

The Texas Commission on Environmental Quality (commission) proposes amendments to §§301.1 - 301.4, 301.6, 301.21, 301.31, 301.38, 301.43, 301.45, 301.51, 301.71, 301.73, and 301.74. The commission also proposes the repeal of §§301.5, 301.22, and 301.23.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water-related districts and to approve the issuance and sale of bonds for district improvements in accordance with numerous chapters of the Texas Water Code (TWC). The commission oversees approximately 1,100 active water districts in Texas. Chapter 301 of the commission's rules governs the creation of levee improvement districts and the planning and review of levees and drainage projects for such districts.

A corresponding rulemaking published in this issue of the *Texas Register* includes changes to 30 TAC Chapter 293, Water Districts.

The proposed rulemaking would revise existing requirements relating to levee improvement districts, levees and other improvements, and the commission's supervision of such districts under TWC, Chapters 5, 16, and 57, as amended by House Bill (HB) 1541, 78th Legislature, 2003. HB 1541 amends various sections of TWC, Chapter 57, to delete references to "plans of reclamation," to delete the requirement to obtain commission approval of such plans, and to add the requirement that an engineer's report be prepared in lieu of a plan of reclamation.

Specifically, the proposed rules would delete all references to plans of reclamation, including deleting references to application requirements and having to obtain commission approval.

The proposed rules would also correct a rule reference regarding fees and delete references to a previous name of the agency.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the sections to be consistent with *Texas Register* and agency requirements. These changes also update references to reflect the agency's name change.

Proposed amendments to §§301.1, 301.2, 301.4, 301.31, 301.38, 301.43, 301.45, 301.51, 301.73, and 301.74 would exclude references to plans of reclamation, in accordance with HB 1541, §§34 - 55, which amend various sections of TWC, Chapter 57; and HB 1541, §57, which repeals various sections of TWC, Chapter 57.

Sections 301.5, 301.22, and 301.23 are proposed to be repealed to exclude references to plans of reclamation, in accordance with HB 1541, §§34 - 55, which amend various sections of TWC, Chapter 57; and HB 1541, §57, which repeals various sections of TWC, Chapter 57.

Proposed amendments to §301.71 correct the reference for fees from TWC, §5.235 to §5.701.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or other units of state and local government as a result of administration or enforcement of the proposed rules. Local governments will see a minor reduction in administrative costs relating to the construction and modification of levees. The agency may see a minor reduction in fee revenue.

This proposed rulemaking implements HB 1541, which revises the oversight responsibilities that the agency has over 46 levee improvement districts (LIDs). Specifically, the proposed rules delete all references to plans of reclamation, including deleting references to application requirements and obtaining agency approval for plans of reclamation.

Most of the 46 LIDs are in the Dallas area and in Fort Bend County. Since counties now have the personnel to review LID construction projects, agency review and approval of these projects is redundant. These proposed rules should save LIDs the cost of paying an agency filing fee of \$100 to review and approve LID plans, as well as the minor administrative costs of providing the agency copies of plans to review. In the past ten years, the agency has had to approve one LID project per year. If LID projects follow past trends, the agency would receive \$100 less in revenue each fiscal year.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated from the changes in the proposed rules will be compliance with HB 1541 and a more efficient process for LID projects.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses. The proposed rules do not pertain to small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

establish new or revise existing requirements relating to the administration of certain water districts and the commission's supervision over their actions under TWC, Chapters 5, 16, and 57, as amended by HB 1541. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposed rules do not exceed a federal standard because no applicable federal standards exist. The proposed rules do not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The proposed rules were not developed solely under the general powers of the agency; but were specifically developed to implement TWC, §§57.015, 57.092, 57.104, 57.108, 57.116 - 57.118, 57.177, 57.216, 57.260, 57.261, 57.265 - 57.267, 57.269, 57.270, and 57.273 - 57.275 as amended by HB 1541 and the proposed rules do not exceed the express requirements of those state statutes. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed a preliminary assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to establish new or revise existing requirements relating to the administration of certain water districts and the commission's supervision over the districts' actions under TWC, Chapters 5, 16, and 57, as amended by HB 1541. Promulgation and enforcement of these amendments will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rulemaking neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a preliminary consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the proposed rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The CMP policy applicable to the proposed rules states that the commission's rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, under TWC, §16.263, must comply with the policies in 31 TAC §501.14(s).

The purpose of the proposed rules is to implement HB 1541. Specifically, the proposed rules delete all the requirements and references related to "plans of reclamation." Additionally, this rulemaking will update the name of the agency. HB 1541 amends TWC, Chapter 57, by deleting all references to plans of reclamation and replacing plans of reclamation with an engineer's report. Deleting the requirements related to plans of reclamation in the commission's rules should not have an adverse affect on coastal

areas because the plans for construction projects will still be reviewed by counties. When the legislature originally passed TWC, Chapter 57, many counