

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §292.1.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 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. In addition, this rule is amended to reflect the current names of some of the districts.

#### SECTION DISCUSSION

The proposed amendments to §292.1, Objective and Scope of Rules, add the districts identified in TWC, §9.010, as added 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 the 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 within this rule.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency and most other units of state and local government due to administration and enforcement of the proposed rule. However, certain water districts determined to be functioning as river authorities will be required by commission rules to have an independent management audit on the river authority's management practices conducted every five years. Alternatively, the rule would allow an affected river authority to implement an internal audit office that reports to the authority's board of directors. The cost for affected river authorities is anticipated to range from \$25,000 to approximately \$100,000 every five years, depending on the size of the operation.

Existing commission regulations require water districts that have been determined to function as river authorities to incorporate administrative policies intended to enhance their management systems. This

includes an independent management audit of the river authority every five years or implementation of an internal audit office within the river authority.

The proposed amendment implements certain provisions of SB 2 which requires the commission to regulate an additional 11 water districts as river authorities. The 11 water districts are:

Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 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. Following adoption of this rulemaking, these entities will be required to have an independent management audit of their operations conducted every five years. The commission estimates this could cost approximately \$25,000 to \$100,000 every five years.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule will be potentially improved management practices at affected river authorities which could lead to improved services provided to the public.

The proposed amendment implements provisions of SB 2 by requiring the commission to regulate an additional 11 water districts as river authorities. The proposed amendment only affects units of

government. No significant fiscal implications are anticipated to individuals and businesses due to implementation of the proposed amendment.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are no adverse fiscal implications anticipated for small and micro-businesses as a result of implementation and enforcement of the proposed amendment, which is intended to implement provisions of SB 2 by requiring the commission to regulate an additional 11 water districts as river authorities. The proposed amendment only affects units of government. The proposed amendment is not anticipated to result in significant fiscal implications for any small or micro-businesses due to implementation of the proposed amendment.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal 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 proposal 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 proposed regulations include the entities listed in TWC, §9.010(b), that were not previously listed in the chapter.

The specific intent of the proposed 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 proposal does not meet the definition of "major environmental rule."

Furthermore, even if the amendment did not 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 proposed 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 proposes this amendment in accordance with its requirements under the specific state law of TWC, §9.012. Therefore, the commission does not propose the adoption of the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

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

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed 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 Texas Coastal Management Program (CMP), 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 CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-053-292-WT. Comments must be received by 5:00 p.m., August 26, 2002. For further information, please contact Joe Thomas, Policy and Regulations Division, (512) 239-4580.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§292.1**

#### **STATUTORY AUTHORITY**

The amendment is proposed 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.

The proposed amendment implements TWC, §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 [Section 52] and Article XVI, §59 [Section 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) [(2)] Brazos River Authority;

(4) [(3)] Canadian River Municipal Water Authority;

(5) Central Colorado River Authority;

(6) [(4)] Colorado River Municipal Water District;

(7) Dallas County Utility and Reclamation District;

(8) [(5)] Guadalupe-Blanco River Authority;

(9) Gulf Coast Water Authority;

(10) [(6)] Lavaca-Navidad River Authority;

(11) [(7)] Lower Colorado River Authority;

(12) [(8)] Lower Neches Valley Authority;

(13) Mackenzie Municipal Water Authority;

(14) North Central Texas Municipal Water Authority;

(15) North Harris County Regional Water Authority;

(16) [(9)] North Texas Municipal Water District;

(17) [(10)] Northeast Texas Municipal Water District;

(18) [(11)] Nueces River Authority;

(19) [(12)] Red River Authority of Texas;

(20) [(13)] Sabine River Authority;

(21) [(14)] San Antonio River Authority;

(22) [(15)] San Jacinto River Authority;

(23) Sulphur River Basin Authority;

(24) Sulphur River Municipal Water District;

(25) [(16)] Tarrant Regional Water District, a Water Control and Improvement District

[Tarrant County Water Control and Improvement District Number 1];

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

(27) [(18)] Trinity River Authority of Texas;

(28) Upper Colorado River Authority;

(29) Upper Guadalupe River Authority;

(30) [(19)] Upper Neches River Municipal Water Authority; and

(31) [(20)] 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 [Texas Water Code].