGMA). The legislature also passed SB 660 related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

SB 313 amended Texas Water Code (TWC), Chapter 35, which relates to the creation of groundwater conservation districts (GCDs) in PGMAs and TWC, Chapter 36, which relates to GCDs. Specifically, SB 313 amended TWC, §§35.007, 35.008, 35.012, 35.013, and 36.0151 which relate to the study and designation of PGMAs and the creation of GCDs in PGMAs.

SB 660 amended TWC, Chapter 36, which relates to GCDs. Specifically, SB 660 added TWC, §36.1082, which adds a definition for affected person in a groundwater management area and amends the reasons that an affected person may petition the commission for an inquiry of a GCD in a groundwater management area.

The commission proposes to amend Chapter 294 to implement amendments to TWC, §§35.007, 35.008, 35.012, 35.013, and 36.0151 and new TWC, §36.1082.

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

Section by Section Discussion

The commission proposes to amend §294.30, Purpose and Applicability, to delete language that is no longer necessary after the amendments to the TWC by SB 313. The commission proposes to delete language to clarify that the boundaries described in the subsequent sections of Chapter 294, Subchapter D only include the boundaries of PGMA's designated prior to September 1, 1997. The commission proposes this amendment to implement TWC, §35.008, as amended by SB 313.

The commission proposes to amend §294.40, Definitions, to implement changes to the TWC as amended by SB 313 and SB660, §17. The commission proposes to amend §294.40(1) by replacing the old definition of an affected person with a new definition that conforms the definition of an affected person in a PGMA in TWC, §35.008 with the definition of an affected person in a groundwater management area in TWC, §36.1082, as added by SB 660, §17. The commission proposes to amend §294.40(3) by changing 25 years to 50 years to ensure conformity with the definition of PGMA in TWC, §35.007, as amended by SB 313. This amendment extends the PGMA evaluation period from 25 to 50 years. The proposed amendment also replaces the word "or" with the word "and" in the definition to implement TWC, §35.007.

The commission proposes to amend §294.41, Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation, to implement TWC, §35.007 and §35.012, as amended by SB 313, and to update an agency name change. The commission proposes to amend §294.41(a) to change the 25-year evaluation period that the executive director and the TWDB's executive administrator use to identify areas of the state for a PGMA study to a 50-year evaluation period. The proposed amendment to §294.41(c)(2) updates the name of the Texas Cooperative Extension to the Texas AgriLife Extension Service. The proposed amendment to §294.41(g)(1)(B) clarifies that the executive director's PGMA report may include the reasons and supporting information for or against adding a recommended PGMA to an existing PGMA. The proposed change will allow the commission to fully implement the commission's authority under TWC, §35.012, as amended by SB 313. The commission proposes to delete §294.41(g)(1)(G) because TWC, §35.007(f), requires the executive director to make a recommendation regarding whether one or more GCDs should be created in the PGMA, whether the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken. The statute does not require the executive director's PGMA report to include an evaluation of groundwater management planning and regulatory functions for the commission. The commission proposes to amend the newly re-lettered §294.41(g)(1)(G) to clarify that the executive director's PGMA report will contain an evaluation of the potential funding available under TWC, Chapter 36, for any GCD that is recommended. The commission also proposes to re-letter existing subparagraph (I) to subparagraph (H) to accommodate the deletion of the existing subparagraph (G). The proposed amendment to §294.41(h) adds that, upon completion, the executive director's PGMA report will be posted on the

commission's Web site for public inspection. The amendment implements TWC, §§35.007, 35.008, and 35.012, as amended by SB 313.

The commission proposes to amend §294.42, Commission Action Concerning PGMA Designation, to implement TWC, §35.012, as amended by SB 313. The proposed amendment allows the commission to consider adding an area recommended for PGMA designation by the executive director to an existing PGMA.

The commission proposes to amend §294.43, Actions Required After PGMA Designation, to implement TWC, §35.013 and §36.0151, as amended by SB 313 and to update a reference to a state agency. The proposed amendment to §294.43(a) and (b) updates the name of the Texas Cooperative Extension to the Texas AgriLife Extension Service. The proposed amendment of §294.43(c) changes the time frame for the executive director to review the status of locally-initiated GCD creation in a PGMA from 180 days to 120 days. This proposed change is to ensure agreement with the time frame in TWC, §35.013, for a GCD to vote on adding a recommended PGMA and advising the commission of the outcome. The proposed amendment to add §294.43(f), (g), and (h) implements TWC, §36.0151, as amended by SB 313. The added language clarifies that the commission may amend territory if the commission is required to issue a subsequent GCD creation order, or a subsequent order to recommend a PGMA be added to a GCD. The proposed change allows the commission to consider the actions taken since the original order that have resulted in part of the PGMA being included in a GCD.

The commission proposes to amend §294.44, Adding a PGMA to an Existing Groundwater Conservation District, to implement TWC, §35.013, as amended by SB 313. The proposed amendment to §294.44(b) changes the 180-day time frame for a GCD to vote on adding a recommended PGMA and advising the commission of the outcome to 120 days to implement the amendments to TWC, §35.013, made by SB 313. The proposed deletion of existing §294.44(c) implements TWC, §35.013, as amended by SB 313. The amendment to TWC, §35.013, provides that a PGMA is added to a GCD upon the vote of the GCD's board of directors and removes the requirement for a voter confirmation election to add the PGMA to the GCD. Therefore, the provisions in existing §294.44(c) are no longer needed because voter elections to add a PGMA to a GCD are no longer required. Subsection (d) is re-lettered to subsection (c). The commission proposes to amend newly re-lettered §294.44(c) to implement TWC, §35.013, as amended by SB 313. If a GCD's board of directors votes not to pursue addition of a PGMA as recommended by the commission, under newly re-lettered §294.44(c), the commission shall within one year create one or more GCDs or recommend the PGMA be added to another existing GCD. The proposed amendment to re-lettered §294.44(d) clarifies that, at the end of the process, if the commission determines that creating a GCD under TWC, Chapter 36, within the boundaries of a PGMA is not appropriate or capable of protecting the groundwater resources, the commission may recommend the legislature create a special law district or amend an existing district's authority to manage the groundwater resources in the PGMA. This proposed amendment implements TWC, §35.008, as amended by SB 313.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed

rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules amend Chapter 294 to implement portions of SB 313 and SB 660, which are procedural in nature or clarify requirements with regard to the study and designation of PGMA and the creation of GCDs within a PGMA and who are affected parties to the PGMA process. The proposed rules: delete language no longer needed; amend the definition of an affected person to conform to the definition in a separate, but related rule proposal for Chapter 293; extend the PGMA evaluation period from 25 to 50 years; clarify that the executive director may include in a PGMA report reasons for or against adding a recommended PGMA to an existing PGMA or GCD; shorten the time frame for the executive director to review the status of the creation of a locally-initiated GCD in a PGMA from 180 days to 120 days; shorten the time frame from 180 to 120 days for a GCD to vote on adding a recommended PGMA; and, specify the responsibilities of the commission when the board of directors of a GCD vote not to add a recommended PGMA.

The proposed rules would require the agency to modify current practices and procedures, but these procedural changes are not expected to have a significant fiscal impact on the agency. The proposed rules would not have a fiscal impact on GCDs or PGMA, but these entities should benefit from improved clarity, processes, and procedures for the study and designation of PGMA and management of groundwater resources.

Public Benefits and Costs

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

The proposed rules are not expected to have a fiscal impact on individuals or businesses that reside in a PGMA or GCD since they are procedural in nature and are not expected to increase or decrease revenues or costs.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules are procedural in nature and are not expected to increase or decrease revenues or costs.

Small Business Regulatory Flexibility Analysis

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

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission has reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225, and has determined that the proposed rules are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that statute. 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 section of the state. These proposed rules implement legislation and do not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety. The designation of an area as a PGMA does not have a regulatory impact on the area.

In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. No federal law applies. These proposed rules implement state legislation and do not exceed that legislation.

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

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.43. The purpose of these proposed rules is to implement amendments to TWC, Chapter 35. These amendments to the TWC provide the process for the agency to designate a PGMA. A PGMA designation is simply a designation; the PGMA does not have any regulatory authority. Therefore, the procedure for PGMA designation and maintenance does not impact or burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are 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 April 17, 2012, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Michael Parrish, 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 2011-054-294-OW. The comment period closes April 23, 2012. Copies of the proposed rule-making 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 Michael Chadwick, Groundwater Planning and Assessment Team, at (512) 239-4517.

SUBCHAPTER D. PRIORITY GROUNDWATER MANAGEMENT AREAS

30 TAC §294.30

Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendment implements TWC, §5.103, Rules.

§294.30. *Purpose and Applicability.*

(a) The purpose of this subchapter is to set out the boundaries of priority groundwater management areas (PGMAs) designated and delineated prior to September 1, 1997 under the Texas Water Code (TWC). ~~[A PGMA under this subchapter is an area designated and delineated by the commission that is experiencing or is expected to experience, based on information available to the commission and the Texas Water Development Board, within the immediately following 25-year period, critical groundwater problems including shortage of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.]~~

(b) PGMAs designated after September 1, 1997 are delineated by commission order under TWC, Chapter 35, using the process contained in Subchapter E of this chapter (relating to Designation of Priority Groundwater Management Areas).

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



SUBCHAPTER E. DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREAS

30 TAC §§294.40 - 294.44

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The proposed amendments implement TWC, §5.103, Rules.

§294.40. *Definitions.*

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

(1) Affected person--A landowner, water well owner, or other user of groundwater in the proposed priority groundwater management area (PGMA), a groundwater conservation district adjacent to the proposed PGMA, a regional water planning group with a water management strategy in the proposed PGMA, or a person who has groundwater rights in the proposed PGMA. ~~[an area that is proposed for priority groundwater management area designation, or any other person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the designation. An interest common to members of the general public does not qualify as a personal justiciable interest.]~~

(2) Executive administrator--The executive administrator of the Texas Water Development Board.

(3) Priority groundwater management area (PGMA)--An area designated and delineated by the commission that is experiencing or is expected to experience, within the immediately following 50-year [25-year] period, critical groundwater problems including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, or [and] contamination of groundwater supplies.

(4) Texas Water Development Board (TWDB)--The agency responsible for water planning and administration of financial programs for the planning, design, and construction of water supply, wastewater treatment, flood control, and agricultural water conservation projects.

§294.41. *Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation.*

(a) The executive director shall confer periodically with the executive administrator according to Texas Water Code (TWC), §35.007 to identify areas of the state that may be experiencing or expected to experience critical groundwater problems within the immediately following 50-year [25-year] period.

(b) If the executive director concludes that an area of the state should be evaluated to determine if it justifies designation as a priority groundwater management area (PGMA), the executive director shall prepare a report and recommendations for consideration by the commission.

(c) The executive director shall provide written notice to groups identified under paragraphs (1) and (2) of this subsection that an area is to be evaluated to determine if it warrants designation as a PGMA according to TWC, §35.007(c). This notice will provide the opportunity for water stakeholders and others identified in paragraph (2) of this subsection to comment or provide studies or other information for use in the executive director's evaluation.

(1) The notice shall be provided to water stakeholders who are the governing body of each county, regional water planning group, adjacent groundwater conservation district (GCD), municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and each irrigation district, located either in whole or in part in the proposed PGMA study area.

(2) The notice shall also be provided to the Texas Department of Agriculture (TDA), the Texas AgriLife Extension Service [~~Cooperative Extension~~], and to the legislators whose districts are included in the proposed PGMA study area.

(3) Not later than the 45th day after the date of the notice, a person who receives notice under paragraph (1) of this subsection may submit to the executive director any existing information, local water supply or quality studies, or site-specific geological information that addresses the shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, or contamination of groundwater supplies.

(4) The executive director shall consider this information in preparing the report and recommendations for the commission.

(d) The executive director shall begin preparation of a PGMA report by requesting a study from the executive administrator. The study must:

(1) include an appraisal of the hydrogeology of the area and other matters within the TWDB's planning expertise relevant to the area;

(2) assess the area's immediate, short-term, and long-term water supply needs and availability; and

(3) be completed and delivered to the executive director within 180 days following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report under this section.

(e) The executive director shall request a study from the executive director of the Texas Parks and Wildlife Department (TPWD) for the purpose of preparing the report required by this section. The study must:

(1) evaluate the potential effects of the designation of a PGMA on an area's natural resources; and

(2) be completed and delivered to the executive director within 180 days following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report under this section.

(f) The executive director shall provide opportunity for TDA to submit information related to the PGMA study as identified in the notice provided under subsection (c) of this section. Information shall be submitted to the executive director within 180 days following the date of the notice.

(g) The executive director must complete the report and file it with the chief clerk within 240 days following the date on which the executive administrator was requested to produce a study.

(1) The executive director's report shall include:

(A) the recommended delineation of the boundaries of any proposed PGMA in the form of a proposed order to be considered for adoption by the commission;

(B) the reasons and supporting information for or against designating the area as a PGMA or adding the designated area to an existing PGMA;

(C) a recommendation of actions to be considered to conserve natural resources;

(D) an evaluation of information or studies submitted to the executive director under this section;

(E) if the designation of a PGMA is recommended, a recommendation regarding whether one or more GCDs should be created in the PGMA, whether the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken;

(F) a recommendation regarding the area and boundaries for any GCD recommended under this subsection;

~~[(G) an evaluation of required or authorized groundwater management planning and regulatory functions under TWC, Chapter 36 for any GCD recommended under this subsection to address identified critical groundwater problems;]~~

(G) ~~[(H)]~~ an evaluation of the estimated revenue available [~~a recommendation regarding adequate funding~~] to finance [~~required or authorized~~] groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36, [~~including a minimum projected maintenance tax rate or production fee rate~~] for any GCD recommended under this subsection; and

(H) ~~[(H)]~~ any other information that the executive director considers helpful to the commission.

(2) To prepare the report, the executive director may conduct necessary studies, hold public meetings, solicit information, or use information prepared by the executive director, the executive director of the TPWD, the TDA, or the executive administrator of the TWDB for other purposes.

(h) Concurrent with filing the report with the chief clerk, the executive director shall make the report available for public inspection on the agency website and provide [~~by providing~~] a copy of the report to at least one public library and the county clerk's office in each county in which the proposed PGMA is located, and to all GCDs adjacent to the proposed PGMA.

(i) Within 30 days of filing the report with the chief clerk, the executive director may publish notice in the *Texas Register* that this report has been prepared, present a summary of its findings and recommendations, and indicate where copies of the report may be obtained or inspected. If the executive director decides to publish notice, this notice shall also be mailed to the same persons who received notice of the initiation of the PGMA study under subsection (c) of this section.

§294.42. Commission Action Concerning PGMA Designation.

(a) If the executive director concludes in the report that the area studied is not a priority groundwater management area (PGMA), no further action by the executive director or the commission is necessary. However, any person may file a motion to overturn under §50.39 of this title (relating to Motion to Overturn).

(b) If the executive director recommends that the area be designated a PGMA or added to an existing PGMA, or if the commission overturns the executive director's conclusion in subsection (a) of this section, the commission shall consider the executive director's PGMA report and recommendations developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation) using the following procedures.

(1) The commission shall hold an evidentiary hearing. On behalf of the commission, the executive director may refer the evidentiary hearing directly to SOAH. At the evidentiary hearing, the commission or the administrative law judge shall consider:

(A) whether the proposed PGMA should be designated or added to an existing PGMA;

(B) whether one or more groundwater conservation districts (GCDs) should be created within all or part of the proposed PGMA, whether all or part of the land in the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken; and

(C) the feasibility and practicability of each GCD recommendation. To determine the feasibility and practicability of each GCD recommendation, the commission or the administrative law judge shall consider:

(i) whether the recommended GCD can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(ii) whether the boundaries of the recommended GCD provide for the effective management of groundwater resources; and

(iii) whether the recommended GCD can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36.

(2) The evidentiary hearing shall be held in one of the counties in which the PGMA is proposed to be located or in the nearest convenient location if adequate facilities are not available in those counties.

(3) The chief clerk shall publish notice of the evidentiary hearing in at least one newspaper with general circulation in the area proposed for PGMA designation. The notice must be published no later than 30 days before the first date set for the hearing. Notice of the evidentiary hearing must include:

(A) if applicable, a statement of the general purpose and effect of designating the proposed PGMA;

(B) if applicable, a statement of the general purpose and effect of creating a new GCD in the proposed PGMA;

(C) if applicable, a statement of the general purpose and effect of adding all or part of the land in the proposed PGMA to an existing GCD;

(D) a map generally outlining the boundaries of the area being considered for PGMA designation or notice of the location at which a copy of the map may be examined or obtained;

(E) a statement that the executive director's report on the proposed PGMA is available for inspection during regular business hours at the commission's main office in Austin, Texas, at regional offices of the commission which include territory within the proposed PGMA, and on the agency's website;

(F) the name and address of each public library, each county clerk's office, and each GCD that has been provided copies of the executive director's report; and

(G) the date, time, and place of the hearing.

(4) The chief clerk shall also mail written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the PGMA or proposed PGMA.

This notice shall be mailed at least 30 days before the date set for the hearing.

(5) The evidentiary hearing must be conducted within 75 days of the date that notice was provided under paragraph (3) of this subsection. At the hearing, the commission or the administrative law judge shall hear testimony and receive evidence from affected persons, and consider the executive director's report and supporting information. The commission or the administrative law judge may request additional information from any source if further information is considered necessary to make a decision. If the commission or administrative law judge requests additional information, the parties will be allowed to examine this information and present any necessary evidence related to the additional information.

(6) If the hearing is remanded to SOAH, the administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file findings and conclusions with the chief clerk.

(c) The commission shall consider the findings, conclusions, and recommendations determined from the evidentiary hearing. The commission shall order one or more of the following actions.

(1) Except as provided in paragraph (3) of this subsection, if the commission decides that an area should be designated as a PGMA or adds the area to an existing PGMA, the commission shall designate and delineate the boundaries of the PGMA.

(2) If the commission designates the area as a PGMA or adds the area to an existing PGMA, the order must recommend that the area be covered by a GCD by either creation of one or more new GCDs, by addition of the land in the PGMA to one or more existing GCDs, or by a combination of these actions. The commission shall give preference to GCD boundaries that are coterminous with the boundaries of the PGMA, but may recommend GCD boundaries based upon existing political subdivision boundaries to facilitate creation of a GCD.

(3) If the commission does not designate the area as a PGMA, the commission shall issue an order stating that the PGMA shall not be designated.

(4) If the commission finds that a GCD created under TWC, Chapter 36 would not be feasible or practicable for the protection of groundwater resources in the PGMA, the commission may recommend in its report to the legislature under TWC, §35.018, the creation of a special district or amendment of an existing district's powers and authorities.

(5) The designation of a PGMA may not be appealed nor may it be challenged under TWC, §5.351 or Texas Government Code, §2001.038.

§294.43. *Actions Required After PGMA Designation.*

(a) The commission shall provide copies of a priority groundwater management area (PGMA) designation order under §294.42 of this title (relating to Commission Action Concerning PGMA Designation) to the commissioners court of any county that is affected by the designation of the PGMA, the Texas AgriLife Extension Service (TAES) [Cooperative Extension (FCE)], and any existing groundwater conservation districts (GCDs) that are adjacent to the PGMA.

(b) The executive director shall request an educational outreach program under this subsection after the commission designates a PGMA under §294.42 of this title.

(1) The executive director shall notify the TAES [FCE] of the PGMA designation and assist in educational programming developed by the TAES [FCE] under Texas Water Code (TWC), §35.012(c).

(2) The executive director shall notify the commissioners court of each county of the court's educational programming responsibilities in the PGMA under TWC, §35.012(c).

(c) No sooner than 120 [that 180] days after the date the commission designated the PGMA under §294.42 of this title, the executive director shall review the status of locally-initiated GCD creation in the PGMA.

(d) The executive director shall identify the areas of the PGMA that are not within a GCD and develop recommended district boundaries that are consistent with the commission's PGMA designation order under §294.42 of this title.

(e) If landowners do not take actions to create a GCD under TWC, §35.012(b), within two years after the date the commission designated the PGMA, the commission shall initiate creation of one or more GCDs under §293.19 of this title (relating to Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas).

(f) The commission may amend the territory in an order issued for a PGMA under §294.42 of this title to adjust for areas that, in the time between when the order was issued under §294.42 of this title relating to PGMA designation and the order issued under this section that have been added to an existing district or created as a separate district.

(g) In making a modification under subsection (f) of this section, the commission may recommend:

- (1) creation of a new district in the area; or
- (2) that the area be added to a different district.

(h) Except as provided by TWC, §35.013(h), a change in the order under subsection (f) of this section does not affect a deadline under TWC, §35.012 or §35.013.

§294.44. Adding a PGMA to an Existing Groundwater Conservation District.

(a) The executive director shall give notice to the board of directors of the existing groundwater conservation district (GCD), if the commission issues an order under §294.42 of this title (relating to Commission Action Concerning PGMA Designation), or under §293.19 of this title (relating to Creation of a Groundwater Conservation District in a Priority Groundwater Management Area) recommending that a priority groundwater management area (PGMA) or a portion of a PGMA be added to an existing GCD. The executive director shall provide a copy of the order to the board of directors of the existing GCD to which the commission is recommending the PGMA be added and to any other existing GCDs adjacent to the PGMA.

(b) Within 120 days after receipt [180 days] of the notice provided under subsection (a) of this section, the board of directors of the existing GCD shall advise the commission of the outcome of the board of directors vote to add the PGMA or a portion of the PGMA [GCD actions or status of current GCD activities] under Texas Water Code (TWC), §35.013.

~~[(e) The costs of an election to add a PGMA to an existing GCD that is approved by the voters shall be paid by the existing GCD. The costs of an election to add a PGMA to an existing GCD at which the proposition fails shall be paid by the commission.]~~

~~(c) [(d)] If the board of directors of the GCD votes not to pursue addition of the PGMA as recommended by the commission [or, if the proposition to add the PGMA to the GCD is defeated at the election], the commission shall either:~~

(1) within one year create one or more GCDs according to TWC, §36.0151 and §293.19 of this title; or

(2) recommend the area be added to another existing GCD as provided by this section [recommend to the legislature under TWC, §35.018(c), in its biennial report, whether legislative action should be taken to address the need for groundwater management in the PGMA].

(d) If the commission determines that creating a district under TWC, Chapter 36 within the boundaries of a designated PGMA is not appropriate or capable of protecting of the groundwater resources for a particular management area or PGMA, the commission may recommend to the legislature under TWC, §35.018(c), in its biennial report, whether legislative action should be taken to create a special law district or amend an existing district's authority to manage the groundwater resources in the PGMA.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.1, concerning Definitions. Subsection (a)(29) is amended to comply with Texas Occupations Code Chapter 1701, §1701.255, Enrollment Qualifications. Subsection (a)(51) is amended to correspond with rule changes regarding requirements for reactivation and Texas Occupations Code Chapter 1701, §1701.316, Reactivation of Peace Officer License and §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers. Subsection (a)(54) is deleted. Subsection (a)(55) - (66) are renumbered to compensate for the deletion of subsection (a)(54). Subsection (b) is amended to reflect the effective date of the changes.

This amendment is necessary to provide clear and concise definitions for use throughout the chapter.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will

AN ACT

relating to priority groundwater management areas.

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

SECTION 1. Subsection (a), Section 35.007, Water Code, is amended to read as follows:

(a) The executive director and the executive administrator shall meet periodically to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 50-year [~~25-year~~] period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management areas across all major and minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development

1 Board shall annually review the need for additional designations as
2 provided by this subsection.

3 SECTION 2. Section 35.008, Water Code, is amended by adding
4 Subsection (j) to read as follows:

5 (j) The commission may adopt rules regarding:

6 (1) the creation of a district over all or part of a
7 priority groundwater management area that was designated as a
8 critical area under Chapter 35, Water Code, as that chapter existed
9 before September 1, 1997, or under other prior law; and

10 (2) the addition of all or part of the land in a
11 priority groundwater management area described by Subdivision (1)
12 to an existing district.

13 SECTION 3. Section 35.012, Water Code, is amended by
14 amending Subsection (b) and adding Subsection (b-1) to read as
15 follows:

16 (b) Except as provided by Section 35.013, within [~~Within~~]
17 two years, but no sooner than 120 days, from the date on which the
18 commission issues an order under Section 35.008 designating a
19 priority groundwater management area, for those areas that are not
20 within a district, the commission shall[+]

21 [~~(1)~~] create one or more new districts under Section
22 36.0151[+]

23 [~~(2)~~ recommend that the areas, or a portion of the
24 areas, be added to an existing district under Section 35.013, or

25 [~~(3)~~ take any combination of the actions under
26 subdivisions (1) and (2)].

27 (b-1) For purposes of this section, the commission may

1 consider territory in two separately designated priority
2 groundwater management areas to be in the same designated priority
3 groundwater management area if:

4 (1) the two areas share a common boundary and one or
5 more common aquifers; and

6 (2) the commission determines that a district composed
7 of territory in the two areas will result in more effective or
8 efficient groundwater management than other options available to
9 the commission.

10 SECTION 4. Section 35.013, Water Code, is amended by
11 amending Subsections (b), (c), (e), (f), (g), and (h) and adding
12 Subsections (b-1) and (g-1) to read as follows:

13 (b) The commission shall submit a copy of the order to the
14 board of the district to which it is recommending the priority
15 groundwater management area be added. Not later than the 120th day
16 after the date of receiving the copy, the [The] board shall vote on
17 the addition of the priority groundwater management area to the
18 district and shall advise the commission of the outcome.

19 (b-1) If the district described by Subsection (b) has not
20 approved an ad valorem tax on the date of the commission's order
21 issued under Section 35.008 and the board of the district votes to
22 accept the addition of the priority groundwater management area to
23 the district, the board shall enter an order adding the territory in
24 the district.

25 (c) If the district described by Subsection (b) has approved
26 an ad valorem tax on the date of the commission's order issued under
27 Section 35.008 and the board votes to accept the addition of the

1 priority groundwater management area to the district, the board:

2 (1) shall enter an order adding the territory in the
3 district;

4 (2) may request the Texas AgriLife [~~Agricultural~~]
5 Extension Service, the commission, and the Texas Water Development
6 Board, with the cooperation and assistance of the Department of
7 Agriculture and other state agencies, to administer an educational
8 program to inform the residents of the status of the area's water
9 resources, the addition of territory to the district, and
10 [~~management~~] options for financing management of the groundwater
11 resources of the [~~including possible annexation into a~~] district;

12 (3) [~~(2)~~] shall call an election to be held not later
13 than the 270th day after the date of the board's vote under
14 Subsection (b) within the priority groundwater management area, or
15 portion of the priority groundwater management area, as delineated
16 by the commission to determine if the added area will assume a
17 proportional share of the debts or taxes of the district [~~priority~~
18 ~~groundwater management area will be added to the district~~]; and

19 (4) [~~(3)~~] shall designate election precincts and
20 polling places for the elections in the order calling an election
21 under this subsection.

22 (e) The ballots for the election shall be printed to provide
23 for voting for or against the proposition: "The [~~inclusion of~~
24 _____ (~~briefly describe priority groundwater~~
25 ~~management area~~) in the _____ District. "~~If the district~~
26 ~~has outstanding debts or taxes, the proposition shall include the~~
27 ~~following language: "and~~] assumption by the _____ (~~briefly~~

1 describe the territory added under Subsection (c)(1)) [~~described~~
 2 ~~area~~] of a proportional share of the debts or taxes of the _____
 3 District instead of the assessment of fees in the described area to
 4 fund the groundwater management activities of the district."

5 (f) Immediately after the election, the presiding judge of
 6 each polling place shall deliver the returns of the election to the
 7 board, and the board shall canvass the returns for the election
 8 within the priority groundwater management area and declare the
 9 results. If a majority of the voters in the priority groundwater
 10 management area voting on the proposition vote in favor of the
 11 proposition, the board shall declare that the priority groundwater
 12 management area assumes a proportional share of the debts or taxes
 13 of [~~is added to~~] the district. If a majority of the voters in the
 14 priority groundwater management area voting on the proposition do
 15 not vote in favor of the proposition [~~against adding the priority~~
 16 ~~groundwater management area to the district~~], the board shall adopt
 17 rules to implement Subsection (g-1) [~~declare that the priority~~
 18 ~~groundwater management area is not added to the district~~]. The
 19 board shall file a copy of the election results with the commission.

20 (g) The [~~If the voters approve adding the priority~~
 21 ~~groundwater management area to the district, the~~] board of the
 22 district to which the priority groundwater management area is added
 23 shall provide reasonable representation on that board compatible
 24 with the district's existing scheme of representation. Not later
 25 than the 30th day after the date on which the board declares that
 26 the priority groundwater management area is added to the district,
 27 the board of the existing district shall appoint a person or persons

1 to represent the area until the next regularly scheduled election
2 or appointment of directors.

3 (g-1) If the voters do not approve the assumption of a
4 proportional share of the debts or taxes of a district under
5 Subsection (e), the board shall assess production fees in the added
6 territory based on the amount of water authorized by permit to be
7 withdrawn from a well or the amount actually withdrawn. A district
8 may use revenue generated for any purpose authorized by Section
9 36.206 or 36.207. Initial production fees may not exceed
10 production fees as set in Section 36.205(c), but may be increased by
11 the board on a majority vote after the first anniversary of the
12 commission order. Production fees may be raised incrementally by
13 40 percent and 10 percent every following year until the maximum
14 production fees equal:

15 (1) \$2 per acre-foot, payable annually, for water used
16 for an agricultural purpose; or

17 (2) 30 cents per 1,000 gallons, payable annually, for
18 water used for any non-agricultural purpose.

19 (h) Not later than the first anniversary of the date on
20 which [~~if~~] the proposition is defeated, or [~~if~~] the board of the
21 existing district votes not to accept the addition of the area to
22 the district, [~~then~~] the commission shall, except as provided under
23 Subsection (i):

24 (1) [~~r~~] create under Section 36.0151 one or more
25 districts covering the priority groundwater management area; or

26 (2) recommend the area be added to another existing
27 district as provided by this section [~~not later than the first~~

1 ~~anniversary of the date on which the proposition is defeated or the~~
2 ~~board votes not to accept the area].~~

3 SECTION 5. Section 36.0151, Water Code, is amended by
4 amending Subsection (a) and adding Subsections (c), (d), and (e) to
5 read as follows:

6 (a) If the commission is required to create a district under
7 Section 35.012(b), it shall, without an evidentiary hearing, issue
8 an order creating the district and shall provide in its order that
9 temporary directors be appointed under Section 36.0161 [~~36.016~~] and
10 that an election be called by the temporary directors to authorize
11 the district to assess taxes and to elect permanent directors.

12 (c) The commission may amend the territory in an order
13 issued under Section 35.008 or this section to adjust for areas
14 that, in the time between when the order was issued under Section
15 35.008 and the order is issued under this section, have:

16 (1) been added to an existing district or created as a
17 separate district; or

18 (2) not been added to an existing district or created
19 as a separate district.

20 (d) In making a modification under Subsection (c), the
21 commission may recommend:

22 (1) creation of a new district in the area; or

23 (2) that the area be added to a different district.

24 (e) Except as provided by Section 35.013(h), a change in the
25 order under Subsection (c) does not affect a deadline under Section
26 35.012 or 35.013.

27 SECTION 6. Subsection (h), Section 36.0171, Water Code, is

1 amended to read as follows:

2 (h) If the majority of the votes cast at the election are
3 against the levy of a maintenance tax, the district shall set
4 production [~~permit~~] fees in accordance with Section 35.013(g-1) to
5 pay for the district's regulation of groundwater in the district,
6 including fees based on the amount of water to be withdrawn from a
7 well.

8 SECTION 7. (a) The changes in law made by this Act apply to
9 any territory in a priority groundwater management area that is not
10 included in a groundwater conservation district on the effective
11 date of this Act.

12 (b) Not later than September 1, 2012, the Texas Commission
13 on Environmental Quality shall create a district or add territory
14 to an existing district for any territory for which the commission
15 has issued an order recommending creation of a district or addition
16 of territory to an existing district under Section 35.008, Water
17 Code, before the effective date of this Act, unless the commission
18 determines that the territory is not suitable under Subsection (i),
19 Section 35.013, Water Code.

20 SECTION 8. All governmental acts and proceedings, including
21 the adoption of rules, of the Texas Commission on Environmental
22 Quality relating to the creation of a groundwater conservation
23 district over all or part of a priority groundwater management area
24 that was designated as a critical area under Chapter 35, Water Code,
25 as that chapter existed before September 1, 1997, or under other
26 prior law, are validated in all respects as of the dates on which
27 they occurred.

1 SECTION 9. Subsection (a), Section 35.007, Water Code, as
2 amended by this Act, applies only to a designation of a priority
3 groundwater management area made by the Texas Commission on
4 Environmental Quality on or after the effective date of this Act. A
5 designation made before the effective date of this Act is governed
6 by the law in effect when the designation was made, and that law is
7 continued in effect for that purpose.

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 313 passed the Senate on March 22, 2011, by the following vote: Yeas 30, Nays 0; May 5, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 17, 2011, House granted request of the Senate; May 28, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 313 passed the House, with amendments, on April 20, 2011, by the following vote: Yeas 145, Nays 0, one present not voting; May 17, 2011, House granted request of the Senate for appointment of Conference Committee; May 26, 2011, House adopted Conference Committee Report by the following vote: Yeas 141, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

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

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

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

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

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

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

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

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

1 jurisdiction.

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

6 (c) The board shall:

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

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

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

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

16 (1) "Default" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 financial assistance program recipient if:

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

4 (2) the recipient is not:

5 (A) a municipality or county; or

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

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

11 (1) perform audits;

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

14 (3) fund reserve accounts;

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

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

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

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

1 final order involved.

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

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

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

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

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

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

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

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

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

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

10 (f) The commission shall adopt rules:

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

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

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

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

27 (c) The executive administrator shall designate the

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

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

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

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

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

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

14 ~~created to provide strategic planning and coordination in the~~

15 ~~acquisition and use of geo-spatial data and related technologies in~~

16 ~~the State of Texas. The executive administrator and the executive~~

17 ~~director of the Department of Information Resources shall designate~~

18 ~~entities to be members of the TGIC. The chief administrative~~

19 ~~officer of each member entity shall select one representative to~~

20 ~~serve on the TGIC. The duties of the TGIC shall include providing~~

21 ~~guidance to the executive administrator in carrying out the~~

22 ~~executive administrator's duties under this section and guidance to~~

23 ~~the Department of Information Resources for development of rules~~

24 ~~related to statewide geo-spatial data and technology standards].~~
25 (d) Not later than December 1, 2016, and before the end of
26 each successive five-year period after that date, the board shall
27 submit to the governor, lieutenant governor, and speaker of the

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

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

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

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

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

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

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

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

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

1 administrator shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (3) identifies:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (1) Section 11.1271;

26 (2) Section 13.146;

27 (3) Section 15.106;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 considered bonds payable from those revenues if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) include estimates of the following:

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

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

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) the water supply needs and water management

1 strategies included in the state water plan;

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

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

9 (5) the impact on subsidence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) identify each desired future condition;

27 (2) provide the policy and technical justifications

1 for each desired future condition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) an owner of land in the management area;

7 (2) a district in or adjacent to the management area;

8 (3) a regional water planning group with a water
9 management strategy in the management area;

10 (4) a person who holds or is applying for a permit from
11 a district in the management area;

12 (5) a person who has groundwater rights in the
13 management area; or

14 (6) any other person defined as affected by commission
15 rule.

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

20 (1) a district fails to submit its management plan to
21 the executive administrator;

22 (2) [if] a district fails [or districts refused] to
23 participate [join] in the joint planning process under Section
24 36.108;

25 (3) a district fails to adopt rules;

26 (4) a district fails to adopt the applicable desired
27 future conditions adopted by the management area at a joint

1 meeting;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) a list of findings and recommended actions

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

3 (3) any other information the panel considers
4 appropriate.

5 (g) [~~(k)~~] The review panel shall submit its report to the
6 commission. The commission may take action under Section 36.3011.

7 Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS. (a) In
8 this section, "development board" means the Texas Water Development
9 Board.

10 (b) [~~(l)~~] A person with a legally defined interest in the
11 groundwater in the [~~groundwater~~] management area, a district in or
12 adjacent to the [~~groundwater~~] management area, or a regional water
13 planning group for a region in the [~~groundwater~~] management area
14 may file a petition with the development board appealing the
15 approval of the desired future conditions of the groundwater
16 resources established under this section. The petition must
17 provide evidence that the districts did not establish a reasonable
18 desired future condition of the groundwater resources in the
19 [~~groundwater~~] management area.

20 (c) [~~(m)~~] The development board shall review the petition
21 and any evidence relevant to the petition. The development board
22 shall hold at least one hearing at a central location in the
23 management area to take testimony on the petition. The development
24 board may delegate responsibility for a hearing to the executive
25 administrator or to a person designated by the executive
26 administrator. If the development board finds that the conditions
27 require revision, the development board shall submit a report to

1 the districts that includes a list of findings and recommended
2 revisions to the desired future conditions of the groundwater
3 resources.

4 (d) [~~(n)~~] The districts shall prepare a revised plan in
5 accordance with development board recommendations and hold, after
6 notice, at least one public hearing at a central location in the
7 [~~groundwater~~] management area. After consideration of all public
8 and development board comments, the districts shall revise the
9 conditions and submit the conditions to the development board for
10 review.

11 Sec. 36.1084. MODELED AVAILABLE GROUNDWATER. (a) The
12 Texas Water Development Board shall require the [~~(e) The~~]
13 districts in a management area to [~~shall~~] submit to the executive
14 administrator not later than the 60th day after the date on which
15 the districts adopted desired future conditions under Section
16 36.108(d-3):

17 (1) the desired future conditions adopted
18 [~~established~~] under Section 36.108;

19 (2) proof that notice was posted for the joint
20 planning meeting; and

21 (3) the desired future conditions explanatory report
22 [~~this section to the executive administrator~~].

23 (b) The executive administrator shall provide each district
24 and regional water planning group located wholly or partly in the
25 management area with the modeled [~~managed~~] available groundwater in
26 the management area based upon the desired future conditions
27 adopted by the districts [~~condition of the groundwater resources~~

1 ~~established under this section].~~

2 Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each
3 district in the management area shall ensure that its management
4 plan contains goals and objectives consistent with achieving the
5 desired future conditions of the relevant aquifers as adopted
6 during the joint planning process.

7 Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT
8 AREA. [~~p~~] Districts located within the same [~~groundwater~~]
9 management areas or in adjacent management areas may contract to
10 jointly conduct studies or research, or to construct projects,
11 under terms and conditions that the districts consider beneficial.
12 These joint efforts may include studies of groundwater availability
13 and quality, aquifer modeling, and the interaction of groundwater
14 and surface water; educational programs; the purchase and sharing
15 of equipment; and the implementation of projects to make
16 groundwater available, including aquifer recharge, brush control,
17 weather modification, desalination, regionalization, and treatment
18 or conveyance facilities. The districts may contract under their
19 existing authorizations including those of Chapter 791, Government
20 Code, if their contracting authority is not limited by Sections
21 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

22 SECTION 18. Section 36.3011, Water Code, is amended to read
23 as follows:

24 Sec. 36.3011. COMMISSION ACTION REGARDING [~~FAILURE OF~~]
25 DISTRICT DUTIES [~~TO CONDUCT JOINT PLANNING~~]. Not later than the
26 45th day after receiving the review panel's report under Section
27 36.1082 [~~36.108~~], the executive director or the commission shall

1 take action to implement any or all of the panel's recommendations.
2 The commission may take any action against a district it considers
3 necessary in accordance with Section 36.303 if the commission finds
4 that:

5 (1) the [~~a~~] district has failed to submit its
6 management plan to the executive administrator;

7 (2) the district has failed to participate in the
8 joint planning process under Section 36.108;

9 (3) the [~~a~~] district has failed to adopt rules;

10 (4) the district has failed to adopt the applicable
11 desired future conditions adopted by the management area at a joint
12 meeting;

13 (5) the district has failed to update its management
14 plan before the second anniversary of the adoption of desired
15 future conditions by the management area;

16 (6) the district has failed to update its rules to
17 implement the applicable desired future conditions before the first
18 anniversary of the date it updated its management plan with the
19 adopted desired future conditions;

20 (7) [~~3~~] the rules adopted by the district are not
21 designed to achieve the desired future conditions adopted by
22 [~~condition of the groundwater resources in~~] the [~~groundwater~~]
23 management area during the joint planning process; [~~or~~]

24 (8) [~~4~~] the groundwater in the management area is
25 not adequately protected by the rules adopted by the district; [~~7~~]
26 or

27 (9) the groundwater in the management area is not

1 adequately protected because of the district's failure to enforce
2 substantial compliance with its rules.

3 SECTION 19. Sections 15.908 and 17.180, Water Code, are
4 repealed.

5 SECTION 20. As soon as practicable after the effective date
6 of this Act, groundwater conservation districts shall appoint
7 initial representatives to regional water planning groups as
8 required by Subsection (c), Section 16.053, Water Code, as amended
9 by this Act.

10 SECTION 21. Not later than January 1, 2013:

11 (1) the Texas Commission on Environmental Quality
12 shall adopt rules under Subsection (f), Section 11.1271, Water
13 Code, as amended by this Act;

14 (2) the Texas Water Development Board and the Texas
15 Commission on Environmental Quality jointly shall adopt rules under
16 Subsection (e), Section 16.402, Water Code, as amended by this Act;
17 and

18 (3) the Texas Water Development Board and the Texas
19 Commission on Environmental Quality, in consultation with the Water
20 Conservation Advisory Council, shall develop the water use and
21 conservation calculation methodology and guidance and the data
22 collection and reporting program required by Subsections (a) and
23 (c), Section 16.403, Water Code, as added by this Act.

24 SECTION 22. Not later than January 1, 2015, the Texas Water
25 Development Board shall submit to the legislature the first report
26 required by Subsection (d), Section 16.403, Water Code, as added by
27 this Act.

1 SECTION 23. The notice provisions of Subsections (b) and
2 (c), Section 36.063, Water Code, as added by this Act, apply only to
3 a meeting or hearing of a groundwater conservation district or a
4 joint planning meeting of groundwater conservation districts held
5 on or after the effective date of this Act. A meeting or hearing
6 held before the effective date of this Act is subject to the notice
7 provisions in effect at the time of the meeting or hearing, and
8 those provisions are continued in effect for that purpose.

9 SECTION 24. The requirement that a groundwater conservation
10 district's management plan under Subsection (a), Section 36.1071,
11 Water Code, as amended by this Act, include the desired future
12 conditions adopted under Section 36.108, Water Code, as amended by
13 this Act, for submission to the executive administrator of the
14 Texas Water Development Board before the plan is considered
15 administratively complete applies only to a district management
16 plan submitted to the executive administrator on or after the
17 effective date of this Act. A management plan submitted before the
18 effective date of this Act is governed by the law in effect on the
19 date the plan was submitted, and that law is continued in effect for
20 that purpose.

21 SECTION 25. The procedures for the adoption and reporting
22 of desired future conditions of groundwater resources in a
23 management area under Section 36.108, Water Code, as amended by
24 this Act, and Section 36.1084, Water Code, as added by this Act,
25 apply only to the adoption of desired future conditions that occurs
26 on or after the effective date of this Act. Desired future
27 conditions adopted before the effective date of this Act are

1 governed by the law in effect on the date the desired future
2 conditions were adopted, and that law is continued in effect for
3 that purpose.

4 SECTION 26. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 660 passed the Senate on April 20, 2011, by the following vote: Yeas 30, Nays 1; May 27, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2011, House granted request of the Senate; May 29, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 660 passed the House, with amendments, on May 20, 2011, by the following vote: Yeas 143, Nays 4, two present not voting; May 28, 2011, House granted request of the Senate for appointment of Conference Committee; May 29, 2011, House adopted Conference Committee Report by the following vote: Yeas 147, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor