

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Subchapter C, Designation of Groundwater Management Areas, §§294.21 - 294.25, and Subchapter D, Priority Groundwater Management Areas, §294.30 and §294.34. The commission also adopts new Subchapter D, Priority Groundwater Management Areas, §294.30, and Subchapter E, Designation of Priority Groundwater Management Areas, §294.39. The commission also adopts amendments to Subchapter E, Designation of Priority Groundwater Management Areas, §§294.40 - 294.44. Sections 294.21 - 294.25, 294.30, 294.34, 294.39, and 294.40 - 294.44 are adopted *without changes* to the proposed text as published in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3953) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted revisions implement portions of Senate Bill (SB) 2, 77th 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 adopted revisions to Chapter 294 implement SB 2, §§2.22 - 2.29, 2.32, 2.33, and 13.02. In a related rulemaking, adopted changes to 30 TAC Chapter 293, Water Districts, which implement SB 2, §§2.26, 2.28, 2.34 - 2.40, 2.48, and 2.55 - 2.57, also appear in this issue of the *Texas Register*.

The changes to Chapter 294 implement SB 2 provisions that transfer the jurisdiction to designate GMAs to the Texas Water Development Board (TWDB). TWC, §35.004 (SB 2, §2.22) provides that the TWDB, with assistance and cooperation from the commission, shall designate GMAs covering all of the major and minor aquifers in the state. It provides further that the commission may designate a

GMA after September 1, 2001, for a petition filed and accepted by the commission prior to that date. TWC, §35.005, Petition to Designate a GMA, and §35.006, Notice for Designation of a GMA, were repealed by SB 2 (§13.02). Because the commission no longer has jurisdiction for the designation of GMAs, the commission adopts the repeal of §§294.21 - 294.25, which contain commission procedures for considering a petition for the designation of a GMA and designation of a GMA through agency rulemaking.

The adopted Chapter 294 amendments will also implement SB 2 provisions that streamline the PGMA designation process. The streamlined PGMA designation process incorporates considerations for creating GCDs in the PGMA designation hearing and requires specific GCD recommendations in the commission's PGMA designation order. TWC, §35.007 (SB 2, §2.23) requires the executive director's PGMA report to include specific GCD creation recommendations. TWC, §35.008 (SB 2, §2.24) requires GCD creation to be considered in the PGMA designation evidentiary hearing, requires the commission to make specific GCD creation recommendations in its PGMA designation order, and encourages new GCD boundaries to be based on designated GMA or PGMA boundaries. TWC, §35.018 (SB 2, §2.28) authorizes the commission to make recommendations in its report to the legislature if GCD creation in a designated PGMA would not be appropriate for or capable of protection of groundwater resources. TWC, §35.012 and §35.013 (SB 2, §2.26 and §2.27) provide for commission and local actions that are required after a PGMA designation. These actions include the opportunity for landowners to establish a GCD in the designated PGMA through either creation or annexation processes and defines educational responsibilities in the PGMA. TWC, §35.012 and §36.0151 (SB 2, §2.26 and §2.37) provide time frames and authority for commission creation of GCDs

in a designated PGMA if local initiative is not taken to create such districts. The commission adopts new §294.39 and amendments to §§294.40 - 294.44 to implement these new statutory provisions and to clarify rule language and sequential ordering of PGMA designation processes.

#### SECTION BY SECTION DISCUSSION

The name of the chapter is amended from “Underground Water Management Areas” to “Groundwater Management Areas” to be consistent with current statutory and agency usage.

##### *Subchapter C: Designation of Groundwater Management Areas*

Section 294.21, Designation of Groundwater Management Area Through Rulemaking; §294.22, Petition for Adoption of Rules Designating a Groundwater Management Area; §294.23, Commission Consideration of Petition for Adoption of Rules Designating a Groundwater Management Area; §294.24, Notice of Commission Consideration of Final Adoption of Rules Designating a Groundwater Management Area; and §294.25, Alteration of Groundwater Management Area, are repealed because the statute on which they are based has been repealed. The designation of GMAs under TWC, §35.004 is now under the jurisdiction of the TWDB.

