

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 6, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2011-1224-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 293, Water Districts
Chapter 294, Priority Groundwater Management Areas
SB 313 and SB 660 (Sections 17 and 18): Groundwater Management
Rule Project No. 2011-054-294-OW

Background and reason(s) for the rulemaking:

In 2011, the 82nd Legislature passed Senate Bill (SB) 313 and SB 660.

SB 313 amended Texas Water Code (TWC), §35.007 to change the 25-year evaluation period that the executive director and executive administrator of the Texas Water Development Board (TWDB) use to identify areas of the state for a priority groundwater management area (PGMA) study to a 50-year evaluation period.

SB 313 amended TWC, §35.008 to validate and authorize the commission adoption of rules regarding the creation of a groundwater conservation district (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 313 amended TWC, §35.012 to clarify the commission's process to create GCDs within a PGMA after the time frame for landowner action has expired and to authorize the commission to combine territory in separate PGMA's during the process to create a GCD to provide for more effective or efficient groundwater management.

SB 313 amended TWC, §35.013 to change the 180-day time frame to 120 days for a GCD board of directors to vote on adding a commission order recommended PGMA to the GCD and advising the commission of the outcome. If a GCD's board of directors vote not to pursue the addition of a PGMA as recommended by the commission, the further amendments to TWC, §35.013, clarify and authorize continued commission action to either create a GCD or recommend the PGMA be added to another GCD.

SB 313 amended TWC, §36.0151 to clarify that the commission may amend territory if the commission is required to issue a subsequent GCD creation order for a PGMA, or a subsequent order to recommend a PGMA be added to a GCD. The change allows the

Re: Docket No. 2011-1224-RUL

commission to consider the actions taken since the original order that have resulted in part of the PGMA being included in a GCD.

SB 660 added new TWC, §36.1082, which adds a definition for an 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.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking implements statutory changes made by SB 313 and SB 660. The adopted rules clarify the commission's process to establish GCDs in PGMAs designated before September 1, 2001 in §293.19; remove a redundant GCD reporting provision in §293.20; streamline and clarify the commission's processes for review of GCD management plan adoption, readoption, and implementation compliance in §293.22; and update the commission's processes in §293.23 to agree with statutory changes relating to petitions requesting an inquiry of a GCD in a groundwater management area.

The adopted rules remove language that is no longer necessary in §294.30; clarify and update definitions in §294.40; clarify the commission's process for the evaluation of and recommendation for designation of PGMAs in §294.41; clarify the commission's process and considerations to designate a PGMA in §294.42; clarify the commission's process to create a GCD in a PGMA in §294.43; and update the commission's process in §294.44 to agree with statutory changes related to recommendations for adding a PGMA to an existing GCD.

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

The adopted rulemaking is required as a result of SB 313 and SB 660, §17 and §18.

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

None.

Statutory authority:

This rulemaking is adopted under TWC, §5.103, which establishes the commission's general authority to adopt rules.

Effect on the:

A.) Regulated community:

The rulemaking is not expected to have a significant impact on any GCD.

B.) Public:

The rulemaking is not expected to have a significant impact on the public.

Re: Docket No. 2011-1224-RUL

C.) Agency programs:

This rulemaking will impact the agency's groundwater program; however, the impact should be minimal since the rulemaking is only updating processes already carried out by the program.

Stakeholder meetings:

The commission held a public hearing for this rulemaking on April 17, 2012 in Austin, Texas.

Public comment:

The commission held a public hearing for this rulemaking on April 17, 2012. The public comment period ended on April 23, 2012. The commission received comments from two individuals, two GCDs, and one county department official. Three of the five commenters supported the rule; one commenter did not support the rule; and one commenter suggested changes. The commenter that suggested changes wanted to restructure, restyle, and add additional language to commission processes regarding GCD management plan noncompliance review and commission action on petitions for GCD inquiry.

Significant changes from proposal:

Several changes were made to the proposal language. Most of the changes were to improve grammar or make wording changes to clarify meaning. The most significant changes were to conform references to the term "management plan" with statutory changes made during the 82nd Legislature outside of SB 660; to add suggested time frames for GCDs to distribute newly adopted management plans to other water planning stakeholders; and, to allow 60 days instead of 30 days for a GCD to reconsider and enter a voluntary compliance agreement proposed by the executive director.

Potential controversial concerns and legislative interest:

The rulemaking implements statutory changes to agency processes and controversial concerns are not anticipated.

There may be legislative interest in the PGMAs designated before September 1, 2001 that have not yet established a GCD. These areas include parts of Briscoe, Comal, Dallam, Midland, Travis, and Upton Counties.

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

No. This rulemaking implements the statutory changes made by SB 313 and SB 660 and does not require the development of new policies.

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

If the rulemaking does not go forward, the commission's rules will be inconsistent with statute. There are no alternatives to this rulemaking.

Commissioners

Page 4

July 6, 2012

Re: Docket No. 2011-1224-RUL

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: March 23, 2012

Anticipated Texas Register publication date: August 10, 2012

Anticipated effective date: August 16, 2012

Six-month Texas Register filing deadline: September 23, 2012

Agency contacts:

Michael Chadwick, Rule Project Manager, 239-4517, Water Availability Division

James Aldredge, Staff Attorney, 239-2496

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

SB 313

SB 660, Sections 17 and 18

cc: Chief Clerk, 2 copies
Executive Director's Office
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