

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

Background and Summary of the Factual Basis for the Proposed Rules

In 2011 the 82nd Legislature passed Senate Bill (SB) 313 related to priority groundwater management areas (PGMA). 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 PGMA 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 PGMA and the creation of GCDs in PGMA.

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 proposes to amend 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 proposes amendments to 30 TAC Chapter 293, Water Districts.

Section by Section Discussion

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

The commission proposes to amend §294.40, Definitions, to implement changes to the TWC as amended by SB 313 and SB660, §17. The commission proposes to amend §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 proposes to amend §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 proposed amendment also replaces the word "or" with the word "and" in the definition to implement TWC, §35.007.

The commission proposes to amend §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 proposes to amend §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 proposed amendment to §294.41(c)(2) updates the name of the Texas Cooperative Extension to the Texas AgriLife Extension Service. The proposed 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 proposed change will allow the commission to fully implement the commission's authority under TWC, §35.012, as amended by SB 313. The commission proposes to delete §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 proposes to amend 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 proposes to re-letter existing subparagraph (I) to subparagraph (H) to accommodate the deletion of the existing subparagraph (G). The proposed 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 proposes to amend §294.42, Commission Action Concerning PGMA Designation, to implement TWC, §35.012, as amended by SB 313. The proposed amendment allows the commission to consider adding an area recommended for PGMA designation by the executive director to an existing PGMA.

The commission proposes to amend §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 proposed amendment to §294.43(a) and (b) updates the name of the Texas Cooperative Extension to the Texas AgriLife Extension Service. The proposed amendment of §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 proposed 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 proposed amendment to add §294.43(f), (g), and (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 proposed 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 proposes to amend §294.44, Adding a PGMA to an Existing Groundwater Conservation District, to implement TWC, §35.013, as amended by SB 313. The proposed 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 proposed 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 proposes to amend 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 proposed amendment to re-lettered §294.44(d) clarifies 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. This proposed amendment implements TWC, §35.008, as amended by SB 313.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules amend Chapter 294 to implement portions of SB 313 and SB 660, which are procedural in nature or clarify requirements with regard to the study and designation of PGMA's and the creation of GCDs within a PGMA and who are affected

parties to the PGMA process. The proposed rules: delete language no longer needed; amend the definition of an affected person to conform to the definition in a separate, but related rule proposal for Chapter 293; extend the PGMA evaluation period from 25 to 50 years; clarify that the executive director may include in a PGMA report reasons for or against adding a recommended PGMA to an existing PGMA or GCD; shorten the time frame for the executive director to review the status of the creation of a locally-initiated GCD in a PGMA from 180 days to 120 days; shorten the time frame from 180 to 120 days for a GCD to vote on adding a recommended PGMA; and, specify the responsibilities of the commission when the board of directors of a GCD vote not to add a recommended PGMA.

The proposed rules would require the agency to modify current practices and procedures, but these procedural changes are not expected to have a significant fiscal impact on the agency. The proposed rules would not have a fiscal impact on GCDs or PGMA, but these entities should benefit from improved clarity, processes, and procedures for the study and designation of PGMA and management of groundwater resources.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed

rules will be compliance with state law.

The proposed rules are not expected to have a fiscal impact on individuals or businesses that reside in a PGMA or GCD since they are procedural in nature and are not expected to increase or decrease revenues or costs.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules are procedural in nature and are not expected to increase or decrease revenues or costs.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

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

proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission has reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the proposed 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 proposed 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 proposed rules implement state legislation and do not exceed that legislation.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.43. The purpose of these proposed 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 proposed 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 proposed rules are not

subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on April 17, 2012, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal

Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-054-294-OW. The comment period closes April 23, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Michael Chadwick, Groundwater Planning and Assessment Team, at (512) 239-4517.

SUBCHAPTER D: PRIORITY GROUNDWATER MANAGEMENT AREAS

§294.30

Statutory Authority

The amendment is proposed 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 proposed 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 proposed 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 proposed 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, 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.