

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** June 3, 2011

**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

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

**Docket No.:** 2010-1397-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 293, Water Districts  
Districts Allowable Cost Participation  
Rule Project No. 2010-050-293-OW

### **Background and reason(s) for the rulemaking:**

On May 28, 2010, Paloma Lake Municipal Utility District (MUD) Number 1, Paloma Lake MUD Number 2, Parkside at Mayfield Ranch MUD, and Armbrust & Brown, L.L.P., on behalf of Greenhawe Water Control and Improvement District Number 2, Lakeside MUD Number 3, Moore's Crossing MUD, Travis County MUD Number 4, Travis County MUD Number 7, Travis County MUD Number 9, West Williamson County MUD Number 1, and Williamson County Water Sewer Irrigation and Drainage District Number 3, petitioned the commission to consider an amendment to §293.44 to facilitate regionalization and cooperative planning among water districts and other local government entities by providing a mechanism for allowing the cost incurred by a district to construct or acquire capacity in regional water, wastewater, and/or drainage facilities to be bonded or reimbursed so long as that cost did not exceed the cost the district would have incurred to construct the facilities required to provide the same service on its own. During the July 28, 2010 agenda, the commissioners approved the petition (Project No. 2010-029-PET-NR) and directed the executive director to initiate the rulemaking process. This adopted rulemaking is in response to that direction.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The adopted amendment will allow a district to fund more than the district's *pro rata* share of the costs of regional water, wastewater, and/or drainage facilities, as long as it is more cost-effective.

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

None.

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

None.

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**Statutory authority:**

- Texas Water Code (TWC), §5.103, which sets forth the TCEQ's general rulemaking authority.
- TWC, §5.105, which allows the TCEQ to establish and approve general policy by rule.
- TWC, §12.081, which provides the commission authority to issue rules necessary to supervise districts.

**Effect on the:**

**A.) Regulated community:**

Districts and landowners within districts who wish to participate in regional planning and development will be affected if districts or developers on behalf of districts enter into agreement(s) with municipal or regional providers of water, wastewater, and/or drainage facilities. The districts may, depending on action by each district's board of directors, incur cost savings over the cost of constructing a stand-alone facility; however, the cost may, depending on action by each district's board of directors, be more than the current rule allows.

**B.) Public:**

The public may, depending on action by each district's board of directors, see an increase in costs. However, there will be a benefit because for bond approval, a district will have to demonstrate that it is more cost-effective to participate in regional water, wastewater, and/or drainage facilities than constructing facilities to serve the district only.

**C.) Agency programs:**

The Office of Water, Water Supply Division's Districts Bond Team, will review bond applications from districts with projects that involve funding more than the districts' *pro rata* share of the costs of regional facilities.

**Stakeholder meetings:**

The adopted rulemaking was generally discussed during the October 19, 2010, Drinking Water Advisory Work Group's quarterly meeting.

**Public comment:**

The commission held a public hearing for this rule on March 8, 2011, in Austin, Texas. The comment period closed on March 14, 2011. No comments were received during this rule's public comment period.

**Significant changes from proposal:**

There are no changes from proposal to adoption.

**Potential controversial concerns and legislative interest:**

None.

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

No.

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

There are no consequences if this rulemaking does not go forward. The current rule allows for funding of a district's *pro rata* share and prohibits funding more than a district's *pro rata* share.

**Key points in the adoption rulemaking schedule:**

**Texas Register proposal publication date:** February 11, 2011

**Anticipated Texas Register publication date:** July 8, 2011

**Anticipated effective date:** July 14, 2011

**Six-month Texas Register filing deadline:** August 11, 2011

**Agency contacts:**

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**Attachments**

cc: Chief Clerk, 2 copies  
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