

**SUBCHAPTER E: DESIGNATION OF PRIORITY GROUNDWATER
MANAGEMENT AREAS
§§294.39 - 294.44
Effective August 29, 2002**

§294.39. Purpose.

The purpose of this subchapter is to provide the procedures for the designation of priority groundwater management areas, including recommendations for the creation of groundwater conservation districts.

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§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 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 25-year period, critical groundwater problems including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, 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.

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§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 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 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;

(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;

(H) 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

(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 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.

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§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 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;

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

(2) If the commission designates the area as a 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.

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§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 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 TCE of the PGMA designation and assist in educational programming developed by the 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 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).

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§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 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 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.

(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 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.

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