

The Texas Natural Resource Conservation Commission (commission) proposes new Subchapter F, East Texas Groundwater Management Area, §§294.60 - 294.63.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This proposed rulemaking adds new §§294.60 - 294.63 to designate a new groundwater management area (GMA) in the eastern portion of the state that would include all of Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties. The purpose of the proposed rulemaking is to provide the most suitable boundary for the management of the groundwater resources. The proposal is made in response to a petition requesting a designation of a GMA submitted on February 8, 2001 by Save Our Springs of North East Texas, Inc. on behalf of 57 landowners in Wood County and a March 21, 2001 commission decision regarding the petition to initiate rulemaking.

Landowner Petition and Commission Decision

The February 8, 2001 petition requested that the commission designate a GMA to include all of Wood County and that the GMA be designated with the objective of providing the most suitable area for the management of groundwater resources by a groundwater conservation district. The petition included resolutions supporting commission designation of a GMA from the Wood County Commissioners Court, City of Hawkins, City of Winnsboro, Hawkins Area Chamber of Commerce, and the Upshur County Commissioners Court.

In January 2001, the commission received copies of similar resolutions supporting the commission designation of a GMA in the area for the Carrizo-Wilcox Aquifer. Similar resolutions were submitted by the Wood Soil and Water Conservation District (WS&WCD) Number 444 (Wood County), the Upshur-Gregg Water Conservation District (WCD) Number 417 (Upshur and Gregg Counties), the Sulphur-Cypress WCD Number 419 (Camp, Franklin, Morris, and Titus Counties), and the Hopkins-Rains WCD Number 445 (Hopkins and Rains Counties).

On March 21, 2001, the commission considered the petition and instructed the executive director's staff to study whether a GMA should be designated in the area, and if they determined that one was appropriate, to propose a rule that would designate and delineate the area as a GMA. Because of the regional nature of the groundwater resources that occur in Wood and the surrounding counties, the commission also instructed the executive director's staff to evaluate the most suitable boundaries for the delineation of a GMA for the regional groundwater resources.

The petition was processed by the executive director's staff under the Administrative Procedure Act, Texas Government Code, §2001.021 and 30 TAC §§294.21 - 294.23 and §20.15. The petition was found to meet the requirements of Texas Water Code (TWC), §35.005 (Pre-Senate Bill 2, 2001) and 30 TAC §294.22, which provide for the landowner petition process for the designation of a GMA.

Prior to September 1, 2001, TWC, §35.004, Designation of Groundwater Management Areas, provided that the commission on its own motion, or in response to receiving a petition, may designate a GMA. Texas Water Code, §35.004 also provided that to the extent feasible, GMAs shall coincide with the

boundaries of a groundwater reservoir (aquifer) or subdivision of an aquifer. However, the statute allows the commission to consider other factors such as the boundaries of political subdivisions to delineate and designate GMAs to provide for the most suitable area to accomplish groundwater management.

Senate Bill (SB) 2, 77th Legislature, 2001, made significant changes to TWC, Chapter 35 that became effective on September 1, 2001. As amended by SB 2, the designation of GMAs will be under the jurisdiction of the Texas Water Development Board (TWDB). Texas Water Code, §35.004(a) as amended by SB 2, provides that the TWDB shall complete the initial designation of GMAs for all of the state's major and minor aquifers by September 1, 2003. Texas Water Code, §35.004(b) as amended by SB 2, however, provides that the commission may designate a GMA after September 1, 2001 for a petition filed and accepted by the commission according to its rules in effect before September 1, 2001, and that the commission shall act on the designation in accordance with §35.004 as amended. Texas Water Code, §35.005 and §35.006 were repealed.

Reason for the Rule and Purpose of GMA Designation

The commission proposes this rule to meet the commission's responsibility under TWC, Chapter 35 to designate GMAs. The proposed designation of the GMA would facilitate both the creation of locally managed groundwater conservation districts and regional cooperation by newly created districts to manage regional groundwater resources.

The purpose for designation of a GMA is two-fold. First, a GMA is a prerequisite for the creation of a groundwater conservation district through TWC, Chapter 36 landowner petition process. A GMA must be designated before a groundwater conservation district can be created administratively by the commission in response to a landowner district-creation petition. Groundwater management is accomplished by groundwater conservation districts as created and authorized under TWC, Chapter 36, or by special law. A GMA is only an identified geographic area and as such does not provide any entity with groundwater management authority. The designation of a GMA by the proposed new rules would simplify future landowner petitions for the creation of new groundwater conservation districts in the identified area. Secondly, the proposed designation would facilitate joint management planning among groundwater conservation districts that share the same aquifers. Groundwater conservation districts that are located in a common GMA are required under TWC, §36.108 to coordinate groundwater management planning for conservation of the common groundwater resources. The proposed new rules would define an area where future groundwater conservation districts will be required to coordinate groundwater management planning for the Carrizo-Wilcox Aquifer and other aquifers.

Previous GMA Designations for the Carrizo-Wilcox Aquifer

The Carrizo-Wilcox Aquifer is exposed on the land surface in a belt from Mexico northeasterly across Texas into Arkansas and Louisiana and dips toward the Gulf of Mexico. The commission, or its predecessors, have designated four regional GMAs for the Carrizo-Wilcox Aquifer, all of which are south and west of the Trinity River. In the southwestern part of the state, the Texas Board of Water Engineers designated Subdivisions 1 and 2 of the Underground Water Reservoir of the Carrizo-Wilcox

Sands in 1957. Subdivision 1 includes the Carrizo-Wilcox Aquifer in all or portions of Dimmit, Frio, La Salle, Medina, Maverick, Uvalde, and Zavalla Counties. Subdivision 2 includes the Carrizo-Wilcox Aquifer in all or portions of Atascosa, Bexar, McMullen, and Wilson Counties. In 1987, the Texas Water Commission designated Management Areas 3 and 4 of the Carrizo-Wilcox Aquifer.

Management Area 3 includes the Carrizo-Wilcox Aquifer in portions of Bastrop, Caldwell, DeWitt, Fayette, Gonzales, Guadalupe, and Lavaca Counties. Management Area 4 includes the Carrizo-Wilcox Aquifer in all or portions of Bastrop, Brazos, Burleson, Falls, Fayette, Freestone, Grimes, Lee, Leon, Limestone, Madison, Milam, Navarro, Robertson, Walker, and Williamson Counties.

The proposed rules do not include the previously designated areas and propose designation of a new GMA for the northern Carrizo-Wilcox Aquifer area. The proposed GMA would include all of Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties.

General Stratigraphy

The geologic units that contain groundwater resources in the proposed GMA are the Tertiary-age Midway Group, Wilcox Group, Claiborne Group, and Jackson Group. The Claiborne Group of the Eocene Epoch includes the major water-bearing formations in the east Texas area. These are, also from oldest to youngest, the Carrizo Sand, Queen City Formation, Sparta Formation, and Yegua Formation. The lower portion of the Carrizo-Wilcox Aquifer includes units of the Wilcox Group and the upper portions consists of the Carrizo Sands of the Claiborne Group. The Queen City and Sparta

Aquifers include the Queen City and Sparta Formations of the Claiborne Group, respectively. The Yegua-Jackson Aquifer includes the upper unit of the Claiborne Group, the Yegua Formation, and the overlying Jackson Group of the Eocene Epoch. The Jackson Group includes the Witsett, Manning, Wellborn, and Cadell Formations.

Rock units to the north and west of the proposed GMA are older, Cretaceous-age rocks that are not geologically or hydrologically associated with those in the proposed GMA. The primary Cretaceous Aquifers to the northwest include the Trinity Group, Woodbine, Nacatoch, and Blossom Aquifers.

Rock units to the south are younger Tertiary-age (Oligocene-Miocene Epoch) rocks where the primary major aquifer is the Gulf Coast Aquifer. The lower most (oldest) unit of the Gulf Coast Aquifer is the Catahoula Formation that acts as a restrictive confining system, separating the aquifer from the underlying Jackson Group.

Geologic Controls

Rock units including the Tertiary-age Aquifers east of the Balcones Fault System in central Texas generally dip toward the Gulf of Mexico. The northern portion of the Carrizo-Wilcox Aquifer is more complex structurally than it is in its southern extent in existing management areas 1 - 4. The aquifer crops out in two distinct bands (where the aquifer units are exposed at the surface), one extending from management area 4 at the Trinity River northeasterly through Henderson, Van Zandt, Rains, Wood, Hopkins, Franklin, Titus, Morris, Cass, and Bowie Counties; the other, caused by the Sabine Uplift to the southeast, in Marion, Harrison, Gregg, Rusk, Panola, Shelby, Nacogdoches, San Augustine, and

Sabine Counties. Between these two outcrop areas lies the East Texas structural basin, a trough into which sediments of the aquifer dip from both sides. South of Anderson, Cherokee, Nacogdoches, San Augustine, and Sabine Counties, the aquifer dips toward the Gulf Coast. The Queen City Aquifer outcrops southeast of the western Carrizo-Wilcox outcrop and overlies the downdip portion of the Carrizo-Wilcox Aquifer in the East Texas structural basin. South of Cherokee and Anderson Counties, the sediments dip to the south. The outcrop of the Sparta Aquifer is southeast of the outcrop of the Queen City Aquifer and overlies the downdip portion of the Queen City Aquifer in Houston, Anderson, Cherokee, Angelina, and Nacogdoches Counties. The sediments that make up the aquifer dip to the south and southeast toward the Gulf Coast. The outcrop of the Yegua-Jackson Aquifer occurs south of the outcrop of the Sparta Aquifer. This aquifer crops out in an east to west direction across Trinity, Angelina, San Augustine, and Sabine Counties and dips south-southeast toward the Gulf Coast.

Groundwater Use in Proposed Management Area

Based on 1997 estimated groundwater pumpage data maintained by the TWDB, the Carrizo-Wilcox, Queen City, Sparta, and Yegua-Jackson Aquifers are the primary aquifers utilized within the proposed GMA. Pumpage of groundwater from the Carrizo-Wilcox Aquifer alone accounted for greater than 70% of the total groundwater pumpage in 20 of the 27 counties (Anderson, Angelina, Camp, Cass, Cherokee, Franklin, Harrison, Henderson, Hopkins, Morris, Nacogdoches, Panola, Rains, Rusk, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood) and greater than 50% of the total groundwater pumpage in two additional counties, Gregg and Marion. Combined groundwater pumpage from the Carrizo-Wilcox, Queen City, and Sparta Aquifers accounted for greater than 95% of the total

groundwater pumpage in all of these counties except for Angelina (87%), Hopkins (87%), Rains (80%), and Titus (94%).

Significant groundwater pumpage from the Yegua-Jackson Aquifer occurs in five of the counties in the southern part of the proposed GMA. The 1997 estimated groundwater pumpage from the Yegua-Jackson Aquifer in Angelina, Houston, Sabine, San Augustine, and Trinity Counties accounted for 12%, 43%, 78%, 52%, and 97%, respectively, of the total groundwater pumpage in these counties. Combined groundwater pumpage from the Yegua-Jackson Aquifer and the Carrizo-Wilcox, Queen City, and Sparta Aquifers accounted for greater than 95% of the total groundwater pumpage in all five of these counties.

Groundwater pumpage from other aquifers delineated by the TWDB also occurs in the proposed GMA. The 1997 estimated groundwater pumpage from the Gulf Coast Aquifer accounted for 3% of the total pumpage in Trinity County. Pumpage from the Nacatoch Aquifer accounted for 44% and 11% of the total groundwater pumpage in Bowie and Hopkins Counties, respectively. Pumpage from the Blossom Aquifer accounted for 5% of the total pumpage in Bowie County.

Regional Assessment of Groundwater Resources

The Carrizo-Wilcox Aquifer is the primary groundwater resource in the proposed GMA. This aquifer is identified as a major aquifer by the TWDB because it supplies large quantities of water to a large area of the state. The Queen City and Sparta Aquifers are also important groundwater resources in the proposed GMA. These aquifers are identified by the TWDB as minor aquifers because they supply

large quantities of water in small areas of the state or small quantities of water in large areas of the state. The Yegua-Jackson Aquifer has not been delineated by the TWDB to date; however, this aquifer is also an important resource in the southern part of the proposed GMA. The Trinity Group Aquifer is the major aquifer to the northwest, and the Gulf Coast Aquifer is the major aquifer to the south of the proposed GMA.

The Carrizo-Wilcox, Queen City, Sparta, and Yegua-Jackson Aquifers are regional aquifers. They extend from the Arkansas and Louisiana borders into south Texas. The Carrizo-Wilcox and Yegua-Jackson Aquifers extend to the Rio Grande and the Queen City and Sparta Aquifers extend into Frio and La Salle Counties to the south. Both the Carrizo-Wilcox and Queen City Aquifers underlie Wood and surrounding counties and the Sparta and Yegua Formation-Jackson Group Aquifers are regionally and geologically associated with the other two aquifers. The designation of the GMA by the proposed new rules delineates an area where regional groundwater management planning for these overlapping aquifers can be coordinated by existing and any future groundwater conservation districts.

Although the Nacatoch Aquifer occurs in parts of Bowie, Franklin, Hopkins, Morris, Rains, and Titus Counties and the Blossom Aquifer occurs in Bowie County, the Carrizo-Wilcox Aquifer is the primary major aquifer in this six-county area. The commission has proposed that all of the territory in these counties should be included in the proposed GMA because of the shared primary major aquifer, but that other counties to the north and west that do not share the Carrizo-Wilcox Aquifer should not. Regional groundwater management planning for the Trinity Group Aquifer and the other minor Cretaceous

Aquifers outside of the proposed GMA would be better accomplished through a separate designation of a different GMA.

In the proposed GMA, the Gulf Coast Aquifer occurs only in the extreme southern part of Angelina, Sabine, and Trinity Counties. Again, the commission has proposed that all of the territory in these three counties should be included in the proposed GMA due to the shared Carrizo-Wilcox major aquifer, but that other counties to the south should not. Regional groundwater management planning for the Gulf Coast Aquifer to the south would be better accomplished through a separate designation of a different GMA.

Proposed Boundaries

The commission considered numerous factors to develop the proposed rules. The commission considered the purpose of a GMA for aquifers in Wood and the surrounding counties. This purpose is to delineate the most suitable area for the management of groundwater resources. To delineate the proposed GMA, the commission evaluated the regional nature, extent, and use of the aquifers shared by Wood and the surrounding counties. The commission reviewed and evaluated the extent and delineation of the previously designated GMAs to the south and west for the Carrizo-Wilcox Aquifer. The commission also evaluated the extent, location, and relationship of other major and minor aquifers to the north and west and to the south of the proposed area and the extent, location, and relationship of the aquifers within the area. The commission considered the directions given to the TWDB in SB 2 to designate GMAs for all of the state's major and minor aquifers. The commission also considered other

factors such as political subdivision boundaries because such boundaries are often recognized and preferred during locally-initiated groundwater conservation district creation efforts.

Texas Water Code, Chapter 35 provides that to the extent feasible, boundaries of aquifers shall be considered when designating GMAs. Chapter 35 also provides that other factors, including the boundaries of political subdivisions, may be considered. Previous GMA designations by the commission or its predecessors have been delineated by hydrological boundaries or by a combination of hydrological and political subdivision (county) boundaries. While designating GMAs by hydrological boundaries is the preferred practice, political boundary considerations are often major considerations in establishing groundwater conservation district boundaries. Generally, the political boundaries preferred by petitioners or by citizens initiating district creation do not coincide with hydrogeologic boundaries.

Texas Water Code, Chapter 35 provides that each GMA shall be designated with the objective of providing the most suitable area for management of the groundwater resources, and TWC, Chapter 36 provides that groundwater conservation districts are the state's preferred method of groundwater management. There are presently 87 groundwater conservation districts created in the state; 52 are presently established and the other 35, created by special Acts of the 77th Legislature, 2001, will require confirmation of the voters to be established. Of the 87 districts, the citizens that have initiated district creation have preferred strict county boundaries for 68 (78%) of the districts. A combination of county boundaries and other types of boundaries account for an additional 12 (14%) of the districts. Therefore, county boundaries have been a primary consideration for 92% of all groundwater conservation districts created to date. Only seven of the 87 (8%) districts were created strictly on

hydrological boundaries. The East Texas Groundwater Management Area (ETGMA) is proposed to be delineated to include full counties because it is most likely that these types of boundaries would be recognized and preferred by citizens in future groundwater conservation district creation efforts.

The commission considered the boundaries of major and minor aquifers, pumpage from aquifers, and political subdivision boundaries that would facilitate groundwater conservation district creation in developing the proposed GMA delineation. The commission proposes that the delineated boundaries are the most suitable boundaries for management of the regional groundwater resources that occur in the east Texas area.

Of the 27 proposed counties, 19 (Anderson, Angelina, Camp, Cass, Cherokee, Gregg, Harrison, Houston, Marion, Morris, Nacogdoches, Panola, Rusk, Sabine, San Augustine, Shelby, Smith, Upshur, and Wood) are entirely underlain or almost entirely underlain by the Carrizo-Wilcox, Queen City, Sparta, or Yegua-Jackson Aquifers. The location of the aquifers were the primary considerations for inclusion of these counties.

In addition to the location of the aquifers, the commission considered groundwater use in evaluating whether the full extent of a county should be included in the proposed area. Part of Trinity County, on the southern boundary of the proposed GMA, is underlain by the Gulf Coast Aquifer. However, the 1997 estimated groundwater pumpage from the Yegua-Jackson Aquifer in Trinity County accounted for 97% of the total groundwater use, while pumpage from the Gulf Coast Aquifer accounted for only 3%

of the total groundwater use. Based on this percentage of groundwater pumpage, the commission has proposed that all of Trinity County be included within the proposed GMA.

Seven of the northern counties (Henderson, Van Zandt, Rains, Hopkins, Franklin, Titus, and Bowie) in the proposed GMA are partially underlain by the Carrizo-Wilcox Aquifer or both the Carrizo-Wilcox and Queen City Aquifers and partially underlain by other aquifers that are primarily located outside of the proposed area. Again, the commission considered groundwater use in evaluating whether the full extent of these counties should be included in the proposed area. In six of the counties (Henderson, Van Zandt, Rains, Hopkins, Franklin, and Titus), groundwater pumpage from either the Carrizo-Wilcox Aquifer or both the Carrizo-Wilcox and Queen City Aquifers accounted for greater than 80% of the total pumpage and exceeded 95% of the total groundwater pumpage in Henderson, Van Zandt, and Franklin Counties. Based on these percentages of groundwater pumpage, the commission has proposed that all of these six counties be included within the proposed GMA.

Bowie County is underlain by one major aquifer, the Carrizo-Wilcox Aquifer; two minor aquifers, the Nacatoch and Blossom Aquifers; and other undifferentiated sources. The commission considered groundwater use in evaluating whether the full extent of the county should be included in the proposed area. The 1997 TWDB estimated groundwater pumpage data for the county indicated that pumpage from the Carrizo-Wilcox Aquifer accounted for 38% of the total pumpage. Pumpage from the Nacatoch and Blossom Aquifers accounted for 44% and 5%, respectively, of the total groundwater pumpage. Groundwater pumpage from undifferentiated sources, that is not from a major or minor aquifer specifically identified in the TWDB data set, accounted for 14% of the total pumpage in the

county. Since groundwater pumpage in Bowie County relies heavily upon both the Carrizo-Wilcox and Nacatoch Aquifers, the commission also considered other issues related to political subdivision boundaries and groundwater management.

The commission considered three possible GMA delineation scenarios for Bowie County: 1.) include the full extent of the county in the proposed GMA; 2.) divide the county hydrologically and only including the area underlain by the Carrizo-Wilcox Aquifer in the proposed GMA; or 3.) exclude the full extent of the county from the proposed GMA.

Under the first option, inclusion of all of Bowie County in the proposed GMA, the proposed area would include the full extent of the regional Carrizo-Wilcox Aquifer and would recognize boundaries that are generally preferred in groundwater conservation district creation efforts. While estimated groundwater pumpage from the Carrizo-Wilcox Aquifer in Bowie County does not represent the majority of total pumpage, it does represent a significant percentage of the pumpage. Including the full county in the proposed area would assure groundwater conservation district coordination if more than one district is created in the east Texas area. The disadvantage of full-county inclusion would be the limitation placed on coordinated management planning for the Nacatoch Aquifer should a GMA be designated specifically for this minor aquifer.

The commission considered a second option, dividing Bowie County hydrogeologically and only including the area underlain by the Carrizo-Wilcox Aquifer in the proposed GMA. Based on review of district creations, this option may be problematic for groundwater conservation district creation.

Historically, landowners that have initiated groundwater conservation district creation efforts, either under TWC, Chapter 36 or through special law, have preferred recognizable or politically standing boundaries. If only part of the county were included in the proposed area, the commission could not, in response to a landowner district creation petition, create a district that would include all of the county. Furthermore, the commission must consider financial information in the proceedings to create a groundwater conservation district. An application to create a groundwater conservation district must include estimates for projected revenue and expense for the proposed district. If only a portion of the county was included in the proposed area, it may be likely that there would not be sufficient revenue to finance district operation and maintenance or that revenue rates would have to be established at levels that would be unacceptable to the voters. Either of these situations would potentially lead to a proposed district the commission could not create, or a proposed district that would likely fail to be confirmed by the voters. Under this scenario, the only alternative for the creation of a county-wide groundwater conservation district would be through special law.

The commission considered a third option, excluding the full extent of Bowie County from the proposed GMA. This option would not provide for the most suitable area for management of the Carrizo-Wilcox Aquifer in east Texas. This option would isolate a single part of the Carrizo-Wilcox Aquifer from the remaining part of the regional aquifer, and thus would inhibit coordinated groundwater management for the regional resource and remove the ability of a groundwater conservation district to redress the failure of coordinated management with the commission under TWC, §36.108 and §36.3011.

The commission proposes that the full extent of Bowie County should be included in the proposed ETGMA. The commission determined that including the full extent of the county would be beneficial to the citizens of Bowie County should they choose, in the future, to petition the commission for the creation of a groundwater conservation district. Furthermore, the inclusion of the county in the proposed GMA would assure that coordinated management of the Carrizo-Wilcox Aquifer would be accomplished if such a district were created either by the commission or by the legislature.

SECTION BY SECTION DISCUSSION

Proposed new §294.60, Purpose and Scope, provides the purpose and scope of the proposed rules. The proposed section provides that the purpose of the rule is to designate the ETGMA. The proposed new section reiterates that the rules do not empower any entity with groundwater management authority; that designation of a GMA is a prerequisite for the creation of a groundwater conservation district through TWC, Chapter 36 landowner petition process; and that groundwater conservation districts within the management area will be subject to the management planning provisions of TWC, §36.108.

Proposed new §294.61, Definitions, provides definitions for certain words and terms. The proposed section is included to clearly define these words and terms as used in the proposed rules. The definitions provided for the Carrizo-Wilcox, Queen City, and Sparta Aquifers are based on previous aquifer-delineation work of the TWDB (Ashworth, J.B. and Flores, R.R., Texas Water Development Board Report LP-212, June 1991 and Ashworth, J.B. and Hopkins, J., Texas Water Development Board Report 395, November 1995). The definition of the Yegua-Jackson Aquifer is based on ongoing aquifer evaluation work of the TWDB and previously published TWDB reports (Anders, R.B., Texas

Water Development Board Report 37, January 1967 and Guyton, W.F. and Associates, Texas Water Development Board Report 110, March 1970). Groundwater management area is given the same definition as provided by TWC, §35.002(11). The definition of other aquifers identifies additional groundwater resources that are located in the proposed GMA.

Proposed new §294.62, Designation of East Texas Groundwater Management Area (ETGMA), provides for the designation of the proposed ETGMA and provides that the area is designated for the management of the Carrizo-Wilcox Aquifer, Queen City Aquifer, Sparta Aquifer, Yegua-Jackson Aquifer, and other aquifers.

Proposed new §294.63, Boundaries, provides the boundaries for the proposed ETGMA. The proposed ETGMA will have boundaries that are coterminous with, that is having the same boundaries, and include all territory within Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties. The boundaries of the ETGMA are shown on Figure 30 TAC §294.63, which appears in this issue of the *Texas Register* in the Tables and Graphics Section.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rulemaking is in effect, there will be no fiscal implications for units of state and local government as a result of administration and enforcement of the proposed

rulemaking.

The proposed rulemaking is intended to designate the ETGMA, which encompasses all of Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties. The purpose of the proposal is to provide the most suitable area for the management of the groundwater resources. The effect of this rulemaking is only the identification of an area that will make up the ETGMA, and does not provide any entity within the area with groundwater management authority.

Designation of a GMA does not require the creation of a groundwater conservation district; however, it is a prerequisite for the creation of a groundwater conservation district by the commission in response to a landowner petition under TWC, Chapter 36. The proposed rulemaking does not create a groundwater conservation district; however, it does designate an area where TWC, Chapter 36 requires existing and future groundwater districts created in the area to coordinate groundwater management planning.

The proposed rulemaking is procedural in nature and does not introduce additional regulatory requirements for units of state and local government; therefore, the commission anticipates no fiscal impacts due to implementation of the proposed rulemaking.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be to facilitate the landowner petition process for future groundwater conservation districts created within counties affected by this rulemaking, and to encourage regional coordinated groundwater management planning.

This rulemaking is intended to identify an area that will make up the ETGMA, and does not provide any entity within the area with groundwater management authority. Designation of a GMA is a prerequisite for the creation of a groundwater conservation district. Although the proposal does not create a groundwater conservation district, it does designate an area where TWC, Chapter 36 requires existing and future groundwater districts created in the area to coordinate groundwater management planning.

The proposed rulemaking is procedural in nature and does not introduce additional regulatory requirements for individuals and businesses; therefore, the commission anticipates no fiscal impacts due to implementation of the proposed rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to any small or micro-businesses as a result of the proposed rulemaking, which is intended to identify an area that will make up the ETGMA. The proposed rulemaking does not create groundwater conservation districts; however, it does designate an area

where TWC, Chapter 36 requires existing and future groundwater districts created in the management area to coordinate groundwater management planning.

The proposed rulemaking is procedural in nature and does not introduce additional regulatory requirements for small and micro-businesses; therefore, the commission anticipates no fiscal impacts due to implementation of the proposed rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule.” “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 section of the state. While the purpose of the proposed rules is ultimately, if a groundwater conservation district is created, to promote coordination of groundwater management within the area which could provide protection to the environment, the proposed rules do not adversely affect in a

material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a section of the state. The designation of a GMA in itself does not have any regulatory effect. The subsequent creation of a groundwater conservation district within the GMA would have a regulatory effect.

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 conducted a takings impact assessment for this rule under Texas Government Code, §2007.043, the Texas Private Real Property Rights Preservation Act. This rulemaking is intended to designate an area as a GMA under TWC, §35.004. This section provides that pursuant to a petition filed and accepted by the commission before September 1, 2001, the commission can designate by rule GMAs to provide the most suitable area for the management of groundwater. This rulemaking does not impact any person's private real property because the designation of a GMA does not, in itself, lead to any regulatory requirements on the land in the area.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor do they affect any action or

authorization identified in §505.11. This proposed rulemaking concerns only the designation of a GMA. Therefore, the rulemaking is not subject to the CMP.

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

ANNOUNCEMENT OF HEARING

The commission will hold three public hearings on this proposal. The first hearing will be in Quitman on November 12, 2001 at 2:00 p.m. in the Carroll Green Civic Center, 602 McAllister St. The second hearing will be in Tyler on November 12, 2001 at 6:00 p.m. in the Regional Training and Development Center, 1530 SSW Loop 323. The third hearing will be in Nacogdoches on November 13, 2001 at 1:00 p.m. in the City Council Commission Chambers, 202 E. Pilar Street. The hearings are 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 hearings; however, commission staff members will be available to discuss the proposal 30 minutes before the hearings and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-012-294-WT. Comments must be received by 5:00

p.m., December 10, 2001. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §35.004, which gives the commission authority to designate GMAs after September 1, 2001 if a petition has been filed and accepted prior to the date.

The proposed new sections implement TWC, §35.004.

SUBCHAPTER F: EAST TEXAS GROUNDWATER MANAGEMENT AREA

§§294.60 - 294.63

§294.60. Purpose and Scope.

(a) The purpose of this subchapter is to designate the East Texas Groundwater Management Area (ETGMA) as a geographic area that is suitable for groundwater management.

(b) The designation of the ETGMA does not provide any entity with the powers and authorities conferred upon a groundwater conservation district under Texas Water Code (TWC), Chapter 36. A groundwater management area is a prerequisite for the creation of a groundwater conservation district through the TWC, Chapter 36 landowner petition process.

(c) All groundwater conservation districts in the ETGMA are required to coordinate groundwater management planning under TWC, §36.108.

§294.61. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context indicates otherwise.

(1) Carrizo-Wilcox Aquifer -- An aquifer which extends as an arcuate belt from Mexico northeasterly across Texas into Arkansas and Louisiana. The lower portion of the aquifer includes units of the Wilcox Group; the upper portion consists of the Carrizo Sand of the Claiborne Group. The northwest boundary of the Carrizo-Wilcox Aquifer is the western updip edge of the outcrop of the Wilcox Group. The southeastern boundary is the downdip extent of the aquifer that contains water with dissolved solids concentrations of less than 3,000 milligrams per liter.

(2) Groundwater management area -- An area that is suitable for management of groundwater resources.

(3) Queen City Aquifer -- An aquifer which extends as a belt from the Frio River in south Texas northeastward into Louisiana. The aquifer includes the Queen City Formation of the Claiborne Group. The northwest boundary of the Queen City Aquifer is the western updip edge of the outcrop of the Queen City Formation. The southeastern boundary is the downdip extent of the aquifer that contains water with dissolved solids concentrations of less than 3,000 milligrams per liter.

(4) Sparta Aquifer -- An aquifer which extends as a narrow band from the Frio River in south Texas northeastward into Louisiana. The aquifer includes the Sparta Formation of the Claiborne Group. The northwest boundary of the Sparta Aquifer is the western updip edge of the outcrop of the Sparta Formation. The southeastern boundary is the downdip extent of the aquifer that contains water with dissolved solids concentrations of less than 3,000 milligrams per liter.

(5) Yegua-Jackson Aquifer -- An aquifer that extends as a narrow band from the Rio Grande in south Texas northeastward across the state to the Sabine River and Louisiana. The aquifer includes the Yegua Formation of the Claiborne Group and the Whitsett, Manning, Wellborn, and Cadell Formations of the Jackson Group. The northwest boundary of the Yegua-Jackson Aquifer is the western updip edge of the outcrop of the Yegua Formation and the southwestern boundary is the western updip edge of the outcrop of the younger Catahoula Formation. The aquifer does not include the Catahoula Formation or other younger formations deposited along the Gulf Coast.

(6) Other aquifers -- Other aquifers would include, but not be limited to:

(A) the Nacatoch Aquifer that is located in portions of Bowie, Franklin, Hopkins, Morris, Rains, and Titus Counties;

(B) the Blossom Aquifer that is located in a portion of Bowie County;

(C) the Gulf Coast Aquifer that is located in portions of Angelina, Sabine, and Trinity Counties; and

(D) any other undifferentiated groundwater resources that are utilized in the groundwater management area.

§294.62. Designation of East Texas Groundwater Management Area (ETGMA).

The ETGMA, as described in §294.63 of this title (relating to Boundaries), is designated as a groundwater management area. The ETGMA is designated for the management of the Carrizo-Wilcox Aquifer, Queen City Aquifer, Sparta Aquifer, Yegua-Jackson Aquifer, or other aquifers.

§294.63. Boundaries.

The boundaries of the East Texas Groundwater Management Area (ETGMA) are coterminous with and include all territory within Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties. The boundaries of the ETGMA are shown in the following figure.

Figure: 30 TAC §294.63

Figure: 30 TAC §294.63

EAST TEXAS GROUNDWATER MANAGEMENT AREA

