

The Texas Commission on Environmental Quality (commission) adopts an amendment to §292.1 *without changes* to the proposed text as published in the July 26, 2002 issue of the *Texas Register* (27 TexReg 6662) which will not be republished. However, the name of Chapter 292 is being changed.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Chapter 292 requires districts that have been determined to function as river authorities to adopt administrative policies that will govern district activities and board member conduct. The commission identified 20 districts in 1992. Senate Bill (SB) 2, §1.01, 77th Legislature, 2001, created Texas Water Code (TWC), Chapter 9, which sets forth provisions regarding the creation and duties of the Texas Water Advisory Council. TWC, §9.010, identified 19 of the 20 districts included in the commission rules, plus an additional 11 that are required to submit information to the newly created Texas Water Advisory Council. TWC, §9.012, also required that the additional 11 districts be included in Chapter 292, but does not preclude the commission from retaining the additional district that was already listed in Chapter 292. In addition, this rule is amended to reflect the current names of some of the districts.

The current name of Chapter 292, River Authorities, does not accurately reflect the nature of entities governed by the rules. Therefore, the commission is changing the name to “Special Requirements for Certain Districts and Authorities.” A name change for Chapter 292 was requested by the Texas Water Conservation Association in a letter dated October 1, 2002. This letter was received outside of the comment period. However, after reviewing the request, the commission agreed that the title of the chapter should be changed, and the change is being included in this rulemaking.

SECTION DISCUSSION

The adopted amendments to §292.1, Objective and Scope of Rules, add the districts identified in TWC, §9.010, as required by SB 2. Those districts are: Bexar-Medina-Atascosa Counties Water Control and Improvement District Number 1, Central Colorado River Authority, Dallas County Utility and Reclamation District, Gulf Coast Water Authority, Mackenzie Municipal Water Authority, North Central Texas Municipal Water Authority, North Harris County Regional Water Authority, Sulphur River Basin Authority, Sulphur River Municipal Water District, Upper Colorado River Authority, and Upper Guadalupe River Authority.

Since adoption of the existing rules, name changes have occurred for three of the districts listed in SB 2 which are currently listed in commission rules. The names of these districts are being updated in this rulemaking. The districts include: Red River Authority, which is now Red River Authority of Texas; Tarrant County Water Control and Improvement District Number 1, which is now Tarrant Regional Water District, a Water Control and Improvement District; and Trinity River Authority, which is now Trinity River Authority of Texas. In addition, paragraphs (2) - (20) have been renumbered as a result of including the new districts. Subsection (b) is amended to change Texas Water Code to TWC to comply with formatting requirements.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the statutory requirements for a “major environmental

rule.” “Major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The principal intent of this amendment is to implement the requirements of TWC, Chapter 9. TWC §9.012 requires the commission to expand the applicability of Chapter 292 to include the authorities subject to TWC, §9.010(b). Chapter 292 requires that certain entities defined as river authorities in the chapter enact specified policies. Currently, Chapter 292 identifies 20 districts. These adopted regulations include the entities listed in TWC, §9.010(b), that were not previously listed in the chapter. The specific intent of the adopted rulemaking is not to protect the environment or reduce risks to human health from environmental exposure and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this rulemaking does not meet the definition of "major environmental rule."

Furthermore, even if the amendment did meet the definition of a “major environmental rule,” the amendment is not subject to §2001.0225, because it does not accomplish any of the four results specified in §2001.0225(a). First, there are no federal law standards relating to or applicable to oversight of river authorities and administrative policies that must be adopted by the authorities. Therefore, there are no applicable standards set by federal law that could be exceeded by this rule. Second, the adopted amendment seeks to carry out the statutory requirements to apply Chapter 292 to

the districts listed in TWC, §9.010(b). Therefore, the rulemaking does not exceed an express requirement of state law. Third, there is no delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in the rule. Therefore, there are no delegation agreement requirements that could be exceeded by this rule. Fourth, the commission adopts this amendment in accordance with its requirements under the specific state law of TWC, §9.012. Therefore, the commission does not adopt the rule solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this adopted rule in accordance with Texas Government Code, Chapter 2007. The principal intent of this amendment is to expand the applicability of Chapter 292 to include the authorities subject to TWC, Chapter 9. This rulemaking implements the requirements of SB 2 by including the districts listed in TWC, §9.010(b), in §292.1(a), which lists the districts subject to the requirements of Chapter 292. Promulgation and enforcement of this adopted rule is neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the adopted rule does not affect a landowner's rights in private real property because this amendment does not burden private real property, nor restrict or limit a landowner's right to property, nor reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the rule. In addition, the adoption fulfills an obligation mandated by state law, which exempts such rulemakings from the requirements of Chapter 2007 under Texas Government Code, §2007.003(b)(4). Therefore, the adopted rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENTS

No public hearing was held for this proposal. The public comment period ended on August 26, 2002, but no comments were received.

SUBCHAPTER A: GENERAL PROVISIONS

§292.1

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; §5.013, which gives the commission continuing supervision over districts created under Article III, §52(b)(1) and (2), and Article XVI, §59, of the Texas Constitution; §12.081, which gives the commission the continuing right of supervision of the powers and duties of all districts and authorities created under Article III, §52, and Article XVI, §59 of the Texas Constitution; and §9.012, relating to Administrative Policies for Authorities.

§292.1. Objective and Scope of Rules.

(a) The commission has the continuing right of supervision of districts and authorities created under Article III, §52 and Article XVI, §59 of the Texas Constitution. The authorities identified in Texas Water Code (TWC), §9.010, shall report to the Texas Water Advisory Council as specified in TWC, §9.011. This chapter shall govern the administrative policies of the following districts:

(1) Angelina and Neches River Authority;

(2) Bexar-Medina-Atascosa Counties Water Control and Improvement District Number

1;

- (3) Brazos River Authority;
- (4) Canadian River Municipal Water Authority;
- (5) Central Colorado River Authority;
- (6) Colorado River Municipal Water District;
- (7) Dallas County Utility and Reclamation District;
- (8) Guadalupe-Blanco River Authority;
- (9) Gulf Coast Water Authority;
- (10) Lavaca-Navidad River Authority;
- (11) Lower Colorado River Authority;
- (12) Lower Neches Valley Authority;
- (13) Mackenzie Municipal Water Authority;

- (14) North Central Texas Municipal Water Authority;
- (15) North Harris County Regional Water Authority;
- (16) North Texas Municipal Water District;
- (17) Northeast Texas Municipal Water District;
- (18) Nueces River Authority;
- (19) Red River Authority of Texas;
- (20) Sabine River Authority;
- (21) San Antonio River Authority;
- (22) San Jacinto River Authority;
- (23) Sulphur River Basin Authority;
- (24) Sulphur River Municipal Water District;
- (25) Tarrant Regional Water District, a Water Control and Improvement District;

(26) Titus County Fresh Water Supply District Number 1;

(27) Trinity River Authority of Texas;

(28) Upper Colorado River Authority;

(29) Upper Guadalupe River Authority;

(30) Upper Neches River Municipal Water Authority; and

(31) West Central Texas Municipal Water District.

(b) Nothing in this chapter shall be construed to relieve a district of its legal duties, obligations, or liabilities relative to its responsibilities as defined in its enabling legislation or in the TWC.