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 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 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 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) 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.