

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Subchapter B, Creation of Water Districts, §293.12; and Subchapter L, Dissolution of Districts, §293.131 and §293.132. The commission also adopts the repeal of Subchapter B, Creation of Water Districts, §293.16; Subchapter C, Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas, §293.21; Subchapter D, Appointment of Directors, §293.36 and §293.37; and Subchapter L, Dissolution of Districts, §293.137. The commission also adopts new Subchapter C, Special Requirements for Groundwater Conservation Districts, §§293.17 - 293.23. Sections 293.18 - 293.20 and 293.22 are adopted *with changes* to the proposed text as published in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3939). Sections 293.12, 293.16, 293.17, 293.21, 293.23, 293.36, 293.37, 293.131, 293.132, 293.137 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The revisions implement portions of Senate Bill (SB) 2, 77th Texas Legislature, 2001, which amended Texas Water Code (TWC), Chapters 35 and 36 relating to priority groundwater management areas (PGMAs), groundwater management areas (GMAs), and groundwater conservation districts (GCDs). The revisions to Chapter 293 implement SB 2, §§2.26, 2.28, 2.34 - 2.40, 2.48, and 2.55 - 2.57. In a related rulemaking, revisions to 30 TAC Chapter 294, Underground Water Management Areas, which implement SB 2, §§2.22 - 2.29, 2.32, 2.33, and 13.02, also appear in this issue of the *Texas Register*.

Adopted modifications to Chapter 293 implement SB 2 provisions that change commission processes and procedures for the creation of GCDs in GMAs and in PGMAs, and commission enforcement

options and procedures relating to GCD management planning and joint planning. The adopted rules revise agency processes to streamline creation of GCDs in response to landowner petitions in accordance with TWC, §§36.013 - 36.016 as amended by SB 2. These adopted changes provide for commission certification of a complete petition submittal replacing a detailed engineering report evaluation; provide for a public hearing replacing a contested case hearing; and provide specific, limited bases for commission rejection of a landowner GCD-creation petition.

The adopted rules also implement TWC, §36.0151, by revising agency processes on the commission-creation of GCDs in a designated PGMA. In the streamlined PGMA designation process, the commission may create a GCD on its own motion under certain situations. The adopted rules change GCD creation in PGMA designated after September 1, 2001 from a contested case hearing to a commission order without hearing. The adopted rules provide a procedure for creation of GCDs in a PGMA designated before September 1, 2001, that includes a district creation hearing process.

The adopted rules implement TWC, §§36.108, 36.3011, 36.303, and 36.3035 by amending and developing new rules relating to commission enforcement responsibilities associated with existing GCD management planning requirements and new joint management planning requirements for GCDs in a common GMA. Under TWC, §36.108, as amended by SB 2, §2.47, a GCD with good cause may petition for a peer panel review of a GCD if the GCD refused to join in the joint planning process or the GCD has failed to adopt, implement, or enforce its rules to protect groundwater resources. The new rules follow the statute and provide for developing a peer review process with review panel findings subject to commission enforcement actions, add procedures for requesting the Texas attorney

general to place a GCD into receivership, and repeal provisions for removing a GCD's taxing authority as an enforcement action.

The commission adopts the repeal of existing GCD-specific provisions in §§293.16, 293.21, 293.36, 293.37, and 293.137, and adopts new Subchapter C, Special Requirements for Groundwater Conservation Districts, with new provisions that are specific to GCDs. The adopted rules in new Subchapter C consolidate existing GCD-specific provisions that implement existing statutes and implement the new provisions of SB 2. The commission adopts this consolidation of GCD-specific provisions for three reasons. First, all types of water districts are subject to TWC, Chapter 49, Provisions Applicable to All Districts, except for GCDs which are specifically exempted from other laws governing the administration or operation of districts under TWC, §36.052. Secondly, hearings for the creation of all other types of water districts are upon request except for GCDs where public meetings are required by the statute. Lastly, a consolidation of the GCD-specific provisions will allow the public to more easily understand commission processes and commission, landowner, and GCD groundwater management responsibilities.

These adopted revisions are being coordinated with an ongoing rulemaking in Chapter 293 under Rule Log Number 2001-054-293-WT for the implementation of SB 1444; House Bill (HB) 2992; 702; and 2912, Article 20.2, 77th Legislature, 2001. Proposed revisions to Chapter 293 in that rulemaking were published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 2984).

SECTION BY SECTION DISCUSSION

Subchapter B: Creation of Water Districts

Section 293.12, Creation Notice Actions and Requirements, is amended to remove GCD-specific provisions in subsections (a) and (d) and to reletter the remaining sections. The removed provisions are amended to implement statutory changes and are moved to new §293.18.

Section 293.16, Expansion of an Existing Groundwater Conservation District's Management Authority, is repealed. Language addressing expansion of an existing GCD's management authority is adopted as new §293.21.

Adopted New Subchapter C: Special Requirements for Groundwater Conservation Districts

New §293.17, Purpose, states that the purpose of the new subchapter is to implement TWC, Chapter 36 provisions for commission implementation relating to GCD creation and requirements of GCDs. The new subchapter provides the processes and requirements specific to the creation of GCDs on landowner petitions; commission-initiated creation of GCDs in PGMA's; and noncompliance review and enforcement relating to GCD failure to meet requirements for management planning and joint planning within a GMA.

New §293.18, Creation of a Groundwater Conservation District in a Groundwater Management Area, provides procedures for landowner petition submittal and commission action for the creation of GCDs in GMA's. New subsection (a) provides for the filing and contents of a complete GCD creation submittal. New subsection (b) provides the requirements and contents of a landowner petition for the

creation of a GCD in a GMA. New subsection (c) provides the requirements for supporting information for the GCD creation submittal. The supporting information is needed by the executive director to evaluate the boundaries, proposed groundwater management projects, temporary director qualifications, petition signatures, financial information for the proposed district, and statements that indicate that copies of the petition have been distributed. The commission has revised §293.18(c)(1)(A) to require the petitioners to provide a metes and bounds description of the proposed boundaries of the proposed GCD if those boundaries differ from a political subdivision boundary. The commission removed proposed language that exempted this requirement if the proposed district boundaries were based on the boundaries of a designated GMA. This revision was made because the commission does not know at this time if the Texas Water Development Board (TWDB) will use a metes and bounds description in its GMA designations and such boundary descriptions are necessary for the executive director to verify petition signatures and for the commission to delineate GCD boundaries. New subsection (d) provides the procedures for executive director review of landowner petitions for the creation of a GCD in a GMA. New subsection (e) provides for the publication and direct mailing of notice of a complete GCD creation submittal and the time and place of the public meeting to receive comments on a landowner GCD creation petition. The subsection provides that the public meeting must be conducted within 60 days of the notice.

In order to ensure that landowner petitions are accessible to the public, subsections (c) and (e) have been revised to require petitioners to make a copy of the petition and supporting information available for public inspection. Subsection (c) has been revised to require that petitioners provide access to the petition and supporting information to all interested individuals and entities at the earliest feasible time.

The notice requirements of subsection (e) have been revised to clarify the availability of the petition and supporting information for public inspection and to require the petitioners to provide proof of notice posting. These revisions will assure that a copy of the petition and supporting information is available for public inspection during the executive director's review and during the time period leading up to the public meeting on the issue.

New subsection (f) provides for executive director actions following the public meeting. The commission has revised the subsection to be more consistent with the statute by clarifying language relating to the executive director recommendation on the petition. As revised, the executive director will summarize the public meeting comments and make a recommendation to the commission on whether the petition, not the submittal, is administratively complete and should be certified. New subsection (g) provides a 90-day time frame after the public meeting for commission action on a landowner petition; certification of a complete GCD creation petition that meets statutory requirements; and appointment of temporary directors. The new subsection provides the statutory findings necessary for the commission certification or denial of a GCD creation petition and landowner opportunity to resubmit a denied petition.

New §293.19, Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area, provides commission procedures for the creation of GCDs in designated PGMA's. New subsection (a) provides procedures for commission creation of GCDs in PGMA's designated after September 1, 2001, subject to statutory provisions amended by SB 2. The subsection implements new statutory requirements to identify areas in the PGMA that have not created

a GCD and recommend GCD creation consistent with the PGMA designation order. The subsection provides for the executive director's recommendation, in the form of a proposed order, to be filed with the chief clerk and for the chief clerk to mail notice to water stakeholders or any other persons identified in the PGMA designation hearing of the place and time when the commission will consider the GCD-creation action. The commission will not hold an evidentiary hearing on the district creation. New subsection (b) provides procedures for commission creation of GCDs in PGMA designated before September 1, 2001. The new section provides for an executive director report to identify areas in pre-September 1, 2001 PGMA that have not created a GCD and a recommendation of whether to create one or more GCDs, to add the identified areas to an existing GCD, or a combination of these actions. The new subsection provides for mailed and published notice of the executive director's report and recommendations and date, time, and location of a contested case hearing on the report and recommendations. The new subsection is adopted to develop the evidentiary record necessary for commission creation of a GCD in a PGMA. Under the statute prior to SB 2, this evidentiary record was not developed in the PGMA designation process or hearing. The subsection defines the scope of evidentiary hearing considerations on GCD-creation action. New subsection (c) provides for commission action to create GCDs in PGMA. The subsection implements new SB 2 requirements and provides for the contents of a commission order; for the appointment of temporary directors by county commissioners courts; and for the temporary directors to call an election to authorize the district, to assess taxes, and to elect permanent directors. The commission corrected a typographical error in §293.19(c)(3) to make one of the references of this subsection read "36.059(b)" instead of "36.059(c)." New subsection (d) provides for commission action to recommend that areas in a PGMA designated before September 1, 2001 be added to an existing GCD. The new section refers to procedures provided

in new §294.44, Adding a PGMA to an Existing Groundwater Conservation District, which implement SB 2 changes.

New §293.20, Records and Reporting, provides guidance to GCDs related to recordkeeping and reporting. New subsection (a) provides that GCDs are subject to the requirements of TWC, Chapter 36 and/or the special law if created in such a manner. The commission adopts the new subsection to provide requirements in the statute that the State Auditor's Office and the commission have identified as common areas of noncompliance during recent GCD management plan audits and are subject to enforcement action by the commission. New subsection (b) provides a listing of documentation that GCDs are required to submit to the commission. This documentation is required by statute or is necessary for the commission to implement its requirements under the statute for enforcement of GCD management plan requirements. The new provision will enable the commission to maintain accurate supervision files of GCDs for the statutory implementation and public inspection. Requirements of the new provision include documentation relating to the creation of the GCD, the election of directors for the GCD, and the changing of boundaries by the GCD. New subsection (c) provides requirements for the filing of GCD management plans necessary for commission oversight. The new subsection implements existing and new statutes and provides that a GCD must forward a copy of its certified groundwater management plan or amended plan to the regional water planning groups that the GCD is located within, to other GCDs that are located in a common GMA, and to the executive director. The subsection provides that GCDs must provide documentation to the executive director that such action has been taken. This documentation is necessary for the commission to implement its statutory responsibilities relating to GCD management plan enforcement and maintenance of accurate district

supervision files for public inspection. New subsection (d) provides for documentation requests from the executive director to GCDs to determine statutory compliance relating to noncompliance review under TWC, Chapter 36. In this subsection, the commission has corrected the name of referenced §293.22 to read “Noncompliance Review and Commission Action” to be consistent with the name of the section. New subsection (e) provides that a district shall provide documentation upon request from the executive director to determine compliance with statutory provisions such as management plan enforcement and response to citizen complaints.

New §293.21, Expansion of an Existing Groundwater Conservation District’s Management Authority, provides procedures for amending a commission order creating a GCD. New §293.21 contains the language of repealed §293.16 with revisions. The new section provides the procedures and requirements for a commission-created GCD to petition for the expansion of groundwater management authority to other water-bearing formations within the GCD's boundaries.

New §293.22, Noncompliance Review and Commission Action, sets out procedures for commission review of GCD noncompliance with requirements of TWC, Chapter 36. New subsection (a) provides the purpose of the section to set out processes for a GCD to achieve compliance and for commission enforcement procedures and actions if compliance is not achieved. The adopted section is applicable if a GCD fails to: 1) adopt a groundwater management plan within two years of the date the GCD was confirmed; 2) achieve certification of a groundwater management plan or amended plan from the executive administrator of the TWDB; 3) forward a copy of its certified groundwater management plan to the other GCDs included in a common GMA; 4) be actively engaged and operational in achieving the

objectives of its groundwater management plan based on the State Auditor's Office audit of the GCD's performance under its plan; or 5) adopt, implement, or enforce rules to protect groundwater as evidenced in a report prepared by a peer-review panel. The commission corrected §293.22(a)(3) TO read "...common groundwater management area" instead of groundwater management plan. New subsection (b) provides the executive director's noncompliance review process including requirements for a GCD to achieve voluntary compliance through a compliance agreement. New subsection (c) provides procedures if the executive director and the GCD are not able to resolve noncompliance issues through a compliance agreement. The subsection provides for the executive director to follow procedures for commission enforcement actions set out in 30 TAC Chapter 70, Subchapter C, including a written report filed with the commission and with the GCD.

New subsection (d) provides for mailed and published notice and hearing if formal enforcement action is necessary to bring a GCD into compliance. The subsection references Chapter 70 for notice procedures and provides additional procedures required by TWC, Chapter 36. New subsection (e) provides for commission enforcement actions against noncompliant GCDs. The subsection provides that the commission may take a statutorily-authorized action that it finds appropriate including issuing an order requiring the GCD to take certain actions or refrain from taking certain actions, dissolving a GCD's board of directors, requesting the attorney general to bring suit for the appointment of a receiver for the GCD, dissolving the GCD, or recommending legislative actions to address the GCD. New subsections (f), (g), and (h) provide additional commission procedures relating to GCD dissolution, dissolution of a board of directors, and receivership. These subsections provide specific procedures and

actions required of the commission to implement orders taken under subsection (e) against a GCD.

New subsection (i) provides for appeals of commission enforcement orders.

New §293.23, Groundwater Conservation District Petition Requesting Inquiry in Groundwater Management Area, provides procedures for commission review of GCD petitions that request a peer panel inquiry related to joint groundwater management planning in a GMA as authorized in TWC, Chapter 36. New subsection (a) provides for the purpose and applicability of the section. New subsection (b) provides for the contents of the petition and the documentation required to request a commission inquiry. The petition must provide evidence that another GCD in the GMA has failed to adopt rules, the groundwater in the GMA is not adequately protected by the rules adopted by another GCD, or the groundwater in the GMA is not adequately protected due to the failure of another GCD to enforce substantial compliance with its rules. New subsection (c) provides procedures for commission review and action relating to a petition requesting an inquiry. The subsection provides the time frame for commission review of the petition and the appointment of a review panel if the petition is not dismissed. New subsection (d) provides requirements for a review panel's report to the commission. The subsection provides that the report must include a summary of evidence taken in any review panel hearing on the petition if hearings were conducted, a list of findings and recommended actions appropriate for the commission to take regarding the petition, and any other information the review panel considers appropriate for commission consideration. New subsection (e) provides for commission action and the timing of commission action on the review panel's report. The adopted section implements TWC, Chapter 36 and changes to the statute made by SB 2.

Subchapter C: Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas

Existing Subchapter C, which consists of §293.21, Commission Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas, is repealed because the statute on which it was based has been changed by SB 2 and to allow consolidation and reorganization of GCD rules in a new Subchapter C. New §293.19 provides new language for commission creation of GCDs in PGMA to address statutory changes.

Subchapter D: Appointment of Directors

Section 293.36, Appointment of Temporary Directors by Commission for a Groundwater Conservation District, is repealed. Similar language addressing the appointment of temporary directors for a GCD in a PGMA is adopted in new §293.19 that includes revisions based on SB 2 statutory changes.

Section 293.37, Estimation of Groundwater Use, is repealed. The repealed section, for purposes of the apportionment of temporary directors for a commission-created multi-county GCD in a PGMA, provided for the executive director to request the estimated groundwater usage by county from the TWDB and for the commission to apportion temporary directors based on this groundwater usage data. Similar provisions addressing estimation of groundwater use related to the appointment of temporary directors for a GCD in a PGMA are adopted in new §293.19. New §293.19(c)(2) provides for the commission to apportion temporary directors in a commission-created multi-county GCD in PGMA based on the estimated groundwater usage data and information contained in the most current version of

the State Water Plan as adopted by the TWDB and other information developed during the designation of the PGMA.

Subchapter L: Dissolution of Districts

Section 293.131, Authorization for Dissolution of Water Districts by the Commission, is amended to remove GCD provisions in subsection (a) and to reletter the remaining subsections. The removed provisions are revised to implement statutory changes and are in new §293.22.

Section 293.132, Notice and Hearing, is amended to remove GCD provisions. The removed provisions are revised to implement statutory changes and are in new §293.22.

Section 293.137, Commission Action for Failure of a Groundwater Conservation District to Submit a Management Plan or to Implement a Certified Plan through its Operations, is repealed to remove GCD-specific provisions. The removed provisions are revised to implement statutory changes and are adopted in new §293.22.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. Major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material

way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a section of the state. While these adopted rules will help protect groundwater, they do not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety. A GCD may tax property owners and charge fees to well owners, but this will not adversely affect the economy of the area.

In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

These adopted rules do not meet any of these four applicability requirements of a major environmental rule. These rules implement state legislation and do not exceed that legislation.

TAKINGS IMPACT ASSESSMENT

The commission has assessed the impact of these adopted rules under Texas Government Code, §2007.043. The purpose of the rules is to adopt new requirements relating to the administration of GCDs and the commission's supervision over their actions under TWC, Chapter 36, particularly as amended by SB 2, 77th Legislature, 2001. Specifically, the rules implement SB 2 by streamlining the process for creating GCDs where initiated by landowner petition. The rules also implement SB 2 by

revising agency processes on the commission creation of GCDs in a designated PGMA. Further, the rules implement SB 2 by amending and developing new rules relating to commission enforcement responsibilities associated with existing GCD management planning requirements for GCDs in a common GMA. These rules promote TWC, Chapter 36 statutory goals of protecting and conserving groundwater and do not adversely affect private real property. If these rules did adversely affect private real property, these rules implement legislation which is action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to property, the groundwater in a district. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.) and found that the rulemaking is identified in the Act's Implementation Rules, 31 TAC §505.11(b), relating to Actions and Rules Subject to the Coastal Management Program, or may affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and requires, therefore, that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission determined that the adopted rules are consistent with the applicable CMP goals and policies. CMP goals applicable to the rules include the goal to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal

zone. The specific purpose of the rules is to adopt new requirements relating to the administration of GCDs and the commission's supervision over their actions under TWC, Chapter 36, particularly as amended by SB 2, 77th Legislature, 2001. Specifically, the rules implement SB 2 by streamlining the process for creating GCDs where initiated by landowner petition. The rules also implement SB 2 by revising agency processes on the commission creation of GCDs in a designated PGMA. Further, the rules implement SB 2 by amending and developing new rules relating to commission enforcement responsibilities associated with existing GCD management planning requirements for GCDs in a GMA. The promulgation and enforcement of these rules promote CMP goals and policies on management of coastal resources and will not violate or exceed any standards identified in the applicable CMP goals and policies.

PUBLIC COMMENT

A public hearing on this rulemaking was scheduled on June 4, 2002 in Austin, but a hearing was not conducted because no one asked to provide oral comments on the rulemaking. One commenter, the Texas Rural Water Association (TRWA), provided written comments on the proposed rules and suggested changes to proposed §§293.18(c)(7), 293.19(c)(1), and 293.20(c)(1). TRWA did not indicate whether it was for or against the adoption of the proposal.

RESPONSE TO COMMENTS

Proposed §293.18 - Creation of a Groundwater Conservation District in a Groundwater Management Area

As TRWA observed, proposed §293.18(c)(7) requires petitioners to provide a copy of the petition for creation of the proposed district to the appropriate county clerk or city secretary. TRWA commented that the proposed subsection inexplicably excludes the stakeholders who serve the persons for whose benefit the aquifer is to be managed and who ultimately will be asked to confirm creation of the GCD. TRWA recommended that §293.18(c)(7) be revised to require petitioners to certify “that a copy of the petition for creation of the proposed district was received by each county in whole or in part within the proposed district and by each municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and each irrigation district located either in whole or in part in the proposed district.”

TRWA argues in support of its proposed change that there is no rationale in TWC, Chapter 36 or the SB 2 amendments that supports this sort of special solicitude for counties and cities to the exclusion of other interested entities and that, other than the additional copying and delivery costs, filing a copy of the petition with other water stakeholders such as retail water utilities would impose no burden on petitioners.

The commission agrees that other water stakeholders should be provided access to the petition and supporting information once it has been filed with the executive director, but disagrees that providing a copy of the petition and supporting information to all stakeholders would not impose a burden on the petitioners. It is appropriate to require petitioners to submit copies of the petition to the counties and municipalities within the proposed district because these stakeholders have specific groundwater management authorities under Local Government Code, §212.0101 and §232.0031, relating to groundwater availability certification for platting. In contrast, the other

stakeholders listed in the comment do not have express statutory authority related to the management of groundwater resources through this type of regulatory oversight. Such petitions are not considered to be valid until the executive director has completed the review under §293.18(d) and that, after a satisfactory review, all stakeholders listed in the comment are to receive written notice of the petition under §293.18(e)(2) and (3).

The commission has modified §293.18(c)(8) and §293.18(e)(1)(C) to provide access to the petition for all interested individuals and entities at the earliest feasible time. Proposed §293.18(c)(8) is renumbered as §293.19(c)(9) and new §293.18(c)(8) is changed to read as follows: “Concurrent with filing the petition and supporting information with the executive director, the petitioners shall make a copy or copies of the petition and supporting information available for public inspection during regular business hours at a centralized location or locations in each county in whole or in part within the proposed district. The petitioners must provide the address and contact information for each location where the petition and supporting information have been made available for public inspection.” In addition, §293.18(e)(1)(C) is changed to read as follows: “provide notice of availability of the petition and supporting information as established by the petitioners under subsection (c)(8) of this section and at any other location deemed appropriate by the executive director.” These changes will assure that a copy of the petition and supporting information is available for public inspection during the executive director’s review and during the time period leading up to the public meeting on the issue.

Proposed §293.19 - Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area

As TRWA noted, proposed §293.19(c)(1) requires the appropriate county commissioners court or courts to appoint temporary directors to a commission-initiated GCD following notice of the GCD creation. TRWA urges that “strong policy considerations supporting a favorable outcome of the confirmation election required for such a GCD justify including a directive that the county commissioners court(s) appoint temporary directors representative of various categories of stakeholders in the area of the proposed GCD.” TRWA contends that this policy rationale was embodied in several GCDs created by Acts of the 77th Legislature, 2001 and provided reference to HB 3655, creating the Bluebonnet Groundwater Conservation District as an example. TRWA recommended that proposed §293.19(c)(1) be revised by adding the following: “In making these appointments, the county commissioners court(s) shall, to the extent they deem appropriate, appoint individuals representing the various categories of stakeholders within the district, such as municipal interests, rural interests, industrial interests, and agricultural interests.”

The commission disagrees with TRWA’s recommendation that §293.19(c)(1) be modified to include guidance to county commissioners courts in making appointments to temporary boards of directors for commission-initiated GCDs. If the commission creates a GCD in a designated PGMA, the temporary directors appointed by the county commissioners court(s) will be responsible for scheduling and conducting an election to authorize the GCD to assess taxes and to elect permanent directors, not for a confirmation election as TWRA appears to suggest. Moreover, the commission is directed by express statutory guidance to apportion the number of

temporary directors per county based on groundwater usage if the commission is required to create a GCD in a PGMA. Under TWC, §36.016(b), relating to Appointment of Temporary Directors, and §36.0161, relating to Method for Appointing Temporary Directors for District in Priority Groundwater Management Area, county commissioners court(s) may be directed by commission order to appoint from one up to five temporary directors to at-large positions depending on the size of the commission-created GCD. If the commission creates a single-county GCD in a designated PGMA, it may be feasible for the county commissioners court to appoint temporary directors that are representative of various water interests. However, if the commission creates a multi-county GCD, with the number of directors apportioned to each county based on groundwater usage, it may be problematic for county commissioners courts to fully consider various water interests in making their appointment(s).

There are policy reasons which support both sides of the temporary director-appointment issue. HB 3655 (creating the Bluebonnet Groundwater Conservation District) and other Acts of the 77th Legislature, 2001, created GCDs with temporary boards of directors to be appointed by county commissioners courts to represent various water stakeholder interests. The commission notes that these temporary directors will be appointed to at-large positions for the counties they represent and will be responsible for scheduling and conducting the confirmation elections for the GCDs. In addition, many of these special law GCDs, including the Bluebonnet Groundwater Conservation District, will retain an appointed board of directors even after the GCDs are confirmed by the voters; however, the commission recognizes that an even greater number of the GCDs created by the 77th Legislature either have temporary directors named in the legislation or require the

county commissioners court(s) to appoint temporary directors without any further stipulation. All of these new GCDs will have permanent directors who will be elected to set terms as opposed to permanent directors who will be appointed to set terms. An elected board of directors is more aligned and consistent with the general law provisions of TWC, Chapter 36. In sum, the commission finds no compelling reason to direct county commissioners courts on how to make these temporary director appointments. Accordingly, the commission has made no change to the rule in response to this comment.

Proposed §293.20 - Records and Reporting

TRWA noted that under proposed §293.20(c)(1), each GCD must, following adoption of its groundwater management plan, forward a copy of the plan to the regional water planning group for the planning region in which the district is located. TRWA believed that a copy of the groundwater management plan also should be forwarded to the water stakeholders directly interested in, and affected by, the groundwater management plan, and at the least, a GCD should make a copy available, at the expense of the GCD, to any county, adjacent GCD, municipality, river authority, water district, or other entities that supply public drinking water including each holder of a certificate of convenience and necessity issued by the commission, and each irrigation district located either in whole or in part in the GCD, at the request of the county, adjacent GCD, or other specified stakeholder.

The commission has made no change to the rule in response to this comment. Section 239.20(c)(1) is based on TWC, §36.1071(b), which requires a GCD groundwater management plan be “...forwarded to the regional water planning group for consideration in their planning process.”

Similarly, §239.20(c)(2) is based on TWC, §36.108(a), which requires, after plan certification under TWC, §36.1072, that “...each district shall forward a copy of the new or revised management plan to the other districts in the management area.” The commission declines to require additional copies of the plan to be delivered to all water stakeholders because it would be unreasonably expensive and burdensome on a GCD.

The commission agrees, however, that a GCD groundwater management plan should be easily and readily available to anyone who wants to examine and/or copy the plan. GCD groundwater management plans are public records. Under TWC, §36.065, a GCD is required to keep a complete account of all its minutes and proceedings, and must preserve its minutes, contracts, records, notices, accounts, receipts, and other records. Under TWC, §36.065, these records are the property of the GCD and are subject to Texas Government Code, Chapter 552, relating to Public Information. Under Texas Government Code, Chapter 552, GCDs must provide copies of public records upon request. If a request is for 50 or fewer pages of paper records, the charge for providing the copy of the public information is limited to photocopying costs that may not include costs of materials, labor, or overhead. Under the TWC, any water stakeholders may obtain a copy of the plan from a GCD upon request.

SUBCHAPTER B: CREATION OF WATER DISTRICTS

§293.12

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and TWC, §§36.001, 36.0015, 36.002, 36.011 - 36.015, 36.0151, 36.016, 36.017, 36.0171, 36.019, 36.101, 36.102, 36.1071, 36.1072, 36.108, 36.113, 36.116, 36.117, 36.122, 36.205, 36.206, 36.3011, 36.303, and 36.3035, as amended by SB 2.

§293.12. Creation Notice Actions and Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for creation of a district by the commission in accordance with Texas Water Code (TWC), Chapter 51, multi-county Water Control & Improvement Districts or single county Water Control and Improvement Districts requesting additional powers; Chapter 54, Municipal Utility Districts; Chapter 55, Water Improvement Districts; Chapter 58, multi-county Irrigation Districts; Chapter 59, Regional Districts; Chapter 65, Special Utility Districts; and Chapter 66, Storm Water Control Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in subsection (a) of this section, the chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The applicant shall cause the notice to be published as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may act on the application, and

(2) not later than the 30th day before the date on which the commission may act on the application, the notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) For those applications described in subsection (a) of this section, the commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

(d) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of convenience and necessity, the applicant shall also, unless waived by executive director, mail copies of the notice to customers of the water supply corporation and other affected parties at least 120 days prior to approval. Such notice shall include the following:

(1) name and business address of the district;

(2) a description of the service area involved;

(3) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(4) a statement that if a hearing is granted, persons may attend the hearing and participate in the process.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, contains a request for approval of an impact fee, the applicant shall comply with the notice provisions of §293.173 of this title (relating to Impact Fee Notice Actions and Requirements).

(f) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows.

(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

SUBCHAPTER B: CREATION OF WATER DISTRICTS

§293.16

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state.

§293.16. Expansion of an Existing Groundwater Conservation District's Management Authority.

**SUBCHAPTER C: SPECIAL REQUIREMENTS FOR
GROUNDWATER CONSERVATION DISTRICTS**

§§293.17 - 293.23

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and TWC, §§ 36.001, 36.0015, 36.002, 36.011 - 36.015, 36.0151, 36.016, 36.017, 36.0171, 36.019, 36.101, 36.102, 36.1071, 36.1072, 36.108, 36.113, 36.116, 36.117, 36.122, 36.205, 36.206, 36.3011, 36.303, and 36.3035, as amended by SB 2.

§293.17. Purpose.

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

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

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

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

(4) procedures for commission review of GCD management plan noncompliance under TWC, Chapter 36, Subchapter I; and

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

§293.18. Creation of a Groundwater Conservation District in a Groundwater Management Area.

(a) Groundwater conservation district creation landowner submittal. An original and one copy of the complete groundwater conservation district (GCD) creation submittal shall be filed with the executive director on behalf of a group of landowners as provided in subsection (b) of this section and shall contain a petition as described in subsection (b) of this section, supporting information as described in subsection (c) of this section, the name and address of a representative designated by the group of landowners for contact purposes, and a \$700 non-refundable submittal fee at the time the petition is filed.

(b) Groundwater conservation district petition. A complete district creation petition must be signed by the majority of the landowners in the proposed district or, if there are more than 50 landowners, at least 50 of those landowners. A complete petition must include the following:

(1) the name of the proposed GCD;

(2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(3) the purpose or purposes of the proposed district;

(4) if any proposed projects are to be funded by the issuance of bonds or notes, a statement of the general nature of the projects proposed to be undertaken by the proposed district, the necessity and feasibility of the work, and the estimated cost of those projects according to the petitioners;

(5) the names of at least five individuals qualified to serve as temporary directors; and

(6) financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the proposed district.

(c) Supporting information. As part of the GCD creation submittal, the petitioners must include the following information.

(1) The petitioners must submit the following information about the area and boundaries of the proposed district:

(A) a metes and bounds description of the proposed boundaries of the proposed district if those boundaries differ from a political subdivision boundary which existed on the date the petition was submitted;

(B) a vicinity map outlining the boundaries of the proposed district which is 22 inches by 36 inches in size at a minimum, or in a digital data electronic format showing as appropriate the location of municipalities, highways, roads, surface water features, and other water districts, together with the areal extent of groundwater aquifers, and showing the location of recharge (i.e., outcrops of aquifer units, karst features, etc.) and Texas Water Development Board (TWDB) located discharge (i.e., seeps, springs, etc.) features identified with state well number, the downdip limits of usable quality groundwater, and any other information the petitioners believe is pertinent to the creation of the proposed district; and

(C) an evaluation and description of how the boundaries of the proposed district will provide for effective management of the groundwater resources within the proposed district and in the GMA.

(2) If the petitioners propose projects that are to be funded by the issuance of bonds or notes, the petitioners must submit an evaluation of the general nature of the proposed projects to be undertaken by the district, the necessity and feasibility of the work, and the estimated cost of those projects according to the petitioners.

(3) The petitioners must submit affidavits from the individuals named in the petition under subsection (b)(5) of this section, establishing that these individuals are qualified to serve as temporary directors according to Texas Water Code (TWC), §§36.051(b), 36.058, and 36.059(b).

(4) The petitioners must submit financial information that includes the projected maintenance tax rate or production fee rate and a proposed budget of revenues and expenses for the proposed district, and a listing of current tax assessments within the boundaries of the proposed district.

(A) If the petitioners propose to finance the district through maintenance taxes, the petitioners must provide a certification by the central appraisal district(s) within the proposed district which indicates the total tax valuation of all land within the proposed district, as reflected on the current county tax rolls. The petitioners must evaluate the projected maintenance tax rate for the proposed district with the total tax valuation and describe how this revenue source will support the proposed budget of expenses.

(B) If the petitioners propose to finance the district through well production fees, the petitioners must provide the estimated non-exempt groundwater usage, by type, for the

proposed district. The petitioners must evaluate the projected production fee rate for the proposed district with the total non-exempt groundwater usage, by type, and describe how this revenue source will support the proposed budget of expenses.

(5) The petitioners must provide a certification by the central appraisal district(s) within the proposed district which indicates that the petitioners are landowners within the proposed district on the date the petition is submitted.

(A) If the tax rolls do not show the petitioners to be the majority of the landowners within the proposed district, then the petitioners shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls to establish that the petitioners comprise the majority of the landowners or that at least 50 of the petitioners are landowners in the proposed district.

(B) The executive director may request any additional information to accurately show the ownership of the land to be included in the proposed district.

(6) The petitioners must provide one contact person for all correspondence from the executive director regarding the petition.

(7) The petitioners must provide a signed statement by the appropriate county clerk or city secretary that a copy of the petition for creation of the proposed district was received by each

county in whole or in part within the proposed district and by each city in whose corporate limits any part of the proposed district is located.

(8) Concurrent with filing the petition and supporting information with the executive director, the petitioners shall make a copy or copies of the petition and supporting information available for public inspection during regular business hours at a centralized location or locations in each county in whole or in part within the proposed district. The petitioners must provide the address and contact information for each location where the petition and supporting information have been made available for public inspection.

(9) The executive director may request any other related information as needed to process the district creation petition.

(d) Petition review. The executive director's review of a petition for the creation of a GCD shall be governed by this subsection.

(1) Within 20 working days of receipt, the executive director shall assign the petition a number and determine if the submittal complies with the requirements in subsection (a) of this section.

(A) If a submittal is not complete, the executive director shall notify the petition contact person of the deficiencies of the submittal via certified mail postmarked no later than 20 working days after the submittal was received.

(B) If the petitioners submit additional information within 20 working days of the date of the notice of deficiencies, the executive director shall evaluate the information within 15 working days and, where applicable, shall determine if the submittal complies with subsection (a) of this section.

(C) If the petitioners do not submit the required information within 20 working days of the date of the notice of deficiencies, the executive director shall return the incomplete submittal to the petitioners, and the submittal fee is forfeited.

(2) If a petition proposes the creation of a GCD in an area, in whole or in part, that has not been designated as a GMA, the executive director shall provide notice to the petitioners and to the executive administrator of the TWDB. The commission may not certify the petition until the TWDB has adopted a rule designating a GMA that is coterminous with or includes the boundaries of the proposed district.

(e) Notice and public meeting.

(1) If the executive director determines that the submittal is complete, the executive director shall prepare a public notice for publishing or mailing. The public notice shall:

(A) state that the commission has received a complete submittal for the proposed creation of a GCD;

(B) provide notice of the date, time, and location of a public meeting to receive comments on the petition to create the district;

(C) provide notice of availability of the petition and supporting information as established by the petitioners under subsection (c)(8) of this section and at any other location deemed appropriate by the executive director; and

(D) provide a general map of the proposed district if the area is not a recognizable political subdivision boundary.

(2) The executive director shall notify the chief clerk that the submittal is complete and shall forward the draft public notice and a mailing list of water stakeholders to the chief clerk. The water stakeholders shall include the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission and each irrigation district located either in whole or in part in the proposed district.

(3) The chief clerk shall mail the notice to the water stakeholders indicating that the petition for the creation of a GCD has been received.

(4) The chief clerk shall mail the notice to the petitioners with instructions for publishing the notice.

(5) The petitioners shall publish notice once a week for two consecutive weeks in one or more newspapers of general circulation in the area of the proposed district. The last publication shall be no later than 30 days before the public meeting. The petitioners must provide proof of publication by publishers affidavit to the chief clerk no later than one week prior to the public meeting.

(6) The petitioners shall post the notice on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is located no later than ten days before the public meeting. The petitioners must provide proof of the posting to the chief clerk no later than one week prior to the public meeting.

(7) The commission or the executive director shall conduct the public meeting on the petition in a central location within the area of the proposed district. The public meeting shall be held no later than 60 days after the date the chief clerk mailed notice to the petitioners.

(f) Executive director actions. Following the public meeting, the executive director shall file recommendations regarding certification of the petition and the appointment of temporary directors with the chief clerk. The executive director shall summarize the public meeting comments and make a recommendation to the commission on whether the petition is administratively complete and should be certified.

(g) Commission actions. Not later than 90 days after the date of the public meeting, the commission shall certify the petition as administratively complete. A petition is administratively

complete if it complies with the requirements of TWC, §36.013(b) and (c), and subsection (a) of this section.

(1) If the commission certifies the petition as administratively complete, the commission shall issue an order stating that the petition is administratively complete, creating the district, and appointing the temporary directors named in the petition.

(2) The commission shall appoint temporary directors according to §§293.31 - 293.35 of this title (relating to Appointment of Directors; Qualifications of Directors; Commission Appointment of Directors to Fill Vacancies; Form of Affidavit for Appointment as Director; and Reinstatement of a Board Member).

(A) If a temporary director appointed by the commission fails to qualify, or if a vacancy occurs in the office of temporary director, the commission shall appoint an individual to fill the vacancy.

(B) Temporary directors appointed under this paragraph serve until the initial directors are elected and have qualified for office or until the voters fail to approve creation of the district.

(3) The commission may not certify a petition if the commission finds that:

(A) the proposed district cannot be adequately funded to finance required or authorized groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36 based on the financial information provided by the petitioners; or

(B) the boundaries of the proposed district do not provide for the effective management of the groundwater resources.

(4) The commission may alter the boundaries if such boundaries would facilitate district creation and confirmation and may also alter boundaries to provide for more effective management of groundwater resources. The commission may give preference to boundaries that are coterminous with those of a GMA and may also consider boundaries along existing political subdivision boundaries.

(5) If the commission does not certify the petition, the executive director shall provide to the petitioners in writing the reasons for not certifying the petition. The petitioners may resubmit the petition, without paying an additional fee, if the petition is resubmitted within 90 days after the date the executive director provides the notice. The resubmitted petition will be treated as a new GCD creation submittal.

§293.19. Commission-Initiated Creation of a Groundwater Conservation District in a Priority Groundwater Management Area.

(a) In priority groundwater management areas (PGMAs) designated after September 1, 2001 under §294.42 of this title (relating to Commission Action Concerning Priority Groundwater Management Area Designation), where no groundwater conservation district (GCD) has been created, the executive director shall, after identifying the applicable areas under §294.43(d) and (e) of this title (relating to Actions Required After Priority Groundwater Management Area Designation), recommend district creation for commission action.

(1) The recommendation shall be based on and consistent with the commission's designation order under §294.42 of this title. The executive director's recommendation, in the form of a proposed order, must provide for the purpose, boundary description, minimum financing, and the number of temporary directors for each county for the district.

(2) The executive director's proposed order shall be filed with the chief clerk for commission consideration. The executive director shall prepare a notice and include a mailing list of:

(A) water stakeholders that include the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and

necessity issued by the commission and each irrigation district located either in whole or in part in the proposed district; and

(B) any other persons identified in the PGMA designation hearing.

(3) The chief clerk shall give notice of the executive director's recommendation and proposed order and the date of the agenda when the commission will act on the district creation to the water stakeholders and other persons identified in the PGMA designation hearing. The commission shall not hold an evidentiary hearing on the district creation.

(b) In PGMA's designated before September 1, 2001, the executive director, after identifying the areas in the PGMA that have not created a district, shall petition the commission for the creation of a district by preparing a report and filing the report with the chief clerk.

(1) The report shall identify the areas not included in a district and evaluate and recommend whether one or more districts should be created in the identified areas, whether the identified areas should be added to an existing district, or whether a combination of these actions should be taken.

(2) The report shall include the following:

(A) the purpose or purposes of the recommended district creation action or actions;

(B) the name of the recommended district or districts or the name of the existing district if the recommendation is to add the identified areas to an existing district;

(C) the area and boundaries of the recommended district or districts or the recommended area to be added to an existing district, including a map generally outlining the boundaries;

(D) the number of temporary directors for each county in the recommended district or districts;

(E) the feasibility and practicability of the recommended district creation action; and

(F) a mailing list of water stakeholders including the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission and each irrigation district located either in whole or in part in the identified areas.

(3) The executive director shall prepare a public notice for publishing and mailing. The public notice shall:

(A) state that the commission has been petitioned by the executive director to create a GCD;

(B) provide notice of the date, time, and location of a contested case hearing to receive evidence on the petition;

(C) provide notice of the availability of the petition and supporting information; and

(D) provide a general map of the proposed district if the area is not a recognizable political subdivision boundary.

(4) On receipt of the report and notice, the chief clerk shall:

(A) mail notice of the petition to the water stakeholders identified in the executive director's report; and

(B) publish notice in one or more newspapers of general circulation in the area of the proposed district.

(5) The commission shall refer the petition to SOAH for a contested case hearing on the executive director's report and recommendation.

(6) The hearing shall be limited to consideration of the executive director's report and recommendation. The administrative law judge may also consider other district creation options evaluated in the executive director's report. To determine the feasibility and practicability of the recommended district creation action, the administrative law judge shall consider:

(A) whether the recommended district creation action can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(B) whether the boundaries of the recommended district creation action provide for the effective management of groundwater resources; and

(C) whether the recommended district creation action can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district operation functions under TWC, Chapter 36.

(7) The administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file these findings and conclusions with the chief clerk with a request for the petition be set for commission consideration.

(c) If the commission finds the creation of the district or districts is feasible and practicable, it shall issue an order creating the district or districts. The order shall include the purpose of the district, boundary description, minimum maintenance tax or production fee necessary to support the district, and the number of temporary directors for each county in the district according to TWC, §36.0161. The commission order shall direct the commissioners court of the county or counties that are within the district to appoint temporary directors. The commission order shall direct the temporary directors to call and schedule an election to authorize the district to assess taxes and to elect permanent directors.

(1) The commissioners court of the county or counties within the district shall, within 90 days after receiving notification from the commission, appoint temporary directors for the district and notify the commission of the appointments. The commissioners court shall not make any appointments after the expiration of the 90-day period. If fewer temporary directors have been appointed at the expiration of the period than required, the commission shall appoint the additional directors.

(2) If the district contains two or more counties, the commission shall apportion the number of temporary directors to each county based on each county's proportionate amount, to the nearest whole number, of the total estimated groundwater use within the district. The total estimated groundwater usage within the district for each county shall be based on information and data contained in the most current version of the Texas State Water Plan as adopted by the Texas Water Development Board and other information developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation).

(3) If a temporary director appointed by the commissioners court fails to qualify according to TWC, §§36.051(b), 36.058, and 36.059(b), or if a vacancy occurs in the office of temporary director, the commissioners court shall appoint an individual to fill the vacancy.

(4) Temporary directors appointed under this subsection shall serve until the initial directors are elected and have qualified for office.

(d) If the commission finds the areas identified in the report provided by subsection (b)(1) of this section should be added to an existing district, the commission shall issue an order recommending the addition of the identified areas to the existing district. The commission and the executive director shall follow the procedures provided under §294.44 of this title (relating to Adding a PGMA to an Existing Groundwater Conservation District).

§293.20. Records and Reporting.

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

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

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

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

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

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

(c) Each district is required under TWC, §36.1071 to adopt a comprehensive management plan and adopt rules that are necessary to implement the management plan. The management plan must be adopted within two years of the date the district was confirmed by election and certified by the executive administrator of the Texas Water Development Board.

(1) Each district must forward a copy of its certified groundwater management plan to the regional water planning group for the planning region in which the district is located and provide confirmation to the executive director that such action has been taken.

(2) Each district must forward a copy of its certified groundwater management plan to the other districts that are included with the district in a common groundwater management area and provide confirmation to the executive director that such action has been taken.

(3) Each district must provide a copy of an existing, new, or amended certified groundwater management plan to the executive director.

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

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

§293.21. Expansion of an Existing Groundwater Conservation District's Management Authority.

(a) Any groundwater conservation district created by the commission under Texas Water Code (TWC), Chapter 36, to manage a specific groundwater resource may expand its authority to manage other water-bearing formations which are within its territorial boundaries by filing a petition with the commission to amend the order creating the district.

(b) The petition to amend the order creating the district shall describe which water-bearing formations are being proposed for management, specifically addressing the following criteria:

(1) identify the new water-bearing formation which is the subject of the petition and its areal extent within the district, including a map if different from the boundaries of the district;

(2) evaluate and describe how expanding the district's authority to manage the other water-bearing formations will provide for the effective management of groundwater resources in the district;

(3) identify the nature of projects and management issues to be undertaken to address concerns of the water-bearing formation, including necessity and feasibility of the work.

(c) If a confirmation election has been held in the territorial boundaries of the district, no further confirmation election is necessary to add these water-bearing formations to the district.

(d) The notice and public meeting provisions of §293.18(e) of this title (relating to Notice and Public Meeting) shall be followed to add a water-bearing formation to an existing district.

(e) The executive director shall summarize the public meeting comments and file recommendations regarding the petition with the chief clerk.

(f) Not later than 90 days after the date of the public meeting, the commission shall issue an order either authorizing the district to manage the other water-bearing formations or denying the petition if the commission finds that authorizing the district to manage the other water-bearing formations would not provide for the effective management of the groundwater resources. The executive director shall provide a copy of the order to the petitioners.

§293.22. Noncompliance Review and Commission Action.

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

(1) adopt a groundwater management plan within two years of the date the district was confirmed by election;

(2) achieve certification of a groundwater management plan or amendment of a groundwater management plan with the executive administrator or the Texas Water Development Board as provided by TWC, §36.1072 and §36.1073;

(3) forward a copy of its certified groundwater management plan to the other GCDs that are included with the district in a common groundwater management area;

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

(5) adopt, implement, or enforce district rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.108 and §293.23 of this title (relating to Groundwater Conservation District Petition Requesting Inquiry in Groundwater Management Area).

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

(1) The executive director may attempt to resolve any noncompliance set out in subsection (a) of this section with the district. After review of the facts and identification of noncompliance issues, the executive director may propose to resolve the issue with the district through a compliance agreement. The compliance agreement must clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

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

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

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

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Executive Director's Preliminary Report). If the executive director's report

recommends dissolution of a district or of a board of directors or the placement of a district into receivership, the commission shall hold an enforcement hearing.

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

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

(e) Commission enforcement actions. In accordance with TWC, §§36.108, 36.301, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

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

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

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

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

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

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that is not operational as determined under TWC, §36.302 and has no outstanding bonded indebtedness.

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

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

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

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

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

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

§293.23. Groundwater Conservation District Petition Requesting Inquiry in Groundwater Management Area.

(a) Purpose and applicability. This section provides procedures for commission review of groundwater conservation district (GCD) petitions that request an inquiry related to joint groundwater management planning in a groundwater management area (GMA); commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.108 and §36.3011. Such petitions must be for good cause and filed following the procedures prescribed by this section.

(b) Petition requesting commission inquiry. A GCD with good cause may file a petition with the executive director to request a commission inquiry if the district adopts a resolution calling for joint planning in a GMA and the other district or districts refused to join in the planning process or the process failed to result in adequate planning.

(1) The petition must include documentation that demonstrates that joint planning was requested in the GMA by district resolution. Documentation shall include:

(A) a certified copy of the board resolution calling for joint planning;

(B) evidence that the resolution was received by the other district or districts in the GMA such as a return receipt for certified mail service;

(C) publishers' affidavits of notice if joint meetings were called; and

(D) copies of joint planning meeting minutes certified by the districts that attended the meetings if such meetings were held.

(2) The petition must include a certified statement from the petitioning district's board of directors that describes why the district believes that adequate planning was not achieved in the GMA.

(3) The petition must provide evidence that:

(A) another district in the management area has failed to adopt rules;

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

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

(4) The district has shown "good cause" if this subsection is satisfied.

(c) Commission review of petition. The commission shall review the petition not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence is not sufficient to show that the items contained in subsection (b)(1), (2), or (3) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

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

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

(B) A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel.

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

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

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

(4) According to TWC, §36.108, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

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

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

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

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

(e) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if the items contained in subsection (b)(1) - (4) of this section apply. The executive director shall, no later than 45 days after the

date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (e) of this title.

**SUBCHAPTER C: CREATION OF GROUNDWATER CONSERVATION DISTRICTS IN
PRIORITY GROUNDWATER MANAGEMENT AREAS**

§293.21

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. The repealed subchapter will be replaced by a reorganized Subchapter C in implementation of SB 2, which amended TWC, Chapters 35 and 36.

§293.21. Commission Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas.

SUBCHAPTER D: APPOINTMENT OF DIRECTORS

§293.36, §293.37

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state and SB 2, which amended TWC, Chapters 35 and 36. Similar provisions to address the repealed sections now appear in §293.19.

§293.36. Appointment of Temporary Directors by Commission for a Groundwater Conservation District.

§293.37. Estimation of Groundwater Use.

SUBCHAPTER L: DISSOLUTION OF DISTRICTS

§293.131, §293.132

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and TWC, §§36.001, 36.0015, 36.002, 36.011 - 36.015, 36.0151, 36.016, 36.017, 36.0171, 36.019, 36.101, 36.102, 36.1071, 36.1072, 36.108, 36.113, 36.116, 36.117, 36.122, 36.205, 36.206, 36.3011, 36.303, and 36.3035, as amended by SB 2.

§293.131. Authorization for Dissolution of Water District by the Commission.

Texas Water Code (TWC), Chapter 49, Subchapters I and K, §§49.321 - 49.327 authorize the commission to dissolve any district as defined in TWC, §49.001(1), which is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

(1) Proceedings for the dissolution of a district may be initiated by the executive director upon his own initiative or upon the receipt of an application filed with the executive director by the owners of land or interests in land within the district which is sought to be dissolved, a member or members of the board of directors of the district, or any other party who can demonstrate an interest in having the district dissolved.

(2) If the dissolution is initiated by a party other than the executive director, the application must include:

(A) a petition on the part of the party requesting dissolution including a statement of the reasons that a dissolution is desirable or necessary;

(B) a statement that the district has been financially dormant for the preceding five-year period for water districts and has performed no functions for the five preceding years and has no outstanding bonded indebtedness;

(C) certified copies of dormancy affidavits submitted pursuant to TWC, §49.197, for five years for water districts preceding the year in which the application is submitted;

(D) evidence that the district has no outstanding bonded indebtedness may be filed as prepared testimony with the application and may consist of statements or testimony from the district's attorney, engineer, or officer and shall include an affidavit of the state comptroller of public accounts certifying that the district has never registered any bonds with the comptroller;

(E) list of assets and liabilities of the district;

(F) evidence that all landowners who have not signed the petition have been notified by mail of the dissolution request. A certified tax roll for the district and certificate of mailing executed by the postmaster would be sufficient evidence;

(G) a filing fee in the amount of \$100; and

(H) additional data and information as the executive director or commission may deem necessary or pertinent to the application.

(3) The executive director may initiate procedures to dissolve a district without financial dormancy affidavits on file if:

(A) the district has failed to comply with the reporting requirements of this chapter for the previous five-year period;

(B) attempts to contact directors, interested parties, or anyone with knowledge of district's financial activity have failed; and

(C) the state comptroller of public accounts has submitted a certificate certifying that the district has never registered any bonds with the comptroller.

§293.132. Notice of Hearing.

A notice of the hearing upon the proposed dissolution of a district will be given by the chief clerk and will describe the reasons for the proceeding, as required by Texas Water Code, §49.322. The notice will be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication will be 30 days before the day of the hearing. Notice of the hearing will be given by the chief clerk by first class mail addressed to the directors of the district according to the last record on file with the executive director.

SUBCHAPTER L: DISSOLUTION OF DISTRICTS

§293.137

STATUTORY AUTHORITY

This repeal is adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. The repealed subchapter will be replaced by new §293.22 in implementation SB 2, which amended TWC, Chapters 35 and 36.

§293.137. Commission Action for Failure of a Groundwater Conservation District to Submit a Management Plan or to Implement a Certified Plan through its Operations.