

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: July 1, 2020

DATE OF REQUEST: June 12, 2020

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Andreea Vasile, Rule/Agenda Coordinator, (512) 239-1806.

CAPTION: Docket No. 2018-0294-RUL. Consideration of the adoption of the amendments to Sections 344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; the repeal of Section 344.32; and new Section 344.66 of 30 TAC Chapter 344, Landscape Irrigation.

The adoption incorporates some of the requested changes made by the Texas Commission on Environmental Quality Irrigator Advisory Council in two rule petitions (Non-rule Project Nos. 2017-041-PET-NR and 2017-042-PET-NR), as well as amend existing sections, repeal a section, and add a new section in order to better align the rules with state statutes and other related regulations. These adopted revisions will strengthen the rules by increasing protection of public health and water conservation. The proposed rules were published in the January 31, 2020 issue of the *Texas Register* (45 TexReg 694). (Marilyn Gates, Alicia Ramirez) (Rule Project No. 2018-004-344-CE)

Ramiro Garcia Jr.

Acting Deputy Director

Kristi Mills-Jurach

Division Director

Andreea Vasile

Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 12, 2020

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Ramiro Garcia Jr., Acting Deputy Director
Office of Compliance and Enforcement

Docket No.: 2018-0294-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 344, Landscape Irrigation
Landscape Irrigation Backflow Assemblies
Rule Project No. 2018-004-344-CE

Background and reason(s) for the rulemaking:

This rulemaking is in response to two petitions submitted by the Texas Commission on Environmental Quality's (TCEQ or commission) Irrigator Advisory Council (IAC), which were granted by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The IAC requested that the commission classify all irrigation systems as health hazards; eliminate the use of double check valves; add the use of Spill Resistant Vacuum Breakers; require that the backflow prevention assembly be tested after repair, replacement, or relocation; require the use of in-line filters or strainers as recommended by the manufacturers; and change the term "backflow prevention devices" to "backflow prevention assemblies."

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will incorporate some of the requested changes within the two rule petitions, as well as amend existing sections, repeal a section, and add a new section to better align the rules with state statutes and other related regulations. These amendments will strengthen the rules by increasing protection of public health and water conservation.

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

This rulemaking will better align the rules with state statutes. Senate Bill (SB) 3 and House Bill (HB) 4, 80th Texas Legislature (2007), required the regulation of the design, installation, and operation of irrigation systems and licensed irrigators. HB 1656, 80th Texas Legislature (2007), required local jurisdictions with a population of 20,000 or more to adopt landscape irrigation ordinances and provided water districts the option of adopting landscape irrigation ordinances.

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

There were additional recommendations made by the TCEQ IAC, as well as by staff in the TCEQ Landscape Irrigation Program, that were incorporated into the rulemaking to facilitate complaint investigations, compliance, and customer service.

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Statutory authority:

Texas Water Code (TWC), §§5.013, 5.102, 5.103, 5.105, and 5.107; TWC, §§37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and Texas Health and Safety Code, §341.033 and §341.034.

Effect on the:

A.) Regulated community:

This rulemaking will not substantially change the requirements for the regulated industry and will not fiscally impact the industry; however, approximately 17 local jurisdictions may need to adopt a landscape irrigation ordinance to pass along the costs of administering their programs to businesses and individuals.

B.) Public:

Implementation and enforcement of the amended rules, if adopted, should result in increased water conservation, increased protection of public health (potable water supply), and improved compliance with irrigation rules.

C.) Agency programs:

Additional investigation and enforcement activities can be absorbed by current resources.

Stakeholder meetings:

The executive director's staff collected stakeholder feedback on the proposed amendments requested in the IAC's petitions to Chapter 344. Public stakeholder meetings were held in Austin, Corpus Christi, El Paso, Fort Worth, Harlingen, Houston, Lubbock, San Antonio, and Tyler. In addition, written stakeholder comments were received from 207 interested parties. Some feedback from the meetings and content from comments received were incorporated into the rule language.

Public comment:

A rule public hearing was held in Austin on February 27, 2020. The commission received comments from 2grunirrigation, LLC; Accurate and Accountable Backflow; Adams Engineering & Development Consultants; Andy's Sprinkler and Drainage; Austin Water; Austin Water SSD; Bac-Flo Unlimited, Inc; Barron Irrigation Repair, LLC; C2 Backflow Services, LLC; Christian Irrigation; City of Allen; City of Denton; City of Frisco; City of Saginaw; Classic Backflow, LLC; Coleman's Lawn Care; Conserva Irrigation; Dallas Irrigation Association; Denton Lawn Sprinkler, Inc; Express Lawn Sprinklers LLC; Frisco Independent School District (ISD); Greg's Sprinkler Works; Irrigation Supply Inc.; Irri-Light Incorporated; Kalan Backflow Service; Longhorn, Inc; MasterScapes; MCR Environmental Services, Inc.; O'Neill & Dunbar, Inc.; Prince Irrigation; Repair Masters Sprinkler Repair, LLC; RW Long, Inc.; South Plains Irrigation Association; Studio 16:19; Terry's Lawn Care; Texas Association of Builders; Texas Irrigation Association; Texas Irrigation Supply; Texas Nursery & Landscape Association; Texas Outdoors; Texas Star; Tomball ISD, Town of Prosper; WaterMark Irrigation, Inc.; Wylie Northeast S.U.D.; and 17 individuals.

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Generally, the comments were regarding:

- whether irrigation systems were going to be classified as health hazards;
- testing frequency of backflow prevention assemblies;
- the use of the reduced pressure principle backflow prevention assembly;
- the use of double check valve backflow prevention assemblies; and
- aesthetics and freeze protection of aboveground installations of backflow prevention assemblies.

Significant changes from proposal:

As a result of two comments requesting the inclusion of a definition for “Sprinkler systems” and/or “Sprinklers” in §344.1, Definitions, a change was made to the definition of irrigation system in §344.1(21) to include sprinklers and sprinkler systems in the definition.

Other non-substantive, grammatical corrections were made.

Potential controversial concerns and legislative interest:

There are no expected controversial concerns or items of legislative interest.

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

Municipalities with a population of more than 20,000 that currently do not have a Landscape Irrigation Program would be impacted. There are an estimated 17 municipalities that would be required to implement a program.

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

If this rulemaking does not go forward, the recommendations in the rule petitions would not be implemented, and some ambiguity in the current rule language would remain.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: January 31, 2020

Anticipated *Texas Register* adoption publication date: July 17, 2020

Anticipated effective date: July 23, 2020

Six-month *Texas Register* filing deadline: July 31, 2020

Agency contacts:

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Alicia Ramirez, Staff Attorney, (512) 239-0133

Andreea Vasile, Texas Register Rule/Agenda Coordinator, (512) 239-1806

Attachments:

SB 3

HB 4

HB 1656

Commissioners

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Re: Docket No. 2018-0294-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Marilyn Gates
Andrea Vasile

1 AN ACT

2 relating to the development, management, and preservation of the
3 water resources of the state; providing penalties.

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

5 ARTICLE 1. ENVIRONMENTAL FLOWS

6 SECTION 1.01. The heading to Section 5.506, Water Code, is
7 amended to read as follows:

8 Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION
9 RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET
10 ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND
11 INSTREAM USES.

12 SECTION 1.02. Section 5.506, Water Code, is amended by
13 adding Subsection (a-1) and amending Subsections (b) and (c) to
14 read as follows:

15 (a-1) State water that is set aside by the commission to
16 meet the needs for freshwater inflows to affected bays and
17 estuaries and instream uses under Section 11.1471(a)(2) may be made
18 available temporarily for other essential beneficial uses if the
19 commission finds that an emergency exists that cannot practically
20 be resolved in another way.

21 (b) The commission must give written notice of the proposed
22 action [~~suspension~~] to the Parks and Wildlife Department before the
23 commission suspends a permit condition under Subsection (a) or
24 makes water available temporarily under Subsection (a-1) [~~this~~

1 ~~section~~]. The commission shall give the Parks and Wildlife
2 Department an opportunity to submit comments on the proposed action
3 [~~suspension~~] for a period of 72 hours from receipt of the notice and
4 must consider those comments before issuing an order implementing
5 the proposed action [~~imposing the suspension~~].

6 (c) The commission may suspend a permit condition under
7 Subsection (a) or make water available temporarily under Subsection
8 (a-1) [~~this section~~] without notice except as required by
9 Subsection (b).

10 SECTION 1.03. Subsection (j), Section 5.701, Water Code, is
11 amended to read as follows:

12 (j) The fee for other uses of water not specifically named
13 in this section is \$1 per acre-foot, except that no political
14 subdivision may be required to pay fees to use water for recharge of
15 underground freshwater-bearing sands and aquifers or for abatement
16 of natural pollution. A fee is not required for a water right that
17 is [~~This fee is waived for applications for instream-use water~~
18 ~~rights~~] deposited into the Texas Water Trust.

19 SECTION 1.04. Section 11.002, Water Code, is amended by
20 adding Subdivisions (15), (16), (17), (18), and (19) to read as
21 follows:

22 (15) "Environmental flow analysis" means the
23 application of a scientifically derived process for predicting the
24 response of an ecosystem to changes in instream flows or freshwater
25 inflows.

26 (16) "Environmental flow regime" means a schedule of
27 flow quantities that reflects seasonal and yearly fluctuations that

1 typically would vary geographically, by specific location in a
2 watershed, and that are shown to be adequate to support a sound
3 ecological environment and to maintain the productivity, extent,
4 and persistence of key aquatic habitats in and along the affected
5 water bodies.

6 (17) "Environmental flow standards" means those
7 requirements adopted by the commission under Section 11.1471.

8 (18) "Advisory group" means the environmental flows
9 advisory group.

10 (19) "Science advisory committee" means the Texas
11 environmental flows science advisory committee.

12 SECTION 1.05. Subsection (a), Section 11.023, Water Code,
13 is amended to read as follows:

14 (a) To the extent that state water has not been set aside by
15 the commission under Section 11.1471(a)(2) to meet downstream
16 instream flow needs or freshwater inflow needs, state [State] water
17 may be appropriated, stored, or diverted for:

18 (1) domestic and municipal uses, including water for
19 sustaining human life and the life of domestic animals;

20 (2) agricultural uses and industrial uses, meaning
21 processes designed to convert materials of a lower order of value
22 into forms having greater usability and commercial value, including
23 the development of power by means other than hydroelectric;

24 (3) mining and recovery of minerals;

25 (4) hydroelectric power;

26 (5) navigation;

27 (6) recreation and pleasure;

1 (7) public parks; and

2 (8) game preserves.

3 SECTION 1.06. Section 11.0235, Water Code, is amended by
4 amending Subsections (b), (c), and (e) and adding Subsections (d-1)
5 through (d-6) and (f) to read as follows:

6 (b) Maintaining the biological soundness of the state's
7 rivers, lakes, bays, and estuaries is of great importance to the
8 public's economic health and general well-being. The legislature
9 encourages voluntary water and land stewardship to benefit the
10 water in the state, as defined by Section 26.001.

11 (c) The legislature has expressly required the commission
12 while balancing all other public interests to consider and, to the
13 extent practicable, provide for the freshwater inflows and instream
14 flows necessary to maintain the viability of the state's streams,
15 rivers, and bay and estuary systems in the commission's regular
16 granting of permits for the use of state waters. As an essential
17 part of the state's environmental flows policy, all permit
18 conditions relating to freshwater inflows to affected bays and
19 estuaries and instream flow needs must be subject to temporary
20 suspension if necessary for water to be applied to essential
21 beneficial uses during emergencies.

22 (d-1) The legislature has determined that existing water
23 rights that are amended to authorize use for environmental purposes
24 should be enforced in a manner consistent with the enforcement of
25 water rights for other purposes as provided by the laws of this
26 state governing the appropriation of state water.

27 (d-2) The legislature finds that to provide certainty in

1 water management and development and to provide adequate protection
2 of the state's streams, rivers, and bays and estuaries, the state
3 must have a process with specific timelines for prompt action to
4 address environmental flow issues in the state's major basin and
5 bay systems, especially those systems in which unappropriated water
6 is still available.

7 (d-3) The legislature finds that:

8 (1) in those basins in which water is available for
9 appropriation, the commission should establish an environmental
10 set-aside below which water should not be available for
11 appropriation; and

12 (2) in those basins in which the unappropriated water
13 that will be set aside for instream flow and freshwater inflow
14 protection is not sufficient to fully satisfy the environmental
15 flow standards established by the commission, a variety of market
16 approaches, both public and private, for filling the gap must be
17 explored and pursued.

18 (d-4) The legislature finds that while the state has
19 pioneered tools to address freshwater inflow needs for bays and
20 estuaries, there are limitations to those tools in light of both
21 scientific and public policy evolution. To fully address bay and
22 estuary environmental flow issues, the foundation of work
23 accomplished by the state should be improved. While the state's
24 instream flow studies program appears to encompass a comprehensive
25 and scientific approach for establishing a process to assess
26 instream flow needs for rivers and streams across the state, more
27 extensive review and examination of the details of the program,

1 which may not be fully developed until the program is under way, are
2 needed to ensure an effective tool for evaluating riverine
3 environmental flow conditions.

4 (d-5) The legislature finds that the management of water to
5 meet instream flow and freshwater inflow needs should be evaluated
6 on a regular basis and adapted to reflect both improvements in
7 science related to environmental flows and future changes in
8 projected human needs for water. In addition, the development of
9 management strategies for addressing environmental flow needs
10 should be an ongoing, adaptive process that considers and addresses
11 local issues.

12 (d-6) The legislature finds that recommendations for state
13 action to protect instream flows and freshwater inflows should be
14 developed through a consensus-based, regional approach involving
15 balanced representation of stakeholders and that such a process
16 should be encouraged throughout the state.

17 (e) The fact that greater pressures and demands are being
18 placed on the water resources of the state makes it of paramount
19 importance to ensure [~~reexamine the process for ensuring~~] that
20 these important priorities are effectively addressed by detailing
21 how environmental flow standards are to be developed using the
22 environmental studies that have been and are to be performed by the
23 state and others and specifying in clear delegations of authority
24 how those environmental flow standards will be integrated into the
25 regional water planning and water permitting process [~~to the~~
26 ~~commission~~].

27 (f) The legislature recognizes that effective

1 implementation of the approach provided by this chapter for
2 protecting instream flows and freshwater inflows will require more
3 effective water rights administration and enforcement systems than
4 are currently available in most areas of the state.

5 SECTION 1.07. Subchapter B, Chapter 11, Water Code, is
6 amended by adding Sections 11.0236, 11.02361, 11.02362, and 11.0237
7 to read as follows:

8 Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) In
9 recognition of the importance that the ecological soundness of our
10 riverine, bay, and estuary systems and riparian lands has on the
11 economy, health, and well-being of the state there is created the
12 environmental flows advisory group.

13 (b) The advisory group is composed of nine members as
14 follows:

15 (1) three members appointed by the governor;

16 (2) three members of the senate appointed by the
17 lieutenant governor; and

18 (3) three members of the house of representatives
19 appointed by the speaker of the house of representatives.

20 (c) Of the members appointed under Subsection (b)(1):

21 (1) one member must be a member of the commission;

22 (2) one member must be a member of the board; and

23 (3) one member must be a member of the Parks and
24 Wildlife Commission.

25 (d) Each member of the advisory group serves at the will of
26 the person who appointed the member.

27 (e) The appointed senator with the most seniority and the

1 appointed house member with the most seniority serve together as
2 co-presiding officers of the advisory group.

3 (f) A member of the advisory group is not entitled to
4 receive compensation for service on the advisory group but is
5 entitled to reimbursement of the travel expenses incurred by the
6 member while conducting the business of the advisory group, as
7 provided by the General Appropriations Act.

8 (g) The advisory group may accept gifts and grants from any
9 source to be used to carry out a function of the advisory group.

10 (h) The commission shall provide staff support for the
11 advisory group.

12 (i) The advisory group shall conduct public hearings and
13 study public policy implications for balancing the demands on the
14 water resources of the state resulting from a growing population
15 with the requirements of the riverine, bay, and estuary systems
16 including granting permits for instream flows dedicated to
17 environmental needs or bay and estuary inflows, use of the Texas
18 Water Trust, and any other issues that the advisory group
19 determines have importance and relevance to the protection of
20 environmental flows. In evaluating the options for providing
21 adequate environmental flows, the advisory group shall take notice
22 of the strong public policy imperative that exists in this state
23 recognizing that environmental flows are important to the
24 biological health of our public and private lands, streams and
25 rivers, and bay and estuary systems and are high priorities in the
26 water management process. The advisory group shall specifically
27 address:

1 (1) ways that the ecological soundness of those
2 systems will be ensured in the water rights administration and
3 enforcement and water allocation processes; and

4 (2) appropriate methods to encourage persons
5 voluntarily to convert reasonable amounts of existing water rights
6 to use for environmental flow protection temporarily or
7 permanently.

8 (j) The advisory group may adopt rules, procedures, and
9 policies as needed to administer this section, to implement its
10 responsibilities, and to exercise its authority under Sections
11 11.02361 and 11.02362.

12 (k) Chapter 2110, Government Code, does not apply to the
13 size, composition, or duration of the advisory group.

14 (l) Not later than December 1, 2008, and every two years
15 thereafter, the advisory group shall issue and promptly deliver to
16 the governor, lieutenant governor, and speaker of the house of
17 representatives copies of a report summarizing:

18 (1) any hearings conducted by the advisory group;
19 (2) any studies conducted by the advisory group;
20 (3) any legislation proposed by the advisory group;
21 (4) progress made in implementing Sections 11.02361
22 and 11.02362; and

23 (5) any other findings and recommendations of the
24 advisory group.

25 (m) The advisory group is abolished on the date that the
26 commission has adopted environmental flow standards under Section
27 11.1471 for all of the river basin and bay systems in this state.

1 Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY
2 COMMITTEE. (a) The Texas environmental flows science advisory
3 committee consists of at least five but not more than nine members
4 appointed by the advisory group.

5 (b) The advisory group shall appoint to the science advisory
6 committee persons who will provide an objective perspective and
7 diverse technical expertise, including expertise in hydrology,
8 hydraulics, water resources, aquatic and terrestrial biology,
9 geomorphology, geology, water quality, computer modeling, and
10 other technical areas pertinent to the evaluation of environmental
11 flows.

12 (c) Members of the science advisory committee serve
13 five-year terms expiring March 1. A vacancy on the science advisory
14 committee is filled by appointment by the co-presiding officers of
15 the advisory group for the unexpired term.

16 (d) Chapter 2110, Government Code, does not apply to the
17 size, composition, or duration of the science advisory committee.

18 (e) The science advisory committee shall:

19 (1) serve as an objective scientific body to advise
20 and make recommendations to the advisory group on issues relating
21 to the science of environmental flow protection; and

22 (2) develop recommendations to help provide overall
23 direction, coordination, and consistency relating to:

24 (A) environmental flow methodologies for bay and
25 estuary studies and instream flow studies;

26 (B) environmental flow programs at the
27 commission, the Parks and Wildlife Department, and the board; and

1 (C) the work of the basin and bay expert science
2 teams described in Section 11.02362.

3 (f) To assist the advisory group to assess the extent to
4 which the recommendations of the science advisory committee are
5 considered and implemented, the commission, the Parks and Wildlife
6 Department, and the board shall provide written reports to the
7 advisory group, at intervals determined by the advisory group, that
8 describe:

9 (1) the actions taken by each agency in response to
10 each recommendation; and

11 (2) for each recommendation not implemented, the
12 reason it was not implemented.

13 (g) The science advisory committee is abolished on the date
14 the advisory group is abolished under Section 11.0236(m).

15 Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME
16 RECOMMENDATIONS. (a) For the purposes of this section, the
17 advisory group, not later than November 1, 2007, shall define the
18 geographical extent of each river basin and bay system in this state
19 for the sole purpose of developing environmental flow regime
20 recommendations under this section and adoption of environmental
21 flow standards under Section 11.1471.

22 (b) The advisory group shall give priority in descending
23 order to the following river basin and bay systems of the state for
24 the purpose of developing environmental flow regime
25 recommendations and adopting environmental flow standards:

26 (1) the river basin and bay system consisting of the
27 Trinity and San Jacinto Rivers and Galveston Bay and the river basin

1 and bay system consisting of the Sabine and Neches Rivers and Sabine
2 Lake Bay;

3 (2) the river basin and bay system consisting of the
4 Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the
5 river basin and bay system consisting of the Guadalupe, San
6 Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas,
7 and San Antonio Bays; and

8 (3) the river basin and bay system consisting of the
9 Nueces River and Corpus Christi and Baffin Bays, the river basin and
10 bay system consisting of the Rio Grande, the Rio Grande estuary, and
11 the Lower Laguna Madre, and the Brazos River and its associated bay
12 and estuary system.

13 (c) For the river basin and bay systems listed in Subsection
14 (b)(1):

15 (1) the advisory group shall appoint the basin and bay
16 area stakeholders committee not later than November 1, 2007;

17 (2) the basin and bay area stakeholders committee
18 shall establish a basin and bay expert science team not later than
19 March 1, 2008;

20 (3) the basin and bay expert science team shall
21 finalize environmental flow regime recommendations and submit them
22 to the basin and bay area stakeholders committee, the advisory
23 group, and the commission not later than March 1, 2009, except that
24 at the request of the basin and bay area stakeholders committee for
25 good cause shown, the advisory group may extend the deadline
26 provided by this subdivision;

27 (4) the basin and bay area stakeholders committee

1 shall submit to the commission its comments on and recommendations
2 regarding the basin and bay expert science team's recommended
3 environmental flow regime not later than September 1, 2009; and

4 (5) the commission shall adopt the environmental flow
5 standards as provided by Section 11.1471 not later than September
6 1, 2010.

7 (d) The advisory group shall appoint the basin and bay area
8 stakeholders committees for the river basin and bay systems listed
9 in Subsection (b)(2) not later than September 1, 2008, and shall
10 appoint the basin and bay area stakeholders committees for the
11 river basin and bay systems listed in Subsection (b)(3) not later
12 than September 1, 2009. The advisory group shall establish a
13 schedule for the performance of the tasks listed in Subsections
14 (c)(2) through (5) with regard to the river basin and bay systems
15 listed in Subsections (b)(2) and (3) that will result in the
16 adoption of environmental flow standards for that river basin and
17 bay system by the commission as soon as is reasonably possible.
18 Each basin and bay area stakeholders committee and basin and bay
19 expert science team for a river basin and bay system listed in
20 Subsection (b)(2) or (3) shall make recommendations to the advisory
21 group with regard to the schedule applicable to that river basin and
22 bay system. The advisory group shall consider the recommendations
23 of the basin and bay area stakeholders committee and basin and bay
24 expert science team as well as coordinate with, and give
25 appropriate consideration to the recommendations of, the
26 commission, the Parks and Wildlife Department, and the board in
27 establishing the schedule.

1 (e) For a river basin and bay system or a river basin that
2 does not have an associated bay system in this state not listed in
3 Subsection (b), the advisory group shall establish a schedule for
4 the development of environmental flow regime recommendations and
5 the adoption of environmental flow standards. The advisory group
6 shall develop the schedule in consultation with the commission, the
7 Parks and Wildlife Department, the board, and the pertinent basin
8 and bay area stakeholders committee and basin and bay expert
9 science team. The advisory group may, on its own initiative or on
10 request, modify a schedule established under this subsection to be
11 more responsive to particular circumstances, local desires,
12 changing conditions, or time-sensitive conflicts. This subsection
13 does not prohibit, in a river basin and bay system for which the
14 advisory group has not yet established a schedule for the
15 development of environmental flow regime recommendations and the
16 adoption of environmental flow standards, an effort to develop
17 information on environmental flow needs and ways in which those
18 needs can be met by a voluntary consensus-building process.

19 (f) The advisory group shall appoint a basin and bay area
20 stakeholders committee for each river basin and bay system in this
21 state for which a schedule for the development of environmental
22 flow regime recommendations and the adoption of environmental flow
23 standards is specified by or established under Subsection (c), (d),
24 or (e). Chapter 2110, Government Code, does not apply to the size,
25 composition, or duration of a basin and bay area stakeholders
26 committee. Each committee must consist of at least 17 members. The
27 membership of each committee must:

1 (1) reflect a fair and equitable balance of interest
2 groups concerned with the particular river basin and bay system for
3 which the committee is established; and

4 (2) be representative of appropriate stakeholders,
5 including the following if they have a presence in the particular
6 river basin and bay system for which the committee is established:

7 (A) agricultural water users, including
8 representatives of each of the following sectors:

9 (i) agricultural irrigation;

10 (ii) free-range livestock; and

11 (iii) concentrated animal feeding
12 operation;

13 (B) recreational water users, including coastal
14 recreational anglers and businesses supporting water recreation;

15 (C) municipalities;

16 (D) soil and water conservation districts;

17 (E) industrial water users, including
18 representatives of each of the following sectors:

19 (i) refining;

20 (ii) chemical manufacturing;

21 (iii) electricity generation; and

22 (iv) production of paper products or
23 timber;

24 (F) commercial fishermen;

25 (G) public interest groups;

26 (H) regional water planning groups;

27 (I) groundwater conservation districts;

1 (J) river authorities and other conservation and
2 reclamation districts with jurisdiction over surface water; and

3 (K) environmental interests.

4 (g) Members of a basin and bay area stakeholders committee
5 serve five-year terms expiring March 1. If a vacancy occurs on a
6 committee, the remaining members of the committee by majority vote
7 shall appoint a member to serve the remainder of the unexpired term.

8 (h) Meetings of a basin and bay area stakeholders committee
9 must be open to the public.

10 (i) Each basin and bay area stakeholders committee shall
11 establish a basin and bay expert science team for the river basin
12 and bay system for which the committee is established. The basin
13 and bay expert science team must be established not later than six
14 months after the date the basin and bay area stakeholders committee
15 is established. Chapter 2110, Government Code, does not apply to
16 the size, composition, or duration of a basin and bay expert science
17 team. Each basin and bay expert science team must be composed of
18 technical experts with special expertise regarding the river basin
19 and bay system or regarding the development of environmental flow
20 regimes. A person may serve as a member of more than one basin and
21 bay expert science team at the same time.

22 (j) The members of a basin and bay expert science team serve
23 five-year terms expiring April 1. A vacancy on a basin and bay
24 expert science team is filled by appointment by the pertinent basin
25 and bay area stakeholders committee to serve the remainder of the
26 unexpired term.

27 (k) The science advisory committee shall appoint one of its

1 members to serve as a liaison to each basin and bay expert science
2 team to facilitate coordination and consistency in environmental
3 flow activities throughout the state. The commission, the Parks
4 and Wildlife Department, and the board shall provide technical
5 assistance to each basin and bay expert science team, including
6 information about the studies conducted under Sections 16.058 and
7 16.059, and may serve as nonvoting members of the basin and bay
8 expert science team to facilitate the development of environmental
9 flow regime recommendations.

10 (l) Where reasonably practicable, meetings of a basin and
11 bay expert science team must be open to the public.

12 (m) Each basin and bay expert science team shall develop
13 environmental flow analyses and a recommended environmental flow
14 regime for the river basin and bay system for which the team is
15 established through a collaborative process designed to achieve a
16 consensus. In developing the analyses and recommendations, the
17 science team must consider all reasonably available science,
18 without regard to the need for the water for other uses, and the
19 science team's recommendations must be based solely on the best
20 science available. For the Rio Grande below Fort Quitman, any uses
21 attributable to Mexican water flows must be excluded from
22 environmental flow regime recommendations.

23 (n) Each basin and bay expert science team shall submit its
24 environmental flow analyses and environmental flow regime
25 recommendations to the pertinent basin and bay area stakeholders
26 committee, the advisory group, and the commission in accordance
27 with the applicable schedule specified by or established under

1 Subsection (c), (d), or (e). The basin and bay area stakeholders
2 committee and the advisory group may not change the environmental
3 flow analyses or environmental flow regime recommendations of the
4 basin and bay expert science team.

5 (o) Each basin and bay area stakeholders committee shall
6 review the environmental flow analyses and environmental flow
7 regime recommendations submitted by the committee's basin and bay
8 expert science team and shall consider them in conjunction with
9 other factors, including the present and future needs for water for
10 other uses related to water supply planning in the pertinent river
11 basin and bay system. For the Rio Grande, the basin and bay area
12 stakeholders committee shall also consider the water accounting
13 requirements for any international water sharing treaty, minutes,
14 and agreement applicable to the Rio Grande and the effects on
15 allocation of water by the Rio Grande watermaster in the middle and
16 lower Rio Grande. The Rio Grande basin and bay expert science team
17 may not recommend any environmental flow regime that would result
18 in a violation of a treaty or court decision. The basin and bay area
19 stakeholders committee shall develop recommendations regarding
20 environmental flow standards and strategies to meet the
21 environmental flow standards and submit those recommendations to
22 the commission and to the advisory group in accordance with the
23 applicable schedule specified by or established under Subsection
24 (c), (d), or (e). In developing its recommendations, the basin and
25 bay area stakeholders committee shall operate on a consensus basis
26 to the maximum extent possible.

27 (p) In recognition of the importance of adaptive

1 management, after submitting its recommendations regarding
2 environmental flow standards and strategies to meet the
3 environmental flow standards to the commission, each basin and bay
4 area stakeholders committee, with the assistance of the pertinent
5 basin and bay expert science team, shall prepare and submit for
6 approval by the advisory group a work plan. The work plan must:

7 (1) establish a periodic review of the basin and bay
8 environmental flow analyses and environmental flow regime
9 recommendations, environmental flow standards, and strategies, to
10 occur at least once every 10 years;

11 (2) prescribe specific monitoring, studies, and
12 activities; and

13 (3) establish a schedule for continuing the validation
14 or refinement of the basin and bay environmental flow analyses and
15 environmental flow regime recommendations, the environmental flow
16 standards adopted by the commission, and the strategies to achieve
17 those standards.

18 (g) In accordance with the applicable schedule specified by
19 or established under Subsection (c), (d), or (e), the advisory
20 group, with input from the science advisory committee, shall review
21 the environmental flow analyses and environmental flow regime
22 recommendations submitted by each basin and bay expert science
23 team. If appropriate, the advisory group shall submit comments on
24 the analyses and recommendations to the commission for use by the
25 commission in adopting rules under Section 11.1471. Comments must
26 be submitted not later than six months after the date of receipt of
27 the analyses and recommendations.

1 (r) Notwithstanding the other provisions of this section,
2 in the event the commission, by permit or order, has established an
3 estuary advisory council with specific duties related to
4 implementation of permit conditions for environmental flows, that
5 council may continue in full force and effect and shall act as and
6 perform the duties of the basin and bay area stakeholders committee
7 under this section. The estuary advisory council shall add members
8 from stakeholder groups and from appropriate science and technical
9 groups, if necessary, to fully meet the criteria for membership
10 established in Subsection (f) and shall operate under the
11 provisions of this section.

12 (s) Each basin and bay area stakeholders committee and basin
13 and bay expert science team is abolished on the date the advisory
14 group is abolished under Section 11.0236(m).

15 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO
16 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The
17 commission may not issue a new permit for instream flows dedicated
18 to environmental needs or bay and estuary inflows. The commission
19 may approve an application to amend an existing permit or
20 certificate of adjudication to change the use to or add a use for
21 instream flows dedicated to environmental needs or bay and estuary
22 inflows.

23 (b) This section does not alter the commission's
24 obligations under Section 11.042(b) or (c), 11.046(b),
25 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491,
26 11.150, 11.152, 16.058, or 16.059.

27 SECTION 1.08. Subsection (b), Section 11.082, Water Code,

1 is amended to read as follows:

2 (b) The state may recover the penalties prescribed in
3 Subsection (a) [~~of this section~~] by suit brought for that purpose in
4 a court of competent jurisdiction. The state may seek those
5 penalties regardless of whether a watermaster has been appointed
6 for the water division, river basin, or segment of a river basin
7 where the unlawful use is alleged to have occurred.

8 SECTION 1.09. Section 11.0841, Water Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) For purposes of this section, the Parks and Wildlife
11 Department has:

12 (1) the rights of a holder of a water right that is
13 held in the Texas Water Trust, including the right to file suit in a
14 civil court to prevent the unlawful use of such a right;

15 (2) the right to act in the same manner that a holder
16 of a water right may act to protect the holder's rights in seeking
17 to prevent any person from appropriating water in violation of a
18 set-aside established by the commission under Section 11.1471 to
19 meet instream flow needs or freshwater inflow needs; and

20 (3) the right to file suit in a civil court to prevent
21 the unlawful use of a set-aside established under Section 11.1471.

22 SECTION 1.10. Subsection (a), Section 11.0842, Water Code,
23 is amended to read as follows:

24 (a) If a person violates this chapter, a rule or order
25 adopted under this chapter or Section 16.236 [~~of this code~~], or a
26 permit, certified filing, or certificate of adjudication issued
27 under this chapter, the commission may assess an administrative

1 penalty against that person as provided by this section. The
2 commission may assess an administrative penalty for a violation
3 relating to a water division or a river basin or segment of a river
4 basin regardless of whether a watermaster has been appointed for
5 the water division or river basin or segment of the river basin.

6 SECTION 1.11. Subsection (a), Section 11.0843, Water Code,
7 is amended to read as follows:

8 (a) Upon witnessing a violation of this chapter or a rule or
9 order or a water right issued under this chapter, the executive
10 director or a person designated by the executive director,
11 including a watermaster or the watermaster's deputy, [~~as defined by~~
12 ~~commission rule,~~] may issue the alleged violator a field citation
13 alleging that a violation has occurred and providing the alleged
14 violator the option of either:

15 (1) without admitting to or denying the alleged
16 violation, paying an administrative penalty in accordance with the
17 predetermined penalty amount established under Subsection (b) [~~of~~
18 ~~this section~~] and taking remedial action as provided in the
19 citation; or

20 (2) requesting a hearing on the alleged violation in
21 accordance with Section 11.0842 [~~of this code~~].

22 SECTION 1.12. Subsection (b), Section 11.134, Water Code,
23 is amended to read as follows:

24 (b) The commission shall grant the application only if:

25 (1) the application conforms to the requirements
26 prescribed by this chapter and is accompanied by the prescribed
27 fee;

1 (2) unappropriated water is available in the source of
2 supply;

3 (3) the proposed appropriation:

4 (A) is intended for a beneficial use;

5 (B) does not impair existing water rights or
6 vested riparian rights;

7 (C) is not detrimental to the public welfare;

8 (D) considers any applicable environmental flow
9 standards established under Section 11.1471 and, if applicable, the
10 assessments performed under Sections 11.147(d) and (e) and Sections
11 11.150, 11.151, and 11.152; and

12 (E) addresses a water supply need in a manner
13 that is consistent with the state water plan and the relevant
14 approved regional water plan for any area in which the proposed
15 appropriation is located, unless the commission determines that
16 conditions warrant waiver of this requirement; and

17 (4) the applicant has provided evidence that
18 reasonable diligence will be used to avoid waste and achieve water
19 conservation as defined by [~~Subdivision (8)(B),~~] Section
20 11.002(8)(B) [~~11.002~~].

21 SECTION 1.13. Section 11.147, Water Code, is amended by
22 amending Subsections (b), (d), and (e) and adding Subsections
23 (e-1), (e-2), and (e-3) to read as follows:

24 (b) In its consideration of an application for a permit to
25 store, take, or divert water, the commission shall assess the
26 effects, if any, of the issuance of the permit on the bays and
27 estuaries of Texas. For permits issued within an area that is 200

1 river miles of the coast, to commence from the mouth of the river
2 thence inland, the commission shall include in the permit any
3 conditions considered necessary to maintain beneficial inflows to
4 any affected bay and estuary system, to the extent practicable when
5 considering all public interests and the studies mandated by
6 Section 16.058 as evaluated under Section 11.1491[~~, those~~
7 ~~conditions considered necessary to maintain beneficial inflows to~~
8 ~~any affected bay and estuary system~~].

9 (d) In its consideration of an application to store, take,
10 or divert water, the commission shall include in the permit, to the
11 extent practicable when considering all public interests, those
12 conditions considered by the commission necessary to maintain
13 existing instream uses and water quality of the stream or river to
14 which the application applies. In determining what conditions to
15 include in the permit under this subsection, the commission shall
16 consider among other factors:

17 (1) the studies mandated by Section 16.059; and

18 (2) any water quality assessment performed under
19 Section 11.150.

20 (e) The commission shall include in the permit, to the
21 extent practicable when considering all public interests, those
22 conditions considered by the commission necessary to maintain fish
23 and wildlife habitats. In determining what conditions to include
24 in the permit under this subsection, the commission shall consider
25 any assessment performed under Section 11.152.

26 (e-1) Any permit for a new appropriation of water or an
27 amendment to an existing water right that increases the amount of

1 water authorized to be stored, taken, or diverted must include a
2 provision allowing the commission to adjust the conditions included
3 in the permit or amended water right to provide for protection of
4 instream flows or freshwater inflows. With respect to an amended
5 water right, the provision may not allow the commission to adjust a
6 condition of the amendment other than a condition that applies only
7 to the increase in the amount of water to be stored, taken, or
8 diverted authorized by the amendment. This subsection does not
9 affect an appropriation of or an authorization to store, take, or
10 divert water under a permit or amendment to a water right issued
11 before September 1, 2007. The commission shall adjust the
12 conditions if the commission determines, through an expedited
13 public comment process, that such an adjustment is appropriate to
14 achieve compliance with applicable environmental flow standards
15 adopted under Section 11.1471. The adjustment:

16 (1) in combination with any previous adjustments made
17 under this subsection may not increase the amount of the
18 pass-through or release requirement for the protection of instream
19 flows or freshwater inflows by more than 12.5 percent of the
20 annualized total of that requirement contained in the permit as
21 issued or of that requirement contained in the amended water right
22 and applicable only to the increase in the amount of water
23 authorized to be stored, taken, or diverted under the amended water
24 right;

25 (2) must be based on appropriate consideration of the
26 priority dates and diversion locations of any other water rights
27 granted in the same river basin that are subject to adjustment under

1 this subsection; and

2 (3) must be based on appropriate consideration of any
3 voluntary contributions to the Texas Water Trust, and of any
4 voluntary amendments to existing water rights to change the use of a
5 specified quantity of water to or add a use of a specified quantity
6 of water for instream flows dedicated to environmental needs or bay
7 and estuary inflows as authorized by Section 11.0237(a), that
8 actually contribute toward meeting the applicable environmental
9 flow standards.

10 (e-2) Any water right holder who makes a contribution or
11 amends a water right as described by Subsection (e-1)(3) is
12 entitled to appropriate credit for the benefits of the contribution
13 or amendment against the adjustment of the holder's water right
14 under Subsection (e-1).

15 (e-3) Notwithstanding Subsections (b)-(e), for the purpose
16 of determining the environmental flow conditions necessary to
17 maintain freshwater inflows to an affected bay and estuary system,
18 existing instream uses and water quality of a stream or river, or
19 fish and aquatic wildlife habitats, the commission shall apply any
20 applicable environmental flow standard, including any
21 environmental flow set-aside, adopted under Section 11.1471
22 instead of considering the factors specified by those subsections.

23 SECTION 1.14. Subchapter D, Chapter 11, Water Code, is
24 amended by adding Section 11.1471 to read as follows:

25 Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

26 (a) The commission by rule shall:

27 (1) adopt appropriate environmental flow standards

1 for each river basin and bay system in this state that are adequate
2 to support a sound ecological environment, to the maximum extent
3 reasonable considering other public interests and other relevant
4 factors;

5 (2) establish an amount of unappropriated water, if
6 available, to be set aside to satisfy the environmental flow
7 standards to the maximum extent reasonable when considering human
8 water needs; and

9 (3) establish procedures for implementing an
10 adjustment of the conditions included in a permit or an amended
11 water right as provided by Sections 11.147(e-1) and (e-2).

12 (b) In adopting environmental flow standards for a river
13 basin and bay system under Subsection (a)(1), the commission shall
14 consider:

15 (1) the definition of the geographical extent of the
16 river basin and bay system adopted by the advisory group under
17 Section 11.02362(a) and the definition and designation of the river
18 basin by the board under Section 16.051(c);

19 (2) the schedule established by the advisory group
20 under Section 11.02362(d) or (e) for the adoption of environmental
21 flow standards for the river basin and bay system, if applicable;

22 (3) the environmental flow analyses and the
23 recommended environmental flow regime developed by the applicable
24 basin and bay expert science team under Section 11.02362(m);

25 (4) the recommendations developed by the applicable
26 basin and bay area stakeholders committee under Section 11.02362(o)
27 regarding environmental flow standards and strategies to meet the

1 flow standards;

2 (5) any comments submitted by the advisory group to
3 the commission under Section 11.02362(q);

4 (6) the specific characteristics of the river basin
5 and bay system;

6 (7) economic factors;

7 (8) the human and other competing water needs in the
8 river basin and bay system;

9 (9) all reasonably available scientific information,
10 including any scientific information provided by the science
11 advisory committee; and

12 (10) any other appropriate information.

13 (c) Environmental flow standards adopted under Subsection
14 (a)(1) must consist of a schedule of flow quantities, reflecting
15 seasonal and yearly fluctuations that may vary geographically by
16 specific location in a river basin and bay system.

17 (d) As provided by Section 11.023, the commission may not
18 issue a permit for a new appropriation or an amendment to an
19 existing water right that increases the amount of water authorized
20 to be stored, taken, or diverted if the issuance of the permit or
21 amendment would impair an environmental flow set-aside established
22 under Subsection (a)(2). A permit for a new appropriation or an
23 amendment to an existing water right that increases the amount of
24 water authorized to be stored, taken, or diverted that is issued
25 after the adoption of an applicable environmental flow set-aside
26 must contain appropriate conditions to ensure protection of the
27 environmental flow set-aside.

1 (e) An environmental flow set-aside established under
2 Subsection (a)(2) for a river basin and bay system other than the
3 middle and lower Rio Grande must be assigned a priority date
4 corresponding to the date the commission receives environmental
5 flow regime recommendations from the applicable basin and bay
6 expert science team and be included in the appropriate water
7 availability models in connection with an application for a permit
8 for a new appropriation or for an amendment to an existing water
9 right that increases the amount of water authorized to be stored,
10 taken, or diverted.

11 (f) An environmental flow standard or environmental flow
12 set-aside adopted under Subsection (a) may be altered by the
13 commission in a rulemaking process undertaken in accordance with a
14 schedule established by the commission. In establishing a
15 schedule, the commission shall consider the applicable work plan
16 approved by the advisory group under Section 11.02362(p). The
17 commission's schedule may not provide for the rulemaking process to
18 occur more frequently than once every 10 years unless the work plan
19 provides for a periodic review under Section 11.02362(p) to occur
20 more frequently than once every 10 years. In that event, the
21 commission may provide for the rulemaking process to be undertaken
22 in conjunction with the periodic review if the commission
23 determines that schedule to be appropriate. A rulemaking process
24 undertaken under this subsection must provide for the participation
25 of stakeholders having interests in the particular river basin and
26 bay system for which the process is undertaken.

27 SECTION 1.15. The heading to Section 11.148, Water Code, is

1 amended to read as follows:

2 Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND
3 EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR
4 ENVIRONMENTAL FLOWS.

5 SECTION 1.16. Section 11.148, Water Code, is amended by
6 adding Subsection (a-1) and amending Subsections (b) and (c) to
7 read as follows:

8 (a-1) State water that is set aside by the commission to
9 meet the needs for freshwater inflows to affected bays and
10 estuaries and instream uses under Section 11.1471(a)(2) may be made
11 available temporarily for other essential beneficial uses if the
12 commission finds that an emergency exists that cannot practically
13 be resolved in another way.

14 (b) Before the commission suspends a permit condition under
15 Subsection (a) or makes water available temporarily under
16 Subsection (a-1) [~~of this section~~], it must give written notice to
17 the Parks and Wildlife Department of the proposed action
18 [~~suspension~~]. The commission shall give the Parks and Wildlife
19 Department an opportunity to submit comments on the proposed action
20 [~~suspension~~] within 72 hours from such time and the commission
21 shall consider those comments before issuing its order implementing
22 the proposed action [~~imposing the suspension~~].

23 (c) The commission may suspend the permit condition under
24 Subsection (a) or make water available temporarily under Subsection
25 (a-1) without notice to any other interested party other than the
26 Parks and Wildlife Department as provided by Subsection (b) [~~of~~
27 ~~this section~~]. However, all affected persons shall be notified

1 immediately by publication, and a hearing to determine whether the
2 suspension should be continued shall be held within 15 days of the
3 date on which the order to suspend is issued.

4 SECTION 1.17. Subsection (a), Section 11.1491, Water Code,
5 is amended to read as follows:

6 (a) The Parks and Wildlife Department and the commission
7 shall have joint responsibility to review the studies prepared
8 under Section 16.058 [~~of this code~~], to determine inflow conditions
9 necessary for the bays and estuaries, and to provide information
10 necessary for water resources management. Each agency shall
11 designate an employee to share equally in the oversight of the
12 program. Other responsibilities shall be divided between the Parks
13 and Wildlife Department and the commission to maximize present
14 in-house capabilities of personnel and to minimize costs to the
15 state. Each agency shall have reasonable access to all information
16 produced by the other agency. Publication of reports completed
17 under this section shall be submitted for comment to [~~both~~] the
18 commission, [~~and~~] the Parks and Wildlife Department, the advisory
19 group, the science advisory committee, and any applicable basin and
20 bay area stakeholders committee and basin and bay expert science
21 team.

22 SECTION 1.18. Subsection (g), Section 11.329, Water Code,
23 is amended to read as follows:

24 (g) The commission may not assess costs under this section
25 against a holder of a non-priority hydroelectric right that owns or
26 operates privately owned facilities that collectively have a
27 capacity of less than two megawatts or against a holder of a water

1 right placed in the Texas Water Trust for a term of at least 20
2 years. [~~This subsection is not intended to affect in any way the~~
3 ~~fees assessed on a water right holder by the commission under~~
4 ~~Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular~~
5 ~~Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts~~
6 ~~of the 73rd Legislature, Regular Session, 1993, a holder of a~~
7 ~~non-priority hydroelectric right that owns or operates privately~~
8 ~~owned facilities that collectively have a capacity of less than two~~
9 ~~megawatts shall be assessed fees at the same rate per acre-foot~~
10 ~~charged to a holder of a non-priority hydroelectric right that owns~~
11 ~~or operates privately owned facilities that collectively have a~~
12 ~~capacity of more than two megawatts.~~]

13 SECTION 1.19. Subsection (e), Section 11.404, Water Code,
14 is amended to read as follows:

15 (e) The court may not assess costs and expenses under this
16 section against:

17 (1) a holder of a non-priority hydroelectric right
18 that owns or operates privately owned facilities that collectively
19 have a capacity of less than two megawatts; or

20 (2) a holder of a water right placed in the Texas Water
21 Trust for a term of at least 20 years.

22 SECTION 1.20. Subchapter I, Chapter 11, Water Code, is
23 amended by adding Section 11.4531 to read as follows:

24 Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For
25 each river basin or segment of a river basin for which the executive
26 director appoints a watermaster under this subchapter, the
27 executive director shall appoint a watermaster advisory committee

1 consisting of at least nine but not more than 15 members. A member
2 of the advisory committee must be a holder of a water right or a
3 representative of a holder of a water right in the river basin or
4 segment of the river basin for which the watermaster is appointed.
5 In appointing members to the advisory committee, the executive
6 director shall consider:

7 (1) geographic representation;

8 (2) amount of water rights held;

9 (3) different types of holders of water rights and
10 users, including water districts, municipal suppliers, irrigators,
11 and industrial users; and

12 (4) experience and knowledge of water management
13 practices.

14 (b) An advisory committee member is not entitled to
15 reimbursement of expenses or to compensation.

16 (c) An advisory committee member serves a two-year term
17 expiring August 31 of each odd-numbered year and holds office until
18 a successor is appointed.

19 (d) The advisory committee shall meet within 30 days after
20 the date the initial appointments have been made and shall select a
21 presiding officer to serve a one-year term. The committee shall
22 meet regularly as necessary.

23 (e) The advisory committee shall:

24 (1) make recommendations to the executive director
25 regarding activities of benefit to the holders of water rights in
26 the administration and distribution of water to holders of water
27 rights in the river basin or segment of the river basin for which

1 the watermaster is appointed;

2 (2) review and comment to the executive director on
3 the annual budget of the watermaster operation; and

4 (3) perform other advisory duties as requested by the
5 executive director regarding the watermaster operation or as
6 requested by holders of water rights and considered by the
7 committee to benefit the administration of water rights in the
8 river basin or segment of the river basin for which the watermaster
9 is appointed.

10 SECTION 1.21. Sections 11.454 and 11.455, Water Code, are
11 amended to read as follows:

12 Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER.
13 Section 11.327 applies to the duties and authority of a watermaster
14 appointed for a river basin or segment of a river basin under this
15 subchapter in the same manner as that section applies to the duties
16 and authority of a watermaster appointed for a water division under
17 Subchapter G [A watermaster as the agent of the commission and under
18 the executive director's supervision shall:

19 ~~[(1) divide the water of the streams or other sources~~
20 ~~of supply of his segment or basin in accordance with the authorized~~
21 ~~water rights;~~

22 ~~[(2) regulate or cause to be regulated the controlling~~
23 ~~works of reservoirs and diversion works in time of water shortage,~~
24 ~~as is necessary because of the rights existing in the streams of his~~
25 ~~segment or basin, or as is necessary to prevent the waste of water~~
26 ~~or its diversion, taking, storage, or use in excess of the~~
27 ~~quantities to which the holders of water rights are lawfully~~

1 ~~entitled, and~~

2 ~~[(3) perform any other duties and exercise any~~
3 ~~authority directed by the commission].~~

4 Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER
5 [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the
6 compensation and expenses of a watermaster appointed for a river
7 basin or segment of a river basin under this subchapter in the same
8 manner as that section applies to the payment of the compensation
9 and expenses of a watermaster appointed for a water division under
10 Subchapter G.

11 (b) The executive director shall deposit the assessments
12 collected under this section to the credit of the watermaster fund.

13 (c) Money deposited under this section to the credit of the
14 watermaster fund may be used only for the purposes specified by
15 Section 11.3291 with regard to the watermaster operation under this
16 subchapter with regard to which the assessments were collected ~~[The~~
17 ~~commission may assess the costs of the watermaster against all~~
18 ~~persons who hold water rights in the river basin or segment of the~~
19 ~~river basin under the watermaster's jurisdiction in accordance with~~
20 ~~Section 11.329 of this code].~~

21 SECTION 1.22. Subchapter F, Chapter 15, Water Code, is
22 amended by adding Section 15.4063 to read as follows:

23 Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may
24 authorize the use of money in the research and planning fund:

25 (1) to compensate the members of the Texas
26 environmental flows science advisory committee established under
27 Section 11.02361 for attendance and participation at meetings of

1 the committee and for transportation, meals, lodging, or other
2 travel expenses associated with attendance at those meetings as
3 provided by the General Appropriations Act;

4 (2) for contracts with cooperating state and federal
5 agencies and universities and with private entities as necessary to
6 provide technical assistance to enable the Texas environmental
7 flows science advisory committee and the basin and bay expert
8 science teams established under Section 11.02362 to perform their
9 statutory duties;

10 (3) to compensate the members of the basin and bay
11 expert science teams established under Section 11.02362 for
12 attendance and participation at meetings of the basin and bay
13 expert science teams and for transportation, meals, lodging, or
14 other travel expenses associated with attendance at those meetings
15 as provided by the General Appropriations Act; and

16 (4) for contracts with political subdivisions
17 designated as representatives of basin and bay area stakeholders
18 committees established under Section 11.02362 to fund all or part
19 of the administrative expenses incurred in conducting meetings of
20 the basin and bay area stakeholders committees or the pertinent
21 basin and bay expert science teams.

22 SECTION 1.23. Subsection (d), Section 16.059, Water Code,
23 is amended to read as follows:

24 (d) The priority studies shall be completed not later than
25 December 31, 2016 [~~2010~~]. The Parks and Wildlife Department, the
26 commission, and the board shall establish a work plan that
27 prioritizes the studies and that sets interim deadlines providing

1 for publication of flow determinations for individual rivers and
2 streams on a reasonably consistent basis throughout the prescribed
3 study period. Before publication, completed studies shall be
4 submitted for comment to the commission, the board, and the Parks
5 and Wildlife Department.

6 SECTION 1.24. Subsection (h), Section 26.0135, Water Code,
7 as amended by Chapters 234 and 965, Acts of the 77th Legislature,
8 Regular Session, 2001, is reenacted and amended to read as follows:

9 (h) The commission shall apportion, assess, and recover the
10 reasonable costs of administering the water quality management
11 programs under this section from users of water and wastewater
12 permit holders in the watershed according to the records of the
13 commission generally in proportion to their right, through permit
14 or contract, to use water from and discharge wastewater in the
15 watershed. Irrigation water rights, ~~and~~ non-priority
16 hydroelectric rights of a water right holder that owns or operates
17 privately owned facilities that collectively have a capacity of
18 less than two megawatts, and water rights held in the Texas Water
19 Trust for terms of at least 20 years will not be subject to this
20 assessment. The cost to river authorities and others to conduct
21 water quality monitoring and assessment shall be subject to prior
22 review and approval by the commission as to methods of allocation
23 and total amount to be recovered. The commission shall adopt rules
24 to supervise and implement the water quality monitoring,
25 assessment, and associated costs. The rules shall ensure that
26 water users and wastewater dischargers do not pay excessive
27 amounts, that program funds are equitably apportioned among basins,

1 that a river authority may recover no more than the actual costs of
2 administering the water quality management programs called for in
3 this section, and that no municipality shall be assessed cost for
4 any efforts that duplicate water quality management activities
5 described in Section 26.177 [~~of this chapter~~]. The rules
6 concerning the apportionment and assessment of reasonable costs
7 shall provide for a recovery of not more than \$5,000,000 annually.
8 Costs recovered by the commission are to be deposited to the credit
9 of the water resource management account and may be used only to
10 accomplish the purposes of this section. The commission may apply
11 not more than 10 percent of the costs recovered annually toward the
12 commission's overhead costs for the administration of this section
13 and the implementation of regional water quality assessments. The
14 commission, with the assistance and input of each river authority,
15 shall file a written report accounting for the costs recovered
16 under this section with the governor, the lieutenant governor, and
17 the speaker of the house of representatives on or before December 1
18 of each even-numbered year.

19 SECTION 1.25. Subsection (b), Section 11.1491, Water Code,
20 is repealed.

21 SECTION 1.26. (a) The governor, lieutenant governor, and
22 speaker of the house of representatives shall appoint the initial
23 members of the environmental flows advisory group as provided by
24 Section 11.0236, Water Code, as added by this article, as soon as
25 practicable on or after the effective date of this Act.

26 (b) As soon as practicable after taking office, the initial
27 members of the environmental flows advisory group shall appoint the

1 initial members of the Texas environmental flows science advisory
2 committee as provided by Section 11.02361, Water Code, as added by
3 this article. The terms of the initial members of the committee
4 expire March 1, 2012.

5 (c) The environmental flows advisory group shall appoint
6 the members of each basin and bay area stakeholders committee as
7 provided by Section 11.02362, Water Code, as added by this article.
8 The terms of the initial members of each committee expire March 1 of
9 the fifth year that begins after the year in which the initial
10 appointments are made.

11 (d) Each basin and bay area stakeholders committee shall
12 appoint the members of the basin and bay expert science team for the
13 river basin and bay system for which the committee is established as
14 provided by Section 11.02362, Water Code, as added by this article.
15 The terms of the initial members of each team expire April 1 of the
16 fifth year that begins after the year in which the initial
17 appointments are made.

18 (e) The executive director of the Texas Commission on
19 Environmental Quality shall appoint the members of the watermaster
20 advisory committee under Section 11.4531, Water Code, as added by
21 this article, for each river basin or segment of a river basin for
22 which the executive director appoints a watermaster under
23 Subchapter I, Chapter 11, Water Code. The terms of the initial
24 members of each committee expire August 31 of the first
25 odd-numbered year that begins after the year in which the initial
26 appointments are made.

27 SECTION 1.27. The changes in law made by this article

1 relating to a permit for a new appropriation of water or to an
2 amendment to an existing water right that increases the amount of
3 water authorized to be stored, taken, or diverted apply only to:

4 (1) water appropriated under a permit for a new
5 appropriation of water the application for which is pending with
6 the Texas Commission on Environmental Quality on the effective date
7 of this Act or is filed with the commission on or after that date; or

8 (2) the increase in the amount of water authorized to
9 be stored, taken, or diverted under an amendment to an existing
10 water right that increases the amount of water authorized to be
11 stored, taken, or diverted and the application for which is pending
12 with the Texas Commission on Environmental Quality on the effective
13 date of this Act or is filed with the commission on or after that
14 date.

15 ARTICLE 2. WATER CONSERVATION AND PLANNING AND OTHER WATER-RELATED
16 PROVISIONS

17 SECTION 2.01. Section 1.003, Water Code, is amended to read
18 as follows:

19 Sec. 1.003. PUBLIC POLICY. It is the public policy of the
20 state to provide for the conservation and development of the
21 state's natural resources, including:

22 (1) the control, storage, preservation, and
23 distribution of the state's storm and floodwaters and the waters of
24 its rivers and streams for irrigation, power, and other useful
25 purposes;

26 (2) the reclamation and irrigation of the state's
27 arid, semiarid, and other land needing irrigation;

1 (3) the reclamation and drainage of the state's
2 overflowed land and other land needing drainage;

3 (4) the conservation and development of its forest,
4 water, and hydroelectric power;

5 (5) the navigation of the state's inland and coastal
6 waters; ~~and~~

7 (6) the maintenance of a proper ecological environment
8 of the bays and estuaries of Texas and the health of related living
9 marine resources; and

10 (7) the voluntary stewardship of public and private
11 lands to benefit waters of the state.

12 SECTION 2.02. Subchapter A, Chapter 1, Water Code, is
13 amended by adding Section 1.004 to read as follows:

14 Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP.

15 (a) The legislature finds that voluntary land stewardship
16 enhances the efficiency and effectiveness of this state's
17 watersheds by helping to increase surface water and groundwater
18 supplies, resulting in a benefit to the natural resources of this
19 state and to the general public. It is therefore the policy of this
20 state to encourage voluntary land stewardship as a significant
21 water management tool.

22 (b) "Land stewardship," as used in this code, is the
23 voluntary practice of managing land to conserve or enhance suitable
24 landscapes and the ecosystem values of the land. Land stewardship
25 includes land and habitat management, wildlife conservation, and
26 watershed protection. Land stewardship practices include runoff
27 reduction, prescribed burning, managed grazing, brush management,

1 erosion management, reseeding with native plant species, riparian
2 management and restoration, and spring and creek-bank protection,
3 all of which benefit the water resources of this state.

4 SECTION 2.03. Subtitle A, Title 2, Water Code, is amended by
5 adding Chapter 10 to read as follows:

6 CHAPTER 10. WATER CONSERVATION ADVISORY COUNCIL

7 Sec. 10.001. DEFINITIONS. In this chapter:

8 (1) "Best management practices" has the meaning
9 assigned by Section 11.002.

10 (2) "Board" means the Texas Water Development Board.

11 (3) "Commission" means the Texas Commission on
12 Environmental Quality.

13 (4) "Council" means the Water Conservation Advisory
14 Council.

15 Sec. 10.002. PURPOSE. The council is created to provide the
16 governor, lieutenant governor, speaker of the house of
17 representatives, legislature, board, commission, political
18 subdivisions, and public with the resource of a select council with
19 expertise in water conservation.

20 Sec. 10.003. CREATION AND MEMBERSHIP. (a) The council is
21 composed of 23 members appointed by the board. The board shall
22 appoint one member to represent each of the following entities or
23 interest groups:

24 (1) Texas Commission on Environmental Quality;

25 (2) Department of Agriculture;

26 (3) Parks and Wildlife Department;

27 (4) State Soil and Water Conservation Board;

- 1 (5) Texas Water Development Board;
- 2 (6) regional water planning groups;
- 3 (7) federal agencies;
- 4 (8) municipalities;
- 5 (9) groundwater conservation districts;
- 6 (10) river authorities;
- 7 (11) environmental groups;
- 8 (12) irrigation districts;
- 9 (13) institutional water users;
- 10 (14) professional organizations focused on water
11 conservation;
- 12 (15) higher education;
- 13 (16) agricultural groups;
- 14 (17) refining and chemical manufacturing;
- 15 (18) electric generation;
- 16 (19) mining and recovery of minerals;
- 17 (20) landscape irrigation and horticulture;
- 18 (21) water control and improvement districts;
- 19 (22) rural water users; and
- 20 (23) municipal utility districts.

21 (b) Each entity or interest group described by Subsection
22 (a) may recommend one or more persons to fill the position on the
23 council held by the member who represents that entity or interest
24 group. If one or more persons are recommended for a position on the
25 council, the board shall appoint one of the persons recommended to
26 fill the position.

27 Sec. 10.004. TERMS. (a) Members of the council serve

1 staggered terms of six years, with seven or eight members' terms, as
2 applicable, expiring August 31 of each odd-numbered year.

3 (b) The board shall fill a vacancy on the council for the
4 unexpired term by appointing a person who has the same
5 qualifications as required under Section 10.003 for the person who
6 previously held the vacated position.

7 Sec. 10.005. PRESIDING OFFICER. The council members shall
8 select one member as the presiding officer of the council to serve
9 in that capacity until the person's term as a council member
10 expires.

11 Sec. 10.006. COUNCIL STAFF. On request by the council, the
12 board shall provide any necessary staff to assist the council in the
13 performance of its duties.

14 Sec. 10.007. PUBLIC MEETINGS AND PUBLIC INFORMATION.

15 (a) The council may hold public meetings as needed to fulfill its
16 duties under this chapter.

17 (b) The council is subject to Chapters 551 and 552,
18 Government Code.

19 Sec. 10.008. INAPPLICABILITY OF ADVISORY COMMITTEE LAW.
20 Chapter 2110, Government Code, does not apply to the size,
21 composition, or duration of the council.

22 Sec. 10.009. COMPENSATION OF MEMBERS. (a) Members of the
23 council serve without compensation but may be reimbursed by
24 legislative appropriation for actual and necessary expenses
25 related to the performance of council duties.

26 (b) Reimbursement under Subsection (a) is subject to the
27 approval of the presiding officer of the council.

1 Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council
2 shall:

3 (1) monitor trends in water conservation
4 implementation;

5 (2) monitor new technologies for possible inclusion by
6 the board as best management practices in the best management
7 practices guide developed by the water conservation implementation
8 task force under Chapter 109, Acts of the 78th Legislature, Regular
9 Session, 2003;

10 (3) monitor the effectiveness of the statewide water
11 conservation public awareness program developed under Section
12 16.401 and associated local involvement in implementation of the
13 program;

14 (4) develop and implement a state water management
15 resource library;

16 (5) develop and implement a public recognition program
17 for water conservation;

18 (6) monitor the implementation of water conservation
19 strategies by water users included in regional water plans; and

20 (7) monitor target and goal guidelines for water
21 conservation to be considered by the board and commission.

22 Sec. 10.011. REPORT. Not later than December 1 of each
23 even-numbered year, the council shall submit to the governor,
24 lieutenant governor, and speaker of the house of representatives a
25 report on progress made in water conservation in this state.

26 Sec. 10.012. DESIGNATION OF CERTIFIED WATER CONSERVATION
27 TRAINING FACILITIES STUDY. (a) The council shall conduct a study

1 to evaluate the desirability of requiring the board to:

2 (1) designate as certified water conservation
3 training facilities entities and programs that provide assistance
4 to retail public utilities in developing water conservation plans
5 under Section 13.146; and

6 (2) give preference to certified water conservation
7 training facilities in making loans or grants for water
8 conservation training and education activities.

9 (b) Not later than December 1, 2008, the council shall
10 submit a written report containing the findings of the study and the
11 recommendations of the council to the governor, lieutenant
12 governor, and speaker of the house of representatives.

13 (c) This section expires June 1, 2009.

14 SECTION 2.04. Section 11.002, Water Code, is amended by
15 adding Subdivision (20) to read as follows:

16 (20) "Best management practices" means those
17 voluntary efficiency measures developed by the commission and the
18 board that save a quantifiable amount of water, either directly or
19 indirectly, and that can be implemented within a specified time
20 frame.

21 SECTION 2.05. Subdivisions (1-a), (5), and (8), Section
22 13.002, Water Code, are amended to read as follows:

23 (1-a) "Landowner," "owner of a tract of land," and
24 "owners of each tract of land" include multiple owners of a single
25 deeded tract of land as shown on the appraisal roll of the appraisal
26 district established for each county in which the property is
27 located.

1 (5) "Commission" means the Texas [~~Natural Resource~~
2 ~~Conservation~~] Commission on Environmental Quality.

3 (8) "Executive director" means the executive director
4 of the commission [~~Texas Natural Resource Conservation~~
5 ~~Commission~~].

6 SECTION 2.06. Subchapter E, Chapter 13, Water Code, is
7 amended by adding Sections 13.146 and 13.147 to read as follows:

8 Sec. 13.146. WATER CONSERVATION PLAN. The commission shall
9 require a retail public utility that provides potable water service
10 to 3,300 or more connections to submit to the executive
11 administrator of the board a water conservation plan based on
12 specific targets and goals developed by the retail public utility
13 and using appropriate best management practices, as defined by
14 Section 11.002, or other water conservation strategies.

15 Sec. 13.147. CONSOLIDATED BILLING AND COLLECTION
16 CONTRACTS. (a) A retail public utility providing water service
17 may contract with a retail public utility providing sewer service
18 to bill and collect the sewer service provider's fees and payments
19 as part of a consolidated process with the billing and collection of
20 the water service provider's fees and payments. The water service
21 provider may provide that service only for customers who are served
22 by both providers in an area covered by both providers'
23 certificates of public convenience and necessity. If the water
24 service provider refuses to enter into a contract under this
25 section or if the water service provider and sewer service provider
26 cannot agree on the terms of a contract, the sewer service provider
27 may petition the commission to issue an order requiring the water

1 service provider to provide that service.

2 (b) A contract or order under this section must provide
3 procedures and deadlines for submitting billing and customer
4 information to the water service provider and for the delivery of
5 collected fees and payments to the sewer service provider.

6 (c) A contract or order under this section may require or
7 permit a water service provider that provides consolidated billing
8 and collection of fees and payments to:

9 (1) terminate the water services of a person whose
10 sewage services account is in arrears for nonpayment; and

11 (2) charge a customer a reconnection fee if the
12 customer's water service is terminated for nonpayment of the
13 customer's sewage services account.

14 (d) A water service provider that provides consolidated
15 billing and collection of fees and payments may impose on each sewer
16 service provider customer a reasonable fee to recover costs
17 associated with providing consolidated billing and collection of
18 fees and payments for sewage services.

19 SECTION 2.07. Subchapter F, Chapter 13, Water Code, is
20 amended by adding Section 13.188 to read as follows:

21 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS.

22 (a) Notwithstanding any other provision in this chapter, the
23 commission by rule shall adopt a procedure allowing a utility to
24 file with the commission an application to timely adjust the
25 utility's rates to reflect an increase or decrease in documented
26 energy costs in a pass through clause. The commission, by rule,
27 shall require the pass through of documented decreases in energy

1 costs within a reasonable time. The pass through, whether a
2 decrease or increase, shall be implemented on no later than an
3 annual basis, unless the commission determines a special
4 circumstance applies.

5 (b) Notwithstanding any other provision to the contrary,
6 this adjustment is an uncontested matter not subject to a contested
7 case hearing. However, the executive director shall hold an
8 uncontested public meeting:

9 (1) on the request of a member of the legislature who
10 represents the area served by the water and sewer utility; or

11 (2) if the executive director determines that there is
12 substantial public interest in the matter.

13 (c) A proceeding under this section is not a rate case and
14 Section 13.187 does not apply.

15 SECTION 2.08. Section 13.2451, Water Code, is amended to
16 read as follows:

17 Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL
18 JURISDICTION. (a) If [~~Except as provided by Subsection (b), if~~] a
19 municipality extends its extraterritorial jurisdiction to include
20 an area certificated to a retail public utility, the retail public
21 utility may continue and extend service in its area of public
22 convenience and necessity under the rights granted by its
23 certificate and this chapter.

24 (b) A municipality that seeks to extend a certificate of
25 public convenience and necessity beyond the municipality's
26 extraterritorial jurisdiction must ensure that the municipality
27 complies with Section 13.241 in relation to the area covered by the

1 portion of the certificate that extends beyond the municipality's
2 extraterritorial jurisdiction.

3 (c) The commission, after notice to the municipality and an
4 opportunity for a hearing, may decertify an area outside a
5 municipality's extraterritorial jurisdiction if the municipality
6 does not provide service to the area on or before the fifth
7 anniversary of the date the certificate of public convenience and
8 necessity was granted for the area. This subsection does not apply
9 to a certificate of public convenience and necessity for an area:

10 (1) that was transferred to a municipality on approval
11 of the commission; and

12 (2) in relation to which the municipality has spent
13 public funds.

14 (d) To the extent of a conflict between this section and
15 Section 13.245, Section 13.245 prevails [~~The commission may not~~
16 ~~extend a municipality's certificate of public convenience and~~
17 ~~necessity beyond its extraterritorial jurisdiction without the~~
18 ~~written consent of the landowner who owns the property in which the~~
19 ~~certificate is to be extended. The portion of any certificate of~~
20 ~~public convenience and necessity that extends beyond the~~
21 ~~extraterritorial jurisdiction of the municipality without the~~
22 ~~consent of the landowner is void].~~

23 SECTION 2.09. Subsection (a-1), Section 13.246, Water Code,
24 is amended to read as follows:

25 (a-1) Except as otherwise provided by this subsection, in
26 addition to the notice required by Subsection (a), the commission
27 shall require notice to be mailed to each owner of a tract of land

1 that is at least 25 [~~50~~] acres and is wholly or partially included
2 in the area proposed to be certified. Notice required under this
3 subsection must be mailed by first class mail to the owner of the
4 tract according to the most current tax appraisal rolls of the
5 applicable central appraisal district at the time the commission
6 received the application for the certificate or amendment. Good
7 faith efforts to comply with the requirements of this subsection
8 shall be considered adequate notice to landowners. Notice under
9 this subsection is not required for a matter filed with the
10 commission under:

11 (1) Section 13.248 or 13.255; or

12 (2) Chapter 65.

13 SECTION 2.10. Subsection (b), Section 15.102, Water Code,
14 is amended to read as follows:

15 (b) The loan fund may also be used by the board to provide:

16 (1) grants or loans for projects that include
17 supplying water and wastewater services in economically distressed
18 areas or nonborder colonias as provided by legislative
19 appropriations, this chapter, and board rules, including projects
20 involving retail distribution of those services; and

21 (2) grants for:

22 (A) projects for which federal grant funds are
23 placed in the loan fund;

24 (B) projects, on specific legislative
25 appropriation for those projects; or

26 (C) water conservation, desalination, brush
27 control, weather modification, regionalization, and projects

1 providing regional water quality enhancement services as defined by
2 board rule, including regional conveyance systems.

3 SECTION 2.11. Subchapter Q, Chapter 15, Water Code, is
4 amended by adding Section 15.9751 to read as follows:

5 Sec. 15.9751. PRIORITY FOR WATER CONSERVATION. The board
6 shall give priority to applications for funds for the
7 implementation of water supply projects in the state water plan by
8 entities that:

9 (1) have already demonstrated significant water
10 conservation savings; or

11 (2) will achieve significant water conservation
12 savings by implementing the proposed project for which the
13 financial assistance is sought.

14 SECTION 2.12. Section 16.017, Water Code, is amended to
15 read as follows:

16 Sec. 16.017. TOPOGRAPHIC AND GEOLOGIC MAPPING. (a) The
17 executive administrator shall carry out the program for topographic
18 and geologic mapping of the state.

19 (b) The executive administrator shall operate as part of the
20 Texas Natural Resources Information System a strategic mapping
21 program to acquire, store, and distribute digital, geospatial
22 information.

23 SECTION 2.13. Subchapter B, Chapter 16, Water Code, is
24 amended by adding Sections 16.023 and 16.024 to read as follows:

25 Sec. 16.023. STRATEGIC MAPPING ACCOUNT. (a) The strategic
26 mapping account is an account in the general revenue fund. The
27 account consists of:

1 (1) money directly appropriated to the board;

2 (2) money transferred by the board from other funds
3 available to the board;

4 (3) money from gifts or grants from the United States
5 government, state, regional, or local governments, educational
6 institutions, private sources, or other sources;

7 (4) proceeds from the sale of maps, data,
8 publications, and other items; and

9 (5) interest earned on the investment of money in the
10 account and depository interest allocable to the account.

11 (b) The account may be appropriated only to the board to:

12 (1) develop, administer, and implement the strategic
13 mapping program;

14 (2) provide grants to political subdivisions for
15 projects related to the development, use, and dissemination of
16 digital, geospatial information; and

17 (3) administer, implement, and operate other programs
18 of the Texas Natural Resources Information System, including:

19 (A) the operation of a Texas-Mexico border region
20 information center for the purpose of implementing Section 16.021
21 (e)(5);

22 (B) the acquisition, storage, and distribution
23 of historical maps, photographs, and paper map products;

24 (C) the maintenance and enhancement of
25 information technology; and

26 (D) the production, storage, and distribution of
27 other digital base maps, as determined by the executive

1 administrator or a state agency that is a member of the Texas
2 Geographic Information Council.

3 (c) The board may invest, reinvest, and direct the
4 investment of any available money in the fund as provided by law for
5 the investment of money under Section 404.024, Government Code.

6 Sec. 16.024. FINANCIAL ASSISTANCE FOR DIGITAL, GEOSPATIAL
7 INFORMATION PROJECTS. (a) A political subdivision seeking a grant
8 under Section 16.023 must file an application with the board.

9 (b) An application must be filed in the manner and form
10 required by board rules.

11 (c) In reviewing an application by a political subdivision
12 for a grant, the board shall consider:

13 (1) the degree to which the political subdivision has
14 used other available resources to finance the development, use, and
15 dissemination of digital, geospatial information;

16 (2) the willingness and ability of the political
17 subdivision to develop, use, and disseminate digital, geospatial
18 information; and

19 (3) the benefits that will be gained by making the
20 grant.

21 (d) The board may approve a grant to a political subdivision
22 only if the board finds that:

23 (1) the grant will supplement rather than replace
24 money of the political subdivision;

25 (2) the public interest is served by providing the
26 grant; and

27 (3) the grant will further the state's ability to

1 gather, develop, use, and disseminate digital, geospatial
2 information.

3 SECTION 2.14. Subsection (h), Section 16.053, Water Code,
4 is amended by adding Subdivisions (10) and (11) to read as follows:

5 (10) The regional water planning group may amend the
6 regional water plan after the plan has been approved by the board.
7 Subdivisions (1)-(9) apply to an amendment to the plan in the same
8 manner as those subdivisions apply to the plan.

9 (11) This subdivision applies only to an amendment to
10 a regional water plan approved by the board. This subdivision does
11 not apply to the adoption of a subsequent regional water plan for
12 submission to the board as required by Subsection (i).
13 Notwithstanding Subdivision (10), the regional water planning
14 group may amend the plan in the manner provided by this subdivision
15 if the executive administrator makes a written determination that
16 the proposed amendment qualifies for adoption in the manner
17 provided by this subdivision before the regional water planning
18 group votes on adoption of the amendment. A proposed amendment
19 qualifies for adoption in the manner provided by this subdivision
20 only if the amendment is a minor amendment, as defined by board
21 rules, that will not result in the overallocation of any existing or
22 planned source of water, does not relate to a new reservoir, and
23 will not have a significant effect on instream flows or freshwater
24 inflows to bays and estuaries. If the executive administrator
25 determines that a proposed amendment qualifies for adoption in the
26 manner provided by this subdivision, the regional water planning
27 group may adopt the amendment at a public meeting held in accordance

1 with Chapter 551, Government Code. The proposed amendment must be
2 placed on the agenda for the meeting, and notice of the meeting must
3 be given in the manner provided by Chapter 551, Government Code, at
4 least two weeks before the date the meeting is held. The public
5 must be provided an opportunity to comment on the proposed
6 amendment at the meeting.

7 SECTION 2.15. Subsection (r), Section 16.053, Water Code,
8 as added by Chapter 1097, Acts of the 79th Legislature, Regular
9 Session, 2005, is amended to read as follows:

10 (r) The board by rule shall provide for reasonable
11 flexibility to allow for a timely amendment of a regional water
12 plan, the board's approval of an amended regional water plan, and
13 the amendment of the state water plan. If an amendment under this
14 subsection is~~is~~ to facilitate planning for water supplies
15 reasonably required for a clean coal project, as defined by Section
16 5.001, the~~the~~ rules may allow for amending a regional water
17 plan without providing notice and without a public meeting or
18 hearing under Subsection (h) if the amendment does not:

19 (1) significantly change the regional water plan, as
20 reasonably determined by the board; or

21 (2) adversely affect other water management
22 strategies in the regional water plan.

23 SECTION 2.16. Subchapter E, Chapter 16, Water Code, is
24 amended by adding Section 16.1311 to read as follows:

25 Sec. 16.1311. PRIORITY FOR WATER CONSERVATION. The board
26 shall give priority to applications for funds for implementation of
27 water supply projects in the state water plan by entities that:

1 (1) have already demonstrated significant water
2 conservation savings; or

3 (2) will achieve significant water conservation
4 savings by implementing the proposed project for which the
5 financial assistance is sought.

6 SECTION 2.17. Sections 16.315 and 16.319, Water Code, are
7 amended to read as follows:

8 Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH
9 FEDERAL REQUIREMENTS. All political subdivisions are hereby
10 authorized to take all necessary and reasonable actions that are
11 not less stringent than [~~to comply with~~] the requirements and
12 criteria of the National Flood Insurance Program, including but not
13 limited to:

14 (1) making appropriate land use adjustments to
15 constrict the development of land which is exposed to flood damage
16 and minimize damage caused by flood losses;

17 (2) guiding the development of proposed future
18 construction, where practicable, away from a location which is
19 threatened by flood hazards;

20 (3) assisting in minimizing damage caused by floods;

21 (4) authorizing and engaging in continuing studies of
22 flood hazards in order to facilitate a constant reappraisal of the
23 flood insurance program and its effect on land use requirements;

24 (5) engaging in floodplain management, ~~and~~ adopting
25 and enforcing permanent land use and control measures that are not
26 less stringent than those [~~consistent with the criteria~~]
27 established under the National Flood Insurance Act, and providing

1 for the imposition of penalties on landowners who violate this
2 subchapter or rules adopted or orders issued under this subchapter;

3 (6) declaring property, when such is the case, to be in
4 violation of local laws, regulations, or ordinances which are
5 intended to discourage or otherwise restrict land development or
6 occupancy in flood-prone areas and notifying the director, or
7 whomever the director designates, of such property;

8 (7) consulting with, giving information to, and
9 entering into agreements with the Federal Emergency Management
10 Agency for the purpose of:

11 (A) identifying and publishing information with
12 respect to all flood areas, including coastal areas; and

13 (B) establishing flood-risk zones in all such
14 areas and making estimates with respect to the rates of probable
15 flood-caused loss for the various flood-risk zones for each of
16 these areas;

17 (8) cooperating with the director's studies and
18 investigations with respect to the adequacy of local measures in
19 flood-prone areas as to land management and use, flood control,
20 flood zoning, and flood damage prevention;

21 (9) taking steps, using regional, watershed, and
22 multi-objective approaches, to improve the long-range management
23 and use of flood-prone areas;

24 (10) purchasing, leasing, and receiving property from
25 the director when such property is owned by the federal government
26 and lies within the boundaries of the political subdivision
27 pursuant to agreements with the Federal Emergency Management Agency

1 or other appropriate legal representative of the United States
2 Government;

3 (11) requesting aid pursuant to the entire
4 authorization from the commission;

5 (12) satisfying criteria adopted and promulgated by
6 the commission pursuant to the National Flood Insurance Program;

7 (13) adopting permanent land use and control measures
8 with enforcement provisions that are not less stringent than [~~which~~
9 ~~are consistent with~~] the criteria for land management and use
10 adopted by the director;

11 (14) adopting more comprehensive floodplain
12 management rules that the political subdivision determines are
13 necessary for planning and appropriate to protect public health and
14 safety;

15 (15) participating in floodplain management and
16 mitigation initiatives such as the National Flood Insurance
17 Program's Community Rating System, Project Impact, or other
18 initiatives developed by federal, state, or local government; and

19 (16) collecting reasonable fees to cover the cost of
20 administering a local floodplain management program.

21 Sec. 16.319. QUALIFICATION. Political subdivisions
22 wishing to qualify under the National Flood Insurance Program shall
23 have the authority to do so by complying with the directions of the
24 Federal Emergency Management Agency and by:

25 (1) evidencing to the director a positive interest in
26 securing flood insurance coverage under the National Flood
27 Insurance Program; and

1 (2) giving to the director satisfactory assurance that
2 measures will have been adopted for the political subdivision that
3 ~~[which measures]~~ will be not less stringent than ~~[consistent with]~~
4 the comprehensive criteria for land management and use developed by
5 the Federal Emergency Management Agency.

6 SECTION 2.18. Chapter 16, Water Code, is amended by adding
7 Subchapter K to read as follows:

8 SUBCHAPTER K. WATER CONSERVATION

9 Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS
10 PROGRAM. (a) The executive administrator shall develop and
11 implement a statewide water conservation public awareness program
12 to educate residents of this state about water conservation. The
13 program shall take into account the differences in water
14 conservation needs of various geographic regions of the state and
15 shall be designed to complement and support existing local and
16 regional water conservation programs.

17 (b) The executive administrator is required to develop and
18 implement the program required by Subsection (a) in a state fiscal
19 biennium only if the legislature appropriates sufficient money in
20 that biennium specifically for that purpose.

21 Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each
22 entity that is required to submit a water conservation plan to the
23 commission under this code shall submit a copy of the plan to the
24 executive administrator.

25 (b) Each entity that is required to submit a water
26 conservation plan to the executive administrator, board, or
27 commission under this code shall report annually to the executive

1 administrator on the entity's progress in implementing the plan.

2 (c) The executive administrator shall review each water
3 conservation plan and annual report to determine compliance with
4 the minimum requirements established by Section 11.1271 and the
5 submission deadlines developed under Subsection (e) of this
6 section.

7 (d) The board may notify the commission if the board
8 determines that an entity has violated this section or a rule
9 adopted under this section. Notwithstanding Section 7.051(b), a
10 violation of this section or of a rule adopted under this section is
11 enforceable in the manner provided by Chapter 7 for a violation of a
12 provision of this code within the commission's jurisdiction or of a
13 rule adopted by the commission under a provision of this code within
14 the commission's jurisdiction.

15 (e) The board and commission jointly shall adopt rules:

16 (1) identifying the minimum requirements and
17 submission deadlines for the annual reports required by Subsection
18 (b); and

19 (2) providing for the enforcement of this section and
20 rules adopted under this section.

21 SECTION 2.19. Section 17.125, Water Code, is amended by
22 adding Subsection (b-2) to read as follows:

23 (b-2) The board shall give priority to applications for
24 funds for implementation of water supply projects in the state
25 water plan by entities that:

26 (1) have already demonstrated significant water
27 conservation savings; or

1 (2) will achieve significant water conservation
2 savings by implementing the proposed project for which the
3 financial assistance is sought.

4 SECTION 2.20. Chapter 35, Water Code, is amended by adding
5 Section 35.020 to read as follows:

6 Sec. 35.020. PUBLIC PARTICIPATION IN GROUNDWATER
7 MANAGEMENT PROCESS. It is the policy of the state to encourage
8 public participation in the groundwater management process in areas
9 within a groundwater management area not represented by a
10 groundwater conservation district.

11 SECTION 2.21. Subsection (d), Section 36.113, Water Code,
12 is amended to read as follows:

13 (d) Before granting or denying a permit or permit amendment,
14 the district shall consider whether:

15 (1) the application conforms to the requirements
16 prescribed by this chapter and is accompanied by the prescribed
17 fees;

18 (2) the proposed use of water unreasonably affects
19 existing groundwater and surface water resources or existing permit
20 holders;

21 (3) the proposed use of water is dedicated to any
22 beneficial use;

23 (4) the proposed use of water is consistent with the
24 district's certified water management plan;

25 (5) if the well will be located in the Hill Country
26 Priority Groundwater Management Area, the proposed use of water
27 from the well is wholly or partly to provide water to a pond, lake,

1 or reservoir to enhance the appearance of the landscape;

2 (6) the applicant has agreed to avoid waste and
3 achieve water conservation; and

4 (7) [~~(6)~~] the applicant has agreed that reasonable
5 diligence will be used to protect groundwater quality and that the
6 applicant will follow well plugging guidelines at the time of well
7 closure.

8 SECTION 2.22. Subsection (d), Section 36.117, Water Code,
9 is amended to read as follows:

10 (d) Notwithstanding Subsection (b), a district may require
11 a well to be permitted by the district and to comply with all
12 district rules if:

13 (1) the withdrawals from a well in the Hill Country
14 Priority Groundwater Management Area and exempted under Subsection
15 (b)(1) are no longer used solely for domestic use or to provide
16 water for livestock or poultry;

17 (2) (2) the purpose of a well exempted under Subsection
18 (b)(2) is no longer solely to supply water for a rig that is
19 actively engaged in drilling or exploration operations for an oil
20 or gas well permitted by the Railroad Commission of Texas; or

21 (3) [~~(2)~~] the withdrawals from a well exempted under
22 Subsection (b)(3) are no longer necessary for mining activities or
23 are greater than the amount necessary for mining activities
24 specified in the permit issued by the Railroad Commission of Texas
25 under Chapter 134, Natural Resources Code.

26 SECTION 2.23. Subchapter H, Chapter 49, Water Code, is
27 amended by adding Section 49.2205 to read as follows:

1 Sec. 49.2205. USE OF RIGHT-OF-WAY EASEMENTS FOR CERTAIN
2 ENERGY-RELATED PURPOSES. (a) To foster the generation and
3 transmission of electricity from clean coal projects, as defined by
4 Section 5.001, renewable energy technology projects, and the
5 capture and storage of carbon dioxide and other greenhouse gases, a
6 district or water supply corporation may allow others to construct,
7 maintain, and operate transmission lines and pipelines over, under,
8 across, on, or along rights-of-way and easements of the district or
9 water supply corporation for transmission of electricity generated
10 by those projects and the transportation of carbon dioxide and
11 other greenhouse gases, unless the use:

12 (1) is incompatible with the public use for which the
13 easement was acquired or condemned; or

14 (2) compromises public health or safety.

15 (b) The district or water supply corporation is not required
16 to obtain additional consideration for the construction,
17 maintenance, and operation of the transmission lines and pipelines
18 under this section if the person constructing, maintaining, and
19 operating the transmission lines and pipelines bears all costs of
20 the construction, maintenance, and operation of the transmission
21 lines and pipelines and restoring the property. The activities
22 authorized by this subsection may be exercised only with the
23 consent of and subject to the direction of the governing body of the
24 district or water supply corporation.

25 (c) A person that is subject to Subsection (a) that acquires
26 a right-of-way easement on real property for a public use may
27 include in the notice of the acquisition a statement that to foster

1 the generation and transmission of electricity from clean coal
2 projects as defined by Section 5.001, Water Code, renewable energy
3 technology projects, and the capture and storage of carbon dioxide
4 and other greenhouse gases, water districts and water supply
5 corporations may allow others to construct, maintain, and operate
6 transmission lines and pipelines over, under, across, on, or along
7 the rights-of-way and easements for the transmission of electricity
8 that is generated by those projects and transportation of carbon
9 dioxide and other greenhouse gases, unless the use:

10 (1) is incompatible with the public use for which the
11 easement was acquired or condemned; or

12 (2) compromises public health or safety.

13 (d) This section applies only to a right-of-way or easement
14 acquired by the district or water supply corporation on or after
15 September 1, 2007.

16 (e) This section does not apply to a right-of-way or
17 easement that is used for the transmission of electricity without
18 the consent of a person owning the transmission lines if that use
19 began before September 1, 2007.

20 SECTION 2.24. Chapter 49, Water Code, is amended by adding
21 Subchapter O to read as follows:

22 SUBCHAPTER O. EFFECT OF SUBDIVISION OF NONAGRICULTURAL LAND ON

23 WATER RIGHTS

24 Sec. 49.501. DEFINITION. In this subchapter, "municipal
25 water supplier" means a municipality or a water supply corporation.

26 Sec. 49.502. APPLICABILITY. This subchapter applies only
27 to a district, other than a drainage district, located wholly or

1 partly in a county:

2 (1) that borders the Gulf of Mexico and the United
3 Mexican States; or

4 (2) that is adjacent to a county described by
5 Subdivision (1).

6 Sec. 49.503. PETITION BY MUNICIPAL WATER SUPPLIER TO
7 CONVERT WATER USE AFTER SUBDIVISION. (a) This section applies
8 only to land:

9 (1) that is:

10 (A) subdivided into town lots or blocks or small
11 parcels of the same general nature as town lots or blocks;

12 (B) designed, intended, or suitable for
13 residential or other nonagricultural purposes, including streets,
14 alleys, parkways, parks, detention or retention ponds, and railroad
15 property and rights-of-way; or

16 (C) in a subdivision created to meet the
17 requirements of a governmental entity authorized to require a
18 recorded plat of subdivided lands;

19 (2) that is in a subdivision for which a plat or map
20 has been filed and recorded in the office of the county clerk of
21 each county in which the subdivision is wholly or partly located;
22 and

23 (3) that is or was assessed as flat rate irrigable
24 property in the municipal water supplier's certificated service
25 area or its corporate area.

26 (b) A municipal water supplier that serves land described by
27 Subsection (a) may petition the district in accordance with this

1 section to convert the proportionate irrigation water right to the
2 Rio Grande from irrigation use to municipal use with municipal
3 priority of allocation under commission rules, for the use and
4 benefit of the municipal water supplier.

5 (c) The municipal water supplier must file the petition with
6 the district not later than January 1 after the expiration of two
7 years after the date the plat or map was recorded under Subsection
8 (a). The district shall consider the petition not later than
9 January 31 of the year following the year in which the petition was
10 filed.

11 (d) The petition must identify by subdivision name or other
12 sufficient description the land that the municipal water supplier
13 supplies or has the right to supply potable water.

14 (e) This section applies only to one subdivision of the land
15 recorded under Subsection (a). This section does not apply to any
16 further subdivision of the same property.

17 Sec. 49.504. EFFECT OF MUNICIPAL WATER SUPPLIER'S FAILURE
18 TO FILE A PETITION. (a) If a municipal water supplier does not
19 file a petition under Section 49.503, the district may retain the
20 water rights for use by the district or may declare the water as
21 excess and contract for the sale or use of the water as determined
22 by the district.

23 (b) Before a district may contract for the sale or use of
24 water for more than one year with a purchaser located outside of a
25 county described by Section 49.502, the district must, for 90 days:

26 (1) make the water available under the same terms to
27 all municipal water suppliers located in those counties; and

1 (2) advertise the offer to sell or contract for the use
2 of the water by posting notice on:

3 (A) any website of the Rio Grande Watermaster's
4 Office;

5 (B) any website of the Rio Grande Regional Water
6 Authority; and

7 (C) the official posting place for the district's
8 board meetings at the district's office.

9 (c) If, after the 90th day after the last date on which the
10 district posted notice, a municipal water supplier in a county
11 described by Section 49.502 has not contracted with the district
12 for the sale or use of the water, the district may contract with any
13 other person for the sale or use of the water under the terms of the
14 offer advertised under Subsection (b).

15 Sec. 49.505. CALCULATION OF PROPORTIONATE WATER RIGHTS. A
16 district that receives a petition under Section 49.503 shall
17 compute the proportionate amount of water rights to the Rio Grande.
18 The proportionate amount of water rights is equal to the amount of
19 irrigable acres of land in the subdivision multiplied by the lesser
20 of:

21 (1) 1.25 acre-feet per irrigable acre; or

22 (2) the sum of all irrigation water rights owned by the
23 district on September 1, 2007, as if the water rights had been
24 converted to municipal use under applicable commission rules,
25 divided by the total amount of irrigable acres of land in the
26 district on September 1, 2007.

27 Sec. 49.506. PROVISION OR CONVERSION OF PROPORTIONATE WATER

1 RIGHTS BY DISTRICT. (a) Not later than the second anniversary of
2 the date the municipal water supplier files a petition under
3 Section 49.503:

4 (1) a district shall provide the municipal water
5 supplier with the proportionate water rights described by Section
6 49.505 from the district's existing water rights; or

7 (2) a district shall, if the district does not have
8 sufficient existing water rights:

9 (A) apply for appropriate amendments to the
10 district's water rights under commission rules to convert the
11 proportionate water rights from irrigation use to municipal use
12 with municipal priority of allocation; and

13 (B) provide to the municipal water supplier the
14 converted rights described by Section 49.505.

15 (b) The district may continue to use the irrigation use
16 water for district purposes until:

17 (1) the commission approves the amendment to the
18 district's water rights; or

19 (2) the water is otherwise provided to the municipal
20 water supplier.

21 (c) A district that applies for appropriate amendments
22 under Subsection (a)(2) shall provide the municipal water supplier
23 with an estimate of the district's reasonable costs for the
24 administrative proceedings. The district is not required to begin
25 the proceedings until the municipal water supplier deposits the
26 amount of the estimate with the district. The municipal water
27 supplier shall pay the district any reasonable costs that exceed

1 the estimate. The district shall refund the balance of the deposit
2 if the actual cost is less than the estimate.

3 Sec. 49.507. CONTRACT TO PURCHASE PROPORTIONATE WATER
4 RIGHTS; WATER RIGHTS SALE CONTRACT. (a) A municipal water
5 supplier may contract to purchase the proportionate water rights
6 described by Section 49.505.

7 (b) The purchase price may not exceed 68 percent of the
8 current market value, as determined under Section 49.509, for the
9 year that the municipal water supplier petitions the district.

10 (c) The contract must be in writing in a document entitled
11 "Water Rights Sales Contract."

12 (d) The contract must include the purchase price for the
13 water rights or, if the consideration for the sale is not monetary,
14 the terms of the sale.

15 (e) The municipal water supplier shall file the contract
16 with the Rio Grande watermaster not later than the 10th day after
17 the date the contract is executed.

18 (f) The municipal water supplier shall pay the purchase
19 price when the proportionate amount of water rights is made
20 available to the municipal water supplier.

21 Sec. 49.508. CONTRACT TO USE PROPORTIONATE WATER RIGHTS;
22 WATER SUPPLY CONTRACT. (a) A municipal water supplier may
23 contract to use water associated with the proportionate water
24 rights described by Section 49.505.

25 (b) The contract must be for at least 40 years.

26 (c) The price for the contractual right to use the municipal
27 use water is based on an amount for one acre-foot of municipal use

1 water with a municipal use priority of allocation and may not exceed
2 the sum of:

3 (1) an amount equal to the district's annual flat rate
4 charge per assessed acre; and

5 (2) the equivalent of the charge for four irrigations
6 per flat rate acre of irrigable property in the district.

7 (d) The parties to the contract shall agree on the terms of
8 payment of the contract price.

9 (e) The board periodically shall determine the flat rate
10 charge and irrigation per acre charge described by Subsection (c).

11 (f) The contract must be in writing in a document entitled
12 "Water Supply Contract." The contract may contain any terms to
13 which the parties agree.

14 (g) The municipal water supplier shall file the contract
15 with the Rio Grande watermaster not later than the 10th day after
16 the date the contract is executed.

17 Sec. 49.509. DUTY OF RIO GRANDE REGIONAL WATER AUTHORITY TO
18 CALCULATE CURRENT MARKET VALUE. (a) The Rio Grande Regional Water
19 Authority annually at its January meeting shall calculate the
20 current market value by using the average price per acre-foot of
21 municipal use water after conversion from irrigation use water to
22 municipal use water with a municipal priority of allocation under
23 commission rules of the last three purchases involving:

24 (1) a municipal water supplier;

25 (2) a party other than a municipal water supplier; and

26 (3) at least 100 acre-feet of municipal use water,
27 with municipal priority of allocation.

1 (b) The Rio Grande Regional Water Authority shall use
2 information from the water rights sales contracts reported to the
3 Rio Grande Watermaster's Office to calculate the current market
4 value.

5 (c) The Rio Grande Regional Water Authority shall make the
6 calculation:

- 7 (1) without charging any of the parties involved; and
8 (2) using 100 percent of the value of monetary
9 exchanges, not in-kind exchanges.

10 Sec. 49.510. ACCOUNTING FOR SALE OF WATER RIGHTS. A
11 district shall maintain an accounting of money received from the
12 sale of water rights under this subchapter.

13 Sec. 49.511. CAPITAL IMPROVEMENTS. A district shall
14 designate at least 75 percent of the proceeds from the sale of water
15 rights for capital improvements in the district.

16 Sec. 49.512. MAP OF SERVICE AREA. (a) In this section,
17 "outer boundaries of a district" means district boundaries without
18 considering any exclusion of land from inside the district.

19 (b) Each municipal water supplier that has a certificate of
20 convenience and necessity service area in the outer boundaries of a
21 district shall file a map of the service area with the district.

22 (c) The municipal water supplier shall update the map and
23 forward the map to the district when changes are made.

24 (d) A district periodically shall provide to a municipal
25 water supplier that serves territory in the district a copy of the
26 district's map showing the outer boundaries of the district.

27 (e) A district may request from a municipal water supplier a

1 map of the municipal water supplier's service area, and a municipal
2 water supplier may request from the district a map of the district's
3 outer boundaries. On request, the district and a municipal water
4 supplier shall provide the map free of charge to each other at least
5 one time each year. If the district or municipal water supplier
6 receives more than one request a year for a map, the district or
7 municipal water supplier may charge a reasonable fee for the map.

8 SECTION 2.25. Subchapter Z, Chapter 51, Education Code, is
9 amended by adding Section 51.969 to read as follows:

10 Sec. 51.969. ON-SITE RECLAIMED SYSTEM TECHNOLOGIES
11 CURRICULUM. The Texas Higher Education Coordinating Board shall
12 encourage each institution of higher education to develop
13 curriculum and provide related instruction regarding on-site
14 reclaimed system technologies, including rainwater harvesting,
15 condensate collection, or cooling tower blow down.

16 SECTION 2.26. Chapter 68, Education Code, is amended by
17 adding Subchapter B to read as follows:

18 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

19 Sec. 68.21. SUSTAINABLE WATER SUPPLY RESEARCH CENTER.

20 (a) In this section, "center" means the Sustainable Water Supply
21 Research Center.

22 (b) The board may establish and operate the Sustainable
23 Water Supply Research Center as part of The University of Texas at
24 Arlington.

25 (c) If established, the center shall:

26 (1) conduct, sponsor, or direct multidisciplinary
27 research directed toward:

1 (A) promoting water conservation through
2 development of a sustainable water supply for this state; and

3 (B) mitigating the effect of diminishing water
4 supplies on the economy and people of this state; and

5 (2) conduct a comprehensive, interdisciplinary
6 instructional program in water conservation with emphasis on
7 development of a sustainable water supply at the graduate level and
8 offer undergraduate courses for students interested in water
9 conservation and sustainable water supply development.

10 (d) The organization, control, and management of the center
11 are vested in the board.

12 (e) The center may enter into an agreement or may cooperate
13 with a public or private entity to perform the research functions of
14 the center.

15 (f) The board may solicit, accept, and administer gifts and
16 grants from any public or private source for the use and benefit of
17 the center.

18 SECTION 2.27. Section 447.004, Government Code, is amended
19 by adding Subsection (c-1) to read as follows:

20 (c-1) The procedural standards adopted under this section
21 must require that on-site reclaimed system technologies, including
22 rainwater harvesting, condensate collection, or cooling tower blow
23 down, or a combination of those system technologies, for nonpotable
24 indoor use and landscape watering be incorporated into the design
25 and construction of:

26 (1) each new state building with a roof measuring at
27 least 10,000 square feet; and

1 (2) any other new state building for which the
2 incorporation of such systems is feasible.

3 SECTION 2.28. Section 341.042, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The
6 commission shall establish recommended standards relating to the
7 domestic use of harvested rainwater, including health and safety
8 standards for treatment and collection methods for harvested
9 rainwater intended for drinking, cooking, or bathing.

10 (b) The commission by rule shall provide that if a structure
11 is connected to a public water supply system and has a rainwater
12 harvesting system for indoor use:

13 (1) the structure must have appropriate
14 cross-connection safeguards; and

15 (2) the rainwater harvesting system may be used only
16 for nonpotable indoor purposes.

17 (c) Standards and rules adopted by the commission under this
18 chapter governing public drinking water supply systems do not apply
19 to a person:

20 (1) who harvests rainwater for domestic use; and

21 (2) whose property is not connected to a public
22 drinking water supply system.

23 SECTION 2.29. Subsection (b), Section 212.0101, Local
24 Government Code, is amended to read as follows:

25 (b) The Texas [~~Natural Resource Conservation~~] Commission on
26 Environmental Quality by rule shall establish the appropriate form
27 and content of a certification to be attached to a plat application

1 under this section.

2 SECTION 2.30. Subsection (b), Section 232.0032, Local
3 Government Code, is amended to read as follows:

4 (b) The Texas [~~Natural Resource Conservation~~] Commission on
5 Environmental Quality by rule shall establish the appropriate form
6 and content of a certification to be attached to a plat application
7 under this section.

8 SECTION 2.31. Chapter 401, Local Government Code, is
9 amended by adding Section 401.006 to read as follows:

10 Sec. 401.006. WATER CONSERVATION BY HOME-RULE
11 MUNICIPALITY. A home-rule municipality may adopt and enforce
12 ordinances requiring water conservation in the municipality and by
13 customers of the municipality's municipally owned water and sewer
14 utility in the extraterritorial jurisdiction of the municipality.

15 SECTION 2.32. Subchapter Z, Chapter 402, Local Government
16 Code, is amended by adding Section 402.911 to read as follows:

17 Sec. 402.911. DUTIES OF WATER SERVICE PROVIDER TO AN AREA
18 SERVED BY SEWER SERVICE OF CERTAIN POLITICAL SUBDIVISIONS.

19 (a) This section applies only to an area:

20 (1) that is located in a county that has a population
21 of more than 1.3 million; and

22 (2) in which a customer's sewer service is provided by
23 a municipality or conservation and reclamation district that also
24 provides water service to other customers and the same customer's
25 water service is provided by another entity.

26 (b) For each person the water service provider serves in an
27 area to which this section applies, the water service provider

1 shall provide the municipality or district with any relevant
2 customer information so that the municipality or district may bill
3 users of the sewer service directly and verify the water
4 consumption of users. Relevant customer information provided under
5 this section includes the name, address, and telephone number of
6 the customer of the water service provider, the monthly meter
7 readings of the customer, monthly consumption information,
8 including any billing adjustments, and certain meter information,
9 such as brand, model, age, and location.

10 (c) The municipality or district shall reimburse the water
11 service provider for its reasonable and actual incremental costs
12 for providing services to the municipality or district under this
13 section. Incremental costs are limited to only those costs that are
14 in addition to the water service provider's costs in providing its
15 services to its customers, and those costs must be consistent with
16 the costs incurred by other water utility providers. Only if
17 requested by the wastewater provider, the water service provider
18 must provide the municipality or district with documentation
19 certified by a certified public accountant of the reasonable and
20 actual incremental costs for providing services to the municipality
21 or district under this section.

22 (d) A municipality or conservation and reclamation district
23 may provide written notice to a person to whom the municipality's or
24 district's sewer service system provides service if the person has
25 failed to pay for the service for more than 90 days. The notice must
26 state the past due amount owed and the deadline by which the past
27 due amount must be paid or the person will lose water service. The

1 notice may be sent by mail or hand-delivered to the location at
2 which the sewer service is provided.

3 (e) The municipality or district may notify the water
4 service provider of a person who fails to make timely payment after
5 the person receives notice under Subsection (d). The notice must
6 indicate the number of days the person has failed to pay for sewer
7 service and the total amount past due. On receipt of the notice,
8 the water service provider shall discontinue water service to the
9 person.

10 (f) This section does not apply to a nonprofit water supply
11 or sewer service corporation created under Chapter 67, Water Code,
12 or a district created under Chapter 65, Water Code.

13 SECTION 2.33. Section 430.003, Local Government Code, is
14 amended to read as follows:

15 Sec. 430.003. EXEMPTIONS OF CERTAIN [~~STATE~~] PROPERTY FROM
16 INFRASTRUCTURE FEES. No county, municipality, or utility district
17 may collect from a state agency or a public or private institution
18 of higher education any fee charged for the development or
19 maintenance of programs or [~~of~~] facilities for the control of
20 excess water or storm water.

21 SECTION 2.34. Section 1903.053, Occupations Code, is
22 amended to read as follows:

23 Sec. 1903.053. STANDARDS. (a) The commission shall adopt
24 by rule and enforce standards governing:

25 (1) the connection of irrigation systems to any water
26 supply;

27 (2) the design, installation, and operation of

1 irrigation systems;

2 (3) water conservation; and

3 (4) the duties and responsibilities of licensed
4 irrigators.

5 (b) ~~[The commission may adopt standards for irrigation that~~
6 ~~include water conservation, irrigation system design and~~
7 ~~installation, and compliance with municipal codes.]~~

8 [(c)] The commission may not require or prohibit the use of
9 any irrigation system, component part, or equipment of any
10 particular brand or manufacturer.

11 (c) In adopting standards under this section, the
12 commission shall consult the council.

13 SECTION 2.35. (a) In this section, "board" means the Texas
14 Water Development Board.

15 (b) The board, in coordination with the Far West Texas
16 Regional Water Planning Group established pursuant to Section
17 16.053, Water Code, shall conduct a study regarding the possible
18 impact of climate change on surface water supplies from the Rio
19 Grande.

20 (c) In conducting the study, the board shall convene a
21 conference within the Far West Texas regional water planning area
22 designated pursuant to Section 16.053, Water Code, to review:

23 (1) any analysis conducted by a state located to the
24 west of this state regarding the impact of climate change on surface
25 water supplies in that state;

26 (2) any other current analysis of potential impacts of
27 climate change on surface water resources; and

1 (3) recommendations for incorporation of potential
2 impacts of climate change into the Far West Texas Regional Water
3 Plan, including potential impacts to the Rio Grande in Texas
4 subject to the Rio Grande Compact and identification of feasible
5 water management strategies to offset any potential impacts.

6 (d) The conference should include, but not be limited to,
7 the participation of representatives of:

- 8 (1) the Far West Texas Regional Water Planning Group;
9 (2) water authorities;
10 (3) industrial customers;
11 (4) agricultural interests;
12 (5) municipalities;
13 (6) fishing or recreational interests;
14 (7) environmental advocacy organizations; and
15 (8) institutions of higher education.

16 (e) Not later than December 31, 2008, the board shall submit
17 to the legislature a written report regarding the study findings
18 under this section.

19 SECTION 2.36. (a) Chapter 9, Water Code, is repealed.

20 (b) The Texas Water Advisory Council is abolished on the
21 effective date of this article.

22 SECTION 2.37. Chapter 64, Water Code, is repealed.

23 SECTION 2.38. As soon as practicable on or after the
24 effective date of this article, the Texas Water Development Board
25 shall appoint the initial members of the Water Conservation
26 Advisory Council, as required by Section 10.003, Water Code, as
27 added by this article. In making the initial appointments, the

1 board shall designate seven members to serve terms expiring August
2 31, 2009, eight members to serve terms expiring August 31, 2011, and
3 eight members to serve terms expiring August 31, 2013.

4 SECTION 2.39. The changes made by this Act to Section
5 13.2451, Water Code, apply only to:

6 (1) an application for a certificate of public
7 convenience and necessity or for an amendment to a certificate of
8 public convenience and necessity submitted to the Texas Commission
9 on Environmental Quality on or after the effective date of this Act;

10 (2) a proceeding to amend or revoke a certificate of
11 public convenience and necessity initiated on or after the
12 effective date of this Act;

13 (3) a certificate of public convenience and necessity
14 issued to a municipality, regardless of the date the certificate
15 was issued;

16 (4) an application by a municipality or by a utility
17 owned by a municipality for a certificate of public convenience and
18 necessity or for an amendment to a certificate, regardless of the
19 date the application was filed; and

20 (5) a proceeding to amend or revoke a certificate of
21 public convenience and necessity held by a municipality or by a
22 utility owned by a municipality, regardless of the date the
23 proceeding was initiated.

24 SECTION 2.40. Sections 15.102 and 17.125, Water Code, as
25 amended by this article, and Sections 15.9751 and 16.1311, Water
26 Code, as added by this article, apply only to an application for
27 financial assistance filed with the Texas Water Development Board

1 on or after the effective date of this article. An application for
2 financial assistance filed before the effective date of this
3 article is governed by the law in effect on the date the application
4 was filed, and the former law is continued in effect for that
5 purpose.

6 SECTION 2.41. The change in law made by Subchapter O,
7 Chapter 49, Water Code, as added by this Act, applies only to a
8 subdivision for which a plat or map has been recorded in the office
9 of the county clerk of a county on or after the effective date of
10 this Act. A subdivision for which a plat or map was recorded before
11 the effective date of this Act is covered by the law in effect on the
12 date the plat or map was recorded, and the former law is continued
13 in effect for that purpose.

14 SECTION 2.42. Not later than June 1, 2008, the Texas
15 Commission on Environmental Quality shall adopt standards as
16 required by Section 1903.053, Occupations Code, as amended by this
17 article, to take effect January 1, 2009.

18 SECTION 2.43. Section 2.27 of this article, adding
19 Subsection (c-1), Section 447.004, Government Code, takes effect
20 September 1, 2009.

21 ARTICLE 3. CONSTRUCTION AND OPERATION OF RESERVOIRS

22 SECTION 3.01. Section 16.051, Water Code, is amended by
23 adding Subsection (i) to read as follows:

24 (i) For purposes of this section, the acquisition of fee
25 title or an easement by a political subdivision for the purpose of
26 providing retail public utility service to property in the
27 reservoir site or allowing an owner of property in the reservoir

1 site to improve or develop the property may not be considered a
2 significant impairment that prevents the construction of a
3 reservoir site under Subsection (g). A fee title or easement
4 acquired under this subsection may not be considered the basis for
5 preventing the future acquisition of land needed to construct a
6 reservoir on a designated site.

7 SECTION 3.02. Subchapter E, Chapter 16, Water Code, is
8 amended by adding Sections 16.143 and 16.144 to read as follows:

9 Sec. 16.143. OPTION TO LEASE. (a) A former owner of real
10 property used for agricultural purposes that was acquired,
11 voluntarily or through the exercise of the power of eminent domain,
12 for a reservoir whose site has been designated as unique for the
13 construction of a reservoir under Section 16.051(g) is entitled to
14 lease the property from the person who acquired the property under
15 terms that allow the former owner to continue to use the property
16 for agricultural purposes until the person who acquired the
17 property determines that such use must be terminated to allow for
18 the physical construction of the reservoir. Consistent with
19 Subsection (b), the lease is subject to the terms and conditions set
20 forth by the person who has acquired the property that are related
21 to the use of the property by the former owner, including the term
22 of the lease, the rent the former owner is required to pay under the
23 lease, and the uses that may be allowed on the property during the
24 term of the lease.

25 (b) A former owner of real property used for agricultural
26 purposes is entitled to lease the property for the property's
27 agricultural rental value until the person who acquired the

1 property determines that the lease must be terminated to allow for
2 the physical construction of the reservoir.

3 Sec. 16.144. ENVIRONMENTAL MITIGATION. (a) If a person
4 proposing to construct a reservoir whose site has been designated
5 as unique for the construction of a reservoir under Section
6 16.051(g) is required to mitigate future adverse environmental
7 effects arising from the construction or operation of the reservoir
8 or its related facilities, the person shall, if authorized by the
9 applicable regulatory authority, attempt to mitigate those effects
10 by offering to contract with and pay an amount of money to an owner
11 of real property located outside of the reservoir site to maintain
12 the property through an easement instead of acquiring the fee
13 simple title to the property for that purpose.

14 (b) An owner of real property may reject an offer made under
15 Subsection (a). If agreement on the terms of an easement under
16 Subsection (a) cannot be reached by the parties after a good faith
17 attempt and offer is made, then the party constructing the
18 reservoir may obtain fee title to the property through voluntary or
19 involuntary means.

20 ARTICLE 4. UNIQUE RESERVOIR SITES AND SITES OF UNIQUE ECOLOGICAL
21 VALUE

22 SECTION 4.01. Section 16.051, Water Code, is amended by
23 adding Subsection (g-1) to read as follows:

24 (g-1) Notwithstanding any other provisions of law, a site is
25 considered to be a designated site of unique value for the
26 construction of a reservoir if the site is recommended for
27 designation in the 2007 state water plan adopted by the board and in

1 effect on May 1, 2007. The designation of a unique reservoir site
2 under this subsection terminates on September 1, 2015, unless there
3 is an affirmative vote by a proposed project sponsor to make
4 expenditures necessary in order to construct or file applications
5 for permits required in connection with the construction of the
6 reservoir under federal or state law.

7 SECTION 4.02. DESIGNATION OF SITES OF UNIQUE ECOLOGICAL
8 VALUE. The legislature, as authorized by Subsection (f), Section
9 16.051, Water Code, designates those river or stream segment sites
10 recommended in the 2007 state water plan as being of unique
11 ecological value.

12 SECTION 4.03. RESTRICTION ON ELIGIBILITY TO HOLD WATER
13 RIGHTS; LIABILITY FOR CONSTRUCTION, OPERATION, AND MAINTENANCE
14 COSTS. (a) This section applies only to the proposed Marvin
15 Nichols and Lake Fastrill reservoirs.

16 (b) The right to appropriate at least 20 percent of the
17 quantity of water that is authorized to be appropriated from each
18 proposed reservoir must be held by one or more entities located in
19 the regional water planning area in which the reservoir is to be
20 located.

21 (c) If one or more entities located outside the regional
22 water planning area in which a proposed reservoir is to be located
23 are to hold the right to appropriate a majority of the quantity of
24 water that is authorized to be appropriated from the reservoir,
25 that entity or those entities must pay all of the costs of
26 constructing, operating, and maintaining the reservoir until such
27 time as one or more entities located in the regional water planning

1 area in which the reservoir is to be located begins diverting water.
2 At such time, the entity or entities making a diversion shall pay a
3 pro-rata share of the cost of operating and maintaining the
4 reservoir.

5 SECTION 4.04. STUDY COMMISSION ON REGION C WATER SUPPLY.

6 (a) The Study Commission on Region C Water Supply is established.
7 The study commission consists of six members as follows:

8 (1) three members appointed by the Region C Regional
9 Water Planning Group; and

10 (2) three members appointed by the Region D Regional
11 Water Planning Group.

12 (b) A member of the study commission may be, but is not
13 required to be, a voting member of the regional water planning group
14 that appointed the member.

15 (c) The members of the study commission shall select a
16 presiding officer from among the members.

17 (d) Members of the study commission are not entitled to
18 compensation for service on the study commission but may be
19 reimbursed for travel expenses incurred while conducting the
20 business of the study commission, as provided for in the General
21 Appropriations Act.

22 (e) The study commission shall:

23 (1) review the water supply alternatives available to
24 the Region C Regional Water Planning Area, including obtaining
25 additional water supply from Wright Patman Lake, Toledo Bend
26 Reservoir, Lake Texoma, Lake O' the Pines, other existing and
27 proposed reservoirs, and groundwater;

1 (2) in connection with the review under Subdivision
2 (1) of this subsection, analyze the socioeconomic effect on the
3 area where the water supply is located that would result from the
4 use of the water to meet the water needs of the Region C Regional
5 Water Planning Area, including:

6 (A) the effects on landowners, agricultural and
7 natural resources, businesses, industries, and taxing entities of
8 different water management strategies; and

9 (B) in connection with the use by the Region C
10 Regional Water Planning Area of water from Wright Patman Lake, the
11 effect on water availability in that lake and the effect on
12 industries relying on that water availability;

13 (3) determine whether water demand in the Region C
14 Regional Water Planning Area may be reduced through additional
15 conservation and reuse measures so as to postpone the need for
16 additional water supplies;

17 (4) evaluate measures that would need to be taken to
18 comply with the mitigation requirements of the United States Army
19 Corps of Engineers in connection with any proposed new reservoirs,
20 including identifying potential mitigation sites;

21 (5) consider whether the mitigation burden described
22 by Subdivision (4) of this subsection may be shared by the Regions C
23 and D Regional Water Planning Areas in proportion to the allocation
24 to each region of water in any proposed reservoir;

25 (6) review innovative methods of compensation to
26 affected property owners, including royalties for water stored on
27 acquired properties and annual payments to landowners for

1 properties acquired for the construction of a reservoir to satisfy
2 future water management strategies;

3 (7) evaluate the minimum number of surface acres
4 required for the construction of proposed reservoirs in order to
5 develop adequate water supply; and

6 (8) identify the locations of proposed reservoir sites
7 and proposed mitigation sites, as applicable, as selected in
8 accordance with existing state and federal law, in the Regions C and
9 D Regional Water Planning Areas using satellite imagery with
10 sufficient resolution to permit land ownership to be determined.

11 (f) The study commission may not be assisted by any person
12 that is a party to or is employed by a party to a contract to perform
13 engineering work with respect to site selection, permitting,
14 design, or construction of the proposed Marvin Nichols reservoir.

15 (g) The Texas Water Development Board, on request of the
16 study commission, may provide staff support or other assistance
17 necessary to enable the study commission to carry out its duties.
18 The Texas Water Development Board shall provide funding for the
19 study commission, including funding of any studies conducted by the
20 study commission, from the regional planning budget of the board.

21 (h) Not later than December 1, 2010, the study commission
22 shall deliver a report to the governor, lieutenant governor, and
23 speaker of the house of representatives that includes:

- 24 (1) any studies completed by the study commission;
25 (2) any legislation proposed by the study commission;
26 (3) a recommendation as to whether Marvin Nichols
27 should remain a designated reservoir site; and

1 (4) other findings and recommendations of the study
2 commission.

3 (i) The study commission is abolished and this section
4 expires December 31, 2011.

5 SECTION 4.05. EFFECTIVE DATE. This article takes effect
6 immediately if this Act receives a vote of two-thirds of all the
7 members elected to each house, as provided by Section 39, Article
8 III, Texas Constitution. If this Act does not receive the vote
9 necessary for immediate effect, this article takes effect September
10 1, 2007.

11 ARTICLE 5. LEGISLATIVE JOINT INTERIM COMMITTEE

12 SECTION 5.01. (a) In this section, "committee" means the
13 joint interim committee on state water funding.

14 (b) The committee is composed of eight members as follows:

15 (1) the chair of the Senate Committee on Natural
16 Resources and the chair of the House Committee on Natural Resources
17 who shall serve as joint chairs of the committee;

18 (2) three members of the senate appointed by the
19 lieutenant governor; and

20 (3) three members of the house of representatives
21 appointed by the speaker of the house of representatives.

22 (c) An appointed member of the committee serves at the
23 pleasure of the appointing official.

24 (d) The committee shall meet at least annually with the
25 executive director of the Texas Commission on Environmental Quality
26 and the executive administrator of the Texas Water Development
27 Board to:

1 (1) receive information on water infrastructure needs
2 as identified in the state water plan;

3 (2) receive information on infrastructure cost and
4 funding options to be used by local entities to meet the needs
5 identified in the state water plan;

6 (3) receive analyses of the funding gap and
7 recommendations on how to address those funding needs;

8 (4) receive information on whether all water fees
9 assessed are sufficient to support the required regulatory
10 water-related state program functions and activities; and

11 (5) identify viable, sustainable, dedicated revenues
12 and fee sources, or increases to existing revenue and fees, to
13 support state water programs and to provide for natural resources
14 data collection and dissemination, financial assistance programs,
15 and water resources planning, including funding to implement water
16 management strategies in the state water plan.

17 (e) The committee may hold hearings and may request reports
18 and other information from state agencies as necessary to carry out
19 this section.

20 (f) The Senate Committee on Natural Resources and the House
21 Committee on Natural Resources shall provide staff necessary for
22 the committee to fulfill its duties.

23 (g) Not later than December 1, 2008, the committee shall
24 report to the governor, the lieutenant governor, and the speaker of
25 the house of representatives on the committee's activities under
26 Subsection (d) of this section. The report shall include
27 recommendations of any legislative action necessary to address

1 funding needs to support the state's water programs and water
2 infrastructure needs.

3 ARTICLE 6. WATER DEVELOPMENT BOARD

4 SECTION 6.01. Section 16.344, Water Code, is amended by
5 adding Subsections (d) through (i) to read as follows:

6 (d) Notwithstanding Section 16.343(g) or Section 16.350(a),
7 a political subdivision may temporarily continue to receive funds
8 under Subchapter K, Chapter 17, if the political subdivision
9 submits a request for temporary continuation of funding and the
10 board determines that:

11 (1) the political subdivision's initial funding
12 application and any amendments for a designated area were reviewed
13 and approved by the board before January 1, 2007;

14 (2) withholding funds would result in an undue
15 hardship for occupants of the property to be served by unreasonably
16 delaying the provision of adequate water or wastewater services;

17 (3) withholding funds would result in inefficient use
18 of local, state, or federal funds under the program;

19 (4) the political subdivision has committed to take
20 the necessary and appropriate actions to correct any deficiencies
21 in adoption or enforcement of the model rules within the time
22 designated by the board, but not later than the 90th day after the
23 date the board makes the determinations under this subsection;

24 (5) the political subdivision has sufficient
25 safeguards in place to prevent the proliferation of colonias; and

26 (6) during the 30 days after the date the board
27 receives a request under this subsection, the board, after

1 consulting with the attorney general, secretary of state, and
2 commission, has not received an objection from any of those
3 entities to the request for temporary continuation of funding.

4 (e) In applying Subsection (d) to applications for
5 increased financial assistance, the board shall only consider areas
6 that were included in the initial application, except that the
7 board may reconsider the eligibility of areas that were the subject
8 of a facility plan in the initial application and that may be
9 determined to be eligible based on criteria in effect September 1,
10 2005.

11 (f) The political subdivision shall take necessary and
12 appropriate actions to correct any deficiencies in its adoption and
13 enforcement of the model rules within the time period required by
14 the board, not to exceed the 90-day period described by Subsection
15 (d)(4), and provide evidence of compliance to the board. The board
16 shall discontinue funding unless the board makes a determination
17 based on the evidence provided that the political subdivision has
18 demonstrated sufficient compliance to continue funding.

19 (g) Except as provided by Subsections (d)-(f), if the board
20 determines that a county or city that is required to adopt and
21 enforce the model rules is not enforcing the model rules, the board
22 shall discontinue funding for all projects within the county or
23 city that are funded under Subchapter K, Chapter 17.

24 (h) The board may not accept or grant applications for
25 temporary funding under Subsection (d) after June 1, 2009.

26 (i) Subsections (d), (e), (f), (g), and (h) and this
27 subsection expire September 1, 2009.

1 ARTICLE 7. RATE CLASSES FOR BILLING

2 SECTION 7.01. Subchapter H, Chapter 49, Water Code, is
3 amended by adding Section 49.2122 to read as follows:

4 Sec. 49.2122. ESTABLISHMENT OF CUSTOMER CLASSES.

5 (a) Notwithstanding any other law, a district may establish
6 different charges, fees, rentals, or deposits among classes of
7 customers that are based on any factor the district considers
8 appropriate, including:

9 (1) the similarity of the type of customer to other
10 customers in the class, including:

11 (A) residential;

12 (B) commercial;

13 (C) industrial;

14 (D) apartment;

15 (E) rental housing;

16 (F) irrigation;

17 (G) homeowner associations;

18 (H) builder;

19 (I) out-of-district;

20 (J) nonprofit organization; and

21 (K) any other type of customer as determined by
22 the district;

23 (2) the type of services provided to the customer
24 class;

25 (3) the cost of facilities, operations, and
26 administrative services to provide service to a particular class of
27 customer, including additional costs to the district for security,

1 recreational facilities, or fire protection paid from other
2 revenues; and

3 (4) the total revenues, including ad valorem tax
4 revenues and connection fees, received by the district from a class
5 of customers relative to the cost of service to the class of
6 customers.

7 (b) A district is presumed to have weighed and considered
8 appropriate factors and to have properly established charges, fees,
9 rentals, and deposits absent a showing that the district acted
10 arbitrarily and capriciously.

11 ARTICLE 8. STUDY OF ROLE OF LAKE SOMERVILLE IN ECONOMIC DEVELOPMENT

12 SECTION 8.01. The legislature finds that:

13 (1) in 1954, the United States Congress authorized the
14 construction of Lake Somerville to provide flood control, water
15 conservation, and other beneficial uses for nearby areas;
16 subsequently, the United States Army Corps of Engineers began
17 reservoir construction in 1962 and began to impound water in 1967;

18 (2) straddling the borders of Burleson, Washington,
19 and Lee Counties, on Yegua Creek 20 river miles upstream from that
20 creek's confluence with the Brazos River, the lake has a storage
21 capacity of 337,700 acre-feet;

22 (3) operation of the lake is supervised by the Fort
23 Worth District of the United States Army Corps of Engineers; the
24 lake is one of nine federal reservoirs that are integrated into the
25 Brazos River Authority's basin-wide system and associated water
26 resource development master plan;

27 (4) the Brazos River Authority owns the stored water,

1 a source from which it furnishes supplies to the City of Brenham
2 according to a contract that was last renewed for a 10-year period
3 in 2003;

4 (5) also significantly involved in the region is the
5 Lower Colorado River Authority, which, from its diverse mix of
6 power plants, provides wholesale electricity to various
7 communities as well as offering them its economic research and
8 expertise;

9 (6) although Lake Somerville has long been a tourist
10 destination for fishing and other water recreation, the facility
11 has not fully effectuated the three-county economic impact that
12 originally was expected at the time that it was built; and

13 (7) a study of Lake Somerville's role in economic
14 development would assist in explaining why the lake has not yet had
15 that impact, beyond the tourism industry, and would help to
16 identify impediments that currently restrict its contribution as
17 well as strategies that would better maximize its economic
18 potential.

19 SECTION 8.02. The Brazos River Authority and the Lower
20 Colorado River Authority shall:

21 (1) conduct, with appropriate input from the public
22 and private sectors, a joint baseline study of the role of Lake
23 Somerville in the economic development of the surrounding vicinity;
24 and

25 (2) jointly submit a full report of their findings and
26 recommendations to the 81st Legislature when that legislature
27 convenes in January 2009.

ARTICLE 9. AGUA SPECIAL UTILITY DISTRICT

SECTION 9.01. The heading to Chapter 7201, Special District Local Laws Code, is amended to read as follows:

CHAPTER 7201. AGUA [~~LA JOYA~~] SPECIAL UTILITY DISTRICT

SECTION 9.02. Section 7201.001, Special District Local Laws Code, is amended by amending Subdivision (3) and adding Subdivision (4) to read as follows:

(3) "Director" means a member of the board.

(4) "District" means the Agua [La Joya] Special Utility District.

SECTION 9.03. Subsection (c), Section 7201.002, Special District Local Laws Code, is amended to read as follows:

(c) The [~~On the effective date of the Act enacting this chapter, the~~] corporation shall be dissolved and succeeded without interruption by the district as provided by Subchapter A1.

SECTION 9.04. Section 7201.005, Special District Local Laws Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) The [~~boundaries of the corporation and initial boundaries of the~~] district is composed of the territory described by Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this subsection [~~are coextensive with the service areas covered by Certificates of Convenience and Necessity Nos. 10559 and 20785, as recorded on the Texas Commission on Environmental Quality maps associated with those certificates. Those maps are incorporated in this section by reference~~].

(b) The boundaries and field notes contained in Section 9.12

1 of the Act enacted by the 80th Legislature, Regular Session, 2007,
2 amending this subsection form a closure. A mistake made in the
3 field notes or in copying the field notes in the legislative process
4 ~~[preparation, copying, or filing of the maps described by~~
5 ~~Subsection (a) and on file with the Texas Commission on~~
6 ~~Environmental Quality]~~ does not affect:

7 (1) the organization, existence, or validity of the
8 district;

9 (2) the right of the district to issue bonds; or

10 (3) the legality or operation of the district.

11 (d) The territory of the district does not include and the
12 district does not have jurisdiction over land that has never been in
13 the service area of the corporation regardless of any erroneous
14 inclusion of that land in the boundaries and field notes in Section
15 9.12 of the Act enacted by the 80th Legislature, Regular Session,
16 2007, amending this section.

17 SECTION 9.05. Section 7201.021, Special District Local Laws
18 Code, is amended by amending Subsections (a), (b), and (d) and
19 adding Subsection (f) to read as follows:

20 (a) Except as provided by this subsection, after the
21 appointment of initial directors under Section 7201.051, the
22 receiver for the corporation ~~[On the effective date of the Act~~
23 ~~enacting this chapter, the corporation]~~ shall transfer the assets,
24 debts, and contractual rights and obligations of the corporation,
25 including all legal claims against the corporation in effect on the
26 date of the transfer, to the district and provide notices and make
27 recordings of the transfer required by the Water Code and general

1 law. If the transfer of any debt requires the permission of the
2 lender, the receiver shall initiate proceedings to obtain that
3 permission.

4 (b) In accordance with the orders of the receivership court
5 and not [~~Not~~] later than the 30th day after the date of the transfer
6 under Subsection (a), the receiver for [~~board of directors of~~] the
7 corporation shall commence dissolution proceedings of the
8 corporation.

9 (d) The receiver for [~~board of directors of~~] the corporation
10 shall notify the Texas Commission on Environmental Quality of the
11 dissolution of the corporation and its succession in interest by
12 [~~the creation of~~] the district in order [~~to replace it~~] to effect
13 the transfer of Certificates of Convenience and Necessity Nos.
14 10559 and 20785 to the district.

15 (f) After the Texas Commission on Environmental Quality
16 takes the action required by Subsection (e), the court shall
17 terminate the receivership.

18 SECTION 9.06. Section 7201.022, Special District Local Laws
19 Code, is amended to read as follows:

20 Sec. 7201.022. EXPIRATION OF SUBCHAPTER. This subchapter
21 expires September 1, 2012 [~~2008~~].

22 SECTION 9.07. Section 7201.051, Special District Local Laws
23 Code, is amended to read as follows:

24 Sec. 7201.051. APPOINTMENT OF INITIAL [~~TEMPORARY~~]
25 DIRECTORS. (a) As soon as practicable after the effective date of
26 the Act enacted by the 80th Legislature, Regular Session, 2007,
27 amending this section, seven initial directors shall be appointed

1 as provided by this section [~~The directors of the corporation who~~
2 ~~hold office on the effective date of the Act enacting this chapter~~
3 ~~shall serve as the temporary directors of the district until~~
4 ~~successor directors are elected and qualify for office~~].

5 (b) To be eligible to be appointed as an initial director,
6 an individual must meet the same requirements as a candidate for an
7 elected position as director under Section 7201.052. The initial
8 directors shall be appointed as follows:

9 (1) one director to represent the residents of the
10 district in the City of Mission appointed by the governing body of
11 that city;

12 (2) one director to represent the residents of the
13 district in the City of Palmview appointed by the governing body of
14 that city;

15 (3) one director to represent the residents of the
16 district in the City of Penitas appointed by the governing body of
17 that city;

18 (4) one director to represent the residents of the
19 district in the City of Sullivan City appointed by the governing
20 body of that city; and

21 (5) three directors to represent the residents of the
22 district outside the municipalities listed in Subdivisions (1)-(4)
23 appointed by the Hidalgo County Commissioners Court [~~The temporary~~
24 ~~directors of the district are assigned position numbers as follows:~~

25 [~~(1) Position 1, Jose Luis Trigo,~~

26 [~~(2) Position 2, Jose Guadalupe Reyna,~~

27 [~~(3) Position 3, George Barreiro,~~

1 ~~[(4) Position 4, Frolian Ramirez,~~
2 ~~[(5) Position 5, Russell Wicker,~~
3 ~~[(6) Position 6, Benito Salinas,~~
4 ~~[(7) Position 7, Manuel Ricardo Garcia,~~
5 ~~[(8) Position 8, Valente Alaniz, Jr., and~~
6 ~~[(9) Position 9, Juan Lino Garza].~~

7 (c) An initial director serves a term that expires on June 1
8 of the year in which the director's successor is elected under
9 Section 7201.052 [If there is a vacancy on the temporary board of
10 directors of the district, the temporary board shall appoint a
11 person to fill the vacancy for the remainder of the term for the
12 vacated position until the applicable election under Section
13 7201.052].

14 SECTION 9.08. Subchapter B, Chapter 7201, Special District
15 Local Laws Code, is amended by adding Sections 7201.0512 and
16 7201.0513 to read as follows:

17 Sec. 7201.0512. INITIAL BOARD TRAINING. (a) Not later
18 than the 60th day after the first date on which all of the initial
19 directors have been appointed, each initial director shall complete
20 at least 12 hours of training on district management and compliance
21 with laws applicable to the district as determined by the receiver
22 for the corporation.

23 (b) The district shall reimburse an initial director for the
24 reasonable expenses incurred by the director in attending the
25 training.

26 Sec. 7201.0513. EDUCATION PROGRAM. (a) Before the first
27 election of directors under Section 7201.052, the initial board

1 shall establish a program of education for directors that includes
2 information on:

3 (1) the history of the district;

4 (2) the district's enabling legislation;

5 (3) Chapters 49 and 65, Water Code, and other laws that
6 apply to the district, including the requirements of the:

7 (A) open meetings law, Chapter 551, Government
8 Code; and

9 (B) public information law, Chapter 552,
10 Government Code;

11 (4) relevant legal developments related to water
12 district governance;

13 (5) the duties and responsibilities of the board;

14 (6) the requirements of conflict of interest laws and
15 other laws relating to public officials; and

16 (7) any applicable ethics policies adopted by the
17 Texas Commission on Environmental Quality or the Texas Ethics
18 Commission.

19 (b) The district shall pay any costs associated with the
20 development of the education program from district revenue.

21 (c) The education program may include training provided by
22 an organization offering courses that have been approved by the
23 Texas Commission on Environmental Quality.

24 (d) The board may adopt bylaws modifying the education
25 program as necessary to meet district needs.

26 SECTION 9.09. Section 7201.052, Special District Local Laws
27 Code, is amended to read as follows:

1 Sec. 7201.052. BOARD OF DIRECTORS. (a) Except as provided
2 by Subsection (1), the [~~The~~] district shall be governed by a board
3 of seven [~~not fewer than nine and not more than 11~~] directors,
4 elected as follows:

5 (1) one director elected by the voters of the part of
6 the City of Mission inside the district to represent that part of
7 the city;

8 (2) one director elected by the voters of the City of
9 Palmview to represent that city;

10 (3) one director elected by the voters of the City of
11 Penitas to represent that city;

12 (4) one director elected by the voters of the City of
13 Sullivan City to represent that city; and

14 (5) three directors elected at-large to numbered
15 positions on the board by the district voters who do not reside in
16 any of the municipalities listed in Subdivisions (1)-(4) to
17 represent the part of the district that is not included in those
18 municipalities, unless the number of at-large directors is
19 increased under Subsection (1) [~~in accordance with Section 49.103,~~
20 Water Code, notwithstanding Subsection (f)(2) of that section].

21 (b) A [~~Except for a temporary director under Section~~
22 ~~7201.051, a~~] candidate for one of the numbered [~~a position as~~]
23 director positions:

24 (1) [~~is elected at large to represent the entire~~
25 ~~service area of the district,~~

26 [~~(2)~~] must reside in the part of the service area of
27 the district that is not included in any of the municipalities

1 listed in Subsections (a)(1)-(4); and

2 (2) [~~(3)~~] must be eligible to hold office under
3 Section 141.001, Election Code.

4 (c) A candidate for one of the director positions
5 representing a municipality listed in Subsection (a)(1), (2), (3),
6 or (4):

7 (1) must reside in the municipality the candidate
8 seeks to represent; and

9 (2) must be eligible to hold office under Section
10 141.001, Election Code.

11 (d) It is the policy of the district that the directors
12 shall represent and reside in as broad a cross-section of the
13 geographic area of the district as possible.

14 (e) [~~(d)~~] The district shall fill a vacancy on the board in
15 accordance with Section 49.105, Water Code.

16 (f) [~~(e)~~] Except for the initial [~~temporary~~] directors
17 appointed [~~listed~~] under Section 7201.051 or elected at the first
18 election under Subsection (g), directors serve staggered terms of
19 four [~~three~~] years.

20 (g) [~~(f)~~] On the uniform election date in May 2008, or in
21 May 2010, if the election is postponed under Subsection (h), the
22 district shall hold an election to elect seven directors. On the
23 [2006, and on that] uniform election date in May of each
24 even-numbered [~~every third~~] year after that date, the district
25 shall hold an election to elect the appropriate number of [~~three~~]
26 directors [~~to serve in positions 1, 4, and 7~~].

27 (h) The initial board by order may postpone until the

1 uniform election date in May 2010 the first election for directors
2 under Subsection (g) if the initial board determines that there is
3 not sufficient time to comply with the requirements of law and to
4 order the election of directors to be held on the first uniform
5 election date specified by that subsection.

6 (i) The directors elected at the first election under
7 Subsection (g) shall cast lots to determine which three directors
8 shall serve terms expiring June 1 of the first even-numbered year
9 after the year in which the directors are elected and which four
10 directors shall serve terms expiring June 1 of the second
11 even-numbered year after the year in which the directors are
12 elected.

13 (j) A director may not serve consecutive terms.

14 (k) A person who has served as a member of the board of
15 directors of the corporation is not eligible to serve as a district
16 director.

17 (l) If, before the expiration of the term of a director
18 elected to represent a municipality under Subsection (a)(1), (2),
19 (3), or (4), the district determines that all of the incorporated
20 territory of the municipality is outside the boundaries of the
21 district, the position immediately becomes an at-large numbered
22 position to be filled at the next general election of the district
23 in accordance with Subsections (a)(5) and (b) [~~(g)~~—On the uniform
24 election date in May 2007, and on that uniform election date every
25 third year after that date, the district shall hold an election to
26 elect three directors to serve in positions 2, 3, and 5.

27 [~~(h)~~—On the uniform election date in May 2008, and on that

1 ~~uniform election date every third year after that date, the~~
2 ~~district shall hold an election to elect three directors to serve in~~
3 ~~positions 6, 8, and 9].~~

4 SECTION 9.10. Subchapter B, Chapter 7201, Special District
5 Local Laws Code, is amended by adding Sections 7201.053 and
6 7201.054 to read as follows:

7 Sec. 7201.053. DISTRICT TREASURER. (a) The board shall
8 elect from among its members one director to serve as district
9 treasurer.

10 (b) The district treasurer shall comply with the training
11 requirements provided by Section 49.1571, Water Code, for an
12 investment officer of a district.

13 Sec. 7201.054. EDUCATION FOR DIRECTORS. (a) Except for an
14 initial director whose term expires in 2008, each director shall
15 complete the education program established under Section 7201.0513
16 before the first anniversary of the date on which the director was
17 appointed or elected.

18 (b) The district shall reimburse a director for the
19 reasonable expenses incurred by the director in attending the
20 education program.

21 (c) A director who is elected to serve a subsequent term
22 shall fulfill the education requirements specified by district
23 bylaws.

24 SECTION 9.11. Section 7201.206, Special District Local Laws
25 Code, is amended to read as follows:

26 Sec. 7201.206. RATES AND FEES FOR SERVICES. (a) The
27 district, in connection with water or sewer retail public utility

1 services, shall establish lifeline, senior citizen, or minimum
2 consumption level rates for services. The rate impact of such
3 services shall be allocated on the basis of costs of services to
4 achieve conservation principles, while securing necessary reserves
5 for the payment of operating expenses, sinking funds, principal,
6 interest, and debt coverage factors, and any other objective
7 established by the district's annual budget.

8 (b) Chapter 395, Local Government Code, does not apply to
9 any fee, charge, or assessment that, before the corporation's
10 dissolution and conversion to a district, is adopted by the
11 receiver for the purpose of generating revenue to fund or recoup the
12 costs of capital improvements or facility expansions necessitated
13 by and attributable to new developments.

14 (c) Notwithstanding Subsection (b), beginning on December
15 31, 2009, the district may not impose any fee, charge, or assessment
16 that, before the corporation's dissolution and conversion to a
17 district, is adopted by the receiver for the purpose of generating
18 revenue to fund or recoup the costs of capital improvements or
19 facility expansions necessitated by and attributable to new
20 developments unless the district readopts the fee, charge, or
21 assessment or adopts a new fee, charge, or assessment in accordance
22 with Chapter 395, Local Government Code. This subsection does not
23 apply to a retail water or sewer rate adopted by the receiver or the
24 district.

25 SECTION 9.12. (a) Except for the areas excluded under
26 Subsection (b) of this section, the boundaries of the Agua Special
27 Utility District are as follows:

1 Beginning at a point in the centerline of FM 495 (Mile 1 Road)
2 a distance of approximately .18 miles west of the intersection of FM
3 495 and Inspiration Road.

4 Thence due north approximately 1.0 miles to a point
5 approximately 166 feet south of the centerline of Mile 2 Road and
6 approximately .18 miles west of the intersection of Mile 2 Road and
7 Inspiration Road

8 Thence follow west along a straight westerly line
9 approximately 180 feet south of Mile 2 Road approximately .51 miles
10 to a point in the centerline of Schubach Road.

11 Following westerly in a straight line approximately .78 miles
12 to the centerline of Bentsen Palm Drive.

13 From the point at the centerline of Bentsen Palm Road
14 continue westerly approximately .78 miles to a point at 26 15 00
15 latitude and -98 22 10 longitude.

16 Turn right and due north and follow approximately 7.0 miles
17 in a northerly direction .10 miles west and parallel to Bentsen Palm
18 Drive to a point at 226 21 04 latitude and -98 21 06 longitude.

19 Turn left and follow westerly along a straight line a
20 distance of approximately 1.66 miles to the intersection of Abram
21 Road and 9 Mile Road.

22 Follow along the centerline of 9 Mile Road westerly
23 approximately 1.65 miles to its intersection with Iowa Avenue.
24 (Latitude: 26 21 31, Longitude: -98 24 16)

25 Continue westerly along a straight line from latitude 26 21
26 31, longitude -98 24 16 approximately 3.79 miles to the center line
27 of FM 2221 (Jara Chinas Road)

1 Thence due south along FM 2221 (Jara Chinas Road)
2 approximate distance of 8.02 Miles to a point approximately .75
3 miles north of the Intersection of Expressway 83 and FM 2221(Jara
4 Chinas Road)

5 Thence at a distance of approximately .75 miles north of the
6 centerline of Expressway 83 due west to northwest approximately 4
7 miles following along the same contour as Expressway 83 to the
8 centerline of El Faro Road from a point .62 miles east of the
9 intersection of El Faro Road and Expressway 83.

10 Turn right and follow due north down the centerline of El Faro
11 Road until its end and continue northerly for a total of
12 approximately 2.79 miles to a point at latitude 26 19 13 and
13 longitude -98 32 40.

14 Turn left and follow northwesterly in a straight line along
15 the east side of 16 Mile Road (Starr County) approximately 1.87
16 miles to a point located at 26 19 30 latitude and -98 34 27
17 longitude.

18 Turn right and follow northeasterly in a straight line
19 approximately 1.02 miles to a point located at 26 20 22 latitude and
20 -98 34 17 longitude.

21 Turn right and follow southeasterly in a straight line
22 approximately 1.26 miles to a point located at 26 20 22 latitude and
23 -98 33 05 longitude.

24 Turn right and follow northeasterly in a straight line along
25 the west side of County Line Road (Starr County) approximately .61
26 miles to a point located at 26 20 43 latitude and -98 32 60
27 longitude.

1 Turn left and follow northwesterly in a straight line
2 approximately 1.26 miles to a point located at 26 20 53 latitude and
3 -98 34 12 longitude.

4 Turn right and follow northeasterly in a straight line along
5 the east side of 16 Mile Road (Starr County) approximately 1.32
6 miles to a point located at 26 22 02 latitude and -98 33 59
7 longitude.

8 Turn left and follow northwesterly in a straight line
9 approximately .55 miles to a point located at 26 22 07 latitude and
10 -98 34 30 longitude.

11 Turn left and follow southwesterly in a straight line
12 approximately 6.17 miles to a point located at 26 16 48 latitude and
13 -98 35 29 longitude.

14 Turn left and follow southeasterly in a straight line
15 approximately .91 miles to a point located at 26 16 30 latitude and
16 -98 34 40 longitude, near the Hidalgo-Starr County line.

17 Turn right and follow southwesterly along the Hidalgo-Starr
18 County line approximately 1.28 miles to its intersection with the
19 Rio Grande River (U.S. side).

20 Thence due south approximately 7.77 miles to the northern
21 winding banks (U.S. side) of the Rio Grande River

22 Thence east along the northern winding banks (US side) of
23 the Rio Grande River approximately 22 miles to a point
24 approximately 1.16 miles south of Greene Road

25 Thence from that center line on Bentsen Park Road
26 approximately .82 miles east northeast to the centerline of
27 Breyfogle/Shuerbach Road

1 Turn left and follow westerly in a straight line
2 approximately .56 miles to a point located 26 11 20 latitude and -98
3 22 30 longitude.

4 Turn left and follow southerly in a straight line
5 approximately .50 miles to the centerline of Military Road.

6 Turn right and follow northerly and then northwesterly along
7 the north side of Military Road approximately .36 miles to its
8 intersection with Farm-to-Market Road 2062.

9 Turn left and follow southerly along Farm-to-Market Road 2062
10 approximately .16 miles to a point located at 26 11 02 latitude and
11 -98 22 46 longitude.

12 Turn right and follow northerly, westerly, southerly,
13 southwesterly, northerly, westerly and then southwesterly for
14 approximately 1.27 miles to a point located at 26 11 11 latitude and
15 -98 23 38 longitude running just north of Park Road 43.

16 Turn right and follow northeasterly along a straight line for
17 approximately .71 miles to the north side of Military Road.

18 Turn left and follow along westerly approximately .44 miles
19 along the north side of Military Road to its intersection with
20 Goodwin Road.

21 Turn right and follow northerly along the centerline of
22 Goodwin Road approximately .33 miles to a point located at 26 12 07
23 latitude and -98 23 53 longitude.

24 Turn right and follow easterly, northerly, easterly and then
25 southeasterly approximately .78 miles to the intersection with
26 Green Road.

27 Turn left and follow northerly along the centerline of Green

1 Road approximately .32 miles.

2 Turn right and follow easterly and then southwesterly
3 approximately 1.16 miles to the north side of Military Road at
4 points 26 11 42 latitude and -98 23 16 longitude.

5 Turn left and follow southeasterly along the north side of
6 Military Road approximately 0.07 miles to a point located at 26 11
7 40 latitude and -98 23 13 longitude.

8 Turn left and follow northeasterly, northerly,
9 northeasterly, northerly, northeasterly, easterly, southerly and
10 then easterly approximately 2.04 miles to the centerline of
11 Shuebach Road/Airfield Road

12 Turn left and follow northeasterly along the centerline of
13 Airfield Road approximately 1.48 miles to its intersection with
14 U.S. Highway 83 Business.

15 Turn right and follow easterly along the centerline of U.S.
16 Highway 83 Business approximately .27 miles to its intersection
17 with Moorefield Road.

18 Turn left and follow northerly along the centerline of
19 Moorefield Road approximately .32 miles to a point located at 26 13
20 23 latitude and -98 21 21 longitude.

21 Make a slight right and follow northeasterly and then
22 northerly along the west banks of the Edinburg Main Canal
23 approximately .66 miles to that point on the centerline of FM 495
24 the beginning (Mile 1 Road) a distance of approximately .18 miles
25 west of the intersection of FM 495 and Inspiration Road to Close.

26 (b) The territory of the Agua Special Utility District does
27 not include the area within the city limits of La Joya, Texas, as it

1 existed on January 1, 1991; the area within the Certificate of
2 Convenience and Necessity of Hidalgo County Municipal Utility
3 District No. 1 as reflected on the records of the Texas Commission
4 on Environmental Quality as of January 1, 2007; and the area within
5 the following boundary lines, which lie wholly within the district:

6 Beginning at a point located at 26 14 57 Latitude and -98 25
7 55 Longitude follow in a northwesterly direction along an unnamed
8 creek approximately .23 Miles to a point located at 26 15 03
9 Latitude and -98 26 05 Longitude.

10 From the point located at 26 15 03 Latitude and -98 26 05
11 Longitude follow in a westerly direction along an unnamed creek
12 approximately .24 Miles to a point located at 26 15 04 Latitude and
13 -98 26 19 Longitude.

14 From the point located at 26 15 04 Latitude and -98 26 19
15 Longitude turn right and follow in a straight line northeasterly
16 approximately .97 Miles to a point located at 26 15 54 Latitude and
17 -98 26 09 Longitude.

18 From the point located at 26 15 54 Latitude and -98 26 09
19 Longitude turn right and follow in a straight line
20 easterly-southeasterly approximately .43 Miles to a point located
21 at 26 15 50 Latitude and -98 25 45 Longitude.

22 From a point located at 26 15 50 Latitude and -98 25 45
23 Longitude turn right and follow in a straight line southwesterly
24 approximately 1.03 Miles to a point located at 26 14 57 Latitude and
25 -98 25 55 Longitude and Place of Beginning.

26 SECTION 9.13. Initial directors of the board of the Agua
27 Special Utility District shall be appointed in accordance with

1 Section 7201.051, Special District Local Laws Code, as amended by
2 this Act, as soon as practicable after the effective date of this
3 Act.

4 SECTION 9.14. Except as otherwise provided by Chapter 7201,
5 Special District Local Laws Code, as amended by this Act, the Agua
6 Special Utility District is subject to:

7 (1) any judicial or administrative order imposing an
8 injunction against the La Joya Water Supply Corporation that is in
9 effect on the date of the transfer under Section 7201.021, Special
10 District Local Laws Code, as amended by this Act; or

11 (2) any judicial or administrative order imposing
12 liability for monetary damages or a civil or administrative penalty
13 against the La Joya Water Supply Corporation that:

14 (A) results from a legal proceeding that is
15 pending on the date of the transfer under Section 7201.021, Special
16 District Local Laws Code, as amended by this Act; or

17 (B) is unsatisfied on the date of the transfer
18 under Section 7201.021, Special District Local Laws Code, as
19 amended by this Act.

20 SECTION 9.15. (a) The legal notice of the intention to
21 introduce the article of this Act that amends Chapter 7201, Special
22 District Local Laws Code, setting forth the general substance of
23 the article, has been published as provided by law, and the notice
24 and a copy of the article have been furnished to all persons,
25 agencies, officials, or entities to which they are required to be
26 furnished under Section 59, Article XVI, Texas Constitution, and
27 Chapter 313, Government Code.

1 (b) The governor has submitted the notice and article to the
2 Texas Commission on Environmental Quality.

3 (c) The Texas Commission on Environmental Quality has filed
4 its recommendations relating to this article with the governor,
5 lieutenant governor, and speaker of the house of representatives
6 within the required time.

7 (d) All requirements of the constitution and laws of this
8 state and the rules and procedures of the legislature with respect
9 to the notice, introduction, and passage of this article are
10 fulfilled and accomplished.

11 SECTION 9.16. This article takes effect immediately if this
12 Act receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this article takes effect September 1, 2007.

16 ARTICLE 10. TRUE RANCH MUNICIPAL UTILITY DISTRICT NO. 1

17 SECTION 10.01. Subtitle F, Title 6, Special District Local
18 Laws Code, is amended by adding Chapter 8269 to read as follows:

19 CHAPTER 8269. TRUE RANCH MUNICIPAL UTILITY DISTRICT NO. 1

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 8269.001. DEFINITIONS. In this chapter:

22 (1) "Board" means the board of directors of the
23 district.

24 (2) "Director" means a board member.

25 (3) "District" means the True Ranch Municipal Utility
26 District No. 1.

27 Sec. 8269.002. NATURE OF DISTRICT. The district is a

1 municipal utility district in Hays County created under and
2 essential to accomplish the purposes of Section 59, Article XVI,
3 Texas Constitution.

4 Sec. 8269.003. CONFIRMATION ELECTION REQUIRED. If the
5 creation of the district is not confirmed at a confirmation
6 election held under Section 8269.023 before September 1, 2012:

7 (1) the district is dissolved September 1, 2012,
8 except that:

9 (A) any debts incurred shall be paid;

10 (B) any assets that remain after the payment of
11 debts shall be transferred to Hays County; and

12 (C) the organization of the district shall be
13 maintained until all debts are paid and remaining assets are
14 transferred; and

15 (2) this chapter expires September 1, 2015.

16 Sec. 8269.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE.

17 (a) All land and other property in the district will benefit from
18 the works and projects to be accomplished by the district under
19 powers conferred by Section 59, Article XVI, Texas Constitution.

20 (b) The district is created to serve a public use and
21 benefit.

22 Sec. 8269.005. INITIAL DISTRICT TERRITORY. (a) The
23 district is initially composed of the territory described by
24 Section 10.02 of the Act creating this chapter.

25 (b) The boundaries and field notes contained in Section
26 10.02 of the Act creating this chapter form a closure. A mistake
27 made in the field notes or in copying the field notes in the

1 legislative process does not affect:

2 (1) the organization, existence, or validity of the
3 district;

4 (2) the right of the district to impose taxes;

5 (3) the right of the district to issue bonds, notes, or
6 other indebtedness or to pay the principal of and interest on a
7 bond;

8 (4) the validity of the district's bonds, notes, or
9 other indebtedness; or

10 (5) the legality or operation of the district or the
11 board.

12 [Sections 8269.006-8269.020 reserved for expansion]

13 SUBCHAPTER A-1. TEMPORARY PROVISIONS

14 Sec. 8269.021. TEMPORARY DIRECTORS. (a) On or after
15 September 1, 2007, a person who owns land in the district may submit
16 a petition to the Texas Commission on Environmental Quality
17 requesting that the commission appoint as temporary directors the
18 five persons named in the petition.

19 (b) The commission shall appoint as temporary directors the
20 five persons named in the first petition received by the commission
21 under Subsection (a).

22 (c) If a temporary director fails to qualify for office or
23 if a vacancy occurs in the office of temporary director, the vacancy
24 shall be filled as provided by Section 49.105, Water Code.

25 (d) Temporary directors serve until the earlier of:

26 (1) the date directors are elected under Section
27 8269.023; or

1 (2) the date this chapter expires under Section
2 8269.003.

3 Sec. 8269.022. ORGANIZATIONAL MEETING OF TEMPORARY
4 DIRECTORS. As soon as practicable after all the temporary
5 directors have qualified under Section 49.055, Water Code, the
6 directors shall meet at a location in the district agreeable to a
7 majority of the directors. If a location cannot be agreed upon, the
8 meeting shall be at the Hays County Courthouse. At the meeting, the
9 temporary directors shall elect officers from among the temporary
10 directors and conduct any other district business.

11 Sec. 8269.023. CONFIRMATION AND INITIAL DIRECTORS'
12 ELECTION. (a) The temporary directors shall hold an election to
13 confirm the creation of the district and to elect five directors as
14 provided by Section 49.102, Water Code.

15 (b) Section 41.001(a), Election Code, does not apply to a
16 confirmation and initial directors' election held under this
17 section.

18 Sec. 8269.024. INITIAL ELECTED DIRECTORS; TERMS. The
19 directors elected under Section 8269.023 shall draw lots to
20 determine which two serve until the first regularly scheduled
21 election of directors under Section 8269.052 and which three shall
22 serve until the second regularly scheduled election of directors.

23 Sec. 8269.025. DATE OF FIRST REGULARLY SCHEDULED ELECTION
24 OF DIRECTORS. The board by order may postpone the first election
25 under Section 8269.052 following the confirmation and initial
26 directors' election held under Section 8269.023 if:

27 (1) the election would otherwise occur not later than

1 the 60th day after the date on which the confirmation election is
2 held; or

3 (2) the board determines that there is not sufficient
4 time to comply with the requirements of law and to order the
5 election.

6 Sec. 8269.026. EXPIRATION OF SUBCHAPTER. This subchapter
7 expires September 1, 2015.

8 [Sections 8269.027-8269.050 reserved for expansion]

9 SUBCHAPTER B. BOARD OF DIRECTORS

10 Sec. 8269.051. DIRECTORS; TERMS. (a) The district is
11 governed by a board of five directors.

12 (b) Directors serve staggered four-year terms.

13 Sec. 8269.052. ELECTION OF DIRECTORS. On the uniform
14 election date in May of each even-numbered year, the appropriate
15 number of directors shall be elected.

16 [Sections 8269.053-8269.100 reserved for expansion]

17 SUBCHAPTER C. POWERS AND DUTIES

18 Sec. 8269.101. GENERAL POWERS AND DUTIES. The district has
19 the powers and duties necessary to accomplish the purposes for
20 which the district is created.

21 Sec. 8269.102. MUNICIPAL UTILITY DISTRICT POWERS AND
22 DUTIES. The district has the powers and duties provided by the
23 general law of this state, including Chapters 49 and 54, Water Code,
24 applicable to municipal utility districts created under Section 59,
25 Article XVI, Texas Constitution.

26 Sec. 8269.103. ROAD PROJECTS. (a) To the extent
27 authorized by Section 52, Article III, Texas Constitution, the

1 district may construct, acquire, improve, maintain, or operate
2 arterials or main feeder roads or improvements in aid of those
3 roads.

4 (b) A road project must meet all applicable construction
5 standards, zoning and subdivision requirements, and regulatory
6 ordinances of the municipality or county in whose jurisdiction the
7 district is located.

8 Sec. 8269.104. COMPLIANCE WITH MUNICIPAL CONSENT
9 ORDINANCES OR RESOLUTIONS. Subject to the limitations of Section
10 54.016, Water Code, the district shall comply with all valid and
11 applicable requirements of any ordinance or resolution adopted by a
12 municipality in the corporate limits or extraterritorial
13 jurisdiction of which the district is located, including an
14 ordinance or resolution adopted before September 1, 2007, that
15 consents to the creation of the district or to the inclusion of
16 lands within the district.

17 [Sections 8269.105-8269.150 reserved for expansion]

18 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

19 Sec. 8269.151. ELECTIONS REGARDING TAXES OR BONDS.

20 (a) Except as provided by Section 8269.201(b), the district may
21 issue, without an election, bonds and other obligations secured by
22 revenue or contract payments from any source other than ad valorem
23 taxation.

24 (b) The district must hold an election in the manner
25 provided by Chapters 49 and 54, Water Code, to obtain voter approval
26 before the district may impose an operation and maintenance tax or
27 issue bonds payable from ad valorem taxes.

1 Sec. 8269.152. OPERATION AND MAINTENANCE TAX. (a) If
2 authorized at an election held under Section 8269.151, the district
3 may impose an operation and maintenance tax on taxable property in
4 the district in accordance with Section 49.107, Water Code.

5 (b) The board shall determine the tax rate. The rate may not
6 exceed the rate approved at the election.

7 [Sections 8269.153-8269.200 reserved for expansion]

8 SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

9 Sec. 8269.201. AUTHORITY TO ISSUE BONDS AND OTHER
10 OBLIGATIONS. (a) The district may issue bonds or other
11 obligations payable wholly or partly from ad valorem taxes, impact
12 fees, revenue, grants, or other district money, or any combination
13 of those sources, to pay for any authorized district purpose.

14 (b) The district may not issue bonds to finance projects
15 authorized by Section 8269.103 unless the issuance is approved by a
16 vote of a two-thirds majority of the voters of the district voting
17 at an election called for that purpose.

18 (c) Bonds or other obligations issued or incurred to finance
19 projects authorized by Section 8269.103 may not exceed one-fourth
20 of the assessed value of the real property in the district.

21 Sec. 8269.202. TAXES FOR BONDS. At the time bonds payable
22 wholly or partly from ad valorem taxes are issued:

23 (1) the board shall impose a continuing direct annual
24 ad valorem tax, without limit as to rate or amount, for each year
25 that all or part of the bonds are outstanding; and

26 (2) the district annually shall impose an ad valorem
27 tax on all taxable property in the district in an amount sufficient

1 to:

2 (A) pay the interest on the bonds as the interest
3 becomes due;

4 (B) create a sinking fund for the payment of the
5 principal of the bonds when due or the redemption price at any
6 earlier required redemption date; and

7 (C) pay the expenses of imposing the taxes.

8 SECTION 10.02. The True Ranch Municipal Utility District
9 No. 1 includes all the territory contained in the following area:

10 BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND CONTAINING 465.71
11 ACRES, MORE OR LESS, OF LAND AREA IN THE JOHN INGRAIM SURVEY,
12 ABSTRACT NO. 256, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT
13 DESCRIBED AS 1279.69 ACRES IN A DEED FROM LESLIE TRUE VESPER ET AL
14 TO LESLIE TRUE VESPER DATED AUGUST 10, 1992 AND RECORDED IN VOLUME
15 948, PAGE 789 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AND BEING
16 MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

17 BEGINNING at a ½" iron rod found in the southwest line of R.M.
18 Highway No. 2325 and that tract described as an 80' R.O.W. in a deed
19 from Cecil H. Hale, et al to the State of Texas dated August 29, 1956
20 and recorded in Volume 169, Page 304 of the Hays County Deed Records
21 for the most northerly northwest corner of the panhandle portion of
22 this description and the Vesper 1279.69 acre tract and east corner
23 of that tract described as 592.30 acres in a deed from Leslie True
24 Vesper et al to Ameritrust Texas, N.A., Trustee dated August 10,
25 1992 and recorded in Volume 949, Page 572 of the Hays County
26 Official Public Records, from which a TXDOT concrete monument found
27 bears N 69°45'42" W 162.75 feet;

1 THENCE leaving the Ameritrust Texas 592.30 acre tract and the
2 PLACE OF BEGINNING as shown on that plat numbered 24587-06-3-d
3 dated May 30, 2006 prepared for Leslie Vesper by Byrn & Associates,
4 Inc., of San Marcos, Texas with the common northeast line of the
5 Vesper 1279.69 acre tract and southwest line of R.M. Highway No.
6 2325 and the State of Texas 80' R.O.W. tract S 69°48'34" E 599.94
7 feet to a ½" iron rod set for the northwest corner of that tract
8 described as "Tract 1-1.00 acres" in a deed from Thomas W. Slaughter
9 et ux to Randy C. Brown et ux dated February 12, 1996 and recorded in
10 Volume 1206, Page 780 of the Hays County Official Public Records,
11 from which A TXDOT concrete monument found bears S 69°47'57" E
12 120.11 feet;

13 THENCE leaving R.M. Highway No. 2325 and the State of Texas
14 80' R.O.W. tract with the common east line of the Vesper 1279.69
15 acre tract and west and south lines of the Brown 1.00 acre Tract 1
16 the following two courses:

17 1. S 20°06'33" W 226.56 feet to a 2.5" pipe fence corner post
18 found for corner, and

19 S 69°41'58" E 234.42 feet to a 2" pipe fence corner post found
20 in the west line of that tract described as "Tract 2-5.347 acres" in
21 the previously mentioned deed to Randy C. Brown et ux for the
22 southeast comer of the Brown 1.00 acre Tract 1;

23 THENCE leaving the Brown 1.00 acre Tract 1 and continuing
24 with the common east line of the Vesper 1279.69 acre tract and west
25 line of the Brown 5.347 acre Tract 2, as fenced and used, the
26 following three courses:

27 S 00°10'12" E 410.74 feet to a ½" iron rod set at the

1 approximate centerline of an underground pipeline for angle point,
2 S 00°04'22" E 196.11 feet to a 2.5" pipe fence post found for
3 angle point, and

4 S 00°24'09" E 15.83 feet to an iron rod found with an aluminum
5 cap stamped "Pro-Tech Eng" at fence corner for the southwest corner
6 of the Brown 5.347 acre Tract 2 and northwest corner of the
7 remaining portion of that tract described as 187.78 acres in a deed
8 from Henry Polvado & Lillie Polvado to Wesley Springs dated May 6,
9 1983 and recorded in Volume 393, Page 570 of the Hays County Deed
10 Records (the Brown 5.347 acre Tract 2 being a portion of the Springs
11 187.78 acre tract);

12 THENCE leaving the Brown 5.347 acre Tract 2 and continuing
13 with the east line of the Vesper 1279.69 acre tract and west line of
14 the Springs 187.78 acre tract, as fenced and used, the following
15 three courses:

16 S 00°00'57" E 1012.24 feet to a 2.5" pipe fence post found for
17 angle point,

18 S 00°06'57" W 908.05 feet to a 4" pipe fence corner post found
19 for angle point, and

20 S 00°03'12" E 354.80 feet to a 4" pipe fence corner post found
21 for the southwest corner of the springs 187.78 acre tract and
22 northwest corner of that tract described as 126.97 acres in a deed
23 from Stanual W. Farris to the Stanual W. Farris Living Trust dated
24 March 10, 2005 and recorded in Volume 2646, Page 385 of the Hays
25 County Official Public Records;

26 THENCE leaving the Springs 187.78 acre tract and continuing
27 with the common east line of the Vesper 1279.69 acre tract and west

1 line of Farris Living Trust 126.97 acre tract, as fenced and used,
2 the following three courses:

3 S 00°12'25" W 952.36 feet to a 4" pipe fence post found for
4 angle point,

5 S 00°09'57"W 1087.12 feet to a 4" cedar post found for angle
6 point, and

7 S 00°22'11" W 1072.11 feet to a ½" iron rod found at fence
8 corner for the southwest corner of the Farris Living Trust 126.97
9 acre tract and northwest corner of that tract described as 32.03
10 acres in a deed from Phil Harris to Shannon Harris dated April 8,
11 1998 and recorded in Volume 1463, Page 335 of the Hays County
12 Official Public Records;

13 THENCE leaving the Farris Living Trust 126.97 acre tract and
14 continuing with the common east line of the Vesper 1279.69 acre
15 tract and west line of the Shannon Harris 32.03 acre tract, as
16 fenced and used, S 00°44'10"W 120.44 feet to a 4" cedar fence corner
17 post found for the southwest corner of the Shannon Harris 32.03 acre
18 tract and northwest corner of that tract described as 28.92 acres in
19 a deed from A.J. Farris et ux to Philip D. Farris dated July 18, 1991
20 and recorded in Volume 882, page 620 of the Hays County Official
21 Public Records;

22 THENCE leaving the Shannon Harris 32.03 acre tract and
23 continuing with the common east line of the Vesper 1279.69 acre
24 tract and west line of the Philip D. Farris 28.92 acre tract, as
25 fenced and used, S 00°24'02" W 279.19 feet to a ½" iron rod found at
26 fence corner for the southeast corner of this description and
27 northeast corner of that tract described as 52.30 acres in a deed

1 from Leslie True Vesper to Paul R. Eastup et ux dated June 5, 1996
2 and recorded in Volume 1240, Page 309 of the Hays County Official
3 Public Records (the Eastup 52.30 acre tract being a portion of the
4 Vesper 1279.69 acre tract);

5 THENCE leaving the Phillip D. Farris 28.92 acre tract and
6 entering the Vesper 1279.69 acre tract with the north line of the
7 Eastup 52.30 acre tract, N 87°10'57" W 1356.38 feet to a ½" iron rod
8 found in fence for the northwest corner of the Eastup 52.03 acre
9 tract and northeast corner of that tract described as 209.16 acres
10 in a deed from Leslie True Vesper to James Nicholas Edwards and Lynn
11 S. Edwards dated July 6, 2005 and recorded in Volume 2719, Page 740
12 of the Hays County Official Public Record (the Edwards 209.16 acre
13 tract being a portion of the Vesper 1279.69 acre tract);

14 THENCE leaving the Eastup 52.30 acre tract with the north
15 line of the Edwards 209.16 acre tract, as fenced and used, the
16 following five courses:

17 N 87°19'31" W 665.61 feet to a 4" pipe fence post found for
18 angle point,

19 N 86°58'45" W 535.67 feet to a 3" cedar fence post found for
20 angle point,

21 N 87°09'05" W 302.22 feet to a 3" cedar fence post found for
22 angle point,

23 N 87°26'23" W 724.92 feet to a 4" cedar fence post found for
24 angle point, and

25 N 86°46'01" W 426.90 feet to a ½" iron rod found with a plastic
26 cap stamped "Byrn Survey" in the east line of that tract described
27 as 504.13 acres in a deed from Leslie True Vesper to James L. Pierce

1 and David L. Pierce dated February 8, 1999 and recorded in Volume
2 1500, Page 452 of the Hays County Official Public Records (the
3 Pierce 504.13 acre tract being a portion of the Vesper 1279.69 acre
4 tract);

5 THENCE leaving the Edwards 209.16 acre tract with the east
6 line of the Pierce 504.13 acre tract the following two courses:

7 N 08°19'22" E 124.79 feet to a ½" iron rod found with a plastic
8 cap stamped "Byrn Survey" for corner, and

9 N 87°41'56" W 751.30 feet to a ½" iron rod found with a plastic
10 cap stamped "Byrn Survey" for the southwest corner of this
11 description, an interior corner in the east line of the Pierce
12 504.13 acre tract, and the south corner of that tract described as
13 10.59 acres in a deed from Leslie True Vesper to James L. Pierce and
14 David L. Pierce dated June 15, 2001 and recorded in Volume 1872,
15 Page 802 of the Hays County Official Public Records (the Pierce
16 10.59 acre tract being a portion of the Vesper 1279.69 acre tract);

17 THENCE leaving the Pierce 504.13 acre tract with the east
18 line of Pierce 10.59 acre tract the following two courses:

19 N 05°37'42" E (being the bearing basis for description) 734.58
20 feet to a ½" iron rod found with a plastic cap stamped "Byrn Survey"
21 for angle point, and

22 N 16°12'16" E 1026.26 feet to a 16" cedar tree stump found in
23 fence in the east line of the previously mentioned Pierce 504.13
24 acre tract for the north corner of the Pierce 10.59 acre tract;

25 THENCE leaving the Pierce 10.59 acre tract and continuing
26 with the east line of the Pierce 504.13 acre tract, as fenced and
27 used, the following eight courses:

1 N 20°34'38" E 42.67 feet to a 16" cedar tree stump found for
2 angle point,

3 N 15°43'09" E 241.85 feet to a 12" cedar tree stump found for
4 angle point,

5 N 08°41'46" E 86.90 feet to a 14" cedar tree stump found for
6 angle point,

7 N 07°33'58" E 244.38 feet to a 2.5" pipe fence post found for
8 angle point,

9 N 24°14'46" E 623.77 feet to a 6" cedar fence post found for
10 angle point,

11 N 24°15'46" E 420.45 feet to a 2.5" pipe fence post found for
12 angle point,

13 N 12°52'45" E 194.02 feet to a 2.5" pipe fence post found for
14 angle point, and

15 N 01°30'08" E 340.55 feet to a 4" pipe fence corner post found
16 in the south line of the previously mentioned Ameritrust Texas
17 592.30 acre tract and north line of the Vesper 1279.69 acre tract
18 for the northeast corner of the Pierce 504.13 acre tract and
19 exterior west corner of this description;

20 THENCE leaving the Pierce 504.13 acre tract with the common
21 north line of the Vesper 1279.69 acre tract, and south line of the
22 Ameritrust Texas 592.30 acre tract, as fenced and used, the
23 following six courses:

24 N 73°32'00" E 130.18 feet to a 4" pipe fence post found for
25 angle point,

26 S 48°36'36" E 170.02 feet to a ½" iron rod found for angle
27 point,

1 S 76°17'07" E 88.03 feet to a 4" pipe fence post found for
2 angle point,

3 S 86°44'44" E 798.24 feet to a 4" pipe fence post found for
4 angle point,

5 S 86°55'19" E 913.16 feet to a 4" pipe fence post found for
6 angle point, and

7 S 86°56'50" E 421.51 feet to a ½" iron rod found for the
8 southeast corner of the Ameritrust Texas 592.30 acre tract and
9 southwest corner of the panhandle portion of this description and
10 the Vesper 1279.69 acre tract;

11 THENCE leaving the fence with the common west line of the
12 panhandle portion of the Vesper 1279.69 acre tract and east line of
13 the Ameritrust Texas 592.30 acre tract the following two courses:

14 N 00°00'32" E 1999.62 feet to a ½" iron rod found for angle
15 point, and

16 N 32°23'54" E 1152.96 feet to the PLACE OF BEGINNING.

17 THERE are contained within these metes and bounds 465.71
18 acres, more or less, as prepared from public records and surveys
19 made on the ground in 1999, 2001, 2005 and on May 30, 2006 by Byrn &
20 Associates, Inc., of San Marcos, Texas. All ½" iron rods set are
21 capped with a plastic cap stamped "Byrn Survey".

22 SECTION 10.03. (a) The legal notice of the intention to
23 introduce this article, setting forth the general substance of this
24 article, has been published as provided by law, and the notice and a
25 copy of this article have been furnished to all persons, agencies,
26 officials, or entities to which they are required to be furnished
27 under Section 59, Article XVI, Texas Constitution, and Chapter 313,

1 Government Code.

2 (b) The governor, one of the required recipients, has
3 submitted the notice and article to the Texas Commission on
4 Environmental Quality.

5 (c) The Texas Commission on Environmental Quality has filed
6 its recommendations relating to this article with the governor, the
7 lieutenant governor, and the speaker of the house of
8 representatives within the required time.

9 (d) All requirements of the constitution and laws of this
10 state and the rules and procedures of the legislature with respect
11 to the notice, introduction, and passage of this article are
12 fulfilled and accomplished.

13 SECTION 10.04. This article takes effect immediately if
14 this Act receives a vote of two-thirds of all the members elected to
15 each house, as provided by Section 39, Article III, Texas
16 Constitution. If this Act does not receive the vote necessary for
17 immediate effect, this article takes effect September 1, 2007.

18 ARTICLE 11. TABLEROCK GROUNDWATER CONSERVATION DISTRICT

19 SECTION 11.01. Subtitle H, Title 6, Special District Local
20 Laws Code, is amended by adding Chapter 8823 to read as follows:

21 CHAPTER 8823. TABLEROCK GROUNDWATER CONSERVATION DISTRICT

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 8823.001. DEFINITIONS. In this chapter:

24 (1) "Board" means the district's board of directors.

25 (2) "Director" means a board member.

26 (3) "District" means the Tablerock Groundwater
27 Conservation District.

1 Sec. 8823.002. NATURE OF DISTRICT. The district is a
2 groundwater conservation district in Coryell County created under
3 and essential to accomplish the purposes of Section 59, Article
4 XVI, Texas Constitution.

5 Sec. 8823.003. CONFIRMATION ELECTION REQUIRED. (a) If the
6 creation of the district is not confirmed at a confirmation
7 election held before September 1, 2012:

8 (1) the district is dissolved on September 1, 2012,
9 except that the district shall:

10 (A) pay any debts incurred;

11 (B) transfer to Coryell County any assets that
12 remain after the payment of debts; and

13 (C) maintain the organization of the district
14 until all debts are paid and remaining assets are transferred; and

15 (2) this chapter expires September 1, 2012.

16 (b) This section expires September 1, 2012.

17 Sec. 8823.004. INITIAL DISTRICT TERRITORY. The initial
18 boundaries of the district are coextensive with the boundaries of
19 Coryell County, Texas.

20 Sec. 8823.005. CONSTRUCTION OF CHAPTER. This chapter shall
21 be liberally construed to achieve the legislative intent and
22 purposes of Chapter 36, Water Code. A power granted by Chapter 36,
23 Water Code, or this chapter shall be broadly interpreted to achieve
24 that intent and those purposes.

25 Sec. 8823.006. APPLICABILITY OF OTHER GROUNDWATER
26 CONSERVATION DISTRICT LAW. Except as otherwise provided by this
27 chapter, Chapter 36, Water Code, applies to the district.

1 [Sections 8823.007-8823.020 reserved for expansion]

2 SUBCHAPTER A-1. TEMPORARY PROVISIONS

3 Sec. 8823.021. APPOINTMENT OF TEMPORARY DIRECTORS.

4 (a) Not later than the 45th day after the effective date of this
5 chapter, five temporary directors shall be appointed as follows:

6 (1) the Coryell County Commissioners Court shall
7 appoint one temporary director from each of the four commissioners
8 precincts in the county to represent the precincts in which the
9 temporary directors reside; and

10 (2) the county judge of Coryell County shall appoint
11 one temporary director who resides in the district to represent the
12 district at large.

13 (b) If there is a vacancy on the temporary board, the
14 authority who appointed the temporary director whose position is
15 vacant shall appoint a person to fill the vacancy.

16 (c) Temporary directors serve until the earlier of:

17 (1) the time the temporary directors become initial
18 directors as provided by Section 8823.024; or

19 (2) the date this chapter expires under Section
20 8823.003.

21 Sec. 8823.022. ORGANIZATIONAL MEETING OF TEMPORARY
22 DIRECTORS. As soon as practicable after all the temporary
23 directors have qualified under Section 36.055, Water Code, a
24 majority of the temporary directors shall convene the
25 organizational meeting of the district at a location within the
26 district agreeable to a majority of the directors. If an agreement
27 on location cannot be reached, the organizational meeting shall be

1 at the Coryell County Courthouse.

2 Sec. 8823.023. CONFIRMATION ELECTION. (a) The temporary
3 directors shall hold an election to confirm the creation of the
4 district.

5 (b) Section 41.001(a), Election Code, does not apply to a
6 confirmation election held as provided by this section.

7 (c) Except as provided by this section, a confirmation
8 election must be conducted as provided by Sections 36.017(b), (c),
9 and (e)-(i), Water Code, and the Election Code. Section 36.017(d),
10 Water Code, does not apply to the confirmation election.

11 (d) The ballot for the election must be printed in
12 accordance with the Election Code and provide for voting for or
13 against the proposition: "The creation of the Tablerock
14 Groundwater Conservation District and the imposition of a
15 maintenance tax at a rate not to exceed two cents on each \$100 of
16 assessed valuation of taxable property in the district."

17 (e) If a majority of the votes cast at the election are not
18 in favor of the creation of the district, the temporary directors
19 may hold a subsequent confirmation election. The subsequent
20 election may not be held before the first anniversary of the date on
21 which the previous election was held.

22 (f) The district may not impose a maintenance tax unless a
23 majority of the votes cast at the election are in favor of the
24 imposition of the maintenance tax.

25 Sec. 8823.024. INITIAL DIRECTORS. (a) If creation of the
26 district is confirmed at an election held under Section 8823.023,
27 the temporary directors become the initial directors and serve for

1 the terms provided by Subsection (b).

2 (b) The initial directors representing commissioners
3 precincts 2 and 4 serve until the election of directors under
4 Section 8823.025, and the initial directors representing
5 commissioners precincts 1 and 3 and the at-large director serve
6 until the next regularly scheduled election of directors under
7 Section 8823.053.

8 Sec. 8823.025. INITIAL ELECTION OF DIRECTORS. On the
9 uniform election date in November of the first even-numbered year
10 after the year in which the creation of the district is confirmed at
11 an election held under Section 8823.023, the district shall hold an
12 election of two directors to replace the initial directors who,
13 under Section 8823.024(b), serve until that election.

14 Sec. 8823.026. EXPIRATION OF SUBCHAPTER. This subchapter
15 expires September 1, 2012.

16 [Sections 8823.027-8823.050 reserved for expansion]

17 SUBCHAPTER B. BOARD OF DIRECTORS

18 Sec. 8823.051. DIRECTORS; TERMS. (a) The district is
19 governed by a board of five directors.

20 (b) Directors serve staggered four-year terms.

21 Sec. 8823.052. METHOD OF ELECTING DIRECTORS. One director
22 is elected from each county commissioners precinct in Coryell
23 County and one director is elected at large.

24 Sec. 8823.053. ELECTION DATE. The district shall hold an
25 election in the district to elect directors on the uniform election
26 date in November of each even-numbered year.

27 Sec. 8823.054. QUALIFICATIONS FOR ELECTION. (a) To be

1 qualified for election as a director, a person must reside in the
2 district.

3 (b) To be qualified for election as a director from a
4 precinct, a person must reside in that precinct.

5 [Sections 8823.055-8823.100 reserved for expansion]

6 SUBCHAPTER C. POWERS AND DUTIES

7 Sec. 8823.101. GROUNDWATER CONSERVATION DISTRICT POWERS
8 AND DUTIES. Except as provided by this chapter, the district has
9 the powers and duties provided by the general law of this state,
10 including Chapter 36, Water Code, and Section 59, Article XVI,
11 Texas Constitution, applicable to groundwater conservation
12 districts.

13 Sec. 8823.102. REGISTRATION AND REPORTING REQUIREMENTS FOR
14 CERTAIN EXEMPT WELLS. The district may adopt rules that require the
15 owner or operator of a well or class of wells exempt from permitting
16 under Section 36.117, Water Code, to register the well with the
17 district and, if the well is not exempt under Section 36.117(b)(1),
18 Water Code, to report groundwater withdrawals from the well using
19 reasonable and appropriate reporting methods and frequency.

20 Sec. 8823.103. WELL SPACING RULES; EXEMPTIONS. (a) Except
21 as provided by Subsection (b), the district shall exempt from the
22 well spacing requirements adopted by the district any well that is
23 completed on or before the effective date of those requirements.

24 (b) The district may provide by rule that a well may lose its
25 exemption under this section if the well is modified in a manner
26 that substantially increases the capacity of the well after the
27 effective date of the well spacing requirements adopted by the

1 district.

2 (c) Except as provided by this section, the district may
3 require any well or class of wells exempt from permitting under
4 Chapter 36, Water Code, to comply with the well spacing
5 requirements adopted by the district. The district shall apply
6 well spacing requirements uniformly to any well or class of wells
7 based on the size or capacity of the well and without regard to the
8 type of use of the groundwater produced by the well.

9 Sec. 8823.104. ADOPTION OF RULES AND ISSUANCE OF PERMITS.
10 Before the district adopts a management plan, the district may
11 adopt rules and issue permits.

12 Sec. 8823.105. CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES.

13 (a) The district and another governmental entity, including a
14 river authority located in the district, may contract for the
15 performance by that entity of a district function.

16 (b) The district may accept a loan from Coryell County to
17 pay for any initial costs of the district, including costs related
18 to a confirmation election.

19 Sec. 8823.106. NO EMINENT DOMAIN POWER. The district may
20 not exercise the power of eminent domain.

21 Sec. 8823.107. DISTRICT TERRITORY REQUIREMENTS;
22 DISSOLUTION OF DISTRICT. (a) On September 1, 2011, the district
23 boundaries must include at least one county adjacent to Coryell
24 County.

25 (b) As soon as practicable after September 1, 2011, the
26 Texas Commission on Environmental Quality shall determine whether
27 the district complies with Subsection (a).

1 (c) If the Texas Commission on Environmental Quality
2 determines that the district does not comply with Subsection (a),
3 the commission shall dissolve the district in accordance with
4 Sections 36.304, 36.305, 36.307, 36.308, 36.309, and 36.310, Water
5 Code, regardless of whether the district meets the criteria for
6 dissolution under Section 36.304(a), Water Code.

7 (d) This section expires September 1, 2013.

8 [Sections 8823.108-8823.150 reserved for expansion]

9 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

10 Sec. 8823.151. REVENUE. To pay the maintenance and
11 operating costs of the district and to pay any bonds or notes issued
12 by the district, the district may:

13 (1) impose an ad valorem tax at a rate that:

14 (A) is approved by a majority of district voters
15 voting at an election held for that purpose; and

16 (B) does not exceed two cents on each \$100 of
17 assessed valuation of taxable property in the district;

18 (2) assess fees for services or for water withdrawn
19 from nonexempt wells; or

20 (3) solicit and accept grants from any private or
21 public source.

22 [Sections 8823.152-8823.200 reserved for expansion]

23 SUBCHAPTER E. DISSOLUTION

24 Sec. 8823.201. ELECTION FOR DISSOLUTION. (a) If the
25 district has no outstanding bond or other long-term indebtedness,
26 the district may be dissolved by a favorable vote of a majority of
27 the registered voters of the district at an election held for that

1 purpose.

2 (b) The board shall hold a dissolution election if the board
3 receives a petition for dissolution signed by at least 50 percent of
4 the registered voters in the district as computed by using the list
5 of registered voters for Coryell County.

6 (c) If the district is dissolved under this section, the
7 board shall:

8 (1) notify the Texas Commission on Environmental
9 Quality and the secretary of state of the dissolution; and

10 (2) transfer title to any assets of the district to
11 Coryell County.

12 SECTION 11.02. (a) The legal notice of the intention to
13 introduce this article, setting forth the general substance of this
14 article, has been published as provided by law, and the notice and a
15 copy of this article have been furnished to all persons, agencies,
16 officials, or entities to which they are required to be furnished
17 under Section 59, Article XVI, Texas Constitution, and Chapter 313,
18 Government Code.

19 (b) The governor has submitted the notice and article to the
20 Texas Commission on Environmental Quality.

21 (c) The Texas Commission on Environmental Quality has filed
22 its recommendations relating to this article with the governor,
23 lieutenant governor, and speaker of the house of representatives
24 within the required time.

25 (d) All requirements of the constitution and laws of this
26 state and the rules and procedures of the legislature with respect
27 to the notice, introduction, and passage of this article are

1 fulfilled and accomplished.

2 ARTICLE 12. EDWARDS AQUIFER AUTHORITY

3 SECTION 12.01. Section 1.11, Chapter 626, Acts of the 73rd
4 Legislature, Regular Session, 1993, is amended by amending
5 Subsection (f) and adding Subsections (f-1) and (f-2) to read as
6 follows:

7 (f) The authority may own, finance, design, ~~[contract with a~~
8 ~~person who uses water from the aquifer for the authority or that~~
9 ~~person to]~~ construct, operate, or ~~[own, finance, and]~~ maintain
10 recharge ~~[water supply]~~ facilities. ~~[Management fees or special~~
11 ~~fees may not be used for purchasing or operating these facilities.]~~
12 For the purpose of this subsection, "recharge ~~[water supply]~~
13 facility" means ~~[includes]~~ a dam, reservoir, ~~[treatment facility,~~
14 ~~transmission facility,]~~ or other method of recharge project and
15 associated facilities, structures, or works but does not include a
16 facility to recirculate water at Comal or San Marcos Springs.

17 (f-1) The authority shall provide written notice of the
18 intent to own, finance, design, construct, operate, or maintain
19 recharge facilities to:

20 (1) each groundwater conservation district in the area
21 in which the recharge facility will be located;

22 (2) the mayor of each municipality in the area in which
23 the recharge facility will be located;

24 (3) the county judge of each county in the area in
25 which the recharge facility will be located; and

26 (4) each member of the legislature who represents the
27 area in which the proposed recharge facility will be located.

1 (f-2) Any entity within the county in which a recharge
2 facility is to be constructed shall be provided opportunity for
3 input and allowed to provide proposals for partnering with the
4 authority to own, finance, design, construct, operate, or maintain
5 the recharge facility.

6 SECTION 12.02. Subsections (a), (c), (e), (f), and (h),
7 Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular
8 Session, 1993, are amended to read as follows:

9 (a) Authorizations to withdraw water from the aquifer and
10 all authorizations and rights to make a withdrawal under this Act
11 shall be limited in accordance with this section to:

12 (1) protect the water quality of the aquifer;

13 (2) protect the water quality of the surface streams
14 to which the aquifer provides springflow;

15 (3) achieve water conservation;

16 (4) maximize the beneficial use of water available for
17 withdrawal from the aquifer;

18 (5) recognize the extent of the hydro-geologic
19 connection and interaction between surface water and groundwater;

20 (6) protect aquatic and wildlife habitat;

21 (7) [~~(6)~~] protect species that are designated as
22 threatened or endangered under applicable federal or state law; and

23 (8) [~~(7)~~] provide for instream uses, bays, and
24 estuaries.

25 (c) Except as provided by Subsections [~~(d)~~] (f) [7] and (h)
26 of this section and Section 1.26 of this article, for the period
27 beginning January 1, 2008, the amount of permitted withdrawals from

1 the aquifer may not exceed or be less than 572,000 ~~[400,000]~~
2 acre-feet of water for each calendar year, which is the sum of all
3 regular permits issued or for which an application was filed and
4 issuance was pending action by the authority as of January 1, 2005.

5 (e) The authority may not allow withdrawals from the aquifer
6 through wells drilled after June 1, 1993, except for replacement,
7 test, or exempt wells or to the extent that the authority approves
8 an amendment to an initial regular permit to authorize a change in
9 the point of withdrawal under that permit ~~[additional water as~~
10 ~~provided by Subsection (d) and then on an interruptible basis].~~

11 (f) If the level of the aquifer is equal to or greater than
12 660 ~~[650]~~ feet above mean sea level as measured at Well J-17, the
13 authority may authorize withdrawal from the San Antonio pool, on an
14 uninterrupted basis, of permitted amounts. If the level of the
15 aquifer is equal to or greater than 845 feet at Well J-27, the
16 authority may authorize withdrawal from the Uvalde pool, on an
17 uninterrupted basis, of permitted amounts. ~~[The authority shall~~
18 ~~limit the additional withdrawals to ensure that springflows are not~~
19 ~~affected during critical drought conditions.]~~

20 (h) To accomplish the purposes of this article, ~~[by June 1,~~
21 ~~1994,~~] the authority, through a program, shall implement and
22 enforce water management practices, procedures, and methods to
23 ensure that, not later than December 31, 2012, the continuous
24 minimum springflows of the Comal Springs and the San Marcos Springs
25 are maintained to protect endangered and threatened species to the
26 extent required by federal law and to achieve other purposes
27 provided by Subsection (a) of this section and Section 1.26 of this

1 article. The authority from time to time as appropriate may revise
2 the practices, procedures, and methods. To meet this requirement,
3 the authority shall require:

4 (1) phased adjustments to [~~reductions in~~] the amount
5 of water that may be used or withdrawn by existing users or
6 categories of other users, including adjustments in accordance with
7 the authority's critical period management plan established under
8 Section 1.26 of this article; or

9 (2) implementation of alternative management
10 practices, procedures, and methods.

11 SECTION 12.03. Subsection (g), Section 1.16, Chapter 626,
12 Acts of the 73rd Legislature, Regular Session, 1993, is amended to
13 read as follows:

14 (g) The authority shall issue an initial regular permit
15 without a term, and an initial regular permit remains in effect
16 until the permit is abandoned or [~~7~~] cancelled [~~7~~, ~~or retired~~].

17 SECTION 12.04. Subsection (b), Section 1.19, Chapter 626,
18 Acts of the 73rd Legislature, Regular Session, 1993, is amended to
19 read as follows:

20 (b) Withdrawal of water under a term permit must be
21 consistent with the authority's critical period management plan
22 established under Section 1.26 of this article. A holder of a term
23 permit may not withdraw water from the San Antonio pool of the
24 aquifer unless:

25 (1) the level of the aquifer is higher than 675 [~~665~~]
26 feet above sea level, as measured at Well J-17;

27 (2) the flow at Comal Springs as determined by Section

1 1.26(c) of this article is greater than 350 cubic feet per second;
2 and

3 (3) the flow at San Marcos Springs as determined by
4 Section 1.26(c) of this article is greater than 200 cubic feet per
5 second.

6 SECTION 12.05. Subsection (a), Section 1.22, Chapter 626,
7 Acts of the 73rd Legislature, Regular Session, 1993, is amended to
8 read as follows:

9 (a) The authority may acquire permitted rights to use water
10 from the aquifer for the purposes of:

11 (1) holding those rights in trust for sale or transfer
12 of the water or the rights to persons within the authority's
13 jurisdiction who may use water from the aquifer;

14 (2) holding those rights in trust as a means of
15 managing overall demand on the aquifer; or

16 (3) holding those rights for resale [~~or retirement as~~
17 ~~a means of complying with pumping reduction requirements under this~~
18 ~~article, or~~

19 [~~(4) retiring those rights, including those rights~~
20 ~~already permitted~~].

21 SECTION 12.06. Article 1, Chapter 626, Acts of the 73rd
22 Legislature, Regular Session, 1993, is amended by amending Section
23 1.26 and adding Section 1.26A to read as follows:

24 Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) After
25 review of the recommendations received in the program document, as
26 prescribed by Section 1.26A of this article, the [The] authority by
27 rule shall adopt [prepare and coordinate implementation of] a [plan

1 ~~for~~] critical period management plan consistent with Sections
2 1.14(a), (f), and (h) of this article [~~on or before September 1,~~
3 ~~1995~~]. The critical period management plan shall be adopted by the
4 authority no later than six months after the authority's receipt of
5 the program document. On adoption of the critical period
6 management plan, the authority shall provide a written report to
7 the governor, lieutenant governor, and speaker of the house of
8 representatives describing the actions taken in response to each
9 recommendation and, for each recommendation not implemented, the
10 reason it was not implemented. The plan [~~mechanisms~~] must:

11 (1) distinguish between discretionary use and
12 nondiscretionary use;

13 (2) require reductions of all discretionary use to the
14 maximum extent feasible;

15 (3) require utility pricing, to the maximum extent
16 feasible, to limit discretionary use by the customers of water
17 utilities; [~~and~~]

18 (4) require reduction of nondiscretionary use by
19 permitted or contractual users, to the extent further reductions
20 are necessary, in the reverse order of the following water use
21 preferences:

22 (A) municipal, domestic, and livestock;

23 (B) industrial and crop irrigation;

24 (C) residential landscape irrigation;

25 (D) recreational and pleasure; and

26 (E) other uses that are authorized by law; and

27 (5) allow irrigation use to continue in order to

permit the user to complete the irrigation of a crop in progress.

(b) In this section, "MSL" means the elevation above mean sea level, measured in feet, of the surface of the water in a well, and "CFS" means cubic feet per second. Not later than January 1, 2008, the authority shall, by rule, adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts indicated in Tables 1 and 2 whether according to the index well levels or the Comal or San Marcos Springs flow as applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 35 percent under Table 2:

TABLE 1

CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

<u>FOR THE SAN ANTONIO POOL</u>				
<u>Comal Springs Flow</u>	<u>San Marcos Springs Flow</u>	<u>Index Well J-17 Level</u>	<u>Critical Period Stage</u>	<u>Withdrawal Reduction-San Antonio Pool</u>
<u>cfs</u>	<u>cfs</u>	<u>MSL</u>		
<u><225</u>	<u><96</u>	<u><660</u>	<u>I</u>	<u>20%</u>
<u><200</u>	<u><80</u>	<u><650</u>	<u>II</u>	<u>30%</u>
<u><150</u>	<u>N/A</u>	<u><640</u>	<u>III</u>	<u>35%</u>
<u><100</u>	<u>N/A</u>	<u><630</u>	<u>IV</u>	<u>40%</u>

TABLE 2

CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES

<u>FOR THE UVALDE POOL</u>		
<u>Withdrawal Reduction-Uvalde Pool</u>	<u>Index Well J-27 Level</u>	<u>Critical Period Stage</u>
<u>MSL</u>		
<u>N/A</u>	<u>---</u>	<u>I</u>
<u>5%</u>	<u><850</u>	<u>II</u>
<u>20%</u>	<u><845</u>	<u>III</u>
<u>35%</u>	<u><842</u>	<u>IV</u>

(c) A change to a critical period stage with higher withdrawal reduction percentages is triggered if the 10-day average of daily springflows at the Comal Springs or the San Marcos Springs

1 or the 10-day average of daily aquifer levels at the J-17 Index Well
2 drops below the lowest number of any of the trigger levels indicated
3 in Table 1. A change to a critical period stage with lower
4 withdrawal reduction percentages is triggered only when the 10-day
5 average of daily springflows at the Comal Springs and the San Marcos
6 Springs and the 10-day average of daily aquifer levels at the J-17
7 Index Well are all above the same stage trigger level. The
8 authority may adjust the withdrawal percentages for Stage IV in
9 Tables 1 and 2 if necessary in order to comply with Subsection (d)
10 or (e) of this section.

11 (d) Beginning September 1, 2007, the authority may not
12 require the volume of permitted withdrawals to be less than an
13 annualized rate of 340,000 acre-feet, under critical period Stage
14 IV.

15 (e) After January 1, 2013, the authority may not require the
16 volume of permitted withdrawals to be less than an annualized rate
17 of 320,000 acre-feet, under critical period Stage IV unless, after
18 review and consideration of the recommendations provided under
19 Section 1.26A of this article, the authority determines that a
20 different volume of withdrawals is consistent with Sections
21 1.14(a), (f), and (h) of this article in maintaining protection for
22 federally listed threatened and endangered species associated with
23 the aquifer to the extent required by federal law.

24 (f) Notwithstanding Subsections (d) and (e) of this
25 section, the authority may require further withdrawal reductions
26 before reviewing and considering the recommendations provided
27 under Section 1.26A of this article if the discharge of Comal

1 Springs or San Marcos Springs declines an additional 15 percent
2 after Stage IV withdrawal reductions are imposed under Subsection
3 (b) of this section. This subsection expires on the date that
4 critical period management plan rules adopted by the authority
5 based on the recommendations provided under Section 1.26A of this
6 article take effect.

7 (g) Notwithstanding the existence of any stage of an interim
8 or final critical period adopted by the authority under this
9 section, a person authorized to withdraw groundwater from the
10 aquifer for irrigation purposes shall, without regard to the
11 withdrawal reductions prescribed for that stage, be allowed to
12 finish a crop already planted in the calendar year during which the
13 critical period is in effect.

14 Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND
15 STAGES FOR CRITICAL PERIOD MANAGEMENT THROUGH RECOVERY
16 IMPLEMENTATION PROGRAM. (a) The authority, with the assistance of
17 Texas A&M University, shall cooperatively develop a recovery
18 implementation program through a facilitated, consensus-based
19 process that involves input from the United States Fish and
20 Wildlife Service, other appropriate federal agencies, and all
21 interested stakeholders, including those listed under Subsection
22 (e)(1) of this section. The recovery implementation program shall
23 be developed for the species that are:

24 (1) listed as threatened or endangered species under
25 federal law; and

26 (2) associated with the aquifer.

27 (b) The authority shall enter into a memorandum of agreement

1 with the United States Fish and Wildlife Service, other appropriate
2 federal agencies, the Texas Commission on Environmental Quality,
3 the Parks and Wildlife Department, the Department of Agriculture,
4 the Texas Water Development Board, and other stakeholders, not
5 later than December 31, 2007, in order to develop a program document
6 that may be in the form of a habitat conservation plan used in
7 issuance of an incidental take permit as outlined in Subsection (d)
8 of this section.

9 (c) The authority shall enter into an implementing
10 agreement with the United States Fish and Wildlife Service, other
11 appropriate federal agencies, the Texas Commission on
12 Environmental Quality, the Parks and Wildlife Department, the
13 Department of Agriculture, the Texas Water Development Board, and
14 other stakeholders to develop a program document that may be in the
15 form of a habitat conservation plan used in issuance of an
16 incidental take permit as outlined in Subsection (d) of this
17 section not later than December 31, 2009.

18 (d) The authority, the Texas Commission on Environmental
19 Quality, the Parks and Wildlife Department, the Department of
20 Agriculture, the Texas Water Development Board, and other
21 stakeholders shall jointly prepare a program document that may be
22 in the form of a habitat conservation plan used in issuance of an
23 incidental take permit with the United States secretary of the
24 interior, through the United States Fish and Wildlife Service and
25 other appropriate federal agencies, under Section 4 or Section 6,
26 Endangered Species Act of 1973 (16 U.S.C. Section 1533 or 1535), as
27 applicable, based on the program developed under Subsection (a) of

1 this section. The program document shall:

2 (1) provide recommendations for withdrawal
3 adjustments based on a combination of spring discharge rates of the
4 San Marcos and Comal Springs and levels at the J-17 and J-27 wells
5 during critical periods to ensure that federally listed,
6 threatened, and endangered species associated with the Edwards
7 Aquifer will be protected at all times, including throughout a
8 repeat of the drought of record;

9 (2) include provisions to pursue cooperative and grant
10 funding to the extent available from all state, federal, and other
11 sources for eligible programs included in the cooperative agreement
12 under Subsection (c) of this section, including funding for a
13 program director; and

14 (3) be approved and executed by the authority, the
15 Texas Commission on Environmental Quality, the Parks and Wildlife
16 Department, the Department of Agriculture, the Texas Water
17 Development Board, and the United States Fish and Wildlife Service
18 not later than September 1, 2012, and the agreement shall take
19 effect December 31, 2012.

20 (e) Texas A&M University shall assist in the creation of a
21 steering committee to oversee and assist in the development of the
22 cooperative agreement under Subsection (c) of this section. The
23 steering committee must be created not later than September 30,
24 2007. The initial steering committee shall be composed of:

25 (1) a representative of each of the following
26 entities, as appointed by the governing body of that entity:

27 (A) the Edwards Aquifer Authority;

1 (B) the Texas Commission on Environmental
2 Quality;

3 (C) the Parks and Wildlife Department;

4 (D) the Department of Agriculture;

5 (E) the Texas Water Development Board;

6 (F) the San Antonio Water System;

7 (G) the Guadalupe-Blanco River Authority;

8 (H) the San Antonio River Authority;

9 (I) the South Central Texas Water Advisory
10 Committee;

11 (J) Bexar County;

12 (K) CPS Energy; and

13 (L) Bexar Metropolitan Water District or its
14 successor; and

15 (2) nine other persons who respectively must be:

16 (A) a representative of a holder of an initial
17 regular permit issued to a retail public utility located west of
18 Bexar County, to be appointed by the authority;

19 (B) a representative of a holder of an initial
20 regular permit issued by the authority for industrial purposes, to
21 be appointed by the authority;

22 (C) a representative of a holder of an industrial
23 surface water right in the Guadalupe River Basin, to be appointed by
24 the Texas Commission on Environmental Quality;

25 (D) a representative of a holder of a municipal
26 surface water right in the Guadalupe River Basin, to be appointed by
27 the Texas Commission on Environmental Quality;

1 (E) a representative of a retail public utility
2 in whose service area the Comal Springs or San Marcos Springs is
3 located;

4 (F) a representative of a holder of an initial
5 regular permit issued by the authority for irrigation, to be
6 appointed by the commissioner of agriculture;

7 (G) a representative of an agricultural producer
8 from the Edwards Aquifer region, to be appointed by the
9 commissioner of agriculture;

10 (H) a representative of environmental interests
11 from the Texas Living Waters Project, to be appointed by the
12 governing body of that project; and

13 (I) a representative of recreational interests
14 in the Guadalupe River Basin, to be appointed by the Parks and
15 Wildlife Commission.

16 (f) The steering committee shall work with Texas A&M
17 University to:

18 (1) establish a regular meeting schedule and publish
19 that schedule to encourage public participation; and

20 (2) not later than October 31, 2007, hire a program
21 director to be housed at Texas A&M University.

22 (g) Texas A&M University may accept outside funding to pay
23 the salary and expenses of the program director hired under this
24 section and any expenses associated with the university's
25 participation in the creation of the steering committee or
26 subcommittees established by the steering committee.

27 (h) Where reasonably practicable or as required by law, any

1 meeting of the steering committee, the Edwards Aquifer area expert
2 science subcommittee, or another subcommittee established by the
3 steering committee must be open to the public.

4 (i) The steering committee appointed under this section
5 shall appoint an Edwards Aquifer area expert science subcommittee
6 not later than December 31, 2007. The expert science subcommittee
7 must be composed of an odd number of not fewer than seven or more
8 than 15 members who have technical expertise regarding the Edwards
9 Aquifer system, the threatened and endangered species that inhabit
10 that system, springflows, or the development of withdrawal
11 limitations. The Bureau of Economic Geology of The University of
12 Texas at Austin and the River Systems Institute at Texas State
13 University shall assist the expert science subcommittee. Chapter
14 2110, Government Code, does not apply to the size, composition, or
15 duration of the expert science subcommittee.

16 (j) The Edwards Aquifer area expert science subcommittee
17 shall, among other things, analyze species requirements in relation
18 to spring discharge rates and aquifer levels as a function of
19 recharge and withdrawal levels. Based on that analysis and the
20 elements required to be considered by the authority under Section
21 1.14 of this article, the expert science subcommittee shall,
22 through a collaborative process designed to achieve consensus,
23 develop recommendations for withdrawal reduction levels and stages
24 for critical period management including, if appropriate,
25 establishing separate and possibly different withdrawal reduction
26 levels and stages for critical period management for different
27 pools of the aquifer needed to maintain target spring discharge and

1 aquifer levels. The expert science subcommittee shall submit its
2 recommendations to the steering committee and all other
3 stakeholders involved in the recovery implementation program under
4 this section.

5 (k) The initial recommendations of the Edwards Aquifer area
6 expert science subcommittee must be completed and submitted to the
7 steering committee and other stakeholders not later than December
8 31, 2008, and should include an evaluation:

9 (1) of the option of designating a separate San Marcos
10 pool, of how such a designation would affect existing pools, and of
11 the need for an additional well to measure the San Marcos pool, if
12 designated;

13 (2) of the necessity to maintain minimum springflows,
14 including a specific review of the necessity to maintain a flow to
15 protect the federally threatened and endangered species; and

16 (3) as to whether adjustments in the trigger levels
17 for the San Marcos Springs flow for the San Antonio pool should be
18 made.

19 (l) In developing its recommendations, the Edwards Aquifer
20 area expert science subcommittee shall:

21 (1) consider all reasonably available science,
22 including any Edwards Aquifer-specific studies, and base its
23 recommendations solely on the best science available; and

24 (2) operate on a consensus basis to the maximum extent
25 possible.

26 (m) After development of the cooperative agreement, the
27 steering committee, with the assistance of the Edwards Aquifer area

1 expert science subcommittee and with input from the other recovery
2 implementation program stakeholders, shall prepare and submit
3 recommendations to the authority. The recommendations must:

4 (1) include a review of the critical period management
5 plan, to occur at least once every five years;

6 (2) include specific monitoring, studies, and
7 activities that take into account changed conditions and
8 information that more accurately reflects the importance of
9 critical period management; and

10 (3) establish a schedule for continuing the validation
11 or refinement of the critical period management plan adopted by the
12 authority and the strategies to achieve the program and cooperative
13 agreement described by this section.

14 (n) In this subsection, "recharge facility" means a dam,
15 reservoir, or other method of recharge project and associated
16 facilities, structures, or works but does not include facilities
17 designed to recirculate water at Comal or San Marcos Springs. The
18 steering committee shall establish a recharge facility feasibility
19 subcommittee to:

20 (1) assess the need for the authority or any other
21 entity to own, finance, design, construct, operate, or maintain
22 recharge facilities;

23 (2) formulate plans to allow the authority or any
24 other entity to own, finance, design, construct, operate, or
25 maintain recharge facilities;

26 (3) make recommendations to the steering committee as
27 to how to calculate the amount of additional water that is made

1 available for use from a recharge project including during times of
2 critical period reductions;

3 (4) maximize available federal funding for the
4 authority or any other entity to own, finance, design, construct,
5 operate, or maintain recharge facilities; and

6 (5) evaluate the financing of recharge facilities,
7 including the use of management fees or special fees to be used for
8 purchasing or operating the facilities.

9 (o) The steering committee may establish other
10 subcommittees as necessary, including a hydrology subcommittee, a
11 community outreach and education subcommittee, and a water supply
12 subcommittee.

13 (p) On execution of the memorandum of agreement described by
14 Subsection (b) of this section, the steering committee described by
15 Subsection (e) of this section may, by majority vote of its members,
16 vote to add members to the steering committee, change the makeup of
17 the committee, or dissolve the committee. If the steering
18 committee is dissolved, the program director hired under Subsection
19 (f) of this section shall assume the duties of the steering
20 committee.

21 (q) The authority shall provide an annual report to the
22 governor, lieutenant governor, and speaker of the house of
23 representatives not later than January 1 of each year that details:

24 (1) the status of the recovery implementation program
25 development process;

26 (2) the likelihood of completion of the recovery
27 implementation program and the cooperative agreement described by

1 Subsection (c) of this section;

2 (3) the extent to which the recommendations of the
3 Edwards Aquifer area expert science subcommittee are being
4 considered and implemented by the authority;

5 (4) any other actions that need to be taken in response
6 to each recommendation;

7 (5) reasons explaining why any recommendation
8 received has not been implemented; and

9 (6) any other issues the authority considers of value
10 for the efficient and effective completion of the program and the
11 cooperative agreement under this section.

12 SECTION 12.07. Subsections (b), (h), and (i), Section 1.29,
13 Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993,
14 are amended to read as follows:

15 (b) The authority shall assess equitable aquifer management
16 fees based on aquifer use under the water management plan to finance
17 its administrative expenses and programs authorized under this
18 article. Each water district governed by Chapter 36 [~~52~~], Water
19 Code, that is within the authority's boundaries may contract with
20 the authority to pay expenses of the authority through taxes in lieu
21 of user fees to be paid by water users in the district. The contract
22 must provide that the district will pay an amount equal to the
23 amount that the water users in the district would have paid through
24 user fees. The authority may not collect a total amount of fees and
25 taxes that is more than is reasonably necessary for the
26 administration of the authority.

27 (h) Fees assessed by the authority may not be used to fund

1 the cost of reducing withdrawals or retiring permits or of
 2 judgments or claims related to withdrawals or permit retirements
 3 ~~[Special fees collected under Subsection (c) or (d) of this section~~
 4 ~~may not be used to finance a surface water supply reservoir~~
 5 ~~project].~~

6 (i) The authority and other stakeholders, including state
 7 agencies, listed under Section 1.26A of this article shall provide
 8 money as necessary~~[, but not to exceed five percent of the money~~
 9 ~~collected under Subsection (d) of this section,]~~ to finance the
 10 activities of the steering committee and any subcommittees
 11 appointed by the steering committee and the program director of the
 12 recovery implementation program under Section 1.26A of this
 13 article. The authority shall provide, as necessary, up to \$75,000
 14 annually, adjusted for changes in the consumer price index, to
 15 finance the South Central Texas Water Advisory Committee's
 16 administrative expenses and programs authorized under this
 17 article.

18 SECTION 12.08. Subsection (a), Section 1.45, Chapter 626,
 19 Acts of the 73rd Legislature, Regular Session, 1993, is amended to
 20 read as follows:

21 (a) The authority may own, finance, design, construct,
 22 ~~[build or]~~ operate, and maintain recharge dams and associated
 23 facilities, structures, or works in the contributing or recharge
 24 area of the aquifer if the recharge is made to increase the yield of
 25 the aquifer, ~~[and]~~ the recharge project does not impair senior
 26 water rights or vested riparian rights, and the recharge project is
 27 not designed to recirculate water at Comal or San Marcos Springs.

1 SECTION 12.09. Subsections (b) and (d), Section 1.14,
2 Section 1.21, and Subsections (a), (c), and (d), Section 1.29,
3 Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993,
4 are repealed.

5 SECTION 12.10. (a) Before January 1, 2012, a suit may not
6 be instituted in a state court contesting:

- 7 (1) the validity or implementation of this article; or
8 (2) the groundwater withdrawal amounts recognized in
9 Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular
10 Session, 1993, as amended by this Act.

11 (b) If applicable, a party that files a suit in any court
12 shall be automatically removed from the steering committee
13 established under Section 1.26A, Chapter 626, Acts of the 73rd
14 Legislature, Regular Session, 1993, as added by this Act.

15 (c) A suit against the Edwards Aquifer Authority may not be
16 instituted or maintained by a person who owns, holds, or uses a
17 surface water right and claims injury or potential injury to that
18 right for any reason, including any actions taken by the Edwards
19 Aquifer Authority to implement or enforce Article 1, Chapter 626,
20 Acts of the 73rd Legislature, Regular Session, 1993, as amended.
21 This section does not apply to suits brought pursuant to Section
22 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session,
23 1993.

24 SECTION 12.11. The change in law made by this article
25 applies only to a cause of action filed on or after the effective
26 date of this article. A cause of action that is filed before the
27 effective date of this article is governed by the law in effect

1 immediately before the effective date of this article, and that law
2 is continued in effect for that purpose.

3 SECTION 12.12. This article takes effect immediately if
4 this Act receives a vote of two-thirds of all the members elected to
5 each house, as provided by Section 39, Article III, Texas
6 Constitution. If this Act does not receive the vote necessary for
7 immediate effect, this article takes effect September 1, 2007.

8 ARTICLE 13. TERRITORY OF CULBERSON COUNTY GROUNDWATER CONSERVATION
9 DISTRICT

10 SECTION 13.01. Chapter 1075, Acts of the 75th Legislature,
11 Regular Session, 1997, is amended by adding Section 3A to read as
12 follows:

13 Sec. 3A. In addition to the portions of Culberson County
14 included in the boundaries of the district on August 31, 2007, the
15 boundaries of the district include all of the remaining territory
16 in Culberson County.

17 SECTION 13.02. (a) The annexation under Section 3A,
18 Chapter 1075, Acts of the 75th Legislature, Regular Session, 1997,
19 as added by this article, of the additional territory in Culberson
20 County that was not included in the boundaries of the Culberson
21 County Groundwater Conservation District on August 31, 2007, is
22 subject to ratification at an election held under Section 36.328,
23 Water Code, and this section in which only the voters residing in
24 the territory to be annexed are eligible to vote.

25 (b) The board of directors of the Culberson County
26 Groundwater Conservation District shall hold the ratification
27 election on the first uniform election date that occurs after the

1 effective date of this article that allows for compliance with the
2 time requirements of the Election Code.

3 (c) If a majority of the voters voting at the ratification
4 election vote in favor of the annexation, the Culberson County
5 Groundwater Conservation District boundaries include all of
6 Culberson County.

7 (d) If a majority of the voters voting at the ratification
8 election do not vote in favor of the annexation, the Culberson
9 County Groundwater Conservation District boundaries are unchanged
10 and this article expires.

11 ARTICLE 14. EFFECTIVE DATE

12 SECTION 14.01. Except as otherwise provided by this Act,
13 this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 3 passed the Senate on March 27, 2007, by the following vote: Yeas 30, Nays 0; May 24, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2007, House granted request of the Senate; May 27, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 29, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 3 passed the House, with amendments, on May 23, 2007, by the following vote: Yeas 133, Nays 8, one present not voting; May 26, 2007, House granted request of the Senate for appointment of Conference Committee; May 28, 2007, House adopted Conference Committee Report by the following vote: Yeas 113, Nays 28, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to water conservation.

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

SECTION 1. Section 1.003, Water Code, is amended to read as follows:

Sec. 1.003. PUBLIC POLICY. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(4) the conservation and development of its forest, water, and hydroelectric power;

(5) the navigation of the state's inland and coastal waters; ~~and~~

(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources; and

(7) the voluntary stewardship of public and private

1 lands to benefit waters of the state.

2 SECTION 2. Subchapter A, Chapter 1, Water Code, is amended
3 by adding Section 1.004 to read as follows:

4 Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP.

5 (a) The legislature finds that voluntary land stewardship
6 enhances the efficiency and effectiveness of this state's
7 watersheds by helping to increase surface water and groundwater
8 supplies, resulting in a benefit to the natural resources of this
9 state and to the general public. It is therefore the policy of this
10 state to encourage voluntary land stewardship as a significant
11 water management tool.

12 (b) "Land stewardship," as used in this code, is the
13 voluntary practice of managing land to conserve or enhance suitable
14 landscapes and the ecosystem values of the land. Land stewardship
15 includes land and habitat management, wildlife conservation, and
16 watershed protection. Land stewardship practices include runoff
17 reduction, prescribed burning, managed grazing, brush management,
18 erosion management, reseeding with native plant species, riparian
19 management and restoration, and spring and creek-bank protection,
20 all of which benefit the water resources of this state.

21 SECTION 3. Subtitle A, Title 2, Water Code, is amended by
22 adding Chapter 10 to read as follows:

23 CHAPTER 10. WATER CONSERVATION ADVISORY COUNCIL

24 Sec. 10.001. DEFINITIONS. In this chapter:

25 (1) "Best management practices" has the meaning
26 assigned by Section 11.002.

27 (2) "Board" means the Texas Water Development Board.

1 (3) "Commission" means the Texas Commission on
2 Environmental Quality.

3 (4) "Council" means the Water Conservation Advisory
4 Council.

5 Sec. 10.002. PURPOSE. The council is created to provide the
6 governor, lieutenant governor, speaker of the house of
7 representatives, legislature, board, commission, political
8 subdivisions, and public with the resource of a select council with
9 expertise in water conservation.

10 Sec. 10.003. CREATION AND MEMBERSHIP. (a) The council is
11 composed of 23 members appointed by the board. The board shall
12 appoint one member to represent each of the following entities or
13 interest groups:

14 (1) Texas Commission on Environmental Quality;

15 (2) Department of Agriculture;

16 (3) Parks and Wildlife Department;

17 (4) State Soil and Water Conservation Board;

18 (5) Texas Water Development Board;

19 (6) regional water planning groups;

20 (7) federal agencies;

21 (8) municipalities;

22 (9) groundwater conservation districts;

23 (10) river authorities;

24 (11) environmental groups;

25 (12) irrigation districts;

26 (13) institutional water users;

27 (14) professional organizations focused on water

1 conservation;

2 (15) higher education;

3 (16) agricultural groups;

4 (17) refining and chemical manufacturing;

5 (18) electric generation;

6 (19) mining and recovery of minerals;

7 (20) landscape irrigation and horticulture;

8 (21) water control and improvement districts;

9 (22) rural water users; and

10 (23) municipal utility districts.

11 (b) Each entity or interest group described by Subsection
12 (a) may recommend one or more persons to fill the position on the
13 council held by the member who represents that entity or interest
14 group. If one or more persons are recommended for a position on the
15 council, the board shall appoint one of the persons recommended to
16 fill the position.

17 Sec. 10.004. TERMS. (a) Members of the council serve
18 staggered terms of six years, with seven or eight members' terms, as
19 applicable, expiring August 31 of each odd-numbered year.

20 (b) The board shall fill a vacancy on the council for the
21 unexpired term by appointing a person who has the same
22 qualifications as required under Section 10.003 for the person who
23 previously held the vacated position.

24 Sec. 10.005. PRESIDING OFFICER. The council members shall
25 select one member as the presiding officer of the council to serve
26 in that capacity until the person's term as a council member
27 expires.

1 Sec. 10.006. COUNCIL STAFF. On request by the council, the
2 board shall provide any necessary staff to assist the council in the
3 performance of its duties.

4 Sec. 10.007. PUBLIC MEETINGS AND PUBLIC INFORMATION. (a)
5 The council may hold public meetings as needed to fulfill its duties
6 under this chapter.

7 (b) The council is subject to Chapters 551 and 552,
8 Government Code.

9 Sec. 10.008. INAPPLICABILITY OF ADVISORY COMMITTEE LAW.
10 Chapter 2110, Government Code, does not apply to the size,
11 composition, or duration of the council.

12 Sec. 10.009. COMPENSATION OF MEMBERS. (a) Members of the
13 council serve without compensation but may be reimbursed by
14 legislative appropriation for actual and necessary expenses
15 related to the performance of council duties.

16 (b) Reimbursement under Subsection (a) is subject to the
17 approval of the presiding officer of the council.

18 Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council
19 shall:

20 (1) monitor trends in water conservation
21 implementation;

22 (2) monitor new technologies for possible inclusion by
23 the board as best management practices in the best management
24 practices guide developed by the water conservation implementation
25 task force under Chapter 109, Acts of the 78th Legislature, Regular
26 Session, 2003;

27 (3) monitor the effectiveness of the statewide water

1 conservation public awareness program developed under Section
2 16.401 and associated local involvement in implementation of the
3 program;

4 (4) develop and implement a state water management
5 resource library;

6 (5) develop and implement a public recognition program
7 for water conservation;

8 (6) monitor the implementation of water conservation
9 strategies by water users included in regional water plans; and

10 (7) monitor target and goal guidelines for water
11 conservation to be considered by the board and commission.

12 Sec. 10.011. REPORT. Not later than December 1 of each
13 even-numbered year, the council shall submit to the governor,
14 lieutenant governor, and speaker of the house of representatives a
15 report on progress made in water conservation in this state.

16 Sec. 10.012. DESIGNATION OF CERTIFIED WATER CONSERVATION
17 TRAINING FACILITIES STUDY. (a) The council shall conduct a study
18 to evaluate the desirability of requiring the board to:

19 (1) designate as certified water conservation
20 training facilities entities and programs that provide assistance
21 to retail public utilities in developing water conservation plans
22 under Section 13.146; and

23 (2) give preference to certified water conservation
24 training facilities in making loans or grants for water
25 conservation training and education activities.

26 (b) Not later than December 1, 2008, the council shall
27 submit a written report containing the findings of the study and the

1 recommendations of the council to the governor, lieutenant
2 governor, and speaker of the house of representatives.

3 (c) This section expires June 1, 2009.

4 SECTION 4. Section 11.002, Water Code, is amended by adding
5 Subdivision (15) to read as follows:

6 (15) "Best management practices" means those
7 voluntary efficiency measures developed by the commission and the
8 board that save a quantifiable amount of water, either directly or
9 indirectly, and that can be implemented within a specified time
10 frame.

11 SECTION 5. Section 11.0235(b), Water Code, is amended to
12 read as follows:

13 (b) Maintaining the biological soundness of the state's
14 rivers, lakes, bays, and estuaries is of great importance to the
15 public's economic health and general well-being. The legislature
16 encourages voluntary water and land stewardship to benefit the
17 water in the state, as defined by Section 26.001.

18 SECTION 6. Subchapter E, Chapter 13, Water Code, is amended
19 by adding Section 13.146 to read as follows:

20 Sec. 13.146. WATER CONSERVATION PLAN. The commission shall
21 require a retail public utility that provides potable water service
22 to 3,300 or more connections to submit to the executive
23 administrator of the board a water conservation plan based on
24 specific targets and goals developed by the retail public utility
25 and using appropriate best management practices, as defined by
26 Section 11.002, or other water conservation strategies.

27 SECTION 7. Section 15.102(b), Water Code, is amended to

1 read as follows:

2 (b) The loan fund may also be used by the board to provide:

3 (1) grants or loans for projects that include
4 supplying water and wastewater services in economically distressed
5 areas or nonborder colonias as provided by legislative
6 appropriations, this chapter, and board rules, including projects
7 involving retail distribution of those services; and

8 (2) grants for:

9 (A) projects for which federal grant funds are
10 placed in the loan fund;

11 (B) projects, on specific legislative
12 appropriation for those projects; or

13 (C) water conservation, desalination, brush
14 control, weather modification, regionalization, and projects
15 providing regional water quality enhancement services as defined by
16 board rule, including regional conveyance systems.

17 SECTION 8. Chapter 16, Water Code, is amended by adding
18 Subchapter K to read as follows:

19 SUBCHAPTER K. WATER CONSERVATION

20 Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS
21 PROGRAM. (a) The executive administrator shall develop and
22 implement a statewide water conservation public awareness program
23 to educate residents of this state about water conservation. The
24 program shall take into account the differences in water
25 conservation needs of various geographic regions of the state and
26 shall be designed to complement and support existing local and
27 regional water conservation programs.

1 (b) The executive administrator is required to develop and
2 implement the program required by Subsection (a) in a state fiscal
3 biennium only if the legislature appropriates sufficient money in
4 that biennium specifically for that purpose.

5 Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each
6 entity that is required to submit a water conservation plan to the
7 commission under this code shall submit a copy of the plan to the
8 executive administrator.

9 (b) Each entity that is required to submit a water
10 conservation plan to the executive administrator, board, or
11 commission under this code shall report annually to the executive
12 administrator on the entity's progress in implementing the plan.

13 (c) The executive administrator shall review each water
14 conservation plan and annual report to determine compliance with
15 the minimum requirements established by Section 11.1271 and the
16 submission deadlines developed under Subsection (e) of this
17 section.

18 (d) The board may notify the commission if the board
19 determines that an entity has violated this section or a rule
20 adopted under this section. Notwithstanding Section 7.051(b), a
21 violation of this section or of a rule adopted under this section is
22 enforceable in the manner provided by Chapter 7 for a violation of a
23 provision of this code within the commission's jurisdiction or of a
24 rule adopted by the commission under a provision of this code within
25 the commission's jurisdiction.

26 (e) The board and commission jointly shall adopt rules:

27 (1) identifying the minimum requirements and

1 submission deadlines for the annual reports required by Subsection
2 (b); and

3 (2) providing for the enforcement of this section and
4 rules adopted under this section.

5 SECTION 9. Subchapter Z, Chapter 51, Education Code, is
6 amended by adding Section 51.969 to read as follows:

7 Sec. 51.969. ON-SITE RECLAIMED SYSTEM TECHNOLOGIES
8 CURRICULUM. The Texas Higher Education Coordinating Board shall
9 encourage each institution of higher education to develop
10 curriculum and provide related instruction regarding on-site
11 reclaimed system technologies, including rainwater harvesting,
12 condensate collection, or cooling tower blow down.

13 SECTION 10. Section 447.004, Government Code, is amended by
14 adding Subsections (c-1) and (c-2) to read as follows:

15 (c-1) The procedural standards adopted under this section
16 must require that on-site reclaimed system technologies, including
17 rainwater harvesting, condensate collection, or cooling tower blow
18 down, or a combination of those system technologies, for nonpotable
19 indoor use and landscape watering be incorporated into the design
20 and construction of:

21 (1) each new state building with a roof measuring at
22 least 10,000 square feet; and

23 (2) any other new state building for which the
24 incorporation of such systems is feasible.

25 (c-2) The procedural standards required by Subsection (c-1)
26 do not apply to a building if the state agency or institution of
27 higher education constructing the building:

1 (1) determines that compliance with those standards is
2 impractical; and

3 (2) notifies the state energy conservation office of
4 the determination and provides to the office documentation
5 supporting the determination.

6 SECTION 11. Section 341.042, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The
9 commission shall establish recommended standards relating to the
10 domestic use of harvested rainwater, including health and safety
11 standards for treatment and collection methods for harvested
12 rainwater intended for drinking, cooking, or bathing.

13 (b) The commission by rule shall provide that if a structure
14 is connected to a public water supply system and has a rainwater
15 harvesting system for indoor use:

16 (1) the structure must have appropriate
17 cross-connection safeguards; and

18 (2) the rainwater harvesting system may be used only
19 for nonpotable indoor purposes.

20 (c) Standards and rules adopted by the commission under this
21 chapter governing public drinking water supply systems do not apply
22 to a person:

23 (1) who harvests rainwater for domestic use; and

24 (2) whose property is not connected to a public
25 drinking water supply system.

26 SECTION 12. Chapter 401, Local Government Code, is amended
27 by adding Section 401.006 to read as follows:

1 Sec. 401.006. WATER CONSERVATION BY HOME-RULE
2 MUNICIPALITY. A home-rule municipality may adopt and enforce
3 ordinances requiring water conservation in the municipality and by
4 customers of the municipality's municipally owned water and sewer
5 utility in the extraterritorial jurisdiction of the municipality.

6 SECTION 13. Section 1903.053, Occupations Code, is amended
7 to read as follows:

8 Sec. 1903.053. STANDARDS. (a) The commission shall adopt
9 by rule and enforce standards governing:

10 (1) the connection of irrigation systems to any water
11 supply;

12 (2) the design, installation, and operation of
13 irrigation systems;

14 (3) water conservation; and

15 (4) the duties and responsibilities of licensed
16 irrigators.

17 (b) ~~[The commission may adopt standards for irrigation that~~
18 ~~include water conservation, irrigation system design and~~
19 ~~installation, and compliance with municipal codes.~~

20 ~~[(c)]~~ The commission may not require or prohibit the use of
21 any irrigation system, component part, or equipment of any
22 particular brand or manufacturer.

23 (c) In adopting standards under this section, the
24 commission shall consult the council.

25 SECTION 14. Section 151.355, Tax Code, is amended to read as
26 follows:

27 Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are

1 exempted from taxes imposed by this chapter:

2 (1) rainwater harvesting equipment or supplies, water
3 recycling and reuse equipment or supplies, or other equipment,
4 services, or supplies used solely to reduce or eliminate water use;

5 (2) equipment, services, or supplies used solely for
6 desalination of surface water or groundwater;

7 (3) equipment, services, or supplies used solely for
8 brush control designed to enhance the availability of water;

9 (4) equipment, services, or supplies used solely for
10 precipitation enhancement;

11 (5) equipment, services, or supplies used solely to
12 construct or operate a water or wastewater system certified by the
13 Texas Commission on Environmental Quality as a regional system;

14 [~~and~~]

15 (6) equipment, services, or supplies used solely to
16 construct or operate a water supply or wastewater system by a
17 private entity as a public-private partnership as certified by the
18 political subdivision that is a party to the project; and

19 (7) tangible personal property specifically used to
20 process, reuse, or recycle wastewater that will be used in
21 fracturing work performed at an oil or gas well.

22 SECTION 15. The change in law made by this Act to Section
23 151.355, Tax Code, does not affect taxes imposed before the
24 effective date of this Act, and the law in effect before the
25 effective date of this Act is continued in effect for purposes of
26 the liability for and collection of those taxes.

27 SECTION 16. As soon as practicable on or after the effective

1 date of this Act, the Texas Water Development Board shall appoint
2 the initial members of the Water Conservation Advisory Council, as
3 required by Section 10.003, Water Code, as added by this Act. In
4 making the initial appointments, the board shall designate seven
5 members to serve terms expiring August 31, 2009, eight members to
6 serve terms expiring August 31, 2011, and eight members to serve
7 terms expiring August 31, 2013.

8 SECTION 17. Section 15.102(b), Water Code, as amended by
9 this Act, applies only to an application for financial assistance
10 filed with the Texas Water Development Board on or after the
11 effective date of this Act. An application for financial assistance
12 filed before the effective date of this Act is governed by the law
13 in effect on the date the application was filed, and the former law
14 is continued in effect for that purpose.

15 SECTION 18. Not later than January 1, 2008, the Texas Water
16 Development Board and the Texas Commission on Environmental Quality
17 jointly shall adopt rules as required by Section 16.402(e), Water
18 Code, as added by this Act.

19 SECTION 19. Not later than June 1, 2008, the Texas
20 Commission on Environmental Quality shall adopt standards as
21 required by Section 1903.053, Occupations Code, as amended by this
22 Act, to take effect January 1, 2009.

23 SECTION 20. (a) Except as provided by Subsection (b) of
24 this section, this Act takes effect immediately if it receives a
25 vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

1 Act takes effect September 1, 2007.

2 (b) Section 10 of this Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 4 was passed by the House on May 1, 2007, by the following vote: Yeas 130, Nays 1, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 4 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 4 on May 27, 2007, by the following vote: Yeas 144, Nays 1, 2 present, not voting.

Chief Clerk of the House

H.B. No. 4

I certify that H.B. No. 4 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 4 on May 28, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to regulation of irrigation systems and irrigators.

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

SECTION 1. Section 1903.251, Occupations Code, is amended to read as follows:

Sec. 1903.251. LICENSE REQUIRED. (a) A person must hold a license issued by the commission under Chapter 37, Water Code, if the person:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system; ~~or~~

(3) connects an irrigation system to a private or public, raw or potable water supply system or any water supply; or

(4) inspects an irrigation system for a municipality or water district.

(b) A person is ineligible for a license under Subsection (a)(4) if the person engages in or has a financial or advisory interest in an entity that engages in an activity under Subsection (a)(1), (2), or (3).

SECTION 2. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.238 to read as follows:

Sec. 49.238. IRRIGATION SYSTEMS. (a) A district may adopt and enforce rules that require an installer of an irrigation

1 system:

2 (1) to hold a license issued under Section 1903.251,
3 Occupations Code; and

4 (2) to obtain a permit before installing a system
5 within the boundaries of the district.

6 (b) If a district adopts rules under Subsection (a), the
7 rules shall include minimum standards and specifications for
8 designing, installing, and operating irrigation systems in
9 accordance with Section 1903.053, Occupations Code, and any rules
10 adopted by the Texas Commission on Environmental Quality under that
11 section.

12 (c) A district may employ or contract with a licensed
13 plumbing inspector, a licensed irrigation inspector, the
14 district's operator, or another governmental entity to enforce the
15 rules.

16 (d) A district may charge an installer of an irrigation
17 system a fee for obtaining or renewing a permit under Subsection
18 (a)(2). The district shall set the fee in an amount sufficient to
19 enable the district to recover the cost of administering this
20 section.

21 (e) This section does not apply to:

22 (1) an on-site sewage disposal system, as defined by
23 Section 366.002, Health and Safety Code; or

24 (2) an irrigation system:

25 (A) used on or by an agricultural operation as
26 defined by Section 251.002, Agriculture Code; or

27 (B) connected to a groundwater well used by the

1 property owner for domestic use.

2 SECTION 3. Chapter 401, Local Government Code, is amended
3 by adding Section 401.006 to read as follows:

4 Sec. 401.006. IRRIGATION SYSTEMS. (a) A municipality with
5 a population of 20,000 or more by ordinance shall require an
6 installer of an irrigation system:

7 (1) to hold a license issued under Section 1903.251,
8 Occupations Code; and

9 (2) to obtain a permit before installing a system
10 within the territorial limits or extraterritorial jurisdiction of
11 the municipality.

12 (b) The ordinance shall include minimum standards and
13 specifications for designing, installing, and operating irrigation
14 systems in accordance with Section 1903.053, Occupations Code, and
15 any rules adopted by the Texas Commission on Environmental Quality
16 under that section.

17 (c) A municipality may employ or contract with a licensed
18 plumbing inspector or a licensed irrigation inspector to enforce
19 the ordinance.

20 (d) A municipality may charge an installer of an irrigation
21 system a fee for obtaining or renewing a permit under Subsection
22 (a)(2). The municipality shall set the fee in an amount sufficient
23 to enable the municipality to recover the cost of administering
24 this section.

25 (e) This section does not apply to:

26 (1) an on-site sewage disposal system, as defined by
27 Section 366.002, Health and Safety Code; or

1 (2) an irrigation system:

2 (A) used on or by an agricultural operation as
3 defined by Section 251.002, Agriculture Code; or

4 (B) connected to a groundwater well used by the
5 property owner for domestic use.

6 SECTION 4. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 1656 was passed by the House on May 1, 2007, by the following vote: Yeas 116, Nays 26, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1656 was passed by the Senate on May 22, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; the repeal of §344.32; and new §344.66.

The amendments to §§344.1, 344.24, 344.30, 344.35, 344.36, 344.50, 344.62, and 344.65 are adopted *with change* to the proposed text as published in the January 31, 2020, *Texas Register* (45 TexReg 694), and, therefore, will be republished. The amendments to §§344.20 - 344.22, 344.31, 344.33, 344.35, - 344.38, 344.40, 344.42, 344.43, 344.51, 344.52, 344.60, 344.61, 344.63 - 344.65, 344.70 - 344.72, and 344.80 and new §344.66 are adopted *without change* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This adopted rulemaking is in response to two petitions submitted by the Irrigator Advisory Council (IAC), which were granted by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The IAC requested that the commission classify all irrigation systems as health hazards; eliminate the use of double check valves; add the use of spill resistant vacuum breakers (SVBs); require that the backflow prevention assemblies be tested after repair, replacement, or relocation; require the use of in-line

filters or strainers as recommended by the manufacturers; and change the term "backflow prevention devices" to "backflow prevention assemblies."

The executive director's staff collected stakeholder feedback on the recommended amendments in the IAC's petitions. Public meetings were held in Austin, Corpus Christi, El Paso, Fort Worth, Harlingen, Houston, Lubbock, San Antonio, and Tyler. In addition, written comments were received from 207 interested parties. Some feedback from the meetings and content from comments received were incorporated into the adopted rule language.

In 2007, the 80th Texas Legislature passed three bills directly affecting landscape irrigation. House Bill (HB) 4 and Senate Bill (SB) 3 directed the commission to adopt rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. These rule changes were included in the most recent updates to Chapter 344 that were effective on January 1, 2009. HB 1656 added a new landscape irrigation license classification, irrigation inspector, and directed municipalities with a population of 20,000 or more to adopt ordinances that require irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. Those municipalities were required to adopt standards and specifications for irrigation systems and include rules adopted by

the TCEQ. Municipalities that adopted ordinances were also required to exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well which is used for domestic purposes. HB 1656 gave water districts the option of adopting rules to govern landscape irrigation in their areas. These provisions were not included in a previous update to Chapter 344 and were added with this rulemaking.

This adopted rulemaking incorporates some of the requested changes in the two IAC rule petitions, as well as: amends existing sections, repeals a section, and adds a new section. These adopted revisions strengthen the rules by providing for increased protection of public health and water conservation. In addition, this adopted rulemaking aligns terms and definitions in this chapter with those in other, relevant chapters of 30 Texas Administrative Code (TAC). Specifically, definitions are amended to align with 30 TAC Chapter 290, Public Drinking Water.

Section by Section Discussion

The commission made various stylistic, non-substantive changes, such as, grammatical corrections, correct use of references, and revisions to improve readability.

Additionally, the commission removed the word "installers" since this word is no longer recognized by either the industry or the TCEQ and replaced the term "backflow prevention devices" with "backflow prevention assemblies." These changes are non-substantive and generally not discussed in this preamble.

SUBCHAPTER A: DEFINITIONS

§344.1, Definitions

The commission adopts amended §344.1(1), to align the "Air gap" definition with the air gap definition used in Chapter 290. This is a more technically correct definition and provides consistency across the two chapters.

The commission adopts amended §344.1(2) by adding a definition for "As-built drawing" as recommended in the IAC petition. This term is commonly used in the irrigation industry to refer to the final irrigation plan produced at the completion of an installation.

The commission adopts the removal of the definition of "Atmospheric Vacuum Breaker" in §344.1(2). This was requested in the rule petition, because it is no longer a viable form of backflow prevention for irrigation systems. The IAC voted in favor of removing the AVB as an approved backflow prevention assembly for landscape irrigation on August 18, 2016.

The commission adopts the amended definition of "Backflow prevention" in §344.1(3). The revision was made to improve clarity and to add the term "backpressure" as a cause of reversal of flow.

The commission adopts the amended definition of "Backflow prevention assembly" in §344.1(4). The revision clarifies that this is a mechanical assembly and can be used with health hazard and non-health hazard installations. Additionally, the term "backflow" was replaced by "hydraulic conditions" to refer to additional conditions where a backflow prevention assembly is required.

The commission adopts the amended definition of "Cross-connection" in §344.1(7) to align with the definition used in Chapter 290.

The commission adopts the amended definition of "Design pressure" in §344.1(9) to improve clarity and reference the head-to-head spacing requirement.

The commission adopts the amendment of the term "Double check valve" in §344.1(10) to "Double check valve assembly" to refer to all the parts for the proper operation of the double check valve assembly. The IAC recommended that this definition be removed and stated it is not appropriate for use if all landscape irrigation systems were classified as a health hazard. Stakeholder feedback from other interested parties did not support removal of this definition or classification of all landscape irrigation systems as a health hazard. Please note that local programs may elect to restrict usage of these devices.

The commission adopts the amended definition of "Employed" in §344.1(12) to reference the amended definition of "Irrigation services" in §344.1(20) rather than "consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems."

The commission adopts the added definition for "Exempt business owner" in §344.1(13) as referenced in Texas Occupations Code, Chapter 1903 and consistent with the usage in §344.31. This term is already in §§344.21, 344.22, 344.32, and 344.35. Subsequent paragraphs were renumbered.

The commission adopts the added definition for "Graywater" in §344.1(14) to align with 30 TAC Chapter 210, Use of Reclaimed Water, Subchapter F, Use of Graywater Systems. There has been an increase in the use of graywater in irrigation systems and this chapter is updated to reflect that increase. This change was recommended by the IAC. Subsequent paragraphs were renumbered.

The commission adopts the amended definition of "Head-to-head spacing" in §344.1(15) (previously §344.1(13)) to improve clarity by specifying that the water spray must reach from device to device and to allow for a 10% deviation from the manufacturer's published radius.

The commission adopts the amended definition of "Health hazard" in §344.1(16) (previously §344.1(14)) to align with the definition used in Chapter 290.

The commission adopts the removal of the definition of "Inspector" in §344.1(16) and combines it with the definition of "Irrigation inspector" in §344.1(18) for improved clarity. The definition of "Irrigation inspector" was amended accordingly.

The commission adopts the removal of the definition for "Installer" in §344.1(17) since there is no longer a license for "installer" in the landscape irrigation program. This is no longer recognized as a valid term in the industry and has been replaced by "irrigation technician." This change was recommended by the IAC.

The commission adopts the amended definition of "Irrigation inspector" in §344.1(18) to incorporate language from the definition of "Inspector," which was removed.

The commission adopts the amended definition of "Irrigation plan" in §344.1(19) to reference the applicable rules in Chapter 344, Subchapter F, Standards for Designing, Installing and Maintaining Landscape Irrigation Systems, and includes the term "as-built drawing," which was added to this section as a defined term.

The commission adopts the amended definition of "Irrigation services" in §344.1(20) to make it more inclusive of all activities involving an irrigation system and added "selling" to the list of services included in this term.

The commission adopts the amended definition of "Irrigation system" in §344.1(21) to improve clarity. Additionally, in response to comments the commission adopts to include sprinklers and sprinkler systems used for irrigation as part of the definition for an irrigation system.

The commission adopts the amended definition of "Irrigation technician" in §344.1(22) to improve clarity and adds the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the amended definition of "Irrigation services."

The commission adopts the amended definition of "Irrigation zone" in §344.1(23) to improve clarity.

The commission adopts the amended definition of "Irrigator" in §344.1(24) to add the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the amended definition of "Irrigation services."

The commission adopts the amended definition of "Master valve" in §344.1(31) to remove the term "remote" and incorporate the term "assembly" for consistency with the amended definition of "backflow prevention assembly."

The commission adopts the amended definition of "New installation" in §344.1(33) to include the "complete replacement of an existing irrigation system." This reflects the practice in the irrigation industry to consider complete replacements as new systems.

The commission adopts the amended definition of "Non-health hazard" in §344.1(34) to align with the definition used in Chapter 290.

The commission adopts the amended definition of "Pass-through contract" in §344.1(36) to clarify that it is also considered a sub-contract to reflect irrigation industry practices.

The commission adopts the amended definition of "Potable water" in §344.1(37) to refer to the definition of "drinking water" in Chapter 290.

The commission adopts the amended definition of "Records of landscape irrigation activities" in §344.1(40) to add the term "irrigation services" in place of the list of

services, "installation, maintenance, alteration, repair, or service." This is consistent with the amended definition of "Irrigation services."

The commission adopts the amended definition of "Static water pressure" in §344.1(42) to clarify that "generally, this is the pressure available to the irrigation system." This is consistent with the irrigation industry use of the term.

The commission adopts the amended definition of "Supervision" in §344.1(43) to remove the reference to the "installer" which is no longer a recognized TCEQ licensed individual. This change was recommended by the IAC.

The commission adopts the added definition of "Temporary irrigation system" in §344.1(44) to establish the types of systems addressed in new §344.66.

SUBCHAPTER B, STANDARDS OF CONDUCT FOR IRRIGATORS, INSTALLERS,
IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL
REQUIREMENTS

§344.20, Purpose of Standards

The commission adopts amended §344.20(a) to replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

The commission adopts amended §344.20(b) to remove the word "installer" as it is no longer a recognized TCEQ licensed individual and replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

§344.21, Intent

The commission adopts amended §344.21(a) to remove the word "installer" because it is no longer a recognized TCEQ licensed individual.

The commission adopts §344.21(c) to address exemptions for on-site sewage systems, agricultural irrigation, and irrigation systems connected to a private well to align with state statutes (HB 1656, 80th Texas Legislature, 2007).

§344.22, Proficiency in the Field of Irrigation; Representation of Qualifications

The commission adopts amended §344.22 to remove "installers" because it is no longer a recognized TCEQ licensed individual.

§344.24, Local Regulation and Inspection

The commission adopts amended §344.24(a) to replace "special purpose district" with "water district" to reflect the typical organizational structure of districts as they relate to public water supplies. Additionally, the commission adopts to remove "installer" in amended §344.24(a) as it is no longer a recognized TCEQ licensed individual.

The commission adopts amended §344.24(b) to allow for any city, town, county, water district, other political subdivision of the state, or public water supplier to require inspections of landscape irrigation systems on sites that are connected to the public water supply.

The commission adopts amended §344.24(c) by removing the reference to "a water district that chooses to implement a landscape irrigation program" and changing the word "may" to "must" to reflect the mandatory nature of this rule. The commission also adopts the removal of the words "if a municipality" for better clarity. The previous combined wording did not make it clear that municipalities with a population of 20,000 or more were required to have a program.

The commission adopts §344.24(d) to specifically address water districts that choose to implement a landscape irrigation program per statute (HB 1656). This change was recommended by the IAC.

The commission adopts the removal of existing §344.24(d) and added this requirement to amended §344.37(b)(6). The commission adopts the removal of existing §344.24(e) and (f), since these requirements are included in adopted §344.21(c).

SUBCHAPTER C, REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS,
IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

§344.30, License Required

The commission adopts amended §344.30(a) to incorporate "irrigation services" in place of the list of services, "sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system" and to clarify that a licensed irrigator is not an "exempt business owner." This is consistent with the added definition for "Exempt business owner" and the amended definition of "Irrigation services" in §344.1.

The commission adopts the removal of §344.30(b) since this requirement expired on December 31, 2009 and refers to "installer" which is no longer a recognized TCEQ licensed individual. This change was made per recommendation from the IAC. The subsequent subsections were re-lettered.

The commission adopts amended §344.30(b) (previously §344.30(c)) to remove "beginning January 1, 2009" since this date has passed and is no longer relevant. There is no change to the description of an irrigation technician.

The commission adopts to replace "he or she is" with "if they are" in amended §344.30(g).

§344.31, Responsibilities of a Business Owner Who Provides Irrigation Services

The commission adopts the amendment of the title of this section from "Exemption for Business Owner Who Provides Irrigation Services" to "Responsibilities of a Business Owner Who Provides Irrigation Services."

The commission adopts amended §344.31, which includes the language from repealed §344.32, Responsibilities of a Business Owner Who Provides Irrigation Services, since both rules refer to the overall responsibilities for exempt business owners. With this change, §344.31 becomes §344.31(a) and §344.32 becomes §344.31(b). The commission also adopts adding the term "irrigation services" to refer to the various services including design, installation, maintenance, alteration, repair, or servicing of irrigation systems. This is consistent with the amended definition of "irrigation services" in §344.1. The commission also adopts adding the word "business" to "exempt owner" in §344.31(b) (previously §344.32) to align with the definition of exempt business owner in §344.1.

§344.32, Responsibilities of a Business Owner Who Provides Irrigation Services

The commission adopts the repeal of §344.32 and adds the rule language to §344.31 as adopted subsection (b) since both rules refer to the overall responsibilities for exempt business owners.

§344.33, Display of License

The commission adopts amended §344.33(a) to remove "installers" as it is no longer a recognized TCEQ licensed individual.

§344.34, Use of License

The commission adopts amended §344.34(b) to add "or entity" to broaden the applicability of this rule to include businesses and to remove "licensed installer" as it is no longer a recognized TCEQ licensed individual. The commission adopts the amendment to §344.34(d) to remove references to installer as it is no longer a recognized TCEQ licensed individual.

§344.35, Duties and Responsibilities of Irrigators

The commission adopts amended §344.35(c) to clarify that the "irrigator-in-charge" is responsible for the irrigation services performed by the exempt business owner's company.

The commission adopts amended §344.35(d)(1) to remove "stamp or rubber" to allow for different approved types of an irrigator's seal. The TCEQ recognizes that emerging technology will provide different approved ways for irrigators to display and use their seal.

The commission adopts amended §344.35(d)(4) by replacing the word "device" with "assembly" to be consistent within the chapter.

The commission adopts amended §344.35(d)(9) to remove "system beginning January 1, 2010." This date has passed and is no longer relevant.

The commission adopts amended §344.35(d)(10) and (12) (previously §344.35(d)(13)) to refer to "conducting irrigation services" as defined in §344.1 rather than listing specific services.

The commission adopts the removal of §344.35(d)(11) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. Subsequent paragraphs were renumbered.

§344.36, Duties and Responsibilities of Irrigation Technicians

The commission adopts the amendment of the title of this section from "Duties and Responsibilities of Installers and Irrigation Technicians" to "Duties and Responsibilities of Irrigation Technicians." The commission adopts amended §344.36(a) to clarify that irrigation technicians are required to work under the supervision of a licensed irrigator and remove references to "installer" since it is no longer a recognized TCEQ licensed

individual. An irrigation technician's responsibilities have been moved from subsection (a) to paragraphs (1) - (3) and amended as discussed below.

The commission adopts amended §344.36(a)(1) to include the connection of an irrigation system to a water supply.

The commission adopts amended §344.36(a)(2) to include the term "backflow prevention assembly" to be consistent with the amended definition in §344.1. The commission adopts to replace "an approved" with "a" in amended §344.36(a)(2).

The commission adopts amended §344.36(a)(3) by referencing "irrigation services" as defined in §344.1 rather than listing specific services.

The commission adopts §344.36(a)(4) to include the requirement to conduct the final walkthrough as required by §344.63.

