

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** April 27, 2016

**DATE OF REQUEST:** April 8, 2016

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Sherry Davis, (512) 239-2141

**CAPTION: Docket No. 2015-1000-RUL.** Consideration of the adoption of amendments to 30 TAC Chapter 293, Water Districts, Sections 293.17, 293.20, 293.22, and 293.23.

The adoption would implement House Bill 2767, 84th Texas Legislature, 2015, Regular Session, by updating the definition of "affected person" and citations in Chapter 293 to conform to changes made to Texas Water Code (TWC), Chapter 36, by the bill and to delete language from the rule that the bill removed from the TWC. The proposed rules were published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8172). (Mike Chadwick, Kayla Murray) (Rule Project No. 2015-025-293-OW)

Kevin McCalla for  
L'Oreal Stepney, P.E.  

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**Deputy Director**

Kim Wilson  

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**Division Director**

Sherry L. Davis  

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**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 8, 2016

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

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

**Docket No.:** 2015-1000-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 293, Water Districts  
HB 2767: Powers, Duties, and Administration of GCDs  
Rule Project No. 2015-025-293-OW

### **Background and reason(s) for the rulemaking:**

In 2015, the 84th Texas Legislature passed House Bill (HB) 2767, relating to the powers, duties, and administration of groundwater conservation districts and amending provisions that authorize fees. The bill makes non-substantive, conforming, or clarifying language changes throughout Texas Water Code (TWC), Chapter 36.

The adopted rules implement changes made by HB 2767. HB 2767 repeals TWC, §36.1082, Petition for Inquiry, and moves the repealed language without substantial change to TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. The commission has existing rules that govern the amended TWC, §36.3011, and HB 2767 does not require any new rules or agency policies; therefore, this rulemaking will only update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made to the TWC by HB 2767.

No additional fees or procedures were adopted by HB 2767.

HB 2767 closely follows bill language that was developed by the Texas Water Conservation Association over the interim. This bill was authored by Representative Jim Keffer and was sponsored by Senator Charles Perry.

HB 2767 was effective June 10, 2015.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The adopted rules implement changes made by HB 2767, which repeals TWC, §36.1082, and moves the repealed language without substantial change to TWC, §36.3011. This rulemaking will also update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made to the TWC by HB 2767.

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

None.

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

None.

**Statutory authority:**

TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction.

TWC, §5.103, which establishes the commission's general authority to adopt rules.

TWC, §5.105, which establishes the commission's authority to set policy by rule.

TWC, §36.3011, which allows an affected person to file a petition for inquiry.

**Effect on the:**

**A.) Regulated community:**

None.

**B.) Public:**

None.

**C.) Agency programs:**

None.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held at TCEQ headquarters in Austin on December 15, 2015, during the comment period. No comments were received at the hearing.

**Public comment:**

The agency received comments from the High Plains Underground Water Conservation District (High Plains UWCD) relating to a typographical error. Additionally, High Plains UWCD commented that the use of "district" is duplicative and unnecessary and recommended striking GDC from the proposed rules.

No changes were made in response to the comments because the typographical error had been corrected prior to publication and the language in the adopted rule is consistent with the statute.

**Significant changes from proposal:**

There are no changes from proposal to adoption.

**Potential controversial concerns and legislative interest:**

There are no controversial concerns or legislative interest related to commission implementation activities for this bill.

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

This rulemaking will not affect any current policies or require development of new policies.

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

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

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** November 20, 2015

**Anticipated *Texas Register* adoption publication date:** May 13, 2016

**Anticipated effective date:** May 19, 2016

**Six-month *Texas Register* filing deadline:** May 20, 2016

**Agency contacts:**

Mike Chadwick, Rule Project Manager, Water Availability Division, (512) 239-4517

Kayla Murray, Staff Attorney, (512) 239-4761

Sherry Davis, Texas Register Coordinator, (512) 239-2141

**Attachments**

HB 2767

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Mike Chadwick  
Sherry Davis

AN ACT

relating to the powers, duties, and administration of groundwater conservation districts; amending provisions that authorize fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by amending Subdivisions (8) and (16) and adding Subdivision (31) to read as follows:

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) willfully [~~wilfully~~] or negligently causing, suffering, or allowing groundwater to escape into any river, creek,

1 natural watercourse, depression, lake, reservoir, drain, sewer,  
2 street, highway, road, or road ditch, or onto any land other than  
3 that of the owner of the well unless such discharge is authorized by  
4 permit, rule, or order issued by the commission under Chapter 26;

5 (F) groundwater pumped for irrigation that  
6 escapes as irrigation tailwater onto land other than that of the  
7 owner of the well unless permission has been granted by the occupant  
8 of the land receiving the discharge; or

9 (G) for water produced from an artesian well,  
10 "waste" also has the meaning assigned by Section 11.205.

11 (16) "Loan fund" means the groundwater conservation  
12 district loan assistance fund created under Section 36.371.

13 (31) "Operating permit" as used in this chapter means  
14 any type of permit issued by a district that relates to the  
15 operation of or production from a water well, which may include  
16 authorization to drill or complete a water well if the district  
17 does not require a separate permit for drilling or completing a  
18 water well.

19 SECTION 2. Section 36.017(i), Water Code, is amended to  
20 read as follows:

21 (i) If a majority of the votes cast at the election are  
22 against the levy of a maintenance tax, the district shall set  
23 [~~production~~] fees authorized by this chapter to pay for the  
24 district's regulation of groundwater in the district [~~, including~~  
25 ~~fees based on the amount of water to be withdrawn from a well~~].

26 SECTION 3. Section 36.0171(h), Water Code, is amended to  
27 read as follows:

1 (h) If the majority of the votes cast at the election are  
2 against the levy of a maintenance tax, the district shall set  
3 ~~[production]~~ fees authorized by this chapter in accordance with  
4 Section 35.013(g-1) to pay for the district's regulation of  
5 groundwater in the district~~[, including fees based on the amount of~~  
6 ~~water to be withdrawn from a well]~~.

7 SECTION 4. Section 36.058, Water Code, is amended to read as  
8 follows:

9 Sec. 36.058. CONFLICTS OF INTEREST. A director of a  
10 district is subject to the provisions of Chapters ~~[Chapter]~~ 171 and  
11 176, Local Government Code, relating to the regulation of conflicts  
12 of officers of local governments.

13 SECTION 5. Section 36.061(a), Water Code, is amended to  
14 read as follows:

15 (a) Subject to the law governing the district, the board  
16 shall adopt the following in writing:

17 (1) a code of ethics for district directors, officers,  
18 employees, and persons who are engaged in handling investments for  
19 the district;

20 (2) a policy relating to travel expenditures;

21 (3) a policy relating to district investments that  
22 ensures that:

23 (A) purchases and sales of investments are  
24 initiated by authorized individuals, conform to investment  
25 objectives and regulations, and are properly documented and  
26 approved; and

27 (B) periodic review is made of district

1 investments to evaluate investment performance and security;

2 (4) policies and procedures for selection,  
3 monitoring, or review and evaluation of professional services; and

4 (5) policies that ensure a better use of management  
5 information, including:

6 (A) budgets for use in planning and controlling  
7 cost; and

8 (B) an audit or finance committee of the board. [~~+~~  
9 and

10 [~~(C) uniform reporting requirements that use~~  
11 ~~"Audits of State and Local Governmental Units" as a guide on audit~~  
12 ~~working papers and that uses "Governmental Accounting and Financial~~  
13 ~~Reporting Standards."~~]

14 SECTION 6. Section 36.116(c), Water Code, is amended to  
15 read as follows:

16 (c) In regulating the production of groundwater based on  
17 tract size or acreage, a district may consider the service needs or  
18 service area of a retail public [~~water~~] utility. For the purposes  
19 of this subsection, "retail public [~~water~~] utility" shall have the  
20 meaning provided by [~~at~~] Section 13.002.

21 SECTION 7. Sections 36.117(a) and (d), Water Code, are  
22 amended to read as follows:

23 (a) A district by rule may provide an exemption from the  
24 district's requirement to obtain [~~a drilling permit, an operating~~  
25 ~~permit, or~~] any [~~other~~] permit required by this chapter or the  
26 district's rules.

27 (d) A district may cancel a previously granted exemption[~~7~~]

1 and may require an operating permit for or restrict production from  
2 a well and assess any appropriate fees~~[,]~~ if:

3 (1) ~~[the well is located in the Hill Country Priority~~  
4 ~~Groundwater Management Area and]~~ the groundwater withdrawals that  
5 were exempted under Subsection (b)(1) are no longer used solely for  
6 domestic use or to provide water for livestock or poultry;

7 (2) the groundwater withdrawals that were exempted  
8 under Subsection (b)(2) are no longer used solely to supply water  
9 for a rig that is actively engaged in drilling or exploration  
10 operations for an oil or gas well permitted by the Railroad  
11 Commission of Texas; or

12 (3) the groundwater withdrawals that were exempted  
13 under Subsection (b)(3) are no longer necessary for mining  
14 activities or are greater than the amount necessary for mining  
15 activities specified in the permit issued by the Railroad  
16 Commission of Texas under Chapter 134, Natural Resources Code.

17 SECTION 8. Section [36.122](#)(e), Water Code, is amended to  
18 read as follows:

19 (e) The district may impose an export ~~[a reasonable]~~ fee or  
20 surcharge ~~[for an export fee]~~ using one of the following methods:

21 (1) a fee negotiated between the district and the  
22 exporter ~~[transporter]~~;

23 (2) a rate not to exceed the equivalent of the  
24 district's tax rate per hundred dollars of valuation for each  
25 thousand gallons of water exported from ~~[transferred out of]~~ the  
26 district or 2.5 cents per thousand gallons of water, if the district  
27 assesses a tax rate of less than 2.5 cents per hundred dollars of

1 valuation; or

2 (3) for a fee-based district, a 50 percent [~~export~~]  
3 surcharge, in addition to the district's production fee, for water  
4 exported from [~~transferred out of~~] the district.

5 SECTION 9. Sections 36.153(a), (b), and (d), Water Code,  
6 are amended to read as follows:

7 (a) Annually and subject to Subsection (c), the board shall  
8 have an audit made of the financial condition of the district. The  
9 district audit shall be performed according to the generally  
10 accepted government auditing standards adopted by the American  
11 Institute of Certified Public Accountants.

12 (b) Financial statements shall be prepared in accordance  
13 with generally accepted accounting principles as adopted by the  
14 American Institute of Certified Public Accountants. The annual  
15 audit and other district records must be open to inspection during  
16 regular business hours at the principal office of the district.

17 (d) A financially dormant district may elect not to conduct  
18 an audit and instead submit to the executive director a financial  
19 dormancy affidavit [~~instead of complying with the audit~~  
20 ~~requirements of Section 49.191~~].

21 SECTION 10. Section 36.157(a), Water Code, is amended to  
22 read as follows:

23 (a) A district, or the county or counties where the district  
24 is to be located, may pay all costs and expenses necessarily  
25 incurred in the creation and organization of a district, including  
26 legal fees and other incidental expenses, and may reimburse any  
27 person, including a county, for money advanced for these purposes.

1 SECTION 11. Section 36.159, Water Code, is amended to read  
2 as follows:

3 Sec. 36.159. GROUNDWATER CONSERVATION DISTRICT MANAGEMENT  
4 PLAN FUNDS. The Texas Water Development Board may allocate funds  
5 from the water assistance fund to a district to:

6 (1) conduct initial data collections under this  
7 chapter;

8 (2) [~~to~~] develop and implement a long-term  
9 management plan under Section 36.1071;~~]~~ and

10 (3) [~~to~~] participate in regional water plans.

11 SECTION 12. Sections 36.205(f) and (g), Water Code, are  
12 amended to read as follows:

13 (f) A district, including a district described under  
14 Subsection (d), may assess a production fee under Subsection (c)  
15 and an export fee under Subsection (g), if applicable, for any water  
16 produced under an exemption under Section 36.117 if that water is  
17 subsequently sold to another person.

18 (g) A district may assess an export [~~a transportation~~] fee  
19 under Section 36.122.

20 SECTION 13. Section 36.206(a), Water Code, is amended to  
21 read as follows:

22 (a) A temporary board may set [~~user~~] fees authorized by this  
23 chapter to pay for the creation and initial operation of a district,  
24 until such time as the district creation has been confirmed and a  
25 permanent board has been elected by a majority vote of the qualified  
26 voters voting in the district in an election called for those  
27 purposes.

1 SECTION 14. Section 36.207, Water Code, is amended to read  
2 as follows:

3 Sec. 36.207. USE OF [~~PERMIT~~] FEES [~~AUTHORIZED BY SPECIAL~~  
4 ~~LAW~~]. A district may use funds obtained from administrative,  
5 production, or export [~~permit~~] fees collected under a [~~pursuant to~~  
6 the] special law governing the district or this chapter for any  
7 purpose consistent with the district's approved management plan,  
8 including, without limitation, making grants, loans, or  
9 contractual payments to achieve, facilitate, or expedite  
10 reductions in groundwater pumping or the development or  
11 distribution of alternative water supplies.

12 SECTION 15. Section 36.251, Water Code, is amended to read  
13 as follows:

14 Sec. 36.251. SUIT AGAINST DISTRICT. (a) A person, firm,  
15 corporation, or association of persons affected by and dissatisfied  
16 with any [~~provision or with any~~] rule or order made by a district,  
17 including an appeal of a decision on a permit application, is  
18 entitled to file a suit against the district or its directors to  
19 challenge the validity of the law, rule, or order.

20 (b) Only the district, the applicant, and parties to a  
21 contested case hearing may participate in an appeal of a decision on  
22 the application that was the subject of that contested case  
23 hearing. An appeal of a decision on a permit application must  
24 include the applicant as a necessary party.

25 (c) The suit shall be filed in a court of competent  
26 jurisdiction in any county in which the district or any part of the  
27 district is located. The suit may only be filed after all

1 administrative appeals to the district are final.

2 SECTION 16. Section 36.3011, Water Code, is amended to read  
3 as follows:

4 Sec. 36.3011. COMMISSION INQUIRY AND ACTION REGARDING  
5 DISTRICT DUTIES. (a) In this section, "affected person" means, with  
6 respect to a management area:

7 (1) an owner of land in the management area;

8 (2) a groundwater conservation district or subsidence  
9 district in or adjacent to the management area;

10 (3) a regional water planning group with a water  
11 management strategy in the management area;

12 (4) a person who holds or is applying for a permit from  
13 a district in the management area;

14 (5) a person with a legally defined interest in  
15 groundwater in the management area; or

16 (6) any other person defined as affected by commission  
17 rule.

18 (b) An affected person may file a petition with the  
19 commission requesting an inquiry for any of the following reasons:

20 (1) a district fails to submit its management plan to  
21 the executive administrator;

22 (2) a district fails to participate in the joint  
23 planning process under Section 36.108;

24 (3) a district fails to adopt rules;

25 (4) a district fails to adopt the applicable desired  
26 future conditions adopted by the management area at a joint  
27 meeting;

1           (5) a district fails to update its management plan  
2 before the second anniversary of the adoption of desired future  
3 conditions by the management area;

4           (6) a district fails to update its rules to implement  
5 the applicable desired future conditions before the first  
6 anniversary of the date it updated its management plan with the  
7 adopted desired future conditions;

8           (7) the rules adopted by a district are not designed to  
9 achieve the adopted desired future conditions;

10           (8) the groundwater in the management area is not  
11 adequately protected by the rules adopted by a district; or

12           (9) the groundwater in the management area is not  
13 adequately protected due to the failure of a district to enforce  
14 substantial compliance with its rules.

15           (c) Not later than the 90th day after the date the petition  
16 is filed, the commission shall review the petition and either:

17           (1) dismiss the petition if the commission finds that  
18 the evidence is not adequate to show that any of the conditions  
19 alleged in the petition exist; or

20           (2) select a review panel as provided in Subsection  
21 (d).

22           (d) If the petition is not dismissed under Subsection (c),  
23 the commission shall appoint a review panel consisting of a  
24 chairperson and four other members. A director or general manager  
25 of a district located outside the management area that is the  
26 subject of the petition may be appointed to the review panel. The  
27 commission may not appoint more than two members of the review panel

1 from any one district. The commission also shall appoint a  
2 disinterested person to serve as a nonvoting recording secretary  
3 for the review panel. The recording secretary may be an employee of  
4 the commission. The recording secretary shall record and document  
5 the proceedings of the panel.

6 (e) Not later than the 120th day after appointment, the  
7 review panel shall review the petition and any evidence relevant to  
8 the petition and, in a public meeting, consider and adopt a report  
9 to be submitted to the commission. The commission may direct the  
10 review panel to conduct public hearings at a location in the  
11 management area to take evidence on the petition. The review panel  
12 may attempt to negotiate a settlement or resolve the dispute by any  
13 lawful means.

14 (f) In its report, the review panel shall include:

15 (1) a summary of all evidence taken in any hearing on  
16 the petition;

17 (2) a list of findings and recommended actions  
18 appropriate for the commission to take and the reasons it finds  
19 those actions appropriate; and

20 (3) any other information the panel considers  
21 appropriate.

22 (g) The review panel shall submit its report to the  
23 commission.

24 (h) Not later than the 45th day after receiving the review  
25 panel's report under this section [~~Section 36.1082~~], the executive  
26 director or the commission shall take action to implement any or all  
27 of the panel's recommendations. The commission may take any action

1 against a district it considers necessary in accordance with  
2 Section 36.303 if the commission finds that:

3 (1) the district has failed to submit its management  
4 plan to the executive administrator;

5 (2) the district has failed to participate in the  
6 joint planning process under Section 36.108;

7 (3) the district has failed to adopt rules;

8 (4) the district has failed to adopt the applicable  
9 desired future conditions adopted by the management area at a joint  
10 meeting;

11 (5) the district has failed to update its management  
12 plan before the second anniversary of the adoption of desired  
13 future conditions by the management area;

14 (6) the district has failed to update its rules to  
15 implement the applicable desired future conditions before the first  
16 anniversary of the date it updated its management plan with the  
17 adopted desired future conditions;

18 (7) the rules adopted by the district are not designed  
19 to achieve the desired future conditions adopted by the management  
20 area during the joint planning process;

21 (8) the groundwater in the management area is not  
22 adequately protected by the rules adopted by the district; or

23 (9) the groundwater in the management area is not  
24 adequately protected because of the district's failure to enforce  
25 substantial compliance with its rules.

26 SECTION 17. Section 36.303(a), Water Code, is amended to  
27 read as follows:

1 (a) If Section [~~36.108,~~] 36.301, 36.3011, or 36.302(f)  
2 applies, the commission, after notice and hearing in accordance  
3 with Chapter 2001, Government Code, shall take action the  
4 commission considers appropriate, including:

5 (1) issuing an order requiring the district to take  
6 certain actions or to refrain from taking certain actions;

7 (2) dissolving the board in accordance with Sections  
8 36.305 and 36.307 and calling an election for the purpose of  
9 electing a new board;

10 (3) requesting the attorney general to bring suit for  
11 the appointment of a receiver to collect the assets and carry on the  
12 business of the groundwater conservation district; or

13 (4) dissolving the district in accordance with  
14 Sections 36.304, 36.305, and 36.308.

15 SECTION 18. Section 36.321, Water Code, is amended to read  
16 as follows:

17 Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. Subject  
18 to Section 36.331, the [~~The~~] owner of land not already in  
19 [~~contiguous to~~] a district may file with the board a notarized  
20 petition requesting that the owner's land be included in the  
21 district. The petition must describe the land by legal description  
22 or by metes and bounds or by lot and block number if there is a  
23 recorded plat of the area to be included in the district.

24 SECTION 19. Section 36.325, Water Code, is amended to read  
25 as follows:

26 Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a)  
27 Landowners of a defined area of territory not already in a district

1 may file with any district a petition requesting inclusion in that  
2 district and, subject to Section 36.331, the defined area of  
3 territory is not required to be contiguous with that district.

4 (b) The petition must be signed by:

5 (1) a majority of the landowners in the territory;

6 (2) at least 50 landowners if the number of landowners  
7 is more than 50; or

8 (3) the commissioners court of the county in which the  
9 area is located if the area is identified as a priority groundwater  
10 management area or includes the entire county.

11 (c) The petition must describe the land by legal description  
12 or by metes and bounds or by lot and block number if there is a  
13 recorded plat of the area to be included in the district.

14 SECTION 20. Section 36.328(a), Water Code, is amended to  
15 read as follows:

16 (a) Annexation of the territory by petition filed under  
17 Section 36.325 is not final until ratified by a majority vote of the  
18 voters in the territory to be added. An election in the existing  
19 district accepting the addition of land is not required.

20 SECTION 21. The heading to Subchapter L, Chapter 36, Water  
21 Code, is amended to read as follows:

22 SUBCHAPTER L. GROUNDWATER CONSERVATION DISTRICT LOAN ASSISTANCE  
23 FUND

24 SECTION 22. Section 36.371, Water Code, is amended to read  
25 as follows:

26 Sec. 36.371. GROUNDWATER CONSERVATION DISTRICT LOAN  
27 ASSISTANCE FUND. (a) The groundwater conservation district loan

1 assistance fund is created, to be funded by direct appropriation  
2 and by the Texas Water Development Board from the water assistance  
3 fund.

4 (b) Repayments of loans shall be deposited in the water  
5 assistance fund.

6 SECTION 23. Section [36.1082](#), Water Code, is repealed.

7 SECTION 24. This Act takes effect immediately if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section [39](#), Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary for immediate  
11 effect, this Act takes effect September 1, 2015.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2767 was passed by the House on April 30, 2015, by the following vote: Yeas 138, Nays 1, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2767 was passed by the Senate on May 20, 2015, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§293.17, 293.20, 293.22, and 293.23 *without change* to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8172), and therefore, these amendments will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

In 2015, the 84th Texas Legislature passed House Bill (HB or bill) 2767, relating to the powers, duties, and administration of groundwater conservation districts (GCDs) and amending provisions that authorize fees. HB 2767 makes non-substantive, conforming, or clarification language changes throughout Texas Water Code (TWC), Chapter 36. Some of the changes made by HB 2767 do not affect the agency's rules. However, the commission has chosen to include all of the changes made by the bill in the Background and Summary of the Factual Basis for the Adopted Rules section of this preamble to provide context to the changes that HB 2767 does require.

Specifically, HB 2767 adds a definition to TWC, §36.001, for "operating permit" to mean any type of GCD permit for operation of or production from a water well including a permit to drill or complete a water well if a district does not require a separate permit for those actions. The bill adds a provision in TWC, §36.058, for GCD directors to be subject to Local Government Code, Chapter 176, relating to disclosure of conflicts. HB 2767 strikes language in TWC, §36.061, related to audit reporting standards and adds language in TWC, §36.153, consistent with TWC, Chapter 49, audit requirements and reporting standards.

The bill amends TWC, §36.157(a), to add that a county or counties where the district is to be located may pay all costs and expenses incurred in the creation and organization of the district. HB 2767 also amends TWC, §36.251, by providing that only a GCD, an applicant, and parties to a contested case may participate in an appeal that was the subject of the contested case. The commission does not have rules governing the items listed in this paragraph; therefore, there are no changes for the commission to make to its rules to accommodate these amendments made by the bill.

Additionally, HB 2767 repeals TWC, §36.1082, Petition for Inquiry, and moves the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This move also included amendments to the newly placed language. The commission has rules governing these items; therefore, the commission amended the rule language in 30 TAC Chapter 293, Water Districts, to ensure the TWC citations included in the chapter are current and conform language to the TWC as amended.

HB 2767 closely follows bill language that was developed by the Texas Water Conservation Association over the interim. HB 2767 was authored by Representative Jim Keffer, sponsored by Senator Charles Perry, and became effective June 10, 2015.

### **Section by Section Discussion**

#### *§293.17, Purpose*

The commission adopts the amendment to §293.17(3) by adding the word "and" to

introduce the §293.17(4) provision. The commission adopts the amendment to §293.17(4) by inserting language to note that HB 2767 moved the petitions for inquiry to TWC, Chapter 36, Subchapter I. Additionally, the commission adopts the deletion of §293.17(5) because the rule language is not needed for commission inquiry or action regarding GCD duties. These changes are required by the amendments HB 2767 made to TWC, §36.3011.

*§293.20, Records and Reporting*

The commission adopts the amendment to §293.20(d) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, and moved the repealed language to amended TWC, §36.3011. This change brings the citations within the agency's rules into agreement with the TWC.

*§293.22, Noncompliance Review and Commission Action*

The commission adopts the amendment to §293.22(a)(5) and (e) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, and moved the repealed language to amended TWC, §36.3011. These changes bring the citations within the agency's rules into agreement with the TWC.

*§293.23, Petition Requesting Commission Inquiry*

The commission adopts the amendment to §293.23(a) by changing the definition of "affected person" to match the definition of "affected person" as defined in TWC, §36.3011, added by the bill. Additionally, the commission adopts removing the citation to TWC,

§36.1082 that was repealed. These changes bring the agency's rules into agreement with the TWC.

The commission adopts the amendment to §293.23(b) by editing paragraphs (4) - (7) to include conforming changes made to TWC, §36.3011(b).

The commission adopts the amendment to §293.23(g)(4) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, and moved the repealed language to amended TWC, §36.3011. This change brings the citations within the agency's rules into agreement with the TWC.

### **Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule"

because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 2767. HB 2767 repeals TWC, §36.1082, and moves the repealed language to amended TWC, §36.3011.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted amendments do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted rulemaking is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) 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. The adopted rulemaking does not meet the four applicability requirements, because the adopted amendments: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the adopted rules; and 4) are not an adoption of a rule solely under the general powers of the commission as the adopted rules are required by HB 2767.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission adopted this rulemaking for the specific purpose of implementing legislation enacted by the 84th Texas Legislature in 2015. The commission's analysis revealed that the rulemaking would achieve consistency with TWC, §36.3011, as amended by HB 2767. The adopted rulemaking amends the rule sections to ensure the TWC citations included in Chapter 293 are current and conform to the language as

amended by HB 2767.

A "taking" under Texas Government Code, Chapter 2007, means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by ensuring the TWC citations included within Chapter 293 are current and conform to the language as amended, the commission has determined that promulgation and enforcement of this adopted rulemaking is neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adopted rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Texas Coastal Management Program (CMP), and, therefore, requires that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and does not have a substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments on the CMP section of the preamble.

### **Public Comment**

The commission held a public hearing on December 15, 2015. The comment period closed on January 4, 2016. The commission received comments from the High Plains Underground Water Conservation District (High Plains UWCD). High Plains UWCD suggested changes to the proposed rule as discussed in the Response to Comments section of this preamble.

### **Response to Comments**

#### *Comment*

High Plains UWCD commented that the acronym GCD was misspelled in §293.23(a)(2). High Plains UWCD also commented that using the term "GDC district" in §293.23(a)(2) is duplicative and unnecessary since the term district includes a groundwater conservation

district under §293.17. High Plains UWCD recommends striking GCD from the proposed rules.

***Response***

**The commission acknowledges this comment. The proposed version of the rule published on November 20, 2015, in the *Texas Register* (40 TexReg 8172) does not contain a misspelled acronym or include the duplicative term of "GCD district" in §293.23(a)(2). The proposed rule language published in the *Texas Register* states "a GCD or subsidence district in or adjacent to the management area." No changes were made in response to this comment.**

## **SUBCHAPTER C: SPECIAL REQUIREMENTS FOR GROUNDWATER**

### **CONSERVATION DISTRICTS**

#### **§§293.17, 293.20, 293.22, 293.23**

#### **Statutory Authority**

These amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, Rules, which establishes the commission's general authority to adopt rules; TWC §5.105, General Policy, which establishes the commission's authority to set policy by rule; and TWC, §36.3011, Commission Inquiry and Action Regarding District Duties, which allows an affected person to file a petition for inquiry.

The adopted amendments implement House Bill 2767.

#### **§293.17. Purpose.**

The purpose of this subchapter is to provide the processes and requirements related to Texas Water Code (TWC), Chapter 36, Groundwater Conservation Districts. The use of the term "district" in this subchapter means groundwater conservation district (GCD) unless the context clearly indicates otherwise. This subchapter provides:

(1) procedures for commission certification of landowner petitions for the creation of GCDs filed under TWC, §36.013;

(2) procedures for the commission, on its own motion, to create GCDs under TWC, §36.0151, in priority groundwater management areas (PGMAs) designated after September 1, 2001;

(3) procedures for the commission, on its own motion, to create GCDs in PGMAs designated before September 1, 2001; and

(4) procedures for commission review of GCD management plan noncompliance and petitions for inquiry under TWC, Chapter 36, Subchapter I.[: and]

[(5) procedures for GCD joint-planning peer review within a groundwater management area.]

### **§293.20. Records and Reporting.**

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

(1) a certified copy of the legislative act creating the district within 60 days after the district is created;

(2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);

(3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and

(4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) A district is required under TWC, §36.1071 to adopt a management plan and adopt rules that are necessary to implement the management plan. In accordance with

TWC, §36.1072, the management plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required. The management plan is subject to approval by the executive administrator of the Texas Water Development Board or the Texas Water Development Board upon appeal. After approval, each district must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) Within 60 days of approval of its management plan, a district must send a copy of its approved management plan to the regional water planning group or groups for the planning region or regions in which the district is located. The district shall maintain records of the correspondence.

(2) Within 60 days of approval of its management plan, a district must forward a copy of its approved management plan to the other districts wholly or partially located in the same groundwater management area or areas. The district shall maintain records of the correspondence.

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title

(relating to Noncompliance Review and Commission Action), and TWC, §36.3011 [§36.1082], and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

**§293.22. Noncompliance Review and Commission Action.**

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. Management plan noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan for review and approval to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) receive within 60 days of submittal, written approval from the executive administrator of the Texas Water Development Board for a management plan, an amended

management plan, or a readopted management plan as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan for review and approval to the executive administrator of the Texas Water Development Board at least once every five years after the date of the most recent management plan approval;

(4) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the district's performance as provided by TWC, §36.302; or

(5) adopt, implement, or enforce district management plans and rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.3011 [§36.1082] and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director shall notify the district and may attempt to resolve any noncompliance set out in subsection (a) of this section with the district.

(2) After review of the facts and identification of noncompliance issues, the executive director shall submit a compliance agreement to the district. The compliance agreement must clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(3) The district shall be provided a specified time frame not to exceed 60 days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to amend the compliance agreement schedule, it must contact the executive director within 30 days of receipt of the compliance agreement so that the compliance agreement can be considered and signed by the district and its board of directors within the 60-day time frame.

(4) If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of the agreement terms. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for commission enforcement

actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement Referrals to SOAH). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Notice of Executive Director's Preliminary Report). If the executive director's report recommends dissolution of a district or of a board of directors or referral of the matter to the Office of the Attorney General requesting the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or referral of the matter to the Office of the Attorney General requesting the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, [§§36.1082,] ~~§§36.301, 36.3011,~~ and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by TWC, §35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors

under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

### **§293.23. Petition Requesting Commission Inquiry.**

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), [§36.1082 and] §36.3011. An affected person means, with respect to a management area: [An affected person is a landowner, water well

owner, or other user of groundwater in the groundwater management area (GMA), a GCD in or adjacent to the GMA, a regional water planning group with a water management strategy in the GMA, a person who holds or is applying for a permit from a GCD in the GMA, or a person who has groundwater rights in the GMA. Such petitions must be filed following the procedures prescribed by this section.]

(1) an owner of land in the management area;

(2) a GCD or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area; or

(5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

- (1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;
- (2) a district fails to participate in the joint planning process under TWC, §36.108;
- (3) a district fails to adopt rules;
- (4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting [by resolution];
- (5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by [for] the management area;
- (6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted [applicable] desired future conditions;
- (7) the rules adopted by a district are not designed to achieve the adopted [applicable] desired future conditions [adopted for the management area during the joint planning process];

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

(d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

(e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The

responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) In accordance with TWC, §36.3011 [§36.1082], the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(h) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause contained in subsection (b)(1) - (9) of this section applies. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) of this title.

(xxv) mammogram with CAD; and

(xxvi) mammogram, digital.

(5) Pathology Services. Data on pathology services must be reported only for professional claims for which the place of service is an independent lab.

(A) Data must be reported at the claim-line level and averaged to reflect the cost per unit of service.

(B) Data must be reported for the following pathology services, using the medical billing codes consistent with §21.4705(b) of this subchapter:

(i) organ or disease panels;

(ii) evocative suppression testing;

(iii) urinalysis;

(iv) chemistry;

(v) hematology-coagulation;

(vi) immunology;

(vii) microbiology;

(viii) anatomic pathology;

(ix) screening cytopathology; and

(x) complete blood count.

(6) Office Visits. Data on office visits must be reported only for professional claims for which the place of service is an office or rural health clinic lab.

(A) For data elements listed in subparagraph (B) of this paragraph, data must be reported at the claim-line level and averaged to reflect the cost per unit of service.

(B) Data must be reported for the following types of office visits, using the medical billing codes consistent with §21.4705(b) of this subchapter:

(i) office or other outpatient visit with a new patient;

(ii) office or other outpatient visit with an established patient;

(iii) office consultation;

(iv) preventive medicine evaluation and management, new patient, by age group;

(v) preventive medicine evaluation and management, established patient, by age group;

(vi) annual gynecological exam, new patient;

(vii) annual gynecological exam, established patient;

(viii) screening pelvic and breast exam;

(ix) screening pap smear; and

(x) cytopathology for pap smear.

(C) Data must be reported for well-woman exams so that all costs associated with a claim are reported with respect to the medical billing consistent with §21.4705(b) of this subchapter.

(d) Data submission requirements. In reporting data required under this section, issuers must:

(1) report data elements according to medical billing codes specified by §21.4705(b) of this subchapter;

(2) separately report data for insurance and HMO and exclude any HMO claims paid through a capitation agreement;

(3) separately report data for in-network and out-of-network claims; and

(4) filter claims data to include only:

(A) claims incurred during the 12-month reporting period. For the 2015 reporting period, limit data for inpatient procedure claims and outpatient procedure claims to claims incurred prior to October 1, 2015, or the date on which the issuer transitioned billing systems to use ICD-10 procedure codes.

(B) claims for which adjudication is final; exclude pending or denied claims;

(C) claims for insureds in commercial fully insured plans or self-funded employer group plans;

(D) claims for which the issuer is the primary plan responsible for payment; exclude claims for which issuer is the secondary plan; and

(E) claims with an allowed amount greater than zero.

{Form No. LHL616 (Health Care Claims Reimbursement Rate Report) is adopted by reference. The form:}

{(1) contains instructions for completion of the report and requires submission of information and data concerning group health benefit plan issuer identification and enrollment information;}

{(2) requires the submission of both contracted and out-of-network claim information for general professional services; pathology services; anesthesiology services; radiology services; neonatology services; outpatient professional and institutional provider services; and inpatient institutional provider services; and}

{(3) is available at <http://www.tdi.state.tx.us/forms/form10accident.html>.}

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 5, 2015.

TRD-201504780

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 20, 2015

For further information, please call: (512) 676-6584

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**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**CHAPTER 293. WATER DISTRICTS**

## SUBCHAPTER C. SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

### 30 TAC §§293.17, 293.20, 293.22, 293.23

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§293.17, 293.20, 293.22, and 293.23.

#### *Background and Summary of the Factual Basis for the Proposed Rules*

In 2015, the 84th Texas Legislature passed House Bill (HB or bill) 2767, relating to the powers, duties, and administration of groundwater conservation districts (GCDs) and amending provisions that authorize fees. HB 2767 makes non-substantive, conforming, or clarification language changes throughout Texas Water Code (TWC), Chapter 36. Some of the changes made by HB 2767 will not affect the agency's rules. However, the commission has chosen to include all of the changes made by the bill in the Background and Summary of the Factual Basis for the Proposed Rule section of this preamble to provide context to the changes that HB 2767 does require.

Specifically, HB 2767 adds a definition to TWC, §36.001, for "operating permit" to mean any type of GCD permit for operation of or production from a water well including a permit to drill or complete a water well if a district does not require a separate permit for those actions. The bill adds a provision in TWC, §36.058, for GCD directors to be subject to Local Government Code, Chapter 176, relating to disclosure of conflicts. HB 2767 strikes language in TWC, §36.061, related to audit reporting standards and adds language in TWC, §36.153, consistent with TWC, Chapter 49, audit requirements and reporting standards. The bill amends TWC, §36.157(a), to add that a county or counties where the district is to be located may pay all costs and expenses incurred in the creation and organization of the district. HB 2767 also amends TWC, §36.251, by providing that only a GCD, an applicant, and parties to a contested case may participate in an appeal that was the subject of the contested case. The commission does not have rules governing the items listed in this paragraph; therefore, there are no changes for the commission to make to its rules to accommodate these amendments made by the bill.

Additionally, HB 2767 repeals TWC, §36.1082, Petition for Inquiry, and moves the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This move also included amendments to the newly placed language. The commission has rules governing these items; therefore, the commission will amend the rule language in 30 TAC Chapter 293, Water Districts, to ensure the TWC citations included in the chapter are current and conform language to the TWC as amended.

HB 2767 closely follows bill language that was developed by the Texas Water Conservation Association over the interim. HB 2767 was authored by Representative Jim Keffer and was sponsored by Senator Charles Perry and became effective June 10, 2015.

#### *Section by Section Discussion*

##### *§293.17, Purpose*

The commission proposes to amend §293.17(3) by adding the word "and" to introduce the §293.17(4) provision. The commission proposes to amend §293.17(4) by inserting lan-

guage to note that HB 2767 moved the petitions for inquiry to TWC, Chapter 36, Subchapter I. Additionally, the commission proposes to delete §293.17(5) because the rule language is not needed for commission inquiry or action regarding GCD duties. These changes are required by the amendments HB 2767 made to TWC, §36.3011.

##### *§293.20, Records and Reporting*

The commission proposes to amend §293.20(d) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This change will bring the citations within the agency's rules into agreement with the TWC.

##### *§293.22, Noncompliance Review and Commission Action*

The commission proposes to amend §293.22(a)(5) and (e) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. These changes will bring the citations within the agency's rules into agreement with the TWC.

##### *§293.23, Petition Requesting Commission Inquiry*

The commission proposes to amend §293.23(a) by changing the definition of "affected person" to match the definition of "affected person" as defined in TWC, §36.3011, added by the bill. Additionally, the commission proposes to remove the citation to TWC, §36.1082 that was repealed. These changes will bring the agency's rules into agreement with the TWC.

The commission proposes to amend §293.23(b) by editing paragraphs (4) - (7) to include conforming changes made to TWC, §36.3011(b).

The commission propose to amend §293.23(g)(4) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This change will bring the citations within the agency's rules into agreement with the TWC.

#### *Fiscal Note: Costs to State and Local Government*

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement provisions of HB 2767. HB 2767 amended Chapter 36 of the TWC with non-substantive, conforming, or language clarification changes. The bill repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language without substantial change to TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. The commission has existing rules that govern the amended TWC, §36.3011, and the implementation of HB 2767 does not require any new rules or agency policies for amended TWC, §36.3011. The proposed rules only update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made by HB 2767.

The proposed rules update the definition of "affected person" but the proposed definition is not substantially different from the current definition and does not significantly change the current

definition. The changes in the proposed rules are administrative in nature and are not expected to result in fiscal implications for the agency or for any other unit of state or local government.

#### *Public Benefits and Costs*

Mr. Horvath has also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law. The agency currently investigates inquiries from the public concerning GCD management activities and would continue to do so under the proposed rules.

No fiscal implications are anticipated for businesses or individuals as a result of the administration or enforcement of the proposed rules. TCEQ currently investigates public inquiries concerning GCD management activities. The proposed rules will allow TCEQ to continue oversight authority that is already in place. The proposed rules only update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made by HB 2767. These changes are not expected to result in any fiscal implications for businesses or individuals.

#### *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 rulemaking would have the same effect on a small business as it does on a large business and would allow TCEQ to continue oversight authority that is already in place to investigate inquiries from the public concerning GCD management activities. The proposed rules make non-substantive changes to the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with HB 2767. No fiscal implications are anticipated for small or micro-businesses due to the administration or enforcement of the proposed rules.

#### *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 rulemaking is necessary in order to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rulemaking is 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 rulemaking is in effect.

#### *Draft Regulatory Impact Analysis Determination*

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 2767. HB 2767 repeals TWC, §36.1082, Petition for Inquiry, and moves the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed rulemaking is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) 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. The proposed rulemaking does not meet the four applicability requirements, because the proposed amendments: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rules; and 4) are not an adoption of a rule solely under the general powers of the commission as the proposed rules are required by HB 2767.

The commission invites public comment of the Draft Regulatory Impact Analysis Determination. Written comments 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 evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposed this rulemaking for the specific purpose of implementing legislation enacted by the 84th Texas Legislature in 2015. The commission's analysis revealed that the rulemaking would achieve consistency with TWC, §36.3011, as amended by HB 2767. The proposed rulemaking would amend the rule sections to ensure the TWC citations included in Chapter 293 are current and conform to the language as amended by HB 2767.

A "taking" under Texas Government Code, Chapter 2007, means a governmental action that affects private real property in a manner that requires compensation to the owner under the United

States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by ensuring the TWC citations included within Chapter 293 are current and conform to the language as amended, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

#### *Consistency with the Coastal Management Program*

The commission reviewed the proposed rulemaking and found the proposed rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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 December 15, 2015, at 10:00 a.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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### *Submittal of Comments*

Written comments may be submitted to Sherry Davis, 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://www1.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 2015-025-293-OW. The comment period closes on January 4, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For

further information, please contact Mike Chadwick, Water Availability Division, Groundwater Planning and Assessment Team, at (512) 239-4517 or Kathy Ramirez, Water Availability Division, (512) 239-6757.

#### *Statutory Authority*

These amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC §5.105, which establishes the commission's authority to set policy by rule; and TWC, §36.3011, which allows an affected person to file a petition for inquiry.

The proposed amendments implement House Bill 2767.

#### *§293.17. Purpose.*

The purpose of this subchapter is to provide the processes and requirements related to Texas Water Code (TWC), Chapter 36, Groundwater Conservation Districts. The use of the term "district" in this subchapter means groundwater conservation district (GCD) unless the context clearly indicates otherwise. This subchapter provides:

- (1) procedures for commission certification of landowner petitions for the creation of GCDs filed under TWC, §36.013;
- (2) procedures for the commission, on its own motion, to create GCDs under TWC, §36.0151, in priority groundwater management areas (PGMAs) designated after September 1, 2001;
- (3) procedures for the commission, on its own motion, to create GCDs in PGMAs designated before September 1, 2001; and
- (4) procedures for commission review of GCD management plan noncompliance and petitions for inquiry under TWC, Chapter 36, Subchapter I, and

~~{(5) procedures for GCD joint-planning peer review within a groundwater management area.}~~

#### *§293.20. Records and Reporting.*

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

- (1) a certified copy of the legislative act creating the district within 60 days after the district is created;
- (2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);
- (3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and
- (4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) A district is required under TWC, §36.1071 to adopt a management plan and adopt rules that are necessary to implement the management plan. In accordance with TWC, §36.1072, the management

plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required. The management plan is subject to approval by the executive administrator of the Texas Water Development Board or the Texas Water Development Board upon appeal. After approval, each district must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) Within 60 days of approval of its management plan, a district must send a copy of its approved management plan to the regional water planning group or groups for the planning region or regions in which the district is located. The district shall maintain records of the correspondence.

(2) Within 60 days of approval of its management plan, a district must forward a copy of its approved management plan to the other districts wholly or partially located in the same groundwater management area or areas. The district shall maintain records of the correspondence.

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title (relating to Noncompliance Review and Commission Action), and TWC, §36.3011 [~~§36.1082~~], and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

*§293.22. Noncompliance Review and Commission Action.*

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. Management plan noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan for review and approval to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) receive within 60 days of submittal, written approval from the executive administrator of the Texas Water Development Board for a management plan, an amended management plan, or a readopted management plan as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan for review and approval to the executive administrator of the Texas Water Development Board at least once every five years after the date of the most recent management plan approval;

(4) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the district's performance as provided by TWC, §36.302; or

(5) adopt, implement, or enforce district management plans and rules to protect groundwater as evidenced in a report prepared by

a commission-appointed review panel as provided by TWC, §36.3011 [~~§36.1082~~] and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director shall notify the district and may attempt to resolve any noncompliance set out in subsection (a) of this section with the district.

(2) After review of the facts and identification of noncompliance issues, the executive director shall submit a compliance agreement to the district. The compliance agreement must clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(3) The district shall be provided a specified time frame not to exceed 60 days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to amend the compliance agreement schedule, it must contact the executive director within 30 days of receipt of the compliance agreement so that the compliance agreement can be considered and signed by the district and its board of directors within the 60-day time frame.

(4) If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of the agreement terms. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for commission enforcement actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement Referrals to SOAH). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Notice of Executive Director's Preliminary Report). If the executive director's report recommends dissolution of a district or of a board of directors or referral of the matter to the Office of the Attorney General requesting the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or referral of the matter to the Office of the Attorney General requesting the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, [~~§§36.1082,~~] §§36.301, 36.3011, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by TWC, §35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

*§293.23. Petition Requesting Commission Inquiry.*

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), [~~§36.1082 and~~] §36.3011. An affected person means, with respect to a management

area: [An affected person is a landowner, water well owner, or other user of groundwater in the groundwater management area (GMA), a GCD in or adjacent to the GMA, a regional water planning group with a water management strategy in the GMA, a person who holds or is applying for a permit from a GCD in the GMA, or a person who has groundwater rights in the GMA. Such petitions must be filed following the procedures prescribed by this section.]

(1) an owner of land in the management area;

(2) a GCD or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area; or

(5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting [by resolution];

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by [for] the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted [applicable] desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted [applicable] desired future conditions [adopted for the management area during the joint planning process];

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

(d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

(e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy

of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) In accordance with TWC, §36.3011 [§36.1082], the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(h) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause contained in subsection (b)(1) - (9) of this section applies. The executive director shall, no later than 45 days after the date the review panel report was received, rec-

ommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2015.

TRD-201504785

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 20, 2015

For further information, please call: (512) 239-2141

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER D. OCCUPATION TAX ON SULPHUR PRODUCERS

###### 34 TAC §3.41

The Comptroller of Public Accounts proposes amendments to §3.41, concerning definition and due dates. The amendments are proposed to implement the provisions of Senate Bill 757, 84th Legislature, 2015 which repealed Tax Code, Chapter 203, effective September 1, 2015.

New subsection (a) indicates the applicability of the rule prior to September 1, 2015.

New subsection (b) clarifies the filing period for the last required report. Subsequent subsections are relettered accordingly.

Rellettered subsection (d) is amended to reflect that the due dates for the reports and tax payments only apply to sulphur produced prior to September 1, 2015.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe,

# Texas Commission on Environmental Quality



## **ORDER ADOPTING AMENDED RULES**

**Docket No. 2015-1000-RUL**

**Rule Project No. 2015-025-293-OW**

On April 27, 2016, the Texas Commission on Environmental Quality (Commission) adopted amended §§293.17, 293.20, 293.22, and 293.23 in 30 Texas Administrative Code Chapter 293, concerning Water Districts. The proposed rules were published for comment in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8172).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (West 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Signed:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., P.E., Chairman