##### *Subchapter D: Priority Groundwater Management Areas*

Section 294.30, Definitions, is repealed and replaced by new §294.30, Purpose and Applicability. The purpose of the subchapter, as provided in new subsection (a), is to set out the boundaries of PGMA's designated and delineated under the TWC prior to September 1, 1997. New subsection (b) provides reference to Subchapter E for PGMA designation procedures after September 1, 1997. Prior to

statutory changes made by SB 1, 75th Legislature, 1997, PGMA's were designated and delineated by commission rules. Changes made by SB 1, that were effective on September 1, 1997, called for PGMA's to be designated by commission order.

Section 294.34, Designation of Hill Country Priority Groundwater Management Area, is repealed because the commission's January 24, 2001 order designating the PGMA supercedes and replaces this designation and delineation by rule. The commission's January 24, 2001 order designated a portion of northern Bexar County overlying the Trinity Aquifer as a PGMA, added the newly designated area to the existing Hill Country PGMA, and delineated new boundaries for the Hill Country PGMA to include the added area.

*Subchapter E: Designation of Priority Groundwater Management Areas*

New §294.39, Purpose, provides the purpose of Chapter 294, Subchapter E, relating to designation of PGMA's. The purpose of Subchapter E is to provide the procedures for the designation of PGMA's, including the development of recommendations for the creation of GCDs.

Section 294.40, Definitions, is amended to implement SB 2 and to improve readability. The definition of "Affected person" is amended to include statutory language changes. Definitions for "Executive administrator" and "Priority groundwater management area (PGMA)" are amended for formatting and statutory conformity reasons. The new definition "Texas Water Development Board (TWDB)" is added to define the term for use in the subchapter.

Section 294.41, Executive Director's Report Concerning Priority Groundwater Management Area Designation, is amended to retitle the section, to implement SB 2, and to improve readability and sequential ordering. The new title of the section, which is more descriptive of the contents of the section, is "Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation." New subsections (a) and (b) are amended from the existing (a) and (b) to improve readability. New subsection (a) removes Texas Parks and Wildlife Department (TPWD), as the statute does not provide for participation of the TPWD at this stage of the PGMA study process. New subsection (c) provides for the PGMA study stakeholder notification before the executive director requests studies from the other agencies. The new subsection (c) is amended to improve readability and moved from the existing subsection (d) to follow a chronological progression through the PGMA process. New subsection (d) provides for the executive director's request for a study to the executive administrator of the TWDB. The subsection is amended from existing subsection (c) to improve readability and reordered to follow a chronological progression through the PGMA process. New subsection (e) provides for the executive director's request for a study to the executive director of the TPWD and is amended from existing subsection (e) to improve readability. New subsection (f) provides the opportunity for the Texas Department of Agriculture (TDA) to submit information relating to the PGMA study. New subsection (f) reflects the addition of TDA to the PGMA process as amended by House Bill 2660, 76th Legislature, 1999. New subsection (g) provides for the timing, filing, and contents of the executive director's PGMA report and recommendations and is amended from existing subsection (f) to improve readability and to implement SB 2 changes. As provided in new subsection (g), the report must include recommendations for boundaries and financing of groundwater management and district-operation functions for any GCD recommended for creation in the PGMA by the executive

director. New subsection (h) provides for the distribution of the executive director's PGMA report for public inspection, and is amended from existing subsection (g)(1) to improve readability and ordering. New subsection (i) provides for publishing notice of the executive director's PGMA report in the *Texas Register* and mailing notice to identified stakeholders. The subsection is amended from existing subsection (g)(2) to improve readability.

Section 294.42, Commission Action Concerning PGMA Designation, is amended to implement SB 2 and to improve readability and sequential ordering. New subsection (a) provides that if the executive director concludes in the PGMA report that the area is not a PGMA, no further action is necessary in a PGMA study area. New subsection (a) is moved from existing §294.41(i) and is amended to improve readability. New subsection (b), concerning commission consideration of the executive director's PGMA report, is amended to improve readability. The subsection provides for the considerations, timing, notice, location, and procedures of the PGMA evidentiary hearing, and is amended from existing subsections (a) - (d) and (f) - (h) to improve readability and to implement new statutory provisions. New subsection (b) requires the commission to hold a hearing on the executive director's report and recommendation for PGMA designation. The hearing may be remanded to the State Office of Administrative Hearings (SOAH). The hearing would consider whether a PGMA should be designated, whether one or more districts should be created, and the feasibility and practicability of each district recommendation. New subsection (c) provides for commission action regarding PGMA designation. The subsection provides for the commission's order, PGMA boundary considerations, and GCD creation recommendations. The subsection is amended from existing subsections (e) and (i) to improve readability and to implement statutory changes. As changed by SB 2, if the commission

designates the area as a PGMA, the designation order must recommend that the PGMA be covered by a GCD by either creation of one or more new GCDs, by addition of the land in the PGMA to an existing GCD, or by a combination of these actions. If the commission finds that a GCD created under TWC, Chapter 36 would not be feasible, the commission may recommend to the legislature that a special district be created or an existing district's powers be amended. Existing subsection (j) repeated statutory language relating to the evidentiary hearing and is removed and not replaced.

Section 294.43, Landowner Actions in a PGMA, is amended to retitle the section, to implement SB 2, and to improve readability and sequential ordering. The commission retitled the section as "Actions Required After PGMA Designation" to be more descriptive of the section contents. New subsection (a) provides for the distribution of the commission's PGMA designation order. New subsection (b) provides for notification by the executive director to the Texas Cooperative Extension and to commissioners courts of counties in the PGMA for the initiation of educational outreach in the PGMA. New subsection (c) provides that the executive director review locally-initiated GCD creation efforts in the PGMA no sooner than 180 days after PGMA designation. New subsection (d) requires the executive director to identify and recommend GCD boundaries that are consistent with the commission's PGMA designation order if locally-initiated GCD creation actions have not been taken in the PGMA. New subsection (e) provides for commission-initiated creation of GCDs within two years if landowners do not take GCD creation action. The new language implements SB 2 changes relating to commission actions that are required following the designation of a PGMA. Existing subsection (a) is removed and is replaced by executive director action in new (c). Existing subsection (a) is replaced by new subsections (b) and (d) - (e).

Section 294.44, Adding a PGMA to an Existing District, is amended to retitle the section, to implement SB 2, to improve readability and sequential ordering, and to remove existing language relating to statutory processes that are outside of the commission's authority. The commission retitled the section as "Adding a PGMA to an Existing Groundwater Conservation District" to be more descriptive of the section contents. New subsection (a) provides for executive director notification of a commission PGMA designation order that recommends adding a PGMA to an existing GCD. It is amended from existing subsection (a) to improve readability. New subsection (b) provides for GCD status reporting of current activities under TWC, §36.013, relating to the addition of a PGMA recommended by a commission order. New subsection (b) replaces existing subsection (b) - (g) by reference to TWC, §36.013. Existing subsections (b) - (g) repeated statutory requirements for a board of directors of a district for which a commission order has recommended addition of a PGMA. This language is omitted because it described board actions that are outside the commission's authority. New subsection (c) amends and replaces existing subsection (h) to provide for costs of an election to add a PGMA to an existing GCD and is amended to improve readability. New subsection (d) provides for commission action in a PGMA if an existing GCD's efforts to add a PGMA recommended by a commission order are not successful or if addition of a PGMA recommended by a commission order is declined by an existing GCD or defeated in a confirmation election. It replaces and amends existing subsection (i) to improve readability and to implement statutory changes.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the adopted rules are not subject to

§2001.0225 because they do 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. These adopted rules implement legislation and do not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety. The designation of an area as a PGMA does not have a regulatory impact on 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. No federal law applies. These adopted rules implement state legislation and do not exceed that legislation.

#### TAKINGS IMPACT ASSESSMENT

The commission has assessed the impact of the adopted rules in accordance with Texas Government Code, §2007.43. The purpose of these adopted rules is to implement amendments to TWC, Chapter 35. These amendments to TWC provide the process for the agency to designate a PGMA. A PGMA designation is simply a designation; the PGMA does not have any regulatory authority. Therefore, the

PGMA designation does not impact or burden private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The executive director reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in 31 TAC §505.11. Therefore, the adopted rules are not subject to the CMP.

#### 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 §294.42. TRWA did not indicate whether it was for or against the adoption of the proposal.

#### RESPONSE TO COMMENTS

*Proposed §294.42 - Commission Action Concerning PGMA Designation* (as to evidentiary hearing)

Proposed §294.42 describes the actions involved with designation of a PGMA, including holding an evidentiary hearing. TRWA noted that in §293.42 the commission proposes the evidentiary hearing be conducted by the SOAH as a contested case hearing under Texas Government Code, §2001.0058, which is a portion of Subchapter C of Chapter 2001. TRWA contends that the legislature did not intend for the commission to utilize the contested case hearing process, which is used in other agency permit

hearings under Subchapter C, Texas Government Code, for conducting a PGMA designation-evidentiary hearing. TRWA argues that, if the legislature had contemplated a process by which affected persons would proceed with the formalities characteristic of the contested case hearings conducted by SOAH, the Legislature would not have precluded judicial review of the agency's final determination on PGMA designation in TWC, §35.008(i). TRWA recommended that the commission set forth particular procedures by which an evidentiary hearing is to be conducted, rather than defaulting to the contested case hearing procedures utilized by SOAH. Further, TRWA recommended that a stakeholder group be appointed to develop recommended procedures consistent with legislative intent.

**The commission has made no change to the rule in response to this comment. The TWC, §35.008 requirement to hold an evidentiary hearing on a PGMA designation was first included in Chapter 35 in 1997. While TWC, §35.008 provides that the procedures set out in that section shall be used for PGMA designations, this section does not provide detailed procedures for conducting evidentiary hearings. However, at the time the legislature amended TWC, §35.008 in the 77th Legislature, 2001, the commission had already conducted two hearings on PGMA designations in which commission and SOAH contested case hearing rules were used. Importantly, in 2001, the legislature did amend TWC, §35.008 to implement some changes suggested by the commission and the TWDB in a January 2001 submittal entitled "Priority Groundwater Management Areas and Groundwater Conservation Districts, Report to the 77th Legislature" (see discussion and recommendations on pages 87 and 94). Presumably the legislature would have expressly stated that this was not the proper procedure or included detailed procedures in the changes to TWC,**

**§35.008, if it believed that such commission action was not appropriate to conduct PGMA designation hearings. The commission would also note that in both the PGMA designation cases held prior to 2001, expedited hearing procedures were used by SOAH at the request of the parties. Although this is still a complicated and lengthy procedure, the commission and SOAH contested case hearing rules provided a workable forum for the PGMA hearings.**

**SUBCHAPTER C: DESIGNATION OF GROUNDWATER MANAGEMENT AREAS**

**§§294.21 - 294.25**

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.

**§294.21. Designation of Groundwater Management Area Through Rulemaking.**

**§294.22. Petition for Adoption of Rules Designating a Groundwater Management Area.**

**§294.23. Commission Consideration of Petition for Adoption of Rules Designating a Groundwater Management Area.**

**§294.24. Notice of Commission Consideration of Final Adoption of Rules Designating a Groundwater Management Area.**

**§294.25. Alteration of Groundwater Management Area.**

**SUBCHAPTER D: PRIORITY GROUNDWATER MANAGEMENT AREAS**

**§294.30, §294.34**

**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.

**§294.30. Definitions.**

**§294.34. Designation of Hill Country Priority Groundwater Management Area.**

**SUBCHAPTER D: PRIORITY GROUNDWATER MANAGEMENT AREAS**

**§294.30**

**STATUTORY AUTHORITY**

The new section is adopted 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, §§35.002, 35.004, 35.008, 35.009, 35.0012, 35.0013, and 35.018, as amended by SB 2.

**§294.30. Purpose and Applicability.**

(a) The purpose of this subchapter is to set out the boundaries of priority groundwater management areas (PGMAs) designated and delineated prior to September 1, 1997 under the Texas Water Code (TWC). A PGMA under this subchapter is an area designated and delineated by the commission that is experiencing or is expected to experience, based on information available to the commission and the Texas Water Development Board, within the immediately following 25-year period, critical groundwater problems including shortage of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.

(b) PGMAs designated after September 1, 1997 are delineated by commission order under TWC, Chapter 35, using the process contained in Subchapter E of this chapter (relating to Designation of Priority Groundwater Management Areas).

**SUBCHAPTER E: DESIGNATION OF PRIORITY GROUNDWATER  
MANAGEMENT AREAS**

**§§294.39 - 294.44**

**STATUTORY AUTHORITY**

The new and amended 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, §§35.002, 35.004, 35.008, 35.009, 35.0012, 35.0013, and 35.018, as amended by SB 2.

**§294.39. Purpose.**

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

**§294.40. Definitions.**

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

(1) **Affected person** - A landowner, water well owner, or other user of groundwater in an area that is proposed for priority groundwater management area designation, or any other person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the designation. An interest common to members of the general public does not qualify as a personal justiciable interest.

(2) **Executive administrator** - The executive administrator of the Texas Water Development Board.

(3) **Priority groundwater management area (PGMA)** - An area designated and delineated by the commission that is experiencing or is expected to experience, within the immediately following 25-year period, critical groundwater problems including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.

(4) **Texas Water Development Board (TWDB)** - The agency responsible for water planning and administration of financial programs for the planning, design, and construction of water supply, wastewater treatment, flood control, and agricultural water conservation projects.

**§294.41. Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation.**

(a) The executive director shall confer periodically with the executive administrator according to Texas Water Code (TWC), §35.007 to identify areas of the state that may be experiencing or expected to experience critical groundwater problems within the immediately following 25-year period.

(b) If the executive director concludes that an area of the state should be evaluated to determine if it justifies designation as a priority groundwater management area (PGMA), the executive director shall prepare a report and recommendations for consideration by the commission.

(c) The executive director shall provide written notice to groups identified under paragraphs (1) and (2) of this subsection that an area is to be evaluated to determine if it warrants designation as a PGMA according to TWC, §35.007(c). This notice will provide the opportunity for water stakeholders and others identified in paragraph (2) of this subsection to comment or provide studies or other information for use in the executive director's evaluation.

(1) The notice shall be provided to water stakeholders who are the governing body of each county, regional water planning group, adjacent groundwater conservation district (GCD), municipality, river authority, water district, or other entity that supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and each irrigation district, located either in whole or in part in the proposed PGMA study area.

(2) The notice shall also be provided to the Texas Department of Agriculture (TDA), the Texas Cooperative Extension, and to the legislators whose districts are included in the proposed PGMA study area.

(3) Not later than the 45th day after the date of the notice, a person who receives notice under paragraph (1) of this subsection may submit to the executive director any existing information, local water supply or quality studies, or site-specific geological information that addresses the shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, or contamination of groundwater supplies.

(4) The executive director shall consider this information in preparing the report and recommendations for the commission.

(d) The executive director shall begin preparation of a PGMA report by requesting a study from the executive administrator. The study must:

(1) include an appraisal of the hydrogeology of the area and other matters within the TWDB's planning expertise relevant to the area;

(2) assess the area's immediate, short-term, and long-term water supply needs and availability; and

(3) be completed and delivered to the executive director within 180 days following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report under this section.

(e) The executive director shall request a study from the executive director of the Texas Parks and Wildlife Department (TPWD) for the purpose of preparing the report required by this section. The study must:

(1) evaluate the potential effects of the designation of a PGMA on an area's natural resources; and

(2) be completed and delivered to the executive director within 180 days following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report under this section.

(f) The executive director shall provide opportunity for TDA to submit information related to the PGMA study as identified in the notice provided under subsection (c) of this section. Information shall be submitted to the executive director within 180 days following the date of the notice.

(g) The executive director must complete the report and file it with the chief clerk within 240 days following the date on which the executive administrator was requested to produce a study.

(1) The executive director's report shall include:

(A) the recommended delineation of the boundaries of any proposed PGMA in the form of a proposed order to be considered for adoption by the commission;

(B) the reasons and supporting information for or against designating the area as a PGMA;

(C) a recommendation of actions to be considered to conserve natural resources;

(D) an evaluation of information or studies submitted to the executive director under this section;

(E) if the designation of a PGMA is recommended, a recommendation regarding whether one or more GCDs should be created in the PGMA, whether the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken;

(F) a recommendation regarding the area and boundaries for any GCD recommended under this subsection;

(G) an evaluation of required or authorized groundwater management planning and regulatory functions under TWC, Chapter 36 for any GCD recommended under this subsection to address identified critical groundwater problems;

(H) a recommendation regarding adequate funding to finance required or authorized groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36, including a minimum projected maintenance tax rate or production fee rate for any GCD recommended under this subsection; and

(I) any other information that the executive director considers helpful to the commission.

(2) To prepare the report, the executive director may conduct necessary studies, hold public meetings, solicit and collect information, or use information prepared by the executive director, the executive director of the TPWD, the TDA, or the executive administrator of the TWDB for other purposes.

(h) Concurrent with filing the report with the chief clerk, the executive director shall make the report available for public inspection by providing a copy of the report to at least one public library and the county clerk's office in each county in which the proposed PGMA is located, and to all GCDs adjacent to the proposed PGMA.

(i) Within 30 days of filing the report with the chief clerk, the executive director may publish notice in the *Texas Register* that this report has been prepared, present a summary of its findings and recommendations, and indicate where copies of the report may be obtained or inspected. If the executive director decides to publish notice, this notice shall also be mailed to the same persons who received notice of the initiation of the PGMA study under subsection (c) of this section.

**§294.42. Commission Action Concerning PGMA Designation.**

(a) If the executive director concludes in the report that the area studied is not a priority groundwater management area (PGMA), no further action by the executive director or the commission is necessary. However, any person may file a motion to overturn under §50.39 of this title (relating to Motion to Overturn).

(b) If the executive director recommends that the area be designated a PGMA, or if the commission overturns the executive director's conclusion in subsection (a) of this section, the commission shall consider the executive director's PGMA report and recommendations developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation) using the following procedures.

(1) The commission shall hold an evidentiary hearing. On behalf of the commission, the executive director may refer the evidentiary hearing directly to SOAH. At the evidentiary hearing, the commission or the administrative law judge shall consider:

(A) whether the proposed PGMA should be designated;

(B) whether one or more groundwater conservation districts (GCDs) should be created within all or part of the proposed PGMA, whether all or part of the land in the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken; and

(C) the feasibility and practicability of each GCD recommendation. To determine the feasibility and practicability of each GCD recommendation, the commission or the administrative law judge shall consider:

(i) whether the recommended GCD can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(ii) whether the boundaries of the recommended GCD provide for the effective management of groundwater resources; and

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

(2) The evidentiary hearing shall be held in one of the counties in which the PGMA is proposed to be located or in the nearest convenient location if adequate facilities are not available in those counties.

(3) The chief clerk shall publish notice of the evidentiary hearing in at least one newspaper with general circulation in the area proposed for PGMA designation. The notice must be published no later than 30 days before the first date set for the hearing. Notice of the evidentiary hearing must include:

(A) if applicable, a statement of the general purpose and effect of designating the proposed PGMA;

(B) if applicable, a statement of the general purpose and effect of creating a new GCD in the proposed PGMA;

(C) if applicable, a statement of the general purpose and effect of adding all or part of the land in the proposed PGMA to an existing GCD;

(D) a map generally outlining the boundaries of the area being considered for PGMA designation or notice of the location at which a copy of the map may be examined or obtained;

(E) a statement that the executive director's report on the proposed PGMA is available for inspection during regular business hours at the commission's main office in Austin, Texas, at regional offices of the commission which include territory within the proposed PGMA, and on the agency's website;

(F) the name and address of each public library, each county clerk's office, and each GCD that has been provided copies of the executive director's report; and

(G) the date, time, and place of the hearing.

(4) The chief clerk shall also mail written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the PGMA or proposed PGMA. This notice shall be mailed at least 30 days before the date set for the hearing.

(5) The evidentiary hearing must be conducted within 75 days of the date that notice was provided under paragraph (3) of this subsection. At the hearing, the commission or the administrative law judge shall hear testimony and receive evidence from affected persons, and consider the executive director's report and supporting information. The commission or the administrative law judge may request additional information from any source if further information is considered necessary

to make a decision. If the commission or administrative law judge requests additional information, the parties will be allowed to examine this information and present any necessary evidence related to the additional information.

(6) If the hearing is remanded to SOAH, the administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file findings and conclusions with the chief clerk.

(c) The commission shall consider the findings, conclusions, and recommendations determined from the evidentiary hearing. The commission shall order one or more of the following actions.

(1) Except as provided in paragraph (3) of this subsection, if the commission decides that an area should be designated as a PGMA, the commission shall designate and delineate the boundaries of the PGMA.

(2) If the commission designates the area as a PGMA, the order must recommend that the area be covered by a GCD by either creation of one or more new GCDs, by addition of the land in the PGMA to one or more existing GCDs, or by a combination of these actions. The commission shall give preference to GCD boundaries that are coterminous with the boundaries of the PGMA, but may recommend GCD boundaries based upon existing political subdivision boundaries to facilitate creation of a GCD.

(3) If the commission does not designate the area as a PGMA, the commission shall issue an order stating that the PGMA shall not be designated.

(4) If the commission finds that a GCD created under TWC, Chapter 36 would not be feasible or practicable for the protection of groundwater resources in the PGMA, the commission may recommend in its report to the legislature under TWC, §35.018, the creation of a special district or amendment of an existing district's powers and authorities.

(5) The designation of a PGMA may not be appealed nor may it be challenged under TWC, §5.351 or Texas Government Code, §2001.038.

**§294.43. Actions Required After PGMA Designation.**

(a) The commission shall provide copies of a priority groundwater management area (PGMA) designation order under §294.42 of this title (relating to Commission Action Concerning PGMA Designation) to the commissioners court of any county that is affected by the designation of the PGMA, the Texas Cooperative Extension (TCE), and any existing groundwater conservation districts (GCDs) that are adjacent to the PGMA.

(b) The executive director shall request an educational outreach program under this subsection after the commission designates a PGMA under §294.42 of this title.

(1) The executive director shall notify the TCE of the PGMA designation and assist in educational programming developed by the TCE under Texas Water Code (TWC), §35.012(c).

(2) The executive director shall notify the commissioners court of each county of the court's educational programming responsibilities in the PGMA under TWC, §35.012(c).

(c) No sooner than 180 days after the date the commission designated the PGMA under §294.42 of this title, the executive director shall review the status of locally-initiated GCD creation in the PGMA.

(d) The executive director shall identify the areas of the PGMA that are not within a GCD and develop recommended district boundaries that are consistent with the commission's PGMA designation order under §294.42 of this title.

(e) If landowners do not take actions to create a GCD under TWC, §35.012(b), within two years after the date the commission designated the PGMA, the commission shall initiate creation of one or more GCDs under §293.19 of this title (relating to Creation of Groundwater Conservation Districts in Priority Groundwater Management Areas).

**§294.44. Adding a PGMA to an Existing Groundwater Conservation District.**

(a) The executive director shall give notice to the board of directors of the existing groundwater conservation district (GCD), if the commission issues an order under §294.42 of this title (relating to Commission Action Concerning PGMA Designation), or under §293.19 of this title (relating to Creation of a Groundwater Conservation District in a Priority Groundwater Management Area) recommending that a priority groundwater management area (PGMA) or a portion of a PGMA be added to an existing GCD. The executive director shall provide a copy of the order to the board of directors of the existing GCD to which the commission is recommending the PGMA be added and to any other existing GCDs adjacent to the PGMA.

(b) Within 180 days of the notice provided under subsection (a) of this section, the board of directors of the existing GCD shall advise the commission of the outcome of GCD actions or status of current GCD activities under Texas Water Code (TWC), §35.013.

(c) The costs of an election to add a PGMA to an existing GCD that is approved by the voters shall be paid by the existing GCD. The costs of an election to add a PGMA to an existing GCD at which the proposition fails shall be paid by the commission.

(d) If the board of directors of the GCD votes not to pursue addition of the PGMA as recommended by the commission or, if the proposition to add the PGMA to the GCD is defeated at the election, the commission shall either:

(1) within one year create one or more GCDs according to TWC, §36.0151 and §293.19 of this title; or

(2) recommend to the legislature under TWC, §35.018(c), in its biennial report, whether legislative action should be taken to address the need for groundwater management in the PGMA.