

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

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

Background and Summary of the Factual Basis for the Adopted Rules

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

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

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

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

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

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

Section by Section Discussion

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

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

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

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

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

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

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

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

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

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

Final Regulatory Impact Determination

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

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

The commission invited public comment regarding the draft regulatory impact analysis

determination but did not receive any comments.

Takings Impact Assessment

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

Consistency with the Coastal Management Program

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

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

Public Comment

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

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

Response to Comments

General

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

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

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

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

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

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

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

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

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

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

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

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

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

Public Benefit and Costs

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

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

Small Business and Micro-Business Assessment

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

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

Local Employment Impact Statement

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

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

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

The commission is proposing these procedural changes to ensure that its rules conform to the changes made to the TWC by SB 313 and SB 660. The rules clarify commission processes relating to: the creation of GCDs in the 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 294

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

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

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

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

SUBCHAPTER D: PRIORITY GROUNDWATER MANAGEMENT AREAS

§294.30

Statutory Authority

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

The adopted amendment implements TWC, §5.103, Rules.

§294.30. Purpose and Applicability.

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

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

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

§§294.40 - 294.44

Statutory Authority

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

The adopted amendments implement TWC, §5.103, Rules.

§294.40. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§294.42. Commission Action Concerning PGMA Designation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§294.43. Actions Required After PGMA Designation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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