The commission adopts the removal of §344.36(c) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. The subsequent subsection §344.36(d) was re-lettered.

The commission adopts §344.36(d) to include the requirement that an irrigation

technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37, Duties and Responsibilities of Irrigation Inspectors

The commission adopts amended §344.37(a) to include "licensed plumbing inspector" as someone who is qualified to conduct irrigation system inspections.

The commission adopts amended §344.37(b) to clarify the recordkeeping requirements for irrigation inspectors.

§344.38, Irrigator Records

The commission adopts the amendment of the title of this section from "Irrigator, Installer, and Irrigation Technician Records" to "Irrigator Records."

The commission adopts the amendment to this section to remove references to "rubber stamp" and leave the more general requirement for "seal" to allow for alternate types of seals. This section is also amended to remove references to records kept by installers and irrigation technicians. Installer is no longer a recognized licensed individual and there are no specific recordkeeping requirements for irrigation technicians.

SUBCHAPTER D, LICENSED IRRIGATOR SEAL

§344.40, Seal Required

The commission adopts amended §344.40 so that the rule is strengthened against the inappropriate use of an irrigator's seal. This is to prevent occasions when an irrigator allows another person to use their seal, change the format of their seal so that it does not meet the requirements in §344.41, or does not sign and date their seal.

§344.42, Seal Display

The commission adopts amended §344.42(b) to remove references to a specific type of media used to produce the seal. The TCEQ recognizes that emerging technology will provide different acceptable ways for irrigators to display and use their seal.

§344.43, Seal Use

The commission adopts amended §344.43(e) to simplify the language so that it is consistent with the rest of the rule.

The commission adopts amended §344.43(e)(1) so that the language regarding the change aligns with §344.43(e).

The commission adopts amended §344.43(e)(2) to clarify that the irrigator making the change is responsible for that change.

The commission adopts amended §344.43(e)(3) to require that the irrigator must seal any changes made.

The commission adopts amended §344.43(f) to specify that the irrigator is responsible for the portion of the irrigation plan they created or changed.

SUBCHAPTER E, BACKFLOW PREVENTION AND CROSS-CONNECTION

§344.50, Backflow Prevention Methods

The commission adopts amended §344.50(a) to eliminate the requirement for approval of backflow prevention assemblies. It was determined that there was no practical way to meet this requirement. Instead, the requirement is to install the assembly per manufacturer' recommendations and to test upon installation. This is consistent with the requirements in Chapter 290.

The commission adopts amended §344.50(b) and (b)(1) to align with the definition of an air gap in §344.1(1).

The commission adopts amended §344.50(b)(2) to reference the installation and testing requirements in §344.50(a).

The commission adopts amended §344.50(b)(3) to reference the installation and testing requirements in §344.50(a) and describe the hydraulic conditions under which the assembly will work. The word "device" was changed to "assembly" per the IAC's recommendation.

The commission adopts amended §344.50(b)(4) to replace atmospheric vacuum breakers (AVBs) as an option for backflow prevention with SVBs per the IAC's recommendation. In practice, AVBs are inadequate for backflow prevention on irrigation systems, because they will not function correctly with a downstream valve. Currently available sprinkler heads are equipped with check valves to conserve water and these are not functional with AVBs. Since AVBs cannot be used with a valve downstream of them, each individual zone would have to have its own AVB. AVBs must be installed a minimum of six inches above the highest downstream emission device. These factors increase the cost and complexity of installation with no appreciable benefit. The commission also corrects a grammatical error in the amended language in §344.50(b)(4) by removing the word "in."

Because SVBs were included as an option for backflow prevention, requirements for the correct hydraulic conditions (no backpressure) and height installation requirements were included in §§344.50(b) and (b)(4)(A). These changes were recommended by the IAC.

The commission adopts amended §344.50(b)(4)(A) to also specify the potential for backpressure.

The commission adopts amended §344.50(b)(4)(B) to specify the minimum installation height and that it is determined from the highest downstream opening.

The commission adopts the removal of the rule language in §344.50(c) and moves it to adopted §344.50(e) per the IAC's recommendation. Subsequent subsections were re-lettered.

The commission adopts amended §344.50(c) (formerly subsection (d)) to replace the word "device" with the word "assembly."

The commission adopts amended §344.50(c)(1) to add the word "and" for better readability.

The commission adopts amended §344.50(c)(2) to eliminate the language referencing backpressure since this information was determined to be incorrect. The subsequent paragraph was renumbered.

The commission adopts amended §344.50(d) (formerly subsection (e)) to include the word "assemblies" and to specify the installation requirements.

The commission adopts amended §344.50(d)(3) to remove the requirement for the Y-type strainer as the maintenance requirements to periodically clean it did not make it practical to use. Subsequent paragraphs were renumbered.

The commission adopts amended §344.50(d)(3) to specify that there must be clearance around the assembly to facilitate testing.

The commission adopts §344.50(e) to specify testing requirements for backflow prevention assemblies, especially those installed to protect against health hazards. This change was requested by the IAC.

§344.51, Specific Conditions and Cross-Connection Control

The commission adopts amended §344.51(a) to make it applicable to any method where a chemical can be introduced into an irrigation system and increase the hazard to the potable water supply. This language was removed from §344.51(c) and moved to §344.51(a).

The commission adopts amended §344.51(b) to address the hazard posed by those

irrigation system components with chemical additives added to them in the manufacturing process. The subsequent subsection was re-lettered.

The commission adopts the removal of §344.51(b) and moves the language to §344.51(c). The language remains the same.

The commission adopts amended §§344.51(d)(1) and (2) to clearly specify that an irrigation system on a site that also has an on-site sewage facility (OSSF) is considered a health hazard.

§344.52, Installation of Backflow Prevention Assembly

The commission adopts the amendment of the title of this section from "Installation of Backflow Prevention Device" to "Installation of Backflow Prevention Assembly."

The commission adopts amended §344.52(b) to add the word "prevention" as "backflow prevention assembly" is the correct term.

The commission adopts amended §344.52(c) to remove the requirement to provide a test report to the "irrigation system's owner or owner's representative" and to replace the word "device" with "assembly." This aligns with the requirements in Chapter 290.

SUBCHAPTER F, STANDARD FOR DESIGNING, INSTALLING AND MAINTAINING
LANDSCAPE IRRIGATION SYSTEMS

§344.60, Water Conservation

The commission adopts the update of the reference regarding the definition of "Water conservation" from §344.1(44) to §344.1(45).

§344.61, Minimum Standards for the Design of the Irrigation Plan

The commission adopts amended §344.61(a) to stress the uniqueness of each individual irrigation system and the irrigation plan for it. These changes were also made to address occasions where the same irrigation plan is used multiple times for different sites. The requirement to submit a drawing showing the actual installation has been removed from §344.61(a) and is addressed in the amendment to §344.61(c). Language addressing how variances from the original plan can be authorized has been removed from §344.61(a) and is addressed in the amendment to §344.61(d) and (e).

The commission adopts amended §344.61(b) to specify that the irrigation plan shall clearly show that those areas to be watered were adequately covered and those that were not were clearly identified. This change was made per a recommendation from the IAC.

The commission adopts amended §344.61(c)(2) to reference the requirements in

§344.61(b) and specify some common physical features of a site to be irrigated.

The commission adopts amended §344.61(c)(4) to specify what should be included on the legend of the irrigation plan and prevent irrigation plans with legends that do not adequately describe the symbols used on the irrigation plan. This change was made per a recommendation from the IAC.

The commission adopts amended §344.61(c)(5) to specify what is expected on the irrigation plan in regard to the zone flow measurement and eliminate occasions where the zone flow measurement does not include the station number or valve size. This change was made per a recommendation from the IAC.

The commission adopts amended §344.61(c)(7) to establish that specifications are required for all irrigation system components and lists certain required information.

The commission adopts §344.61(d) to specify that changes shall be clearly noted in red ink and place requirements on the change itself. This language was moved from §344.61(a).

The commission adopts §344.61(e) to specify that the as-built drawing provided to the owner or owner's representative shall clearly show all the changes made to the

irrigation plan.

§344.62, Minimum Design and Installation Requirements

The commission adopts amended §344.62(b)(1) to allow for a 10% discrepancy from the manufacturer's published radius in the spacing of emission devices. This accommodates variations in installations. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(b)(3) to apply the requirement for directional spray of emission devices away from impervious surfaces to all irrigation systems and clarify that this is a requirement for all installations.

The commission adopts amended §344.62(c) to include the requirement to provide the optimum pressure for an emission device and promote water conservation while adequately watering the site. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(d) to clarify that the acronym "PVC" means polyvinyl chloride.

The commission adopts amended §344.62(g) to further clarify that water shall not be

sprayed on surfaces made of impervious materials.

The commission adopts amended §344.62(h) by changing the word "device" to "assembly" to be consistent with the revisions in the rest of the chapter.

The commission adopts amended §344.62(k) by changing the word "device" to "assembly" to be consistent with the revisions in the rest of the chapter.

The commission adopts amended §344.62(l) to specify that the required depth of pipes is six inches and is measured from the topmost pipe so that multiple pipes laid in one trench do not impinge on the depth requirement. For example, irrigators may erroneously lay multiple pipes in one trench and the topmost pipe may only be three inches from the surface not the required six inches. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(n) to specify that the lid of the valve box shall also be color-coded purple, not just the box. This addresses instances where the box is buried in the ground, with only the lid being visible. This change was made per a recommendation from the IAC.

The commission adopts amended §344.62(o) to remove the effective date as it has

passed.

The commission adopts §344.62(p) to provide clear requirements for valves and other irrigation system components to be housed in valve boxes. These components are buried. If they are not housed in a valve box, they cannot be readily located.

§344.63, Completion of Irrigation System Installation

The commission adopts amended §344.63 to clarify that this section applies to the irrigator and irrigation technician. The introductory statement has been amended to specify "on-site" supervision for the installation and requires the irrigator to provide the items listed in §344.63(1) - (4).

The commission adopts amended §344.63(2) to specify that the completed maintenance checklist shall be provided to the owner or owner's representative.

The commission adopts amended §344.63(2)(A) to accommodate occasions when an automatic controller is not used. Some irrigation systems do not use an automatic controller to turn the different zones on and off and instead use a valve turned by hand.

The commission adopts amended §344.63(2)(B) to provide better clarity and the

meaning of the acronym "historical ET" which means "historical evapotranspiration."

The commission adopts amended §344.63(2)(C) by providing a more concise explanation of irrigation components that should be listed for maintenance and frequency of service.

The commission adopts amended §344.63(2)(D) to improve clarity and include the defined term from §344.1(2) "as-built drawing" which is occasionally provided to the owner or owner's representative upon completion of the installation.

The commission adopts amended §344.63(3) to clarify that the ink on the irrigator's sticker shall be waterproof.

The commission adopts amended §344.63(4) to include the defined term in §344.1(2) "as-built drawing" which is commonly used in the industry and provided to the owner or owner's representative at completion.

§344.64, Maintenance, Alteration, Repair, or Service of Irrigation Systems

The commission adopts the removal of existing §344.64(a) and moves it to §344.72(c).

The commission adopts amended §344.64(a) (previously subsection (b)) to specify that

trenches shall be filled with soil free of any objects that could damage the irrigation system and should be compacted to eliminate depressions that could develop if not compacted.

The commission adopts amended §344.64(b) (previously subsection (c)) to provide a meaning for the acronym PVC.

The commission adopts amended §344.64(c) (previously subsection (d)) to clarify the location of the isolation valve, replace the word "device" with "assembly" as per the IAC's recommendation, and reference the installation requirements in §344.62(k).

§344.65, Reclaimed Water

The commission adopts amended §344.65(4) to clarify that the backflow prevention assembly is required to be on the water line providing water to the entire site to protect against contamination. Additionally, the commission adopts to replace the word "device" to "assembly" in amended §344.65(4) to be consistent with the revisions in the rest of the chapter.

The commission adopts amended §344.65(5) to clarify the size of the required sign.

§344.66, Temporary Irrigation Systems

The commission adopts new §344.66 to provide rules that regulate temporary irrigation systems to provide for water conservation and the protection of public health.

The commission adopts new §344.66(a) to state that temporary irrigation systems must be installed by appropriately licensed individuals.

The commission adopts new §344.66(b) to state that temporary irrigation systems connected to potable water supplies pose a contamination hazard and require backflow prevention.

The commission adopts new §344.66(c) to state that temporary irrigation systems must be installed in a manner that conserves water.

The commission adopts new §344.66(d) to state that temporary irrigation systems must be temporary and must have a definite end date at which time they will be removed.

SUBCHAPTER G, ADVERTISING, CONTRACT, AND WARRANTY

§344.70, Advertisement

The commission adopts amended §344.70(a) to simplify the subsection by using the

term "irrigation services" and specify that the irrigator's license number must be visible on both outward sides of the vehicle used to advertise irrigation services.

The commission adopts amended §344.70(b) to apply the requirement regardless of the media used to advertise. This change was made per a recommendation from the IAC.

The commission adopts amended §344.70(c) to clarify the location of the information available to the public for complaint purposes.

§344.71, Contracts

The commission adopts amended §344.71(a) and (b) to provide the correct TCEQ website address and Mail Code information.

The commission adopts amended §344.71(c) to clarify that regardless of the existence of a pass-through contract, the irrigator is still responsible for providing a warranty to the owner or owner's representative.

§344.72, Warranties

The commission adopts amended §344.72(b) to provide the correct TCEQ website address and Mail Code information.

The commission adopts amended §344.72(c) to specify that during the warranty period the irrigator is responsible for the work they performed or that was performed under their supervision. This subsection also relieves the irrigator of any responsibility for work performed by any other individual on an irrigation system they installed.

SUBCHAPTER H, IRRIGATOR ADVISORY COUNCIL

§344.80, Irrigator Advisory Council

The commission adopts amended §344.80(e) to clarify that the council member terms are staggered with three member's terms ending each odd-numbered year and add that when a member leaves the council before his or her term expires, an interim member is selected to serve the remainder of the departing member's term.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Administrative Procedure Act, Texas Government Code, §2001.001 *et. seq.*, 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 Texas Government Code, §2001.0225(g)(3). A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that

may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rulemaking is to strengthen the rules and to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC. Specifically, definitions are adopted to align with Chapter 290. In addition, the rules provide for better protection of public health and better water conservation. Protection of human health and the environment may be a by-product of the adopted rules, but it is not the specific intent of the rules. Therefore, the commission concludes that the adopted rules do not constitute a major environmental rule.

Furthermore, the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under specific state law.

The adopted rules do not exceed a federal standard because there are no federal standards regulating the practice of landscape irrigation. The adopted rules do not exceed state law requirements. Also, the adopted rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the state of Texas and an agency or representative of the federal government to implement a state and federal program regarding landscape irrigation. And finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency.

Therefore, Texas Government Code, §2001.0225, is not applicable to these adopted rules.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an analysis of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to strengthen the rules and to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC.

Specifically, definitions are adopted to align with Chapter 290. In addition, this rulemaking provides for better protection of public health and better water conservation.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because the adopted rules will neither burden, nor restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of these regulations. In other words, these rules will not constitute a statutory or constitutional taking because they only update existing rules to comply with current technical standards and conservation methods and do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the adopted rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on February 27, 2020. The comment period closed on March 3, 2020. The commission received comments from 2greenirrigation, LLC, Accurate and Accountable Backflow, Adams Engineering & Development Consultants (Adams), Andy's Sprinkler and Drainage, Austin Water, Austin Water SSD, Bac-Flo Unlimited, Inc, Barron Irrigation Repair, LLC, C2 Backflow Services, LLC, Christian Irrigation, City of Allen, City of Denton, City of Frisco, City of Saginaw, Classic Backflow, LLC, Coleman's Lawn Care, Conserva Irrigation, Dallas Irrigation Association (DIA), Denton Lawn Sprinkler, Inc., Express Lawn Sprinklers LLC, Frisco Independent School District (Frisco ISD), Greg's Sprinkler Works, Irrigation Supply Inc., Irri-Light Incorporated (Irri-Light), Kalan Backflow Service, Longhorn, Inc., MasterScapes, MCR Environmental Services, Inc., O'Neill & Dunbar, Inc., Prince Irrigation, Repair Masters Sprinkler Repair, LLC, RW Long, Inc., South Plains Irrigation Association (SPIA), Studio 16:19, Terry's Lawn Care, Texas Association of Builders (TAB), Texas Irrigation Association (TXIA), Texas Irrigation Supply, Texas Nursery & Landscape Association (TNLA), Texas Outdoors, Texas Star, Tomball Independent School District (Tomball ISD), Town of Prosper, WaterMark Irrigation, Wylie Northeast

S.U.D. (Wylie), and seventeen individuals.

Response to Comments

Comment

Several commenters stated the revisions will protect the state water supply.

Response

The commission acknowledges these comments.

Comment

2greenirrigation, LLC, Accurate and Accountable Backflow, Bac-Flow Unlimited, Inc, C2 Backflow Services, LLC, City of Allen, City of Saginaw, Classic Backflow, LLC, Conserva Irrigation, O'Neill & Dunbar, Inc., Repair Masters Sprinkler Repair, LLC, Tomball ISD, Town of Prosper, and six individuals commented that landscape irrigation systems should be considered health hazards.

Andy's Sprinkler and Drainage, City of Denton, City of Frisco, Coleman's Lawn Care, DIA, Express Lawn Sprinklers LLC, Greg's Sprinkler Works, Prince Irrigation, Studio 1619, Terry's Lawn Care LLC, TAB, TXIA, TNLA, Texas Star, WaterMark Irrigation, Wylie and five individuals commented that landscape irrigation systems should not be considered health hazards.

Response

The commission responds that the IAC requested that landscape irrigation systems be considered health hazards. After nine public meetings and an open comment period, the commission determined that there was not an adequate demonstration that all irrigation systems should be considered health hazards. The determination that all irrigation systems should not be considered health hazards was reflected in the draft rules that were published on January 31, 2020. The commission did not make any changes to the rules as a result of these comments.

Comment

City of Denton, Greg's Sprinkler Works, Longhorn, Inc, MasterScapes, Prince Irrigation, Texas Star, and one individual commented that additional input from the public is required, and the public is not convinced of the necessity for these rule revisions.

Response

The commission responds that the public was given opportunity to provide comments during the stakeholder process, the public hearing, and the comment period for this rulemaking. All comments were considered during this rule revision. No changes were made in response to these comments.

Comment

City of Denton, City of Frisco, Greg's Sprinkler Works, and Texas Irrigation Supply commented that the proposed rule revisions felt like an unfunded or unenforceable mandate.

Response

The commission responds that the fiscal impact of the Chapter 344 rule revisions was evaluated, and it was determined the revisions will not have an adverse impact on property owners or programs of local jurisdictions. The changes requested in the original petitions which may have had a significant impact, such as considering all irrigation systems as health hazards, were not included in these rule revisions. The commission recognizes that local jurisdictions may implement more stringent requirements and those costs will be evaluated at the local government level. No changes were made in response to these comments.

Comment

City of Frisco suggested simplifying reporting complaints against unlicensed workers.

Response

The commission responds that the complaint process used to investigate unlicensed individuals installing and/or repairing landscape irrigation systems is

not a part of the scope of this rulemaking but may be considered in a future rulemaking. No changes were made as a result of this comment.

Comment

Classic Backflow, LLC commented that the TCEQ rules do not meet changes addressed in the 2015 International Plumbing Code (amended) Backflow/Cross-Connection Control Requirements amendment 608.16.5.

Response

The commission responds that, while there are benefits for TCEQ regulations to mirror the IPC, there is no requirement for the Chapter 344 regulations to meet the requirements in the IPC. No changes were made as a result of this comment.

Comment

DIA, Irrigation Supply Inc., TXIA, TNLA, and 2 individuals commented that the proposed changes are needed to ensure rules are clear, consistent, and enforceable.

Response

The commission acknowledges these comments.

Comment

Irri-Light commented they felt the proposed rules should be provided to new home and pool builders, and to cities and towns with an OSSF code enforcement office.

Response

The commission responds that the revised rules will be published in regulatory guidance and made available to the regulated community and local jurisdictions. Information on the revised rules will be incorporated into outreach and other educational opportunities to facilitate implementation. No changes were made as a result of this comment.

Comment

O'Neill & Dunbar, Inc. and two individuals commented that in-line filters and strainers, including Wye-type filters, are helpful and should be required.

Response

The commission responds that information received during the stakeholder process as well as from industry subject matter experts did not support the required use of in-line filters. Local jurisdictions may adopt local rules that are more stringent than TCEQ requirements. No changes were made as a result of these comments.

Comment

Texas Star expressed concern that companies are polluting local stormwater and the Trinity River in their region and that the commission is not doing anything about it.

Response

The commission responds that this rulemaking was not specific to any receiving water bodies. Complaints related to stormwater discharges can be submitted to the commission and will be investigated. No changes were made as a result of this comment.

Comment

TNLA commented they appreciated the clarity of "exempt business owner" in the rule revisions and requested that "recommendation(s)" in §344.50 be changed to "installation guidelines."

Response

The commission responds that the language in §344.50 states "recommendation(s)" to align with the language used in Chapter 290. No changes were made as a result of these comments.

Comment

TNLA requested adding "sprinkler system" in the definition of "Irrigation services" in

§344.1(20).

Response

The commission responds that including "sprinkler system" will enhance compliance with §344.70. In response to comments, the definition of "Irrigation system" in §344.1(21) has been revised to state, "This term includes sprinklers and sprinkler systems used for irrigation."

Comment

MasterScapes and one individual questioned what role the water purveyor and the city would play in enforcement and supporting the rules.

Response

The commission responds that the language in the revised §344.24 clarifies that a local jurisdiction with a population of 20,000 or more is required to adopt a local landscape irrigation ordinance that requires irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. The local jurisdiction, including water purveyors and city governments, will be responsible for ensuring compliance with their ordinances. The commission's staff would support the local jurisdiction in program development, implementation, and enforcement. No changes were made as a result of these

comments.

Comment

Texas Irrigation Supply supported increased enforcement of existing rules.

Response

The commission responds that the language in §344.24 will enhance enforcement by clarifying the requirement for local jurisdictions to adopt a landscape irrigation ordinance. No changes were made as a result of this comment.

Comment

The TNLA expressed concern about a lack of licensed inspectors.

Response

The commission responds that the local jurisdictions continue to have jurisdiction over the landscape irrigation inspector program. The commission's staff can support the local jurisdiction in program development, implementation, and enforcement. No changes were made as a result of this comment.

Comment

One individual commented that the wording in §344.24(c) should be consistent with

HB 1656 and to remove confusion from the phrase "if a municipality."

Response

The commission agrees with this comment and has removed the words "if a municipality" to clarify this requirement.

Comment

Christian Irrigation commented that the wording concerning on-site supervision needed to be specific, as some cities interpreted the rule to require a licensed irrigator to always be on the work site.

Response

The commission responds that the language in §344.30(b) is clear in that a licensed irrigation technician must be under the supervision of the licensed irrigator. This language allows for the licensed irrigator to supervise more than one licensed technician. Local jurisdictions can adopt local rules that are more stringent than TCEQ requirements. No changes to the revisions were made as a result of this comment.

Comment

One individual commented that the role of an irrigation technician should be clarified

in §§344.1, 344.30(b)(2), 344.35(d)(10), and 344.36(a)(3), to say that they cannot sell, design, or consult as part of the irrigation services they provide.

Response

The commission responds that the amended definition of "Irrigation services" in §344.1(20) adds "selling" to the list of services included in this term. The role of an irrigation technician is defined in §344.1(22) and is limited to performing irrigation services under the supervision of a licensed irrigator. The language in §344.30(b) is clear in that a licensed irrigation technician must be under the supervision of the licensed irrigator. Section 344.36(a) clarifies that irrigation technicians are required to work under the supervision of a licensed irrigator. In addition, §344.36(d) includes the requirement that an irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services. No changes were made as a result of this comment.

Comment

Bac-Flo Unlimited, Inc commented that drip irrigation is being sold that has root killer embedded into the piping.

Response

The commission responds that root killer in drip irrigation is among the many

hazards posed to the water supply by irrigation systems. This supports the current requirements for backflow prevention. No changes were made as a result of this comment.

Comment

Bac-Flo Unlimited, Inc listed several documented cases of cross connection contamination related events in San Antonio.

Response

The commission responds that no changes were made as a result of this comment. The examples provided are inconclusive or dated and do not support a change.

Comment

Bac-Flo Unlimited, Inc. and Studio 16:19 commented that the commission should develop an education process about landscape irrigation systems and their associated hazards.

Response

The commission responds that these comments are not in the scope of the current rule revisions but agrees that education on landscape irrigation systems is necessary to facilitate compliance and safety in the irrigation industry. Information

on the revised rules will be incorporated into outreach and other educational opportunities to facilitate implementation. No changes were made as a result of these comments.

Comment

Barron Irrigation Repair, LLC, Repair Masters Sprinkler Repair LLC, RW Long Inc, and one individual commented that the handles on double-check valve assemblies shut-off valves should be better constructed. Repair Masters Sprinkler Repair, LLC and one individual expressed concern that the double-check valve assembly shut-off valve handles rust easily. Barron Irrigation Repair, LLC asked the TCEQ to encourage cities to require all backflow devices be equipped with stainless steel handles.

Response

The commission responds that the requirements in revised §344.50, pertaining to the appropriate amount of clearance around the assembly to allow for testing and repair help prevent rust and corrosion by creating space for collected water to drain. Backflow prevention assemblies with stainless steel handles are available for purchase as necessary. No change was made as a result of these comments.

Comment

City of Frisco, Irrigation Supply Inc, MasterScapes, Studio 16:19, Terry's Lawn Care,

Wylie, and three individuals commented that they felt the rule revisions would increase the end costs to the customers due to the cost of backflow assembly replacements. Andy's Sprinkler and Drainage, City of Denton, City of Frisco, and two individuals added that they believe the increase in backflow assembly related costs would lead to customers seeking out non-licensed individuals to perform irrigation work illegally. Coleman's Lawn Care stated that an increase in costs would lead to a rise in non-compliance.

Response

The commission responds that the adopted revisions do not classify all irrigation systems as health hazards and do not require the replacement of existing backflow assemblies. No changes were made as a result of these comments.

Comment

DIA commented that they agreed with the revision to change the wording for "backflow prevention device" to "backflow prevention assembly."

Response

The commission acknowledges this comment.

Comment

MasterScapes requested clarification on the use of Pressure Vacuum Breakers (PVBs) in place of Reduced Pressure Principle Backflow Prevention Devices (RPs).

Response

The commission responds that PVB backflow prevention assemblies are an acceptable form of backflow prevention if installed under the correct hydraulic conditions (no backpressure). No changes were made as a result of this comment.

Comment

TNLA commented that the TCEQ should acknowledge that the commission is prepared to allow any installation method verbally or visually represented on installation guidelines.

Response

The commission responds that §344.50 requires the backflow prevention assembly to be installed per manufacturer's recommendations. No changes were made as a result of this comment.

Comment

Texas Outdoors commented that these rules would allow the general public to understand that there is a risk to the water supply from each landscape irrigation

system.

Response

The commission agrees with this comment. No changes were made as a result of this comment.

Comment

One individual commented that §344.50(a) should be revised to indicate that all backflow prevention assemblies shall be installed, maintained, and tested according to manufacturer's recommendations.

Response

The commission responds that the testing requirements are listed in §344.50(c) and (d) and will create a conflict if the wording is changed to "tested according to manufacturer's recommendations." No changes were made as a result of this comment.

Comment

Accurate and Accountable Backflow, Classic Backflow, LLC, Kalan Backflow Service, Tomball ISD, Wylie, and two individuals expressed approval of the use of SVBs over AVBs.

Response

The commission acknowledges these comments.

Comment

DIA and TXIA commented that they were against the use of SVBs over AVBs.

Response

The commission responds that information received during the stakeholder process as well as from industry subject matter experts did not support the use of AVBs as they were not practical to be used on an irrigation system. Primarily, the prevalence of check valves in modern sprinkler heads prevent the use of AVBs. SVBs provide the irrigation industry an additional tool to use as backflow prevention on landscape irrigation systems. No changes were made as a result of these comments.

Comment

Tomball ISD commented that SVBs could be used in areas subject to freeze damage to mitigate the risk to landscape irrigation systems from frozen double check valve assemblies.

Response

The commission responds that SVBs are included for use as appropriate backflow prevention in the revised rules. No changes were made as a result of this comment.

Comment

An individual commented that §344.50(b)(4) should be revised to remove the word "in."

Response

The commission responds that this typographical error will be corrected by removing the word "in."

Comments

Accurate and Accountable Backflow, Kalan Backflow Service, and O'Neill & Dunbar, Inc. commented that double check valve assemblies should be eliminated.

Studio 16:19, SPIA, Texas Irrigation Supply, Tomball ISD, and Town of Prosper commented that double check valve assemblies should be limited, but not eliminated.

Austin Water SSD, Christian Irrigation, City of Allen, City of Frisco, DIA, Express Lawn Sprinklers LLC, TAB, TXIA, Texas Star, Wylie, and four individuals commented that

double check valve assemblies should not be eliminated.

Frisco ISD and two individuals commented that there should be a procedure for grandfathering replacement of double check valve assemblies.

Response

The commission responds that the revised rules do not support limiting or eliminating the use of double check valve assemblies. The requirement for local jurisdictions with a population of 20,000 or more to adopt a landscape irrigation ordinance will provide local jurisdictions the opportunity to govern the use of double check valve assemblies and regulate the testing frequency. No changes were made as a result of these comments.

Comments

Andy's Sprinkler and Drainage, Coleman's Lawn Care, Express Lawn Sprinklers, MasterScapes, SPIA, and one individual expressed concern about double check valve assemblies being damaged if required to be installed above ground.

Andy's Sprinkler and Drainage, Christian Irrigation, City of Allen, MasterScapes, and one individual commented that requiring backflow prevention devices to be installed above ground would be ugly or unsightly.

Response

The commission responds that the requirements in §344.50 require the backflow prevention assembly to be installed per manufacturer's recommendations.

Aesthetics of the system are beyond the scope of this rule revision. No changes were made as a result of these comments.

Comments

MasterScapes expressed concern that the commission was not requiring testing on double check valve assemblies when the commission is concerned about safety.

Repair Masters Sprinkler Repair, LLC and one individual commented that double check valve assemblies should be tested annually after being relocated or repaired.

Response

The commission responds that the testing requirements for all backflow prevention assemblies was increased to require testing upon repair, replacement, or relocation, in addition to installation. The requirements in §344.24 support a local jurisdiction that wants to implement a more stringent testing frequency. No changes were made as a result of these comments.

Comment

City of Allen, DIA, Express Lawn Sprinklers LLC, Kalan Backflow Service, TXIA, and Wylie commented that all in-line filters and strainers, including y-type filters, should not be used and are not necessary.

Response

The commission responds that the rule revisions do not require any type of in-line filter on irrigation systems. No changes were made as a result of these comments.

Comment

One individual submitted a comment requesting to add a requirement to §344.50(d) to state that "the pit or vault shall provide ample drainage so that the backflow prevention assembly is never submerged in water which could cause a cross-connection."

Response

The commission responds that the installation of the backflow prevention assembly is covered in §344.50. No changes were made as a result of this comment.

Comments

2greenirrigation, Accurate And Accountable Backflow, Austin Water, C2 Backflow Services, LLC, Christian Irrigation, City of Allen, City of Frisco, City of Saginaw, Classic

Backflow, Conserva Irrigation, Greg's Sprinkler Works, Kalan Backflow Service, Longhorn, Inc, MasterScapes, Repair Masters Sprinkler Repair, LLC, Terry's Lawn Care, TAB, TXIA, Tomball ISD, Town of Prosper, and five individuals commented that backflow prevention devices need periodic testing.

Wylie and three individuals commented that backflow prevention assemblies need to be tested after repair, replacement, or relocation.

Bac-Flow Unlimited, Inc commented that backflow prevention devices need annual testing and maintenance.

DIA commented that the commission should research a minimum testing frequency. TNLA commented that backflow prevention assemblies on systems designated as health hazards require annual testing.

Response

The commission responds that frequency of testing of a backflow prevention assembly is based on the degree of hazard posed by the irrigation system. Those backflow prevention assemblies on irrigation systems classified as health hazards must be tested annually. For all other irrigation systems, there was not a conclusive demonstration of the need for a specific ongoing testing frequency. The

requirements in §344.24 allow a local jurisdiction that wants to implement a more stringent testing frequency. No changes were made as a result of these comments.

Comments

Andy's Sprinkler and Drainage, MasterScapes, Studio 16:19, and one individual commented that reclassifying all landscape irrigation systems as health hazards would require the use of RPs or reduced pressure backflow assembly.

Two individuals commented that they were in favor of the use of RPs or reduced pressure backflow assemblies as a result of reclassifying all landscape irrigation systems as health hazards.

Response

The commission responds that the rule revisions do not classify all irrigation systems as health hazards or require the use of RPs or another appropriate backflow prevention assembly. Information provided during the stakeholder meetings and the comment period did not support classifying all irrigation systems as health hazards. No changes were made as a result of these comments.

Comment

One individual commented that backflow prevention assembly test reports (instead of

only the results) should be submitted to the water purveyor within 10 days of testing.

Response

The commission responds that §344.52(c) requires the test report to be submitted to the water purveyor within 10 days. No changes were made as a result of this comment.

Comments

Irri-Light and one individual commented that the irrigation plan must be on the job site. Irri-Light also requested that rules be made to require all irrigation designers walk properties they design.

Response

The commission responds that the irrigation plan must be on the job site under §344.61(a). The commission further responds that placing requirements for individuals not licensed by the TCEQ is beyond the scope of the Chapter 344 regulations. No changes were made in response to these comments.

Comment

One individual commented that the requirement in §344.61(a) should continue for "a paper or electronic copy of the irrigation plan" to be kept on site.

Response

The commission responds that to provide for possible alternate forms of the irrigation plan in the future, it is necessary to remove the limiting options of paper or electronic copies of the irrigation plan. No changes were made as a result of this comment.

Comment

One individual commented that the term "device" be replaced with "assembly", as included in the petitioner's recommendation, in §344.62(h) and (k).

Response

The commission responds that to be consistent with the intended revisions already made throughout the rest of the chapter, §344.62(h) and (k) have been modified to change "device" to "assembly."

SUBCHAPTER A: DEFINITIONS

§344.1

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations Code, §1903.158, concerning Per Diem; Reimbursement; Texas Occupations Code, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The

amendment is adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Operations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.1. Definitions.

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

(1) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch. [A complete physical separation

between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.]

(2) As-built drawing--The final irrigation plan produced at the completion of an irrigation system installation and provided to the irrigation system's owner or the owner's representative. The as-built drawing(s) will reflect all changes made to the original irrigation plan and/or specifications during the construction process and show all aspects of the irrigation system including the dimensions, geometry, and location of all elements of the irrigation system. May be referred to as "record drawings" or "as-builts."

[(2) Atmospheric Vacuum Breaker--An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time, it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an Atmospheric Vacuum Breaker Back-siphonage Prevention Assembly.]

(3) Backflow prevention--The [mechanical] prevention of the reversal of [reverse] flow, due to [or] back siphonage or backpressure, of nonpotable water from an irrigation system into the potable water supply [source].

(4) Backflow prevention assembly--A mechanical [Any] assembly used to prevent backflow into a potable water system. The type of assembly used is based on the [existing or potential] degree of [health] hazard (health hazard or non-health hazard) and hydraulic conditions [backflow condition].

(5) Completion of irrigation system installation--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

(6) Consulting--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

(7) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process. [An actual or potential connection between a potable water source and an irrigation system that may contain contaminates or pollutants or any source of water that has been treated to a lesser degree in the treatment process.]

(8) Design--The act of determining the various elements of a landscape irrigation system that will include, but not limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulic [hydraulics] calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

(9) Design pressure--The pressure that is required for an emission device to operate properly and in conjunction with the head-to-head spacing requirement. Design pressure is [calculated by adding] the sum of the minimum operating pressure of [necessary at] an emission device to the total of all pressure losses accumulated from the [an] emission device to the water source.

(10) Double Check Valve Assembly--An assembly that is composed of two independently acting, [approved] check valves, including tightly closing [closed] resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

(11) Emission device--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(12) Employed--The state of being engaged [Engaged] or hired to provide irrigation services and of being [consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is] in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(13) Exempt business owner--an owner of a business who employs a licensed irrigator to supervise the irrigation services performed by the business as referenced in Texas Occupations Code, Chapter 1903.

(14) Graywater--wastewater from showers, bathtubs, handwashing lavatories, sinks that are used for disposal of household or domestic products, sinks that are not used for food preparation or disposal, and clothes-washing machines. Graywater does not include wastewater from the washing of material, including

diapers, soiled with human excreta or wastewater that has come into contact with toilet waste.

(15) [(13)] Head-to-head spacing--The spacing of emission devices such that the distance between them is within [spray or rotary heads equal to] the manufacturer's published radius range and the water spray reaches from device to device. A deviation of 10% or less is acceptable. [of the head.]

(16) [(14)] Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply. [A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.]

(17) [(15)] Hydraulics--The science of dynamic and static water; the mathematical computation of [determining] pressure losses and/or [and] pressure requirements of an irrigation system.

[(16) Inspector--A licensed plumbing inspector, water district operator, other governmental entity, or irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor.]

[(17) Installer--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Chapter 30 of this title (relating to Occupational Licenses and Registrations).]

(18) Irrigation inspector--A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector. [A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).]

(19) Irrigation plan--A scaled drawing of a new landscape irrigation system to be installed. The irrigation plan shall meet all the requirements in §§344.60 -

344.65 of this title (relating to Water Conservation; Minimum Standards for the Design of the Irrigation Plan; Minimum Design and Installation Requirements; Completion of Irrigation System Installation; Maintenance, Alteration, Repair, or Service of Irrigation Systems; and Reclaimed Water) and is provided as an as-built drawing to the owner or owner's representative upon completion of the irrigation system installation [which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system].

(20) Irrigation services--All activities involving an irrigation system including, selling [Selling], designing, installing, maintaining, altering, repairing, servicing, permitting, [providing] consulting services [regarding], or connecting an irrigation system to a water supply.

(21) Irrigation system--A system permanently installed on a site and that is composed of an [An] assembly of component parts [that is permanently installed] for the controlled distribution and conservation of water to irrigate, reduce dust, and control erosion in any type of landscape vegetation in any location[, and/or to reduce dust or control erosion]. This term includes sprinklers and sprinkler systems used for irrigation. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(22) Irrigation technician--A person who works under the supervision of a licensed irrigator to perform irrigation services [install, maintain, alter, repair, service or supervise installation of an irrigation system,] including the connection of an irrigation [such] system [in or] to a private or public, raw or potable water supply system or any other water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(23) Irrigation zone--A subdivision of an irrigation system with a matched precipitation rate based on plant [material] type ([such as] turf, shrubs, or trees), microclimate ([factors such as] sun/shade ratio), topographic features, [(such as slope) and] soil type ([conditions such as] sand, loam, clay, or combination), and [or for] hydrological control.

(24) Irrigator--A person who performs irrigation services and/or [sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or] supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(25) Irrigator-in-Charge--The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(26) Landscape irrigation--The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

(27) License--An occupational license that is issued by the commission under Chapter 30 of this title (relating to Occupational Licenses and Registrations) to an individual that authorizes the individual to engage in an activity that is covered by this chapter.

(28) Mainline--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(29) Maintenance checklist--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking

the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(30) Major maintenance, alteration, repair, or service--Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(31) Master valve--A [remote] control valve located after the backflow prevention assembly [device] that controls the flow of water to the irrigation system mainline.

(32) Matched precipitation rate--The condition in which all sprinkler heads within an irrigation zone apply water at the same rate

(33) New installation--An irrigation system installed at a location where one did not previously exist or is a complete replacement of an existing irrigation system.

(34) Non-health hazard--A cross-connection, [or] potential contamination hazard, or other situation involving [cross connection from a landscape irrigation system that involves] any substance that generally will [would] not be a health hazard but will [would] constitute a nuisance or be aesthetically objectionable if introduced into the public [potable] water supply.

(35) Non-potable water--Water that is not suitable for human consumption. Non-potable water sources include, but are not limited to, irrigation systems, lakes, ponds, streams, gray water [that is discharged from washing machines, dishwashers or other appliances], water [vapor] condensate from cooling towers, reclaimed water, and harvested rainwater.

(36) Pass-through contract--A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services. A pass-through contract is also referred to as a sub-contract. [relating to an irrigation system.]

(37) Potable water--Water that is suitable for human consumption and meets the definition of drinking water in §290.38(23) of this title (relating to Definitions)).

(38) Pressure Vacuum Breaker--An assembly that contains [containing] an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.

(39) Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

(40) Records of landscape irrigation activities--The irrigation plans, contracts, warranty information, invoices, copies of permits, and all other documents that relate to irrigation services [the installation, maintenance, alteration, repair, or service of a landscape irrigation system].

(41) Reduced Pressure Principle Backflow Prevention Assembly--An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

(42) Static water pressure--The pressure of water when it is not moving.

Generally, this is the pressure available to the irrigation system.

(43) Supervision--The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local and [or] state requirements. Also performed by a licensed [installer working under the direction of a licensed irrigator or beginning January 1, 2009, an] irrigation technician who is working under the direction of a licensed irrigator to perform [install, maintain, alter, repair or service an] irrigation services [system].

(44) Temporary Irrigation System - A temporarily installed, above ground system of pipes and component parts used to distribute water to the landscaping of a site for the establishment of plant growth, reduction of dust, and erosion control. Temporary irrigation systems must meet the requirements in §344.66 of this title (relating to Temporary Irrigation Systems).

(45) [(44)] Water conservation--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is

required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

(46) [(45)] Zone flow--A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

(47) [(46)] Zone valve--An automatic valve that controls a single zone of a landscape irrigation system.

**SUBCHAPTER B: STANDARDS OF CONDUCT FOR IRRIGATORS, [INSTALLERS,]
IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL
REQUIREMENTS**

§§344.20 - 344.22, 344.24

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendments are adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and

THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.20. Purpose of Standards.

(a) The correct practice of irrigation as a science and profession is essential for the protection and conservation of the water resources of the state and shall [should] be conducted by individuals who are held to the highest ethical standards. The legislature has vested the commission with the authority and duty to establish and enforce standards of professional conduct and ethics for practitioners in the irrigation industry.

(b) Every applicant for an irrigator, [installer,] irrigation technician, or irrigation inspector license shall [must] become fully informed of the obligations and responsibilities inherent in the practice of irrigation as outlined by these standards of conduct. Each licensed irrigator, [installer,] irrigation technician, or irrigation inspector

is deemed to have notice of these standards of conduct and is required to abide by the standards.

§344.21. Intent.

(a) These standards of conduct are established to prescribe responsibility on the part of an irrigator, [an installer,] an irrigation technician, an irrigation inspector, and a qualifying exempt business owner to aid in governing the irrigation industry.

(b) The commission will determine what actions constitute violations of the standards in accordance with Chapter 70 of this title (relating to Enforcement) and Texas Water Code, Chapter 7 and institute appropriate disciplinary action, which may lead to monetary penalties or the suspension or revocation of a license in accordance with the applicable state statutes.

(c) This section does not apply to:

(1) an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002; or

(2) an irrigation system:

(A) used on or by an agricultural operation as defined by Texas

Agriculture Code, §251.002; or

(B) connected to a groundwater well used by the property owner

for domestic use.

§344.22. Proficiency in the Field of Irrigation; Representation of Qualifications.

(a) All irrigators, [installers,] irrigation technicians, and inspectors shall be knowledgeable of the current industry standards regarding selling, designing, providing consulting services, installing, maintaining, altering, repairing, or servicing irrigation systems, including the connection of such a system to any source of water and water conservation. All irrigators, [installers,] irrigation technicians, and inspectors shall conform to the current adopted version of these rules and any local rules that do not conflict with these rules, or that are more stringent than these rules, when performing these activities.

(b) All irrigators, [installers,] irrigation technicians, irrigation inspectors, and exempt business owners shall accurately and truthfully represent to prospective clients their qualifications to perform the services requested and shall not perform

services for which they are not qualified by experience, knowledge, or license in the technical field involved.

(c) All irrigators, [installers,] irrigation technicians, and inspectors shall be knowledgeable of local requirements related to landscape irrigation systems.

§344.24. Local Regulation and Inspection.

(a) Where any city, town, county, water [special purpose] district, other political subdivision of the state, or public water supplier requires licensed irrigators, [installers,] irrigation technicians, or irrigation inspectors to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory the licensed irrigator, ~~installer~~, irrigation technician, or irrigation inspector shall [must] comply with such requirements, ordinances, and regulations.

(b) Any city, town, county, water district, other political subdivision of the state, or public water supplier that is not required to adopt rules or ordinances regulating landscape irrigation may adopt a landscape irrigation program by ordinance or rule and may be responsible for inspection of irrigation systems on sites that are connected

[connections] to its public water supply system [up to and including the backflow prevention device]. Any rule or ordinance adopted to regulate landscape irrigation shall be at least as stringent as the requirements in this chapter.

(c) Municipalities with a population of 20,000 or more shall [and a water district that chooses to implement a landscape irrigation program must] verify that the irrigator that designs and installs an irrigation system holds a valid irrigator's license and has obtained a permit before installing a system within its territorial limits or ~~if a municipality~~, its extraterritorial jurisdiction. Inspectors must verify that the design and installation meet the requirements of this chapter and local ordinances or rules that do not conflict with this chapter, or that are more stringent than this chapter.

(d) A water district that chooses to implement a landscape irrigation program shall meet the program requirements in subsection (c) of this section.

[(d) Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of

the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.]

[(e) An inspector may not inspect a landscape irrigation system that is an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002.]

[(f) An inspector may not inspect an irrigation system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002; or is connected to a groundwater well that is used by the property owner for domestic use.]

**SUBCHAPTER C: REQUIREMENTS FOR LICENSED IRRIGATORS, [INSTALLERS,]
IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS**

§§344.30, 344.31, 344.33 - 344.38

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties

Relating to Public Water Supplies.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.30. License Required.

(a) An irrigator is an individual who:

(1) performs irrigation services including [sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system, including] the connection of such system to any water supply;

(2) is not an exempt business owner and advertises or represents to anyone that the individual can perform irrigation services [any or all of these functions]; and

(3) is required to hold a valid irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

[(b) Through December 31, 2009, an installer is an individual who connects an irrigation system to any water supply.]

(b) [(c)] An [Beginning January 1, 2009, an] irrigation technician is an individual who:

(1) connects an irrigation system to a water supply;

(2) under the supervision of a licensed irrigator, installs, maintains, alters, repairs, or services a landscape irrigation system;

(3) represents to anyone that the individual can perform any or all of these functions; and

(4) is required to hold a valid irrigation technician license issued under Chapter 30 of this title.

(c) [(d)] All irrigators [, installers,] and irrigation technicians shall comply with the rules contained in this chapter when performing any or all of the functions listed in this section.

(d) [(e)] An individual who inspects irrigation systems and enforces a municipality's landscape irrigation ordinance must:

(1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or

(2) hold a valid plumbing inspector license.

(e) [(f)] An individual who inspects irrigation systems and enforces a water district's rules related to landscape irrigation systems must:

(1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or

(2) hold a valid plumbing inspector license; or

(3) be the district's operator; or

(4) be employed by another regulatory authority with jurisdiction over landscape irrigation and hold the appropriate license.

(f) [(g)] An inspector shall comply with the rules contained in this chapter when performing any [or all] of the functions listed in this section.

(g) [(h)] A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) **if they are** ~~he or she is~~ performing irrigation work in a building or on a premise [premises] owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in §344.62(b), (c), (g), (j), and (k) of this title (relating to Minimum Design and Installation Requirements) concerning spacing; water pressure; spraying water over impervious materials; rain or moisture shut-off devices or other technology; and isolation valve [§344.62(b) Spacing, §344.62(c) Water pressure, §344.62(g) related to spraying water over impervious materials, §344.62(j) Rain or moisture shut-off devices or other technology, and §344.62(k) Isolation valve]. Municipalities or water districts may adopt more stringent requirements for a home or property owner who installs an irrigation system.

§344.31. Responsibilities of a [Exemption for] Business Owner Who Provides Irrigation Services.

(a) Under Chapter 30 of this title (relating to Occupational Licenses and Registrations), a business owner who employs a licensed irrigator as an irrigator-in-

charge to provide consulting services, [or] to supervise, or conduct [the exempt business's] operations relating to irrigation services [the design, installation, maintenance, alteration, repairing, and servicing of irrigation systems] is exempt from the licensing requirements of Texas Occupations Code, Chapter 1903.

(b) An exempt business owner who provides landscape irrigation services shall ensure that all irrigation services are supervised by a licensed irrigator, according to the requirements of this subchapter. An exempt business owner who engages in landscape irrigation is responsible for verifying the validity of the license belonging to all irrigators and irrigation technicians performing irrigation services for the business. An exempt business owner who engages in landscape irrigation is responsible for designating an irrigator-in-charge.

§344.33. Display of License.

(a) Irrigators [, installers,] and irrigation technicians shall prominently display their license certificate at the place of irrigation business or employment and shall present their license upon request by any regulatory authority, irrigation system's owner, or prospective owner.

(b) Irrigation inspectors shall present their license, when requested by any entity that is regulated under this chapter, and when that request is made while an irrigation inspector is conducting business.

§344.34. Use of License.

(a) No one other than the irrigator, [installer,] irrigation technician, or irrigation inspector to whom a license is issued shall use or attempt to use the license, which includes the license number.

(b) An individual or entity who uses or attempts to use the license or license number of someone else who is a licensed irrigator, [licensed installer,] licensed irrigation technician, or licensed irrigation inspector is in violation of Texas Occupations Code, Chapter 1903, and this chapter.

(c) An irrigator's license or license number may be used at only one entity as the irrigator-in-charge. An irrigator may work for other entities, but not as the irrigator-in-charge.

(d) It is a violation of this chapter for an irrigator, [installer,] irrigation technician or irrigation inspector to authorize or allow another person or entity to use

the irrigator's, [installer's,] irrigation technician's, or irrigation inspector's license or license number in a manner inconsistent with this chapter.

§344.35. Duties and Responsibilities of Irrigators.

(a) An irrigator shall comply with the rules contained in this chapter when performing any or all of the functions described in this section.

(b) An irrigator who performs work for an entity or for an exempt business owner who performs or offers to perform irrigation services shall be knowledgeable of and responsible for all permits, contracts, agreements, advertising, and other irrigation services secured and performed using the irrigator's license.

(c) A licensed irrigator who is employed by an exempt business owner and designated as the irrigator-in-charge [as defined by §344.31 of this title (relating to Exemption for Business Owner Who Provides Irrigation Services)] shall supervise all irrigation services of the business, in accordance with this chapter.

(d) A licensed irrigator is responsible for:

(1) using the [stamp or rubber] seal in accordance with this chapter;

(2) obtaining all permits and inspections required to install an irrigation system;

(3) complying with local regulations;

(4) determining the appropriate backflow prevention method for each irrigation system installation and installing the backflow prevention **assembly** device correctly;

(5) maintaining landscape irrigation systems records;

(6) conserving water;

(7) developing and following an irrigation plan for each new irrigation system;

(8) designing an irrigation system that complies with the requirements of this chapter;

(9) providing on-site supervision of the installation of [an] irrigation systems [system beginning January 1, 2010];

(10) providing supervision to an irrigation technician who is conducting irrigation services [while connecting an irrigation system to a water supply, installing, maintaining, altering, repairing, or servicing an irrigation system];

[(11) providing supervision to an installer connecting an irrigation system through December 31, 2009;]

(11) [(12)] completing the irrigation system including the final "walk through," completing the maintenance checklist, placing a permanent sticker on the controller or on the maintenance checklist if the irrigation system does not have an automatic controller, and providing a copy of the design plan;

(12) [(13)] conducting irrigation services in compliance [selling, consulting, performing maintenance, alteration, repair, and service of irrigation systems that complies] with the requirements of this chapter;

(13) [(14)] providing advertisements, contracts, and warranties that comply with the requirements of this chapter; and

(14) [(15)] installing an irrigation system that complies with the requirements of this chapter.

§344.36. Duties and Responsibilities of [Installers and] Irrigation Technicians.

(a) A licensed irrigation technician under the supervision of a licensed irrigator, is responsible for: [licensed installer may connect an irrigation system to a water supply through December 31, 2009. This includes installing an approved backflow prevention method pursuant to §344.50 of this title (relating to Backflow Prevention Methods) when connecting an irrigation system to a potable water supply. Beginning January 1, 2009, a licensed irrigation technician may connect an irrigation system to a water supply, including installing an approved backflow prevention method pursuant to §344.50 of this title and may maintain, alter, repair, service, or direct the installation of irrigation systems under the supervision of an irrigator.]

(1) connecting an irrigation system to a water supply;

(2) installing a ~~an~~ approved backflow prevention assembly pursuant to §344.50 of this title (relating to Backflow Prevention Methods);

(3) conducting irrigation services including maintaining, altering, repairing, servicing, or directing the installation of irrigation systems; and

(4) conducting the final walk through in compliance with the requirements §344.63 of this title (relating to Completion of Irrigation System Installation).

(b) If an [installer or] irrigation technician connects an irrigation system to a potable water supply, the connection and installation of the backflow prevention assembly [method] must be as indicated on the site irrigation plan or as directed by the licensed irrigator and documented on the site irrigation plan.

[(c) Through December 31, 2009, an installer is responsible for the connection of an irrigation system to a water supply under the supervision of a licensed irrigator.]

(c) [(d)] An [Beginning January 1, 2009, an] irrigation technician, under the supervision of a licensed irrigator, is responsible for:

(1) connecting an irrigation system to a water supply; and

(2) providing on-site supervision of the installation, maintenance, alteration, repair, service of an irrigation system including the final walk through with the irrigation system owner or owner's representative to explain the maintenance and operation of the irrigation system.

(d) An irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37. Duties and Responsibilities of Irrigation Inspectors.

(a) A licensed irrigation inspector or licensed plumbing inspector shall enforce the applicable irrigation rules or ordinance of the employing governmental entity and, at a minimum, is responsible for: [.]

(1) verifying that the appropriate permits have been obtained for an irrigation system;

(2) verifying that the irrigator, irrigation technician, or water operator is licensed;

(3) inspecting the irrigation system;

(4) determining that the irrigation system complies with the requirements of this chapter;

(5) determining that the appropriate backflow prevention assembly was installed, tested, and the test results were provided to the water purveyor;

(6) investigating complaints related to irrigation systems including the advertisement of irrigation services; and

(7) maintaining records according to this chapter. Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

(b) A licensed irrigation inspector, licensed plumbing inspector, a water district's operator or other appropriately licensed individual employed by a governmental entity shall be responsible for:

(1) verifying that the appropriate permits have been obtained for an irrigation system [and that the irrigator and installer or irrigation technician, if applicable, are licensed];

(2) verifying that the irrigator, irrigation technician, or water district operator is licensed;

(3) [(2)] inspecting the irrigation system;

(4) [(3)] determining that the irrigation system complies with the requirements of this chapter;

(5) [(4)] determining that the appropriate backflow prevention assembly [device] was installed, tested, and the test results were provided to the water purveyor;

(6) [(5)] investigating complaints related to irrigation systems including the [system installation, maintenance, alteration, repairs, or service of an irrigation system and] advertisement of irrigation services; and

[(6) maintaining records according to this chapter.]

(7) each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

§344.38. Irrigator [, Installer, and Irrigation Technician] Records.

Upon the licensed irrigator obtaining the seal [or rubber stamp], in accordance with this chapter, an impression of the seal shall [or rubber stamp will] be made on letterhead, or other business stationary, and maintained on file for review by the commission. Archival copies of all records given to the irrigation system's owner or owner's representative shall be maintained by the irrigator. Records will be maintained

by the irrigator for a period of three years from the date installation, maintenance, alteration, repair or service was completed. Irrigators [installers, and irrigation technicians] shall make all records of landscape irrigation services available within ten business days of any request made by authorized representatives of the commission or the local regulatory authority with jurisdiction over landscape irrigation [issues].

**SUBCHAPTER C: REQUIREMENTS FOR LICENSED IRRIGATORS, [INSTALLERS,
IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS
[§344.32]**

Statutory Authority

The repeal of this section is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The repeal of this section is adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The repeal of this section is adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the repeal of this section is also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection

of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted repealed section implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

[§344.32. Responsibilities of a Business Owner Who Provides Irrigation Services.]

[An exempt owner who provides landscape irrigation services shall ensure that all irrigation services are supervised by a licensed irrigator, according to the requirements of this subchapter. An exempt business owner who engages in landscape irrigation is responsible for verifying the validity of the license belonging to all, installers, and irrigation technicians performing irrigation services for the business. An exempt business owner who engages in landscape irrigation is responsible for designating an irrigator-in-charge.]

SUBCHAPTER D: LICENSED IRRIGATOR SEAL

§§344.40, 344.42, -344.43

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC §49.238, concerning Irrigation Systems. These amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.40. Seal Required.

Each irrigator, upon being licensed with the commission, shall obtain a seal, as described in §344.41 of this title (relating to Seal Design). Licensed irrigators shall not engage in any landscape irrigation services without physical possession of the seal and the license. The irrigator is responsible for the security of the seal and for ensuring that it shall not be used in a manner that does not meet the requirements of this chapter.

§344.42. Seal Display.

(a) On every document requiring an irrigator's seal, the seal shall be clearly visible and legible on the original document and all copies or reproductions of the original document.

(b) An irrigator may use an alternative media (electronic, rubber stamp, embossing, etc.) to use their [or other format] seal and signature if the seal, signature, and date are clearly visible and legible on the original document and all copies or reproductions of the original document.

§344.43. Seal Use.

(a) Irrigators shall:

(1) sign their legal name;

(2) affix the seal above the irrigator's signature; and

(3) include the date of signing (month, day, and year) of each document to which the seal is affixed.

(b) The presence of the irrigator's seal displayed above the irrigator's signature and date on any document constitutes the acceptance of all professional responsibility for the document and the irrigation services performed in accordance with that document.

(c) The irrigator will maintain, for three years, a copy of each document bearing the irrigator's seal.

(d) Once a document containing a seal is issued, the seal may not be altered.

(e) Irrigators shall not change [use or authorize the use of a seal on] any plan or specification created by another irrigator unless [the irrigator]:

(1) the change is made to [Reviews and makes changes to] adapt the plan or specification to the specific site conditions and to address state and local requirements; [and]

(2) the irrigator accepts [Accepts] full responsibility for any changes the irrigator makes [alterations] to the original plan or specification [and any downstream consequences; and].]

(3) the irrigator seals and dates the changes made to the original irrigation plan.

(f) If an irrigator prepares only a portion of a plan or specification, that portion of the plan [design] or specification must be sealed [prepared] by the irrigator [or under the irrigator's supervision] and [seal, should be] clearly identified.

(g) Irrigators shall sign, seal and date the irrigation plan and specifications, contract, addenda or change orders, warranty, and the maintenance checklist.

SUBCHAPTER E: BACKFLOW PREVENTION AND CROSS-CONNECTIONS

§§344.50 - 344.52

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.50. Backflow Prevention Methods.

(a) All backflow prevention assemblies installed per this chapter shall be installed according to manufacturer's recommendations and provided with sufficient clearance to facilitate testing. [Any irrigation system that is connected to a public or private potable water supply must be connected through a commission-approved backflow prevention method. The backflow prevention device must be approved by the American Society of Sanitary Engineers; or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or the Uniform Plumbing Code; or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.]

(b) If conditions that present a health hazard exist, one of the following types of backflow prevention shall [methods must] be used, [to prevent backflow;]

(1) An air gap may be used if installed per the definition of air gap in §344.1(1) of this title (relating to Definitions). [:]

[(A) there is an unobstructed physical separation; and]

[(B) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.]

(2) Reduced pressure principle backflow prevention assemblies may be used if installed per subsection (a) of this section and:

(A) the assembly [device] is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and

(B) drainage is provided for any water that may be discharged through the [assembly] relief valve.

(3) Pressure vacuum breakers may be used if installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition [will occur]; and

(B) the assembly [device] is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(4) Spill-resistant pressure vacuum breakers may be used if ~~in~~ installed per subsection (a) of this section and [Atmospheric vacuum breakers may be used if]:

(A) there is no actual or potential for a back-pressure condition [no back-pressure will be present]; and

(B) the assembly is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler. [there are no shutoff valves downstream from the atmospheric vacuum breaker;]

[(C) the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;]

[(D) there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and]

[(E) a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.]

[(c) Backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter.]

(c) [(d)] If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the assembly [device] is tested upon installation and:

(1) a local regulatory authority does not prohibit the use of a double check valve; and

[2) backpressure caused by an elevation of pressure in the discharge piping by pump or elevation of piping above the supply pressure which could cause a reversal of the normal flow of water or back-siphonage conditions caused by a reduced or negative pressure in the irrigation system exist; and]

(2) [(3)] test cocks are used for testing only.

(d) [(e)] Double [If a double] check valve assemblies [is] installed below ground shall meet the following installation requirements:

(1) test cocks shall [must] be plugged, except when the double check valve is being tested;

(2) test cock plugs shall [must] be threaded, water-tight, and made of non-ferrous material; and

[(3) a y-type strainer is installed on the inlet side of the double check valve;]

(3) [(4)] there shall [must] be a clearance all the way around the assembly [between any fill material and the bottom of the double check valve] to allow space for testing and repair. [; and]

[(5) there must be space on the side of the double check valve to test and repair the double check valve.]

(e) At a minimum, all backflow prevention assemblies shall be tested by a licensed backflow prevention assembly tester upon installation, repair, replacement, or relocation. Those backflow prevention assemblies used in irrigation systems designated as health hazards shall be tested annually.

§344.51. Specific Conditions and Cross-Connection Control.

(a) Before any chemical is added by any method (aspiration, injection, etc.) to an irrigation system which is connected to any potable water supply, the irrigation system shall [must] be connected through a reduced pressure principle backflow prevention assembly or air gap.

(b) Irrigation system components treated with chemical additives and connected to any potable water supply shall be connected through a reduced pressure principle backflow prevention assembly.

(c) [(b)] Connection of more than one water source to an irrigation system presents the potential for contamination of the potable water supply if backflow occurs. Therefore, connection of any additional water source to an irrigation system that is connected to the potable water supply can only be made [done] if the irrigation system is connected to the potable water supply through a reduced-pressure principle backflow prevention assembly or an air gap.

[(c) Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any potable water supply must be connected through a reduced pressure principle backflow device.]

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Chapter 285 of this title (relating to On-Site Sewage Facilities), then:

(1) all irrigation piping and valves shall [must] meet the separation distances from the On-Site Sewage Facilities system as required for a private water line

in §285.91(10) of this title (relating to Tables), concerning the minimum required separation distances for on-site sewage facilities [Minimum Required Separation Distances for On-Site Sewage Facilities)];

(2) the irrigation system is designated a health hazard and any connections using a private or public potable water source shall [must] be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in §344.50 of this title (relating to Backflow Prevention Methods); and

(3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system shall [must] be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.

§344.52. Installation of Backflow Prevention Assembly [Device].

(a) If an irrigation system is connected to a potable water supply and requires major maintenance, alteration, repair, or service, the system shall [must] be connected to the potable water supply through an approved, properly installed backflow

prevention method as defined in this title before any major maintenance, alteration, repair, or service is performed.

(b) If an irrigation system is connected to a potable water supply through a double check valve, pressure vacuum breaker, or reduced pressure principle backflow prevention assembly and includes an automatic master valve on the system, the automatic master valve shall [must] be installed on the discharge side of the backflow prevention assembly.

(c) The irrigator shall ensure the backflow prevention assembly [device] is tested prior to being placed in service and the test results provided to the local water purveyor [and the irrigation system's owner or owner's representative] within ten business days of testing [of] the backflow prevention assembly [device].

**SUBCHAPTER F: STANDARDS FOR DESIGNING, INSTALLING, AND MAINTAINING
LANDSCAPE IRRIGATION SYSTEMS**

§§344.60 - 344.66

Statutory Authority

These amendments and new section are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments and new section are also adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments and new section are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments and new section are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water

Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments and new section implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.60. Water Conservation.

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in §344.1(45) [§344.1(44)] of this title (relating to Definitions).

§344.61. Minimum Standards for the Design of the Irrigation Plan.

(a) An irrigator shall prepare a site-specific [an] irrigation plan for each new irrigation system [site where a new irrigation system will be installed. A paper or electronic copy of] The [the] irrigation plan must be on the job site [at all times] during the installation of the irrigation system and must be consulted for installation requirements. [A drawing showing the actual installation of the system is due to each

irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:]

[(1) diminish the operational integrity of the irrigation system;]

[(2) violate any requirements of this chapter; and]

[(3) go unnoted in red on the irrigation plan.]

(b) The irrigation plan must show that the irrigation system provides [include] complete coverage of all areas [the area] to be irrigated. If there are areas on the site that are not to be irrigated, they must be clearly identified on the irrigation plan [a system does not provide complete coverage of the area to be irrigated, it must be noted on the irrigation plan].

(c) All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

(1) the irrigator's seal, signature, and date of signing;

(2) all major physical features in accordance with subsection (b) of this section including, but not limited to, property lines, streets, sidewalks, buildings, fences, flower bed lines, and the boundaries of the areas to be watered;

(3) a North arrow;

(4) a legend showing the symbols used in the irrigation plan and an accurate description of what the symbol represents;

(5) the zone flow measurement for each zone which includes the zone/controller station number and the zone valve size;

(6) location and type of each:

(A) controller;

(B) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);

(7) specifications for all irrigation system components to include, but not limited to, location, type, size, manufacturer, model number, operating pressure, flow range, radius of throw;

[(7) location, type, and size of each:]

[(A) water source, such as, but not limited to a water meter and point(s) of connection;]

[(B) backflow prevention device;]

[(C) water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;]

[(D) valve, including, but not limited to, zone valves, master valves, and isolation valves;]

[(E) pressure regulation component; and]

[(F) main line and lateral piping.]

(8) the scale used; and

(9) the design pressure.

(d) During the installation of the irrigation system, changes from the original plan may be authorized by the licensed irrigator if they are clearly documented in red ink on the irrigation plan and the change does not:

(1) diminish the operational integrity of the irrigation system; and

(2) violate any requirements of this chapter.

(e) All changes to the irrigation plan shall be documented as an as-built drawing.

§344.62. Minimum Design and Installation Requirements.

(a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

(b) Spacing.

(1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure. In no instance shall the spacing exceed plus or minus 10% of the manufacturer's published radius or spacing of the device(s).

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. [If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.]

(3) Pop-up spray heads or rotary sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar. Narrow paved walkways, jogging paths, golf cart

paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.

(c) Water pressure. Emission devices must be installed to operate at the optimum or recommended sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. If an optimum or recommended pressure is not published, then the emission devices must be installed to operate at not below the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Polyvinyl chloride (PVC) piping [Piping] in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second [for polyvinyl chloride (PVC) pipe].

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water on or over any surfaces made of impervious material including but not limited to concrete, asphalt, brick, wood, stones set with mortar, [or any other impervious material, such as, but not limited to,] walls, fences, sidewalks, and streets[, etc.].

(h) Master valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention **assembly** device on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation

systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Loving, Winkler, Ward, Reeves, Ector, Crane and Pecos Counties are excluded from this requirement.

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention **assembly** ~~device~~.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the topmost pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan/as-built drawing [plan]. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan/as-built drawing [irrigation plan] and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six -inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the topmost pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a [covered purple] valve box with a colored-coded purple lid or cover and the hose bib and any hoses connected to the bib must be labeled "non-potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) A [Beginning January 1, 2010, either a] licensed irrigator or [a] licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not on-site, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

(p) Valve boxes. A valve box shall be used as a durable, rigid enclosure for valves and/or any other irrigation system components that require subsurface protection.

§344.63. Completion of Irrigation System Installation.

Upon completion of the irrigation system, the irrigator or irrigation technician who provided the on-site supervision for the [on-site] installation shall be required to provide [complete] four items:

(1) a final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;

(2) The completed maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the maintenance checklist shall include but are not limited to:

(A) the manufacturer's manual for the automatic controller, if one is used [the system is automatic];

(B) a seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration data or monthly historical [reference] evapotranspiration [(historical ET)] data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;

(C) a list of irrigation system components [, such as the] (nozzle, [or] pump filters, etc.) [and other such components;] that require maintenance and the recommended frequency for the service; and

(D) the statement, "This irrigation system has been installed in accordance with all applicable state regulations as well as applicable [and] local laws, ordinances, rules, [regulations] or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan/As-built drawing [Irrigation Plan] and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker printed with waterproof ink which contains the irrigator's name, license number, company name, telephone number and the dates of

the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. [The information contained on the sticker must be printed with waterproof ink and include:]

(4) The irrigation plan/as-built drawing [irrigation plan] indicating the actual installation of the system must be provided to the irrigation system's owner or owner's [owner] representative.

§344.64. Maintenance, Alteration, Repair, or Service of Irrigation Systems.

[(a) The irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system.]

(a) [(b)] All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be backfilled and returned to the original grade with suitable soil free of any objects that could damage the plumbing of

the irrigation system. The backfill must be compacted such that a depression does not develop [select backfill].

(b) [(c)] Colored polyvinyl chloride (PVC) pipe primer solvent must be used on all PVC pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(c) [(d)] When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or at a point upstream of the backflow prevention assembly [device], an isolation valve shall be installed, if an isolation valve is not currently installed per §344.62(k) of this title (relating to Minimum Design and Installation Requirements) [present].

§344.65. Reclaimed Water.

Reclaimed water may be utilized in landscape irrigation systems if:

(1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;

(2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;

(3) the irrigation system is installed using purple components;

(4) the domestic potable water line providing water to the site is connected using an air gap or a reduced pressure principle backflow prevention **assembly** device in accordance with §290.47(f) [§290.47(i)] of this title (relating to Appendices);

(5) a minimum of an eight-inch [eight inch] by eight-inch [eight inch] sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER - DO NOT DRINK" and "AGUA DE RECUPERACIÓN - NO BEBER"; and

(6) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the water purveyor.

§344.66. Temporary Irrigation Systems.

(a) Temporary irrigation systems must be installed by a licensed irrigator or an irrigation technician under the supervision of a licensed irrigator.

(b) Temporary irrigation systems must meet the backflow prevention requirements in Subchapter E of this chapter (relating to Backflow Prevention and Cross-Connections).

(c) Temporary irrigation systems must be installed in accordance with §344.1(45) of this title (relating to Definitions).

(d) Temporary irrigation systems must have established a definite end date at which time the temporary irrigation system must be removed.

SUBCHAPTER G: ADVERTISING, CONTRACT, AND WARRANTY

§§344.70 - 344.72

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.70. Advertisement.

(a) All vehicles used in the performance of irrigation services [installation, maintenance, alteration, repair, or service] must display the irrigator's license number in the form of "LI_____" in a contrasting color of block letters at least two inches high, visible on both outward sides of the vehicle.

(b) All forms of advertisement [written and electronic advertisements] for irrigation services, regardless of the type of media, must display the irrigator's license number in the form of "LI_____." Any form of advertisement [, including business cards, and estimates] which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number. Trailers that advertise irrigation services must display the irrigator's license number.

(c) At the location of the permanent structure where the irrigation business is primarily conducted and irrigation records are kept, the [The] name, mailing address, and telephone number of the commission must be prominently displayed on a legible sign [and displayed] in plain view for the purpose of addressing complaints [at the permanent structure where irrigation business is primarily conducted and irrigation records are kept].

§344.71. Contracts.

(a) All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-235 [MC-178], P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.texas.gov [www.tceq.state.tx.us]." All contracts must include the irrigator's seal, signature, and date.

(b) All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation

in Texas is regulated by the Texas Commission on [On] Environmental Quality (TCEQ) (MC-235 [MC-178]), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website [web site] is: www.tceq.texas.gov [www.tceq.state.tx.us]."

(c) An individual who agrees by contract to provide irrigation services as defined in §344.30 of this title (relating to License Required) shall hold an irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in §344.1(36) of this title (relating to Definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. If an irrigator installs a system pursuant to a pass-through contract, [the irrigator shall still be responsible for providing the irrigation system's owner or through contract,] the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this chapter. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work.

(d) The contract must include the dates that the warranty is valid.

§344.72. Warranties.

(a) On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required.

(b) An irrigator's written warranty on new irrigation systems must specify the irrigator's name, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-235 [MC-178], P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.texas.gov [www.tceq.state.tx.us]."

(c) On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's

representative a written and sealed document that details the work performed and identifies the materials furnished [in the maintenance, alteration, repair, or service]. If a warranty is provided, the irrigator shall abide by the terms. The warranty document must include the irrigator's name and business contact information. The irrigator is responsible for all work that is performed by the irrigator or that is performed under the irrigator's direction on an irrigation system installed by the irrigator during the warranty period. The irrigator is not responsible for any work performed by any other individual on the same irrigation system.

SUBCHAPTER H: IRRIGATOR ADVISORY COUNCIL

§344.80

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is also adopted under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations §1903.158, concerning Per Diem; Reimbursement; Texas Occupations, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is

adopted under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also adopted under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015, and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.80. Irrigator Advisory Council.

(a) The Irrigator Advisory Council is composed of nine members that are appointed by the commission. Appointments to the council will be made without regard to race, creed, sex, religion, or national origin of the appointees. The purpose of the council is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters relating to landscape irrigation. The council has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Six members of the council must be licensed irrigators who are residents of the State of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques.

(c) Three members must be representatives of the public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

(d) It is grounds for removal from the council by the commission if a member:

(1) does not meet, at the time of the appointment, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council;

(2) does not maintain, during service on the council, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council;
or

(3) misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period.

(e) The members of the council serve staggered six-year terms, with the terms expiring February 1 of each odd-numbered year. For cases where a council member cannot finish their term, the replacement member will serve the remainder of the term.

(f) A member of the council is entitled to per diem as appropriated by the Texas Legislature for each day that the member engages in the business of the council. A member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as provided for in the General Appropriations Act.

(g) The council shall hold meetings at the call of the commission or chairman.

(h) A majority of the council constitutes a quorum for conducting business.

(i) The council will elect a chairman by a majority vote.

§328.201. Definitions.

The following terms, when used in this subchapter, shall have the following meanings.

(1) Governmental entity--A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district.

(2) Hardship--A circumstance that causes unreasonable burden on the governmental entity.

(3) Recyclable material--A material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

§328.202. General Requirements.

A governmental entity shall:

(1) establish a program for the separation and collection of all recyclable materials generated by the entity's operations;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

§328.203. Exemptions.

(a) This subchapter does not apply to:

(1) a school district with a student enrollment of less than 10,000 students; and

(2) a municipality with a population of less than 5,000, if compliance with this subchapter would create a hardship.

(b) A governmental entity may exclude one or more recyclable materials from their program if the commission finds that:

(1) a recycling program for a recyclable material is not available through their solid waste provider; or

(2) the inclusion of a recyclable material would create a hardship.

(c) A governmental entity may request additional consideration from the commission if compliance with this subchapter would create a hardship.

§328.204. Purchasing Preference for Recycled Materials.

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Preferences will be applied in accordance with state procurement statutes and rules.

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 January 16, 2020.

~~TRD-202000169~~

~~Robert Martinez~~

~~Director, Environmental Law Division~~

~~Texas Commission on Environmental Quality~~

~~Earliest possible date of adoption: March 1, 2020~~

~~For further information, please call: (512) 293-1806~~

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CHAPTER 344. LANDSCAPE IRRIGATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; to repeal §344.32; and new §344.66.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is in response to two petitions submitted by the Irrigator Advisory Council (IAC), which were approved by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The IAC requested that the commission classify all irrigation systems as health hazards; eliminate the use of double check valves; add the use of Spill Resistant Vacuum Breakers; require that the backflow prevention assembly be tested after repair, replacement, or relocation; require the use of in-line filters or strainers as recommended by the manufacturers; and change the term "Backflow prevention devices" to "Backflow prevention assemblies."

The executive director's staff collected stakeholder feedback on the proposed changes to the IAC's petitions. Public meetings were held in Austin, Corpus Christi, El Paso, Fort Worth, Harlingen, Houston, Lubbock, and San Antonio. In addition, written comments were received from 207 interested parties. The feedback from the meetings and comments were incorporated into the proposed draft rule language.

In 2007, the 80th Texas Legislature passed three bills directly affecting landscape irrigation. House Bill (HB) 4 and Senate Bill (SB) 3 directed the commission to adopt rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. These rule changes were included in the most recent updates to Chapter 344 that were effective on January 1, 2009. HB 1656 added a new landscape irrigation license classification, irrigation inspector, and directs municipalities with a population of 20,000 or more to adopt ordinances that require irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. Municipalities were required to adopt standards and specifications for irrigation systems and include rules adopted by the TCEQ. Municipalities were required to exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well which is used for domestic purposes. HB 1656 gave water districts the option of adopting rules to govern landscape irrigation in their areas. These provisions were not included in the most recent update to Chapter 344 and are proposed to be added with this rulemaking.

This rulemaking would incorporate some of the requested changes made by the two IAC rule petitions, as well as, amend existing sections, repeal a section, and add a new section.

These proposed revisions would strengthen the rules and provide for increased protection of the public health and increased water conservation. In addition, this rulemaking would align terms and definitions in this chapter with those in other, relevant chapters of 30 Texas Administrative Code (TAC). Specifically, definitions are proposed to be amended to align with 30 TAC Chapter 290, Public Drinking Water.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as, grammatical corrections, correct use of references, and revisions to improve readability. Additionally, the commission proposes to remove the word "installers" since this word is no longer recognized by TCEQ and replace the words "backflow prevention devices" with "backflow prevention assemblies." These changes are non-substantive and generally are not specifically discussed in this preamble.

SUBCHAPTER A: DEFINITIONS

§344.1, Definitions

The commission proposes to amend §344.1(1), to align the "Air gap" definition with the air gap definition used in Chapter 290. This is a more technically correct definition and would provide better consistency across the two chapters.

The commission proposes §344.1(2) by adding a definition for "As-built drawing" as recommended in the IAC petition. This term is commonly used in the irrigation industry to refer to the final irrigation plan produced at the completion of an installation.

The commission proposes to remove the definition of "Atmospheric vacuum breaker" in §344.1(2). This was requested in the rule petition because it is no longer a viable form of backflow prevention for irrigation systems. The IAC voted in favor of removing the atmospheric vacuum breaker as an approved backflow prevention assembly for landscape irrigation on August 18, 2016.

The commission proposes to amend the definition of "Backflow prevention" in §344.1(3). The revision is made to improve clarity and add the term "backpressure" as a cause of reversal of flow.

The commission proposes to amend the definition of "Backflow prevention assembly" in §344.1(4). The revision would clarify that this is a mechanical assembly and can be used with health hazard and non-health hazard installations. In addition, the term "backflow" is replaced by "hydraulic conditions" to refer to additional conditions where a backflow prevention assembly is required.

The commission proposes to amend the definition of "Cross-connection" in §344.1(7) to align with the definition used in Chapter 290.

The commission proposes to amend the definition of "Design pressure" in §344.1(9) to improve clarity and reference the head-to-head spacing requirement.

The commission proposes to amend the definition for "Double Check Valve" in §344.1(10) to "Double Check Valve Assembly" to refer to all the parts for the proper operation of the double check valve assembly. The IAC recommended that this definition be removed since it is not appropriate for use if all irrigation systems were classified as a health hazard per the recommendation from the rule petition. Stakeholder feedback from other interested parties did not support removal of this definition or

classification of all landscape irrigation as a health hazard. Local programs may elect to restrict usage of these devices.

The commission proposes to amend the definition of "Employed" in §344.1(12) to reference the amended definition of "Irrigation services" in §344.1(20) rather than "consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems."

The commission proposes to add a definition for "Exempt business owner" in §344.1(13) as referenced in Texas Occupations Code, Chapter 1903 and in Chapter 344 landscape irrigation rules and consistent with the usage in §344.31. This term is currently in §§344.21, 344.22, 344.32, 344.35. Subsequent paragraphs will be renumbered.

The commission proposes to add a definition for "Graywater" in §344.1(14), to align with 30 TAC Chapter 210, Subchapter F, Use of Graywater Systems. There has been an increase in the use of graywater in irrigation systems and this chapter is being updated to reflect that increase. This change was recommended by the IAC.

The commission proposes to amend the definition of "Head-to-head spacing" in §344.1(15) (previously §344.1(13)) to specify that the water spray must reach from device to device and to allow for a 10% deviation from the manufacturer's published radius. This aligns with the proposed use of this term in §344.62, Minimum Design and Installation Requirements.

The commission proposes to amend the definition of "Health hazard" in §344.1(16) (previously §344.1(14)) to align with the definition used in Chapter 290.

The commission proposes to remove the definition of "Inspector" in §344.1(16) and combine it with the definition of "Irrigation inspector" in §344.1(18) for improved clarity. The definition of "Irrigation inspector" is proposed to be amended accordingly.

The commission proposes to remove the definition for "Installer" in §344.1(17) since there is no longer a license for "installer" in the landscape irrigation program. This is no longer recognized as a valid term in the industry and has been replaced by "irrigation technician." This change was recommended by the IAC.

The commission proposes to amend the definition for "Irrigation inspector" in §344.1(18)) to incorporate language from the definition for "Inspector," which is proposed to be removed. This includes adding reference to, "A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector."

The commission proposes to amend the definition for "Irrigation plan" in §344.1(19) to reference the applicable rules in Chapter 344, Subchapter F, Standards for Designing, Installing and Maintaining Landscape Irrigation Systems, and include the term "as-built drawing," which is proposed to be added as a definition to this section.

The commission proposes to amend the definition for "Irrigation services" in §344.1(20) to make it more inclusive of all activities involving an irrigation system and adding "selling" to the list of services included in this term.

The commission proposes to amend the definition for "Irrigation system" in §344.1(21) to improve clarity.

The commission proposes to amend the definition for "Irrigation technician" in §344.1(22), to improve clarity and to add the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the proposed amended definition of "Irrigation services."

The commission proposes to amend the definition for "Irrigation zone" in §344.1(23) to improve clarity.

The commission proposes to amend the definition for "Irrigator" in §344.1(24) to add the term "irrigation services" in place of the list of services, "install, maintain, alter, repair, service or supervise installation of an irrigation system." This is consistent with the proposed amended definition of "Irrigation services."

The commission proposes to amend the definition of "Master valve" in §344.1(31) to remove the term "remote" and to incorporate the term "assembly" for consistency with the proposed amended definition of "Backflow prevention assembly" in this section.

The commission proposes to amend the definition of "New installation" in §344.1(33) to include the "complete replacement of an existing irrigation system." This reflects the practice in the irrigation industry to consider complete replacements as new systems.

The commission proposes to amend the definition of "Non-health hazard" in §344.1(34) to align with the definition used in Chapter 290.

The commission proposes to amend the definition for "Pass-through contract," in §344.1(36) to clarify that it is also considered a sub-contract to reflect irrigation industry practices.

The commission proposes to amend the definition for "Potable water" in §344.1(37) to refer to the definition of "Drinking water" in Chapter 290.

The commission proposes to amend the definition of "Records of landscape irrigation activities" in §344.1(40) to add the term "irrigation services" in place of the list of services, "installation, maintenance, alteration, repair, or service." This is consistent with the proposed amended definition of "Irrigation services."

The commission proposes to amend the definition of "Static water pressure" in §344.1(42) to clarify that "generally, this is the pressure available to the irrigation system." This is consistent with the irrigation industry use of the term.

The commission proposes to amend the definition of "Supervision" in §344.1(43) to remove the reference to the "installer" which is no longer a recognized TCEQ licensed individual. This change was recommended by the IAC.

The commission proposes to add a definition for "Temporary irrigation system" in §344.1(44), to establish the types of systems addressed in proposed new §344.66 under Chapter 344, Subchapter F.

SUBCHAPTER B, STANDARDS OF CONDUCT FOR IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

§344.20, *Purpose of Standards*

The commission proposes to amend §344.20(a) to replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

The commission proposes to amend §344.20(b) to remove the word "installer" as it is no longer a recognized TCEQ licensed individual and to replace the word "should" with "shall" to better reflect the mandatory nature of this rule.

§344.21, *Intent*

The commission proposes to amend §344.21(a) to remove the word "installer" because it is no longer a recognized TCEQ licensed individual.

The commission proposes §344.21(c) to address exemptions for on-site sewage systems, agricultural irrigation, and irrigation systems connected to a private well to align with statute (HB 1656).

§344.22, *Proficiency in the Field of Irrigation; Representation of Qualifications*

The commission proposes to amend §344.22 to remove "installers" as it is no longer a recognized TCEQ licensed individual.

§344.24, *Local Regulation and Inspection*

The commission proposes to amend §344.24(a) to replace "special purpose district" with "water district" to reflect typical organizational structure of districts as they relate to public water supplies.

The commission proposes to amend §344.24(b) to allow for any city, town, county, water district, other political subdivision of the state, or public water supplier to include inspections of the landscape irrigation systems in addition to the connections to the public water supply.

The commission proposes to amend §344.24(c) by removing the reference to "a water district that chooses to implement a landscape irrigation program" and changing the word "must" to "shall" to reflect the mandatory nature of this rule. The previous combined wording was ambiguous that municipalities with a population of 20,000 or more were required to have a program.

The commission proposes to add §344.24(d) to specifically address water districts that choose to implement a landscape irrigation program. "Water district" was included as per statute and the word "shall" was included to reflect the mandatory nature of these rules. This change was recommended by the IAC.

The commission proposes to remove existing §344.24(d) - (f), related to requirements for inspectors, and adding the language to proposed §344.37(a)(7), Duties and Responsibilities of Irrigation Inspectors, for better clarity.

Subchapter C, REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

§344.30, *License Required*

The commission proposes to amend §344.30(a) to incorporate "irrigation services" in place of the list of services, "sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system" and to clarify that a licensed irrigator is not an "exempt business owner." This is consistent with the proposed definition for "Exempt business owner" and the amended definition of "Irrigation services" in §344.1.

The commission proposes to remove §344.30(b) since this was a requirement prior to January 1, 2010 and refers to "installer" which is no longer a recognized TCEQ licensed individual. This change was made per recommendation from the IAC. The subsequent subsections have been re-lettered.

The commission proposes §344.30(b) (previously §344.30(c)) to remove "beginning January 1, 2009" since this date has passed and is no longer relevant. There is no change to the description of an irrigation technician.

§344.31, Exemption for Business Owner Who Provides Irrigation Services

The commission proposes to amend the title of this section from "Exemption for Business Owner Who Provides Irrigation Services" to "Responsibilities of a Business Owner Who Provides Irrigation Services."

The commission proposes to combine §344.31 and §344.32, Responsibilities of a Business Owner Who Provides Irrigation Services, since both rules refer to the overall responsibilities for exempt business owners. With this change, §344.31 becomes §344.31(a) and §344.32 becomes §344.31(b). The term "irrigation services" is added to refer to the various services including design, installation, maintenance, alteration, repairing, or servicing of irrigation systems. This is consistent with the amended definition of "Irrigation services" in §344.1. The word "business" is added to "exempt owner" in §344.31(b) (previously §344.32) to align with the definition of exempt business owner in §344.1.

§344.32, Responsibilities of a Business Owner Who Provides Irrigation Services

The commission proposes to repeal §344.32 and add the rule text language as proposed §344.31(b) since both rules refer to the overall responsibilities for exempt business owners.

§344.33, Display of License

The commission proposes to amend §344.33(a) to remove "installers" as it is no longer a recognized TCEQ licensed individual.

§344.34, Use of License

The commission proposes to amend §344.34(b) to add "or entity" to broaden the applicability of this rule to include businesses and to remove "licensed installer" as it is no longer a recognized TCEQ licensed individual. The commission proposes to amend §344.34(d) to remove references to installer as it is no longer a recognized TCEQ licensed individual.

§344.35, Duties and Responsibilities of Irrigators

The commission proposes to amend §344.35(c) to clarify that the "irrigator-in-charge" is responsible for the irrigation services performed by the exempt business owner's company.

The commission proposes to amend §344.35(d)(1) to remove "stamp or rubber" to accommodate different approved types of an irrigator's seal. The TCEQ recognizes that emerging technology will provide different approved ways for irrigators to display and use their seal.

The commission proposes to amend §344.35(d)(9) to remove "system beginning January 1, 2010." This date has passed and is no longer relevant.

The commission proposes to amend §344.35(d)(10) and (12) (previously §344.35(d)(13)) to refer to "conducting irrigation services" as defined in §344.1 rather than listing specific services.

The commission proposes to remove §344.35(d)(11) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. Subsequent paragraphs are renumbered.

§344.36, Duties and Responsibilities of Installers and Irrigation Technicians

The commission proposes to amend the section of this title from "Duties and Responsibilities of Installers and Irrigation Technicians" to "Duties and Responsibilities of Irrigation Technicians." The commission proposes to amend §344.36(a) to clarify that irrigation technicians are required to work under the supervision of a licensed irrigator and to remove references to "installer" since it is no longer a recognized TCEQ licensed individual;

The commission proposes §344.36(a)(1) to include the connection of an irrigation system to a water supply.

The commission proposes §344.36(a)(2) to include the installation requirement of an approved backflow prevention assembly, to be consistent with the proposed revised definition of §344.1.

The commission proposes §344.36(a)(3) referencing "irrigation services" as defined in §344.1 rather than listing specific services.

The commission proposes to add §344.36(a)(4) to include the requirement to conduct the final walkthrough as required by §344.63.

The commission proposes to remove §344.36(c) since this requirement applies to an "installer" which is no longer a recognized TCEQ licensed individual. Subsequent subsection is re-lettered.

The commission proposes §344.36(d) to include the requirement that an irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37, Duties and Responsibilities of Irrigation Inspectors

The commission proposes to amend §344.37(a) to include "licensed plumbing inspector" as being qualified to conduct irrigation system inspections and to move the recordkeeping requirement for irrigation inspectors from §344.24(d) to §344.37(b)(7).

The commission proposes to amend §344.37(b) to include water district's operators and to move the recordkeeping requirement for irrigation inspectors from §344.24(d) to §344.37(b)(7) and to remove reference to "installer" since this is no longer a recognized licensed individual.

The commission proposes to remove the requirements to verify licensure from §344.37(b)(1) to proposed §344.37(b)(2) and to add water district operator. Subsequent paragraphs are renumbered.

The commission proposes to remove the requirement in §344.37(b)(6) which lists specific types of irrigation activities to be investigated in order to simplify this rule.

The commission proposes to amend §344.37(b)(7) to include, in full, the recordkeeping requirements for irrigation inspectors (previously in §344.24(d)).

§344.38, Irrigator, Installer, and Irrigation Technician Records

The commission proposes to amend the title of this section from "Irrigator, Installer, and Irrigation Technician Records" to "Irrigator Records."

The commission proposes to revise this section to remove references to "rubber stamp" and leave the more general requirement for "seal" to allow for alternate types of seals. This section was also revised to remove references to records kept by installers and irrigation technicians. Installer is no longer a recognized

licensed individual and there are no specific recordkeeping requirements for irrigation technicians.

SUBCHAPTER D, LICENSED IRRIGATOR SEAL

§344.40, *Seal Required*

The commission proposes to amend §344.40 so that the rule is strengthened against the inappropriate use of an irrigator's seal. This is to prevent occasions when an irrigator allows another person to use their seal, changes the format of their seal so that it does not meet the requirements in §344.41, or does not sign and date their seal.

§344.42, *Seal Display*

The commission proposes to amend §344.42(b) to remove references to a specific type of media used to produce the seal. The TCEQ recognizes that emerging technology will provide different approved ways for irrigators to display and use their seal.

§344.43, *Seal Use*

The commission proposes to amend §344.43(e) to simplify the language so that it is consistent with the rest of the rule.

The commission proposes to amend §344.43(e)(1) so that the language regarding the change aligns with §344.43(e).

The commission proposes to amend §344.43(e)(2) to clarify that the irrigator making the change is responsible for that change.

The commission proposes to amend §344.43(e)(3) to require that the irrigator must seal any changes made.

The commission proposes to amend §344.43(f) to specify that the irrigator is responsible for the portion of the irrigation plan they created or changed.

SUBCHAPTER E, BACKFLOW PREVENTION AND CROSS-CONNECTION

§344.50, *Backflow Prevention Methods*

The commission proposes to amend §344.50(a) to eliminate the requirement for approval of backflow prevention assemblies. It was determined that there was no practical way to meet this requirement. Instead, the requirement is to install the assembly per manufacturer's recommendations and to test it. This is consistent with the requirements in Chapter 290.

The commission proposes to amend §344.50(b) to align with the definition of an air gap in §344.1(1).

The commission proposes to amend §344.50(b)(2) to reference the installation and testing requirements in §344.50(a).

The commission proposes to amend §344.50(b)(3) to reference the installation and testing requirements in §344.50(a) and describe the hydraulic conditions under which the assembly will work. The word "device" was changed to "assembly" per the rule petition.

The commission proposes to amend §344.50(b)(4) to replace atmospheric vacuum breakers (AVBs) as an option for backflow prevention with spill resistant vacuum breakers (SVB) per the recommendation from the rule petition. In practice, AVBs are recognized as not adequate for backflow prevention on irrigation systems because they will not function correctly with a downstream valve. Currently available sprinkler heads are equipped with check valves in order to conserve water and these are not functional with AVBs. Since AVBs cannot be used with a valve downstream of them, each individual zone would have to have

its own AVB. AVBs must be installed a minimum of six inches above the highest downstream emission device. These factors increase the cost and complexity of installation with no appreciable benefit.

The commission proposes to amend §344.50(b)(4)(A) to also specify potential for back-pressure.

The commission proposes to amend §344.50(b)(4)(B) to specify the minimum installation height and that it is determined from the highest downstream opening.

Spill resistant vacuum breakers (SVBs) were included as an option for backflow prevention. Requirements for the correct hydraulic conditions (no backpressure) and height installation requirements were included in the requirements for SVBs. These changes were recommended by the rule petition.

The commission proposes to remove the current language in §344.50(c) and include it in proposed §344.50(e) per recommendation from the rule petition. Subsequent subsections are re-lettered.

The commission proposes §344.50(c) (formerly subsection (d)) to replace the word "device" with the word "assembly."

The commission proposes to amend §344.50(c)(1) to add the word "and" for better readability.

The commission proposes to amend §344.50(c)(2) to eliminate the language referencing backpressure since this information was determined to be incorrect. Subsequent paragraph is renumbered.

The commission proposes to amend §344.50(d) (formerly subsection (e)) to include the word "assemblies" and to specify the installation requirements.

The commission proposes to amend §344.50(d)(3) to remove the requirement for the Y-type strainer as the maintenance requirements to periodically clean it did not make it practical to use. Subsequent paragraphs are renumbered.

The commission proposes to amend §344.50(d)(3) to specify that there must be clearance around the assembly to facilitate testing.

The commission proposes to add §344.50(e) to specify testing requirements for backflow prevention assemblies especially those installed to protect against health hazards. This change was requested by the rule petition.

§344.51, *Specific Conditions and Cross-Connection Control*

The commission proposes to amend §344.51(a) to make it applicable to any method where a chemical can be introduced into an irrigation system which will increase the hazard to the potable water supply. This language was removed from §344.51(c) and moved to §344.51(a).

The commission proposes §344.51(b) to address the hazard posed by those irrigation system components with chemical additives added to them in the manufacturing process. Subsequent subsection is re-lettered.

The commission proposes to remove §344.51(b) and move it down one subsection to §344.51(c). The language remains the same.

The commission proposes to amend §344.51(d)(1) and (2) to clearly specify that an irrigation system on a site that also has an On-site Sewage Facility (OSSF) is considered a health hazard.

§344.52, Installation of Backflow Prevention Device

The commission proposes to amend the title of this section from "Installation of Backflow Prevention Device" to "Installation of Backflow Prevention Assembly."

The commission proposes to amend §344.52(b) to add the word "prevention" as it is the correct term.

The commission proposes to amend §344.52(c) to remove the requirement to provide a test report to the "irrigation system's owner or owner's representative" and to replace the word "device" with assembly. This aligns with the requirements in Chapter 290.

SUBCHAPTER F, STANDARD FOR DESIGNING, INSTALLING AND MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

§344.60, Water Conservation

The commission proposes to update the reference regarding the definition of water conservation from §344.1(44) to §344.1(45).

§344.61, Minimum Standards for the Design of the Irrigation Plan

The commission proposes to amend §344.61(a) to stress the uniqueness of each individual irrigation system and the irrigation plan for it. These changes were also made to address occasions where the same irrigation plan is used multiple times for different sites. The requirement of drawing showing actual installation has been removed from §344.61(a) and is addressed in the proposed amendment to §344.61(c). Language addressing how variances from the original plan can be authorized has been removed from §344.61(a) and is addressed in the proposed amendment to §344.61(d) and (e).

The commission proposes to amend §344.61(b) to specify that the irrigation plan shall clearly show that those areas to be watered were adequately covered and those that were not were clearly identified. This change was made per recommendation from the IAC.

The commission proposes to amend §344.61(c)(2) to reference the requirements in §344.61(b) and specify some common physical features of a site to be irrigated.

The commission proposes to amend §344.61(c)(4) to specify what should be included on the legend of the irrigation plan and prevent irrigation plans with legends that do not adequately describe the symbols used on the irrigation plan. This change was made per recommendation from the IAC.

The commission proposes to amend §344.61(c)(5) to specify what is expected on the irrigation plan in regard to the zone flow measurement and eliminate occasions where the zone flow measurement does not include the station number or valve size. This change was made per recommendation from the IAC.

The commission proposes to amend §344.61(c)(7) to establish that specifications are required for all irrigation system components and lists some of the required information.

The commission proposes to add §344.61(d) to specify that changes shall be clearly noted in red ink and places requirements on the change itself. This language was moved from §344.61(a).

The commission proposes to add §344.61(e) to specify that the as-built drawing provided to the owner or owner's representative shall clearly show all the changes made to the irrigation plan.

§344.62, Minimum Design and Installation Requirements

The commission proposes to amend §344.62(b)(1) to allow for a 10% discrepancy from the manufacturer's published radius in the spacing of emission devices. This will accommodate variations in installations. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(b)(3) to generalize the requirement for directional spray of emission devices away from impervious surfaces to all irrigation systems and to clarify that this is a requirement for all installations. Exempted areas that drain into a landscaped area have been added.

The commission proposes to amend §344.62(c) to include the requirement to provide the optimum pressure for an emission device and promote water conservation while adequately watering the site. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(d) to clarify that the acronym "PVC" means polyvinyl chloride.

The commission proposes to amend §344.62(g) to further clarify that water shall not be sprayed on surfaces made of impervious materials.

The commission proposes to amend §344.62(l) to specify that the required depth is six inches and is measured from the topmost pipe so that multiple pipes laid in one trench do not impinge on the depth requirement. For example, irrigators may lay multiple pipes in one trench and the topmost pipe may only be three inches from the surface not the required six inches. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(n) to specify that the lid of the valve box shall be color-coded purple and not just the box. This is because the box is buried in the ground and is not visible while the lid is visible. This change was made per recommendation from the IAC.

The commission proposes to amend §344.62(o) to remove the effective date as it has passed.

The commission proposes to add §344.62(p) to provide clear requirements for valves and other irrigation system components to be housed in valve boxes. These components are buried, if they are not housed in a valve box, they cannot be located.

§344.63, Completion of Irrigation System Installation

The commission proposes to amend §344.63 to clarify that this section applies to the irrigator and to the irrigation technician. The introductory statement has been amended to specify 'on-site' supervision for the installation and requires the installer to provide the items listed in §344.63(1) - (4).

The commission proposes to amend §344.63(2) to specify that the completed maintenance checklist shall be provided to the owner or owner's representative.

The commission proposes to amend §344.63(2)(A) to accommodate occasions when an automatic controller is not used. Some irrigation systems do not use an automatic controller to turn the different zones on and off and instead use a valve turned by hand.

The commission proposes to amend §344.63(2)(B) to provide better clarity and to provide the meaning of the acronym "historical ET" which means "historical evapotranspiration."

The commission proposes to amend §344.63(2)(C) by providing a more concise explanation of irrigation components that should be listed for maintenance and frequency of service.

The commission proposes to amend §344.63(2)(D) to improve clarity and to include the defined term §344.1(2) "as-built drawing" which is occasionally provided to the owner or owner's representative upon completion of the installation.

The commission proposes to amend §344.63(3) to clarify that the ink on the irrigator's sticker shall be waterproof.

The commission proposes to amend §344.63(4) to include the defined term in §344.1(2) "as-built drawing" which is commonly used in the industry and provided to the owner or owner's representative at completion.

§344.64, Maintenance, Alteration, Repair, or Service of Irrigation Systems

The commission proposes to remove existing §344.64(a) and to move it to §344.72(c) concerning Warranties.

The commission proposes to amend §344.64(a) (previously subsection (b)) to specify that trenches shall be filled with soil free of any objects that could damage the irrigation system and should be compacted to eliminate depressions that could develop if not compacted.

The commission proposes to amend §344.64(b) (previously subsection (c)) to provide a meaning for the acronym PVC.

The commission proposes to amend §344.64(c) (previously subsection (d)) to clarify the location of the isolation valve, to replace the word "device" with "assembly" as per the rule petition, and to reference the installation requirements in §344.62(k).

§344.65, Reclaimed Water

The commission proposes to amend §344.65(4) to clarify that the backflow prevention assembly is required to be on the water line providing water to the entire site in order to protect against contamination.

The commission proposes to amend §344.65(5) to add wording specifying a minimum "eight-inch by eight-inch" sign be posted for reclaimed water use.

§344.66, Temporary Irrigation Systems

The commission proposes new §344.66 to provide rules that regulate temporary irrigation systems in order to provide for water conservation and protection of the public health.

The commission proposes new §344.66(a) to clarify that temporary irrigation systems must be installed by appropriately licensed individuals.

The commission proposes new §344.66(b) to clarify that temporary irrigation systems connected to potable water supplies pose a contamination hazard and require backflow prevention.

The commission proposes new §344.66(c) to clarify that temporary irrigation systems must be installed in a manner that conserves water.

The commission proposes new §344.66(d) to clarify that temporary irrigation systems must be temporary and must have a definite end date at which time they will be removed.

SUBCHAPTER G, ADVERTISING, CONTRACT, AND WARRANTY

§344.70, Advertisement

The commission proposes to amend §344.70(a) to simplify the section by using the term "irrigation services" and to specify that the irrigator's license number must be visible on both outward sides of the vehicle used to advertise irrigation services.

The commission proposes to amend §344.70(b) to apply the requirement regardless of the media used to advertise. This change was made per recommendation from the IAC.

The commission proposes to amend §344.70(c) to clarify the location of the of the information available to the public for complaint purposes.

§344.71, Contracts

The commission proposes to amend §344.71(a) and (b) to provide the correct TCEQ website address and Mail Code information.

The commission proposes to amend §344.71(c) to clarify that regardless of the existence of a pass-through contract, the irrigator is still responsible for providing a warranty to the owner or owner's representative.

§344.72, Warranties

The commission proposes to amend §344.72(b) to provide the correct TCEQ website address and Mail Code information.

The commission proposes to amend §344.72(c) to specify that during the warranty period the irrigator is responsible for the work they performed or that was performed under their supervision. This section also relieves the irrigator of any responsibility for work performed by any other individual on an irrigation system they installed.

SUBCHAPTER H, IRRIGATOR ADVISORY COUNCIL

§344.80, Irrigator Advisory Council

The commission proposes to amend §344.80(e) to clarify that the council member terms are staggered with three members terms ending each odd-numbered year. The commission proposes further amending §344.80(e) to clarify that interim members are selected to serve the remainder of the departing member's term.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking includes a clarification in §344.24, which brings the section into compliance with Texas Local Government Code, §551.006. This state law requires a municipality with a population of more than 20,000 people to adopt an ordinance with minimum standards for irrigation systems, including a permit for installers. The inclusion of this clarification in the proposed rulemaking may result in an agency enforcement action if a municipality is found to be out of compliance. This possible enforcement action may include penalties, which would result in a fiscal impact to a unit of local government and the state. The agency has identified 17 municipalities that have not yet adopted the ordinance referenced in §344.24.

For the purpose of this fiscal note, the agency assumes that all municipalities would comply with state law and the proposed rulemaking, and no enforcement action will be required.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be improved readability and compliance with state law, as well as increased protection of public health and better water conservation. The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Under the Texas Local Government Code, §551.006(d), municipalities have the option of recovering their administrative costs by charging a fee to licensed individuals who are obtaining or renewing a municipal permit.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement would not be required because the proposed rulemaking would not adversely affect a local economy in a material way for the first five years that the proposed rulemaking would be in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rulemaking would be in effect. The proposed rulemaking does reference a state law which requires a municipality with more than 20,000 people to adopt an ordinance with minimum standards for irrigation systems. The agency estimates that 10 municipalities with a population between 20,000 and 25,000 people would need to adopt an ordinance.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking would be in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking would not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Administrative Procedure Act, Texas Government Code, §2001.001 *et. seq.*, 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 Texas Gov-

ernment Code, §2001.0225(g)(3). A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rulemaking is to strengthen the rules and provide for better protection of public health and better water conservation. In addition, this rulemaking seeks to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC. Specifically, definitions are proposed to be amended to align with Chapter 290. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the rules. Therefore, the commission concludes that the proposed rules do not constitute a major environmental rule.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under specific state law.

The proposed rules do not exceed a federal standard because there are no federal standards regulating the practice of landscape irrigation. The proposed rules do not exceed state law requirements. Also, the proposed rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the state of Texas and an agency or representative of the federal government to implement a state and federal program regarding landscape irrigation. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency.

Therefore, Texas Government Code, §2001.0225, is not applicable to these proposed rules. The commission invites comment on the draft regulatory impact determination.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to strengthen the rules and provide for better protection of public health and better water conservation. In addition, this rulemaking seeks to align terms and definitions in this chapter with those in other, relevant chapters of 30 TAC. Specifically, definitions are proposed to be amended to align with Chapter 290.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because the proposed rules would neither burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that

which would otherwise exist in the absence of these regulations. In other words, these rules would not constitute a statutory or constitutional taking because they only update existing rules to comply with current technical standards and conservation methods and do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would the proposed rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

Written comments on the consistency of this rulemaking with the CMP goals and policies 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 February 27, 2020, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing, however commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, 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: <https://www6.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 2018-004-344-CE. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Al Fuentes, Program Support and Environmental Assistance Division, (512) 239-0400.

SUBCHAPTER A. DEFINITIONS

30 TAC §344.1

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations;

Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations Code, §1903.158, concerning Per Diem; Reimbursement; Texas Occupations Code, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.1. Definitions.

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

(1) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch. [A complete physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.]

(2) As-built drawing--The final irrigation plan produced at the completion of an irrigation system installation and provided to the irrigation system's owner or the owner's representative. The as-built drawing(s) will reflect all changes made to the original irrigation plan and/or specifications during the construction process and show all aspects of the irrigation system including the dimensions, geometry, and location of all elements of the irrigation system. May be referred to as "record drawings" or "as-builts."

(2) Atmospheric Vacuum Breaker--An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time, it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an Atmospheric Vacuum Breaker Back-siphonage Prevention Assembly.]

(3) Backflow prevention--The [mechanical] prevention of the reversal of [reverse] flow, due to [or] back siphonage or backpressure, of nonpotable water from an irrigation system into the potable water supply [source].

(4) Backflow prevention assembly--A mechanical [Any] assembly used to prevent backflow into a potable water system. The type of assembly used is based on the [existing or potential] degree

of [health] hazard (health hazard or non-health hazard) and hydraulic conditions [backflow condition].

(5) Completion of irrigation system installation--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

(6) Consulting--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

(7) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process. [An actual or potential connection between a potable water source and an irrigation system that may contain contaminants or pollutants or any source of water that has been treated to a lesser degree in the treatment process.]

(8) Design--The act of determining the various elements of a landscape irrigation system that will include, but not limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulic [hydraulics] calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

(9) Design pressure--The pressure that is required for an emission device to operate properly and in conjunction with the head-to-head spacing requirement. Design pressure is [calculated by adding] the sum of the minimum operating pressure of [necessary at] an emission device to the total of all pressure losses accumulated from the [an] emission device to the water source.

(10) Double Check Valve Assembly--An assembly that is composed of two independently acting, [approved] check valves, including tightly closing [closed] resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

(11) Emission device--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(12) Employed--The state of being engaged [Engaged] or hired to provide irrigation services and of being [consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is] in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(13) Exempt business owner--an owner of a business who employs a licensed irrigator to supervise the irrigation services performed by the business as referenced in Texas Occupations Code, Chapter 1903.

(14) Graywater--wastewater from showers, bathtubs, handwashing lavatories, sinks that are used for disposal of household or domestic products, sinks that are not used for food preparation or disposal, and clothes-washing machines. Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come into contact with toilet waste.

(15) [(13)] Head-to-head spacing--The spacing of emission devices such that the distance between them is within [spray or rotary heads equal to] the manufacturer's published radius range and the water spray reaches from device to device. A deviation of 10% or less is acceptable. [of the head.]

(16) [(14)] Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply. [A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.]

(17) [(15)] Hydraulics--The science of dynamic and static water; the mathematical computation of [determining] pressure losses and/or [and] pressure requirements of an irrigation system.

{(16) Inspector--A licensed plumbing inspector, water district operator, other governmental entity, or irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor.}

{(17) Installer--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Chapter 30 of this title (relating to Occupational Licenses and Registrations).}

(18) Irrigation inspector--A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector. [A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).]

(19) Irrigation plan--A scaled drawing of a new landscape irrigation system to be installed. The irrigation plan shall meet all the requirements in §§344.60 - 344.65 of this title (relating to Water Conservation; Minimum Standards for the Design of the Irrigation Plan; Minimum Design and Installation Requirements; Completion of Irrigation System Installation; Maintenance, Alteration, Repair, or Service of Irrigation Systems; and Reclaimed Water) and is provided as an as-built drawing to the owner or owner's representative upon completion of the irrigation system installation [which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system].

(20) Irrigation services--All activities involving an irrigation system including, selling [Selling], designing, installing, maintaining, altering, repairing, servicing, permitting, [providing] consulting services [regarding], or connecting an irrigation system to a water supply.

(21) Irrigation system--A system permanently installed on a site and that is composed of an [An] assembly of component parts [that is permanently installed] for the controlled distribution and conservation of water to irrigate, reduce dust, and control erosion in any type of landscape vegetation in any location[-; and/or to reduce dust or control erosion]. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(22) Irrigation technician--A person who works under the supervision of a licensed irrigator to perform irrigation services [install,

maintain, alter, repair, service or supervise installation of an irrigation system,] including the connection of an irrigation [such] system [in or] to a private or public, raw or potable water supply system or any other water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(23) Irrigation zone--A subdivision of an irrigation system with a matched precipitation rate based on plant [material] type ([such as] turf, shrubs, or trees), microclimate ([factors (such as] sun/shade ratio), topographic features, [(such as slope) and] soil type ([conditions (such as] sand, loam, clay, or combination), and [or for] hydrological control.

(24) Irrigator--A person who performs irrigation services and/or [sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or] supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(25) Irrigator-in-Charge--The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(26) Landscape irrigation--The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

(27) License--An occupational license that is issued by the commission under Chapter 30 of this title (relating to Occupational Licenses and Registrations) to an individual that authorizes the individual to engage in an activity that is covered by this chapter.

(28) Mainline--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(29) Maintenance checklist--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(30) Major maintenance, alteration, repair, or service--Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(31) Master valve--A [remote] control valve located after the backflow prevention assembly [device] that controls the flow of water to the irrigation system mainline.

(32) Matched precipitation rate--The condition in which all sprinkler heads within an irrigation zone apply water at the same rate

(33) New installation--An irrigation system installed at a location where one did not previously exist or is a complete replacement of an existing irrigation system.

(34) Non-health hazard--A cross-connection, [or] potential contamination hazard, or other situation involving [cross connection from a landscape irrigation system that involves] any substance that generally will [would] not be a health hazard but will [would] constitute a nuisance or be aesthetically objectionable if introduced into the public [potable] water supply.

(35) Non-potable water--Water that is not suitable for human consumption. Non-potable water sources include, but are not limited to, irrigation systems, lakes, ponds, streams, gray water [that is discharged from washing machines, dishwashers or other appliances], water [vapor] condensate from cooling towers, reclaimed water, and harvested rainwater.

(36) Pass-through contract--A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services. A pass-through contract is also referred to as a sub-contract. [relating to an irrigation system.]

(37) Potable water--Water that is suitable for human consumption and meets the definition of drinking water in §290.38(23) of this title (relating to Definitions).

(38) Pressure Vacuum Breaker--An assembly that contains [containing] an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.

(39) Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

(40) Records of landscape irrigation activities--The irrigation plans, contracts, warranty information, invoices, copies of permits, and all other documents that relate to irrigation services [the installation, maintenance, alteration, repair, or service of a landscape irrigation system].

(41) Reduced Pressure Principle Backflow Prevention Assembly--An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

(42) Static water pressure--The pressure of water when it is not moving. Generally, this is the pressure available to the irrigation system.

(43) Supervision--The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local and [or] state requirements. Also performed by a licensed [installer working under the direction of a licensed irrigator or beginning January 1, 2009, an] irrigation technician who is working under the direction of a licensed irrigator to perform [install, maintain, alter, repair or service an] irrigation services [system].

(44) Temporary Irrigation System--A temporarily installed, above ground system of pipes and component parts used to distribute water to the landscaping of a site for the establishment of plant growth, reduction of dust, and erosion control. Temporary irrigation systems must meet the requirements in §344.66 of this title (relating to Temporary Irrigation Systems).

(45) [(44)] Water conservation--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

(46) [(45)] Zone flow--A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

(47) [(46)] Zone valve--An automatic valve that controls a single zone of a landscape irrigation system.

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

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SUBCHAPTER B. STANDARDS OF CONDUCT FOR IRRIGATORS, [INSTALLERS,] IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS, AND LOCAL REQUIREMENTS

30 TAC §§344.20 - 344.22, 344.24

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning

Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments, implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.20. Purpose of Standards.

(a) The correct practice of irrigation as a science and profession is essential for the protection and conservation of the water resources of the state and shall [should] be conducted by individuals who are held to the highest ethical standards. The legislature has vested the commission with the authority and duty to establish and enforce standards of professional conduct and ethics for practitioners in the irrigation industry.

(b) Every applicant for an irrigator, [installer,] irrigation technician, or irrigation inspector license shall [must] become fully informed of the obligations and responsibilities inherent in the practice of irrigation as outlined by these standards of conduct. Each licensed irrigator, [installer,] irrigation technician, or irrigation inspector is deemed to have notice of these standards of conduct and is required to abide by the standards.

§344.21. Intent.

(a) These standards of conduct are established to prescribe responsibility on the part of an irrigator, [an installer,] an irrigation technician, an irrigation inspector, and a qualifying exempt business owner to aid in governing the irrigation industry.

(b) The commission will determine what actions constitute violations of the standards in accordance with Chapter 70 of this title (relating to Enforcement) and Texas Water Code, Chapter 7 and institute appropriate disciplinary action, which may lead to monetary penalties or the suspension or revocation of a license in accordance with the applicable state statutes.

(c) This section does not apply to:

(1) an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002; or

(2) an irrigation system:

(A) used on or by an agricultural operation as defined by Texas Agriculture Code, §251.002; or

(B) connected to a groundwater well used by the property owner for domestic use.

§344.22. Proficiency in the Field of Irrigation; Representation of Qualifications.

(a) All irrigators, [installers,] irrigation technicians, and inspectors shall be knowledgeable of the current industry standards regarding selling, designing, providing consulting services, installing, maintaining, altering, repairing, or servicing irrigation systems, including the connection of such a system to any source of water and water conservation. All irrigators, [installers,] irrigation technicians, and inspectors shall conform to the current adopted version of these rules and any local rules that do not conflict with these rules, or that are more stringent than these rules, when performing these activities.

(b) All irrigators, [installers,] irrigation technicians, irrigation inspectors, and exempt business owners shall accurately and truthfully represent to prospective clients their qualifications to perform the services requested and shall not perform services for which they are not qualified by experience, knowledge, or license in the technical field involved.

(c) All irrigators, [installers,] irrigation technicians, and inspectors shall be knowledgeable of local requirements related to landscape irrigation systems.

§344.24. Local Regulation and Inspection.

(a) Where any city, town, county, water [special purpose] district, other political subdivision of the state, or public water supplier requires licensed irrigators, [installers,] irrigation technicians, or irrigation inspectors to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory the licensed irrigator, [installer,] irrigation technician, or irrigation inspector shall [must] comply with such requirements, ordinances, and regulations.

(b) Any city, town, county, water district, other political subdivision of the state, or public water supplier that is not required to adopt rules or ordinances regulating landscape irrigation may adopt a landscape irrigation program by ordinance or rule and may be responsible for inspection of irrigation systems on sites that are connected [connections] to its public water supply system. Any rule or ordinance adopted to regulate landscape irrigation shall be at least as stringent as the requirements in this chapter. [up to and including the backflow prevention device.]

(c) Municipalities with a population of 20,000 or more shall [and a water district that chooses to implement a landscape irrigation program must] verify that the irrigator that designs and installs an irrigation system holds a valid irrigator's license and has obtained a permit before installing a system within its territorial limits or if a municipality, its extraterritorial jurisdiction. Inspectors must verify that the design and installation meet the requirements of this chapter and local ordinances or rules that do not conflict with this chapter, or that are more stringent than this chapter.

(d) A water district that chooses to implement a landscape irrigation program shall meet the program requirements in subsection (c) of this section.

~~[(d) Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.]~~

~~[(e) An inspector may not inspect a landscape irrigation system that is an on-site sewage disposal system, as defined by Texas Health and Safety Code, §366.002.]~~

~~[(f) An inspector may not inspect an irrigation system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002; or is connected to a groundwater well that is used by the property owner for domestic use.]~~

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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, [INSTALLERS,] IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §§344.30, 344.31, 344.33 - 344.38

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001-37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.30. License Required.

(a) An irrigator is an individual who:

(1) performs irrigation services including [sells, designs, provides consultation services, installs, maintains, alters, repairs, or services an irrigation system, including] the connection of such system to any water supply;

(2) is not an exempt business owner and advertises or represents to anyone that the individual can perform irrigation services [any or all of these functions]; and

(3) is required to hold a valid irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations).

~~[(b) Through December 31, 2009, an installer is an individual who connects an irrigation system to any water supply.]~~

(b) ~~[(e)]~~ An ~~[Beginning January 1, 2009, an]~~ irrigation technician is an individual who:

- (1) connects an irrigation system to a water supply;
- (2) under the supervision of a licensed irrigator, installs, maintains, alters, repairs, or services a landscape irrigation system;
- (3) represents to anyone that the individual can perform any or all of these functions; and
- (4) is required to hold a valid irrigation technician license issued under Chapter 30 of this title.

(c) ~~[(d)]~~ All irrigators~~;~~ ~~installers;~~ and irrigation technicians shall comply with the rules contained in this chapter when performing any or all of the functions listed in this section.

(d) ~~[(e)]~~ An individual who inspects irrigation systems and enforces a municipality's landscape irrigation ordinance must:

- (1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or
- (2) hold a valid plumbing inspector license.

(e) ~~[(f)]~~ An individual who inspects irrigation systems and enforces a water district's rules related to landscape irrigation systems must:

- (1) hold a valid irrigation inspector license issued according to Chapter 30 of this title; or
- (2) hold a valid plumbing inspector license; or
- (3) be the district's operator; or
- (4) be employed by another regulatory authority with jurisdiction over landscape irrigation and hold the appropriate license.

(f) ~~[(g)]~~ An inspector shall comply with the rules contained in this chapter when performing any ~~[or all]~~ of the functions listed in this section.

(g) ~~[(h)]~~ A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) if he or she is performing irrigation work in a building or on a premise ~~[premises]~~ owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in §344.62(b), (c), (g), (j), and (k) of this title (relating to Minimum Design and Installation Requirements) concerning spacing; water pressure; spraying water over impervious materials; rain or moisture shut-off devices or other technology; and isolation valve ~~[§344.62(b) Spacing, §344.62(c) Water pressure, §344.62(g) related to spraying water over impervious materials, §344.62(j) Rain or moisture shut-off devices or other technology, and §344.62(k) Isolation valve]~~. Municipalities or water districts may adopt more stringent requirements for a home or property owner who installs an irrigation system.

§344.31. Responsibilities of a ~~[Exemption for]~~ Business Owner Who Provides Irrigation Services.

(a) Under Chapter 30 of this title (relating to Occupational Licenses and Registrations), a business owner who employs a licensed irrigator as an irrigator-in-charge to provide consulting services, ~~[or]~~ to supervise, or conduct ~~[the exempt business's]~~ operations relating to irrigation services ~~[the design, installation, maintenance, alteration, repairing, and servicing of irrigation systems]~~ is exempt from the licensing requirements of Texas Occupations Code, Chapter 1903.

(b) An exempt business owner who provides landscape irrigation services shall ensure that all irrigation services are supervised by a licensed irrigator, according to the requirements of this subchapter. An

exempt business owner who engages in landscape irrigation is responsible for verifying the validity of the license belonging to all irrigators and irrigation technicians performing irrigation services for the business. An exempt business owner who engages in landscape irrigation is responsible for designating an irrigator-in-charge.

§344.33. Display of License.

(a) Irrigators~~;~~ ~~installers;~~ and irrigation technicians shall prominently display their license certificate at the place of irrigation business or employment and shall present their license upon request by any regulatory authority, irrigation system's owner, or prospective owner.

(b) Irrigation inspectors shall present their license, when requested by any entity that is regulated under this chapter, and when that request is made while an irrigation inspector is conducting business.

§344.34. Use of License.

(a) No one other than the irrigator, ~~[installer;~~ irrigation technician, or irrigation inspector to whom a license is issued shall use or attempt to use the license, which includes the license number.

(b) An individual or entity who uses or attempts to use the license or license number of someone else who is a licensed irrigator, ~~[licensed installer;~~ licensed irrigation technician, or licensed irrigation inspector is in violation of Texas Occupations Code, Chapter 1903, and this chapter.

(c) An irrigator's license or license number may be used at only one entity as the irrigator-in-charge. An irrigator may work for other entities, but not as the irrigator-in-charge.

(d) It is a violation of this chapter for an irrigator, ~~[installer;~~ irrigation technician or irrigation inspector to authorize or allow another person or entity to use the irrigator's, ~~[installer's;~~ irrigation technician's, or irrigation inspector's license or license number in a manner inconsistent with this chapter.

§344.35. Duties and Responsibilities of Irrigators.

(a) An irrigator shall comply with the rules contained in this chapter when performing any or all of the functions described in this section.

(b) An irrigator who performs work for an entity or for an exempt business owner who performs or offers to perform irrigation services shall be knowledgeable of and responsible for all permits, contracts, agreements, advertising, and other irrigation services secured and performed using the irrigator's license.

(c) A licensed irrigator who is employed by an exempt business owner and designated as the irrigator-in-charge ~~[as defined by §344.31 of this title (relating to Exemption for Business Owner Who Provides Irrigation Services)]~~ shall supervise all irrigation services of the business, in accordance with this chapter.

(d) A licensed irrigator is responsible for:

- (1) using the ~~[stamp or rubber]~~ seal in accordance with this chapter;
- (2) obtaining all permits and inspections required to install an irrigation system;
- (3) complying with local regulations;
- (4) determining the appropriate backflow prevention method for each irrigation system installation and installing the backflow prevention device correctly;
- (5) maintaining landscape irrigation systems records;

- (6) conserving water;
- (7) developing and following an irrigation plan for each new irrigation system;
- (8) designing an irrigation system that complies with the requirements of this chapter;
- (9) providing on-site supervision of the installation of [an] irrigation systems [system beginning January 1, 2010];
- (10) providing supervision to an irrigation technician who is conducting irrigation services [while connecting an irrigation system to a water supply, installing, maintaining, altering, repairing, or servicing an irrigation system];
- [(11) providing supervision to an installer connecting an irrigation system through December 31, 2009;]
- (11) [(12)] completing the irrigation system including the final "walk through," completing the maintenance checklist, placing a permanent sticker on the controller or on the maintenance checklist if the irrigation system does not have an automatic controller, and providing a copy of the design plan;
- (12) [(13)] conducting irrigation services in compliance [selling, consulting, performing maintenance, alteration, repair, and service of irrigation systems that complies] with the requirements of this chapter;
- (13) [(14)] providing advertisements, contracts, and warranties that comply with the requirements of this chapter; and
- (14) [(15)] installing an irrigation system that complies with the requirements of this chapter.

§344.36. Duties and Responsibilities of [Installers and] Irrigation Technicians.

(a) A licensed irrigation technician under the supervision of a licensed irrigator, is responsible for: [~~licensed installer may connect an irrigation system to a water supply through December 31, 2009. This includes installing an approved backflow prevention method pursuant to §344.50 of this title (relating to Backflow Prevention Methods) when connecting an irrigation system to a potable water supply. Beginning January 1, 2009, a licensed irrigation technician may connect an irrigation system to a water supply, including installing an approved backflow prevention method pursuant to §344.50 of this title and may maintain, alter, repair, service, or direct the installation of irrigation systems under the supervision of an irrigator.~~]

- (1) connecting an irrigation system to a water supply;
- (2) installing an approved backflow prevention assembly pursuant to §344.50 of this title (relating to Backflow Prevention Methods);
- (3) conducting irrigation services including maintaining, altering, repairing, servicing, or directing the installation of irrigation systems; and
- (4) conducting the final walk through in compliance with the requirements §344.63 of this title (relating to Completion of Irrigation System Installation).

(b) If an [~~installer or~~] irrigation technician connects an irrigation system to a potable water supply, the connection and installation of the backflow prevention assembly [~~method~~] must be as indicated on the site irrigation plan or as directed by the licensed irrigator and documented on the site irrigation plan.

[(c) Through December 31, 2009, an installer is responsible for the connection of an irrigation system to a water supply under the supervision of a licensed irrigator.]

(c) [(d)] An [Beginning January 1, 2009, an] irrigation technician, under the supervision of a licensed irrigator, is responsible for:

- (1) connecting an irrigation system to a water supply; and
- (2) providing on-site supervision of the installation, maintenance, alteration, repair, service of an irrigation system including the final walk through with the irrigation system owner or owner's representative to explain the maintenance and operation of the irrigation system.

(d) An irrigation technician shall not act as an irrigator nor advertise or offer to perform irrigation services.

§344.37. Duties and Responsibilities of Irrigation Inspectors.

(a) A licensed irrigation inspector or licensed plumbing inspector shall enforce the applicable irrigation rules or ordinance of the employing governmental entity and, at a minimum, is responsible for: [-]

- (1) verifying that the appropriate permits have been obtained for an irrigation system;
- (2) verifying that the irrigator, irrigation technician, or water operator is licensed;
- (3) inspecting the irrigation system;
- (4) determining that the irrigation system complies with the requirements of this chapter;
- (5) determining that the appropriate backflow prevention assembly was installed, tested, and the test results were provided to the water purveyor;
- (6) investigating complaints related to irrigation systems including the advertisement of irrigation services; and
- (7) maintaining records according to this chapter. Each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

(b) A licensed irrigation inspector, licensed plumbing inspector, a water district's operator or other appropriately licensed individual employed by a governmental entity shall be responsible for:

- (1) verifying that the appropriate permits have been obtained for an irrigation system [~~and that the irrigator and installer or irrigation technician, if applicable, are licensed~~];
- (2) verifying that the irrigator, irrigation technician, or water district operator is licensed;
- (3) [(2)] inspecting the irrigation system;
- (4) [(3)] determining that the irrigation system complies with the requirements of this chapter;
- (5) [(4)] determining that the appropriate backflow prevention assembly [~~device~~] was installed, tested, and the test results were provided to the water purveyor;
- (6) [(5)] investigating complaints related to irrigation systems including the [~~system installation, maintenance, alteration,~~]

repairs, or service of an irrigation system and] advertisement of irrigation services; and

~~[(6) maintaining records according to this chapter.]~~

(7) each inspector shall maintain a log of all irrigation systems inspected that includes, but is not limited to, the system location, property owner, irrigator responsible for installation, permit status, problems noted during the inspection, and date of the inspection. The log must be kept for three years. The log shall be available for review within two business days of the request by authorized representatives of the commission or any regulatory authority with jurisdiction over landscape irrigation issues in the area the inspector is employed to inspect.

§344.38. *Irrigator[, Installer, and Irrigation Technician] Records.*

Upon the licensed irrigator obtaining the seal [~~or rubber stamp~~], in accordance with this chapter, an impression of the seal shall [~~or rubber stamp will~~] be made on letterhead, or other business stationery, and maintained on file for review by the commission. Archival copies of all records given to the irrigation system's owner or owner's representative shall be maintained by the irrigator. Records will be maintained by the irrigator for a period of three years from the date installation, maintenance, alteration, repair or service was completed. Irrigators [~~installers, and irrigation technicians~~] shall make all records of landscape irrigation services available within ten business days of any request made by authorized representatives of the commission or the local regulatory authority with jurisdiction over landscape irrigation [~~issues~~].

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

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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §344.32

Statutory Authority

The repealed section is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and

Power to Contract; and under TWC §49.238, concerning Irrigation Systems. The repealed section is also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. The repealed section proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the repealed section is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed repealed section implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.32. *Responsibilities of a Business Owner Who Provides Irrigation Services.*

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SUBCHAPTER D. LICENSED IRRIGATOR SEAL

30 TAC §§344.40, 344.42, 344.43

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas

Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.40. Seal Required.

Each irrigator, upon being licensed with the commission, shall obtain a seal, as described in §344.41 of this title (relating to Seal Design). Licensed irrigators shall not engage in any landscape irrigation services without physical possession of the seal and the license. The irrigator is responsible for the security of the seal and for ensuring that it shall not be used in a manner that does not meet the requirements of this chapter.

§344.42. Seal Display.

(a) On every document requiring an irrigator's seal, the seal shall be clearly visible and legible on the original document and all copies or reproductions of the original document.

(b) An irrigator may use an alternative media (electronic, rubber stamp, embossing, etc.) to use their ~~[or other format]~~ seal and signature if the seal, signature, and date are clearly visible and legible on the original document and all copies or reproductions of the original document.

§344.43. Seal Use.

- (a) Irrigators shall:
- (1) sign their legal name;
 - (2) affix the seal above the irrigator's signature; and
 - (3) include the date of signing (month, day, and year) of each document to which the seal is affixed.
- (b) The presence of the irrigator's seal displayed above the irrigator's signature and date on any document constitutes the acceptance of all professional responsibility for the document and the irrigation services performed in accordance with that document.
- (c) The irrigator will maintain, for three years, a copy of each document bearing the irrigator's seal.
- (d) Once a document containing a seal is issued, the seal may not be altered.
- (e) Irrigators shall not change ~~[use or authorize the use of a seal on]~~ any plan or specification created by another irrigator unless ~~[the irrigator]~~:
- (1) the change is made to ~~[Reviews and makes changes to]~~ adapt the plan or specification to the specific site conditions and to address state and local requirements; ~~[and]~~
 - (2) the irrigator accepts ~~[Acepts]~~ full responsibility for any changes the irrigator makes ~~[alterations]~~ to the original plan or specification; ~~[and [and any downstream consequences:]]~~
 - (3) the irrigator seals and dates the changes made to the original irrigation plan.
- (f) If an irrigator prepares only a portion of a plan or specification, that portion of the plan ~~[design]~~ or specification must be sealed ~~[prepared]~~ by the irrigator ~~[or under the irrigator's supervision]~~ and ~~[seal, should be]~~ clearly identified.

(g) Irrigators shall sign, seal and date the irrigation plan and specifications, contract, addenda or change orders, warranty, and the maintenance checklist.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806

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SUBCHAPTER E. BACKFLOW PREVENTION AND CROSS-CONNECTIONS

30 TAC §§344.50 - 344.52

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.50. Backflow Prevention Methods.

(a) All backflow prevention assemblies installed per this chapter shall be installed according to manufacturer's recommendations and provided with sufficient clearance to facilitate testing.

[(a) Any irrigation system that is connected to a public or private potable water supply must be connected through a commission-approved backflow prevention method. The backflow prevention device

must be approved by the American Society of Sanitary Engineers; or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or the Uniform Plumbing Code; or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.]

(b) If conditions that present a health hazard exist, one of the following types of backflow prevention shall [methods must] be used, [to prevent backflow;]

(1) An air gap may be used if installed per the definition of air gap in §344.1 of this title (relating to Definitions). [;]

[(A) there is an unobstructed physical separation; and]

[(B) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater;]

(2) Reduced pressure principle backflow prevention assemblies may be used if installed per subsection (a) of this section and:

(A) the assembly [device] is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and

(B) drainage is provided for any water that may be discharged through the [assembly] relief valve.

(3) Pressure vacuum breakers may be used if installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition [will occur]; and

(B) the assembly [device] is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(4) Spill-resistant pressure vacuum breakers may be used if installed per subsection (a) of this section and:

(A) there is no actual or potential for a back-pressure condition; and

(B) the assembly is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

[(4) Atmospheric vacuum breakers may be used if:]

[(A) no back-pressure will be present;]

[(B) there are no shutoff valves downstream from the atmospheric vacuum breaker;]

[(C) the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;]

[(D) there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and]

[(E) a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls;]

[(e) Backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter;]

(c) [(d)] If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the assembly [device] is tested upon installation and:

(1) a local regulatory authority does not prohibit the use of a double check valve; and

[(2) backpressure caused by an elevation of pressure in the discharge piping by pump or elevation of piping above the supply pressure which could cause a reversal of the normal flow of water or backsiphonage conditions caused by a reduced or negative pressure in the irrigation system exist; and]

(2) [(3)] test cocks are used for testing only.

(d) [(e)] Double [If a double] check valve assemblies [is] installed below ground shall meet the following installation requirements:

(1) test cocks shall [must] be plugged, except when the double check valve is being tested;

(2) test cock plugs shall [must] be threaded, water-tight, and made of non-ferrous material; and

[(3) a y-type strainer is installed on the inlet side of the double check valve;]

(3) [(4)] there shall [must] be a clearance all the way around the assembly [between any fill material and the bottom of the double check valve] to allow space for testing and repair. [; and]

[(5) there must be space on the side of the double check valve to test and repair the double check valve;]

(e) At a minimum, all backflow prevention assemblies shall be tested by a licensed backflow prevention assembly tester upon installation, repair, replacement, or relocation. Those backflow prevention assemblies used in irrigation systems designated as health hazards shall be tested annually.

§344.51. Specific Conditions and Cross-Connection Control.

(a) Before any chemical is added by any method (aspiration, injection, etc.) to an irrigation system which is connected to any potable water supply, the irrigation system shall [must] be connected through a reduced pressure principle backflow prevention assembly or air gap.

(b) Irrigation system components treated with chemical additives and connected to any potable water supply shall be connected through a reduced pressure principle backflow prevention assembly.

(c) [(b)] Connection of more than one water source to an irrigation system presents the potential for contamination of the potable water supply if backflow occurs. Therefore, connection of any additional water source to an irrigation system that is connected to the potable water supply can only be made [done] if the irrigation system is connected to the potable water supply through a reduced-pressure principle backflow prevention assembly or an air gap.

[(e) Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any

potable water supply must be connected through a reduced pressure principle backflow device.}]

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Chapter 285 of this title (relating to On-Site Sewage Facilities), then:

(1) all irrigation piping and valves shall [must] meet the separation distances from the On-Site Sewage Facilities system as required for a private water line in §285.91(10) of this title (relating to Tables), concerning the minimum required separation distances for on-site sewage facilities [Minimum Required Separation Distances for On-Site Sewage Facilities)];

(2) the irrigation system is designated a health hazard and any connections using a private or public potable water source shall [must] be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in §344.50 of this title (relating to Backflow Prevention Methods); and

(3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system shall [must] be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.

§344.52. Installation of Backflow Prevention Assembly [Device].

(a) If an irrigation system is connected to a potable water supply and requires major maintenance, alteration, repair, or service, the system shall [must] be connected to the potable water supply through an approved, properly installed backflow prevention method as defined in this title before any major maintenance, alteration, repair, or service is performed.

(b) If an irrigation system is connected to a potable water supply through a double check valve, pressure vacuum breaker, or reduced pressure principle backflow prevention assembly and includes an automatic master valve on the system, the automatic master valve shall [must] be installed on the discharge side of the backflow prevention assembly.

(c) The irrigator shall ensure the backflow prevention assembly [device] is tested prior to being placed in service and the test results provided to the local water purveyor [and the irrigation system's owner or owner's representative] within ten business days of testing [ef] the backflow prevention assembly [device].

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

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SUBCHAPTER F. STANDARDS FOR DESIGNING, INSTALLING, AND

MAINTAINING LANDSCAPE IRRIGATION SYSTEMS

30 TAC §§344.60 - 344.66

Statutory Authority

These amendments and new section are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments and new section are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments and new section are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments and new section are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments and new section implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.60. Water Conservation.

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in §344.1(45) [§344.1(44)] of this title (relating to Definitions).

§344.61. Minimum Standards for the Design of the Irrigation Plan.

(a) An irrigator shall prepare a site-specific [an] irrigation plan for each new irrigation system. The [site where a new irrigation system will be installed. A paper or electronic copy of the] irrigation plan must be on the job site [at all times] during the installation of the irrigation system and must be consulted for installation requirements. [A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system; variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:]

- {(1) diminish the operational integrity of the irrigation system;}
- {(2) violate any requirements of this chapter; and}
- {(3) go unnoted in red on the irrigation plan.}

(b) The irrigation plan must show that the irrigation system provides [include] complete coverage of all areas [the area] to be irrigated. If there are areas on the site that are not to be irrigated, they must be clearly identified on the irrigation plan [a system does not provide

complete coverage of the area to be irrigated, it must be noted on the irrigation plan].

(c) All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

(1) the irrigator's seal, signature, and date of signing;

(2) all major physical features in accordance with subsection (b) of this section including, but not limited to, property lines, streets, sidewalks, buildings, fences, flower bed lines, and the boundaries of the areas to be watered;

(3) a North arrow;

(4) a legend showing the symbols used in the irrigation plan and an accurate description of what the symbol represents;

(5) the zone flow measurement for each zone which includes the zone/controller station number and the zone valve size;

(6) location and type of each:

(A) controller;

(B) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);

(7) specifications for all irrigation system components to include, but not limited to, location, type, size, manufacturer, model number, operating pressure, flow range, radius of throw;

~~[(7) location, type, and size of each:]~~

~~[(A) water source, such as, but not limited to a water meter and point(s) of connection;]~~

~~[(B) backflow prevention device;]~~

~~[(C) water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;]~~

~~[(D) valve, including, but not limited to, zone valves, master valves, and isolation valves;]~~

~~[(E) pressure regulation component; and]~~

~~[(F) main line and lateral piping.]~~

(8) the scale used; and

(9) the design pressure.

(d) During the installation of the irrigation system, changes from the original plan may be authorized by the licensed irrigator if they are clearly documented in red ink on the irrigation plan and the change does not:

(1) diminish the operational integrity of the irrigation system; and

(2) violate any requirements of this chapter.

(e) All changes to the irrigation plan shall be documented as an as-built drawing.

§344.62. Minimum Design and Installation Requirements.

(a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

(b) Spacing.

(1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the man-

ufacturer's published specifications for a specific emission device at a specific operating pressure. In no instance shall the spacing exceed plus or minus 10% of the manufacturer's published radius or spacing of the device(s).

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. ~~[If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.]~~

(3) Pop-up spray heads or rotary sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar. Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.

(c) Water pressure. Emission devices must be installed to operate at the optimum or recommended sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. If an optimum or recommended pressure is not published, then the emission devices must be installed to operate at not below the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Polyvinyl chloride (PVC) piping [Piping] in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second ~~[for polyvinyl chloride (PVC) pipe].~~

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water on or over any surfaces made of impervious material including but not limited to concrete, asphalt, brick, wood, stones set with mortar, [or any other impervious material, such as, but not limited to,] walls, fences, sidewalks, and streets[; etc].

(h) Master valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's

published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Loving, Winkler, Ward, Reeves, Ector, Crane and Pecos Counties are excluded from this requirement.

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention device.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the topmost pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan/as-built drawing [plan]. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan/as-built drawing [irrigation plan] and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the topmost pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a [covered purple] valve box with a colored-coded purple lid or cover and the hose bib and any hoses connected to the bib must be labeled "non-potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) A [Beginning January 1, 2010, either a] licensed irrigator or [a] licensed irrigation technician shall be on-site at all times while

the landscape irrigation system is being installed. When an irrigator is not on-site, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

(p) Valve boxes. A valve box shall be used as a durable, rigid enclosure for valves and/or any other irrigation system components that require subsurface protection.

§344.63. *Completion of Irrigation System Installation.*

Upon completion of the irrigation system, the irrigator or irrigation technician who provided the on-site supervision for the [on-site] installation shall be required to provide [complete] four items:

(1) a final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;

(2) The completed maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the maintenance checklist shall include but are not limited to:

(A) the manufacturer's manual for the automatic controller, if one is used [the system is automatic];

(B) a seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration data or monthly historical [reference] evapotranspiration [(historical ET)] data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;

(C) a list of irrigation system components[; such as the] (nozzle, [or] pump filters, etc.) [and other such components;] that require maintenance and the recommended frequency for the service; and

(D) the statement, "This irrigation system has been installed in accordance with all applicable state regulations as well as applicable [and] local laws, ordinances, rules, [regulations] or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan/As-built drawing [Irrigation Plan] and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker printed with waterproof ink which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. [The information contained on the sticker must be printed with waterproof ink and include:]

(4) The irrigation plan/as-built drawing [irrigation plan] indicating the actual installation of the system must be provided to the irrigation system's owner or owner's [owner] representative.

§344.64. *Maintenance, Alteration, Repair, or Service of Irrigation Systems.*

[(a)] The irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other

irrigator who subsequently conducts any irrigation service on the same irrigation system.]

(a) [(b)] All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be backfilled and returned to the original grade with suitable soil free of any objects that could damage the plumbing of the irrigation system. The backfill must be compacted such that a depression does not develop [select backfill].

(b) [(e)] Colored polyvinyl chloride (PVC) pipe primer solvent must be used on all PVC pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(c) [(d)] When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or at a point upstream of the backflow prevention assembly [device], an isolation valve shall be installed, if an isolation valve is not currently installed per §344.62(k) of this title (relating to Minimum Design and Installation Requirements) [present].

§344.65. Reclaimed Water.

Reclaimed water may be utilized in landscape irrigation systems if:

- (1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;
- (2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;
- (3) the irrigation system is installed using purple components;
- (4) the domestic potable water line providing water to the site is connected using an air gap or a reduced pressure principle backflow prevention device, in accordance with §290.47(f) [§290.47(i)] of this title (relating to Appendices);
- (5) a minimum of an eight-inch [eight inch] by eight-inch [eight inch] sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER - DO NOT DRINK" and "AGUA DE RECUPERACIÓN - NO BEBER"; and
- (6) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the water purveyor.

§344.66. Temporary Irrigation Systems.

(a) Temporary irrigation systems must be installed by a licensed irrigator or an irrigation technician under the supervision of a licensed irrigator.

(b) Temporary irrigation systems must meet the backflow prevention requirements in Subchapter E of this chapter (relating to Backflow Prevention and Cross-Connections).

(c) Temporary irrigation systems must be installed in accordance with §344.1(45) of this title (relating to Definitions).

(d) Temporary irrigation systems must have established a definite end date at which time the temporary irrigation system must be removed.

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

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Earliest possible date of adoption: March 1, 2020

For further information, please call: (512) 239-1806

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**SUBCHAPTER G. ADVERTISING,
CONTRACT, AND WARRANTY**

30 TAC §§344.70 - 344.72

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. These amendments are also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; and Texas Occupations Code, §1903.251, concerning License Required. These amendments are proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, these amendments are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.70. Advertisement.

(a) All vehicles used in the performance of irrigation services [installation, maintenance, alteration, repair, or service] must display the irrigator's license number in the form of "LI _____" in a contrasting color of block letters at least two inches high, visible on both outward sides of the vehicle.

(b) All forms of advertisement [written and electronic advertisements] for irrigation services, regardless of the type of media, must display the irrigator's license number in the form of "LI _____." Any form of advertisement[; including business cards, and estimates] which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number. Trailers that advertise irrigation services must display the irrigator's license number.

(c) At the location of the permanent structure where the irrigation business is primarily conducted and irrigation records are kept,

the [The] name, mailing address, and telephone number of the commission must be prominently displayed on a legible sign [and displayed] in plain view for the purpose of addressing complaints [at the permanent structure where irrigation business is primarily conducted and irrigation records are kept].

§344.71. Contracts.

(a) All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-235 [MC-178], P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.texas.gov [~~www.teeq.state.tx.us~~]." All contracts must include the irrigator's seal, signature, and date.

(b) All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation in Texas is regulated by the Texas Commission on [On] Environmental Quality (TCEQ) (MC-235 [MC-178]), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website [web site] is: www.tceq.texas.gov [www.teeq.state.tx.us]."

(c) An individual who agrees by contract to provide irrigation services as defined in §344.30 of this title (relating to License Required) shall hold an irrigator license issued under Chapter 30 of this title (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in §344.1(36) of this title (relating to Definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. If an irrigator installs a system pursuant to a pass-through contract, [the irrigator shall still be responsible for providing the irrigation system's owner or through contract.] the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this chapter. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work.

(d) The contract must include the dates that the warranty is valid.

§344.72. Warranties.

(a) On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required.

(b) An irrigator's written warranty on new irrigation systems must specify the irrigator's name, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-235 [MC-178], P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.texas.gov [www.teeq.state.tx.us]."

(c) On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative a written and sealed document that details the work performed and identifies the materials furnished [in the maintenance, alteration, repair, or service]. If a warranty is provided, the irrigator shall abide by the terms. The warranty document must include the irrigator's name and business contact information. The irrigator is responsible for all work that is performed by the irrigator or that is performed under the irrigator's direction on an irrigation system installed by the irrigator during the warranty period. The irrigator is not responsible for any work performed by any other individual on the same irrigation system.

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 January 16, 2020.

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Texas Commission on Environmental Quality
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SUBCHAPTER H. IRRIGATOR ADVISORY COUNCIL

30 TAC §344.80

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; TWC, §5.107, concerning Advisory Committees, Work Groups, and Task Forces; TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract; and under TWC, §49.238, concerning Irrigation Systems. The amendment is also proposed under Texas Occupations Code, §1903.001, concerning Definitions; Texas Occupations Code, §1903.002, concerning Exemptions; Texas Occupations Code, §1903.053, concerning Standards; Texas Occupations Code, §1903.151, concerning Council Membership; Texas Occupations Code, §1903.152, concerning Eligibility of Public Members; Texas Occupations Code, §1903.155, concerning Presiding Officer; Texas Occupations Code, §1903.157, concerning Meetings; Texas Occupations Code, §1903.158, concerning Per Diem; Reimbursement; Texas Occupations Code, §1903.159, concerning Council Duties; and Texas Occupations Code, §1903.251, concerning License Required. The amendment is proposed under Texas Local Government Code, §551.006, concerning Irrigation Systems. Finally, the amendment is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; and

THSC, §341.034, concerning Licensing and Registration of Persons Who Perform Duties Relating to Public Water Supplies.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.107, 37.001 - 37.015 and 49.238; Texas Occupations Code, §§1903.001, 1903.002, 1903.053, 1903.151, 1903.152, 1903.155, 1903.157, 1903.158, 1903.159, and 1903.251; Texas Local Government Code, §551.006; and THSC, §341.033 and §341.034.

§344.80. Irrigator Advisory Council.

(a) The Irrigator Advisory Council is composed of nine members that are appointed by the commission. Appointments to the council will be made without regard to race, creed, sex, religion, or national origin of the appointees. The purpose of the council is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters relating to landscape irrigation. The council has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Six members of the council must be licensed irrigators who are residents of the State of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques.

(c) Three members must be representatives of the public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

(d) It is grounds for removal from the council by the commission if a member:

(1) does not meet, at the time of the appointment, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council;

(2) does not maintain, during service on the council, the qualifications that are required by subsection (b) or (c) of this section for appointment to the council; or

(3) misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period.

(e) The members of the council serve staggered six-year terms, with the terms expiring February 1 of each odd-numbered year. For cases where a council member cannot finish their term, the replacement member will serve the remainder of the term.

(f) A member of the council is entitled to per diem as appropriated by the Texas Legislature for each day that the member engages in the business of the council. A member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as provided for in the General Appropriations Act.

(g) The council shall hold meetings at the call of the commission or chairman.

(h) A majority of the council constitutes a quorum for conducting business.

(i) The council will elect a chairman by a majority vote.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED AND NEW RULES AND REPEALING A RULE

Docket No. 2018-0294-RUL

Rule Project No. 2018-004-344-CE

On July 1, 2020 the Texas Commission on Environmental Quality (Commission) adopted new and amended rules and repealed a rule in 30 Texas Administrative Code Chapter 344, concerning Landscape Irrigation. The proposed rules and repeal were published for comment in the January 31, 2020 issue of the *Texas Register* (45 TexReg 694).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new and amended rules are hereby adopted, and the existing rule is repealed. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted and repealed rules and the preamble to the adopted and repealed 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 the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

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.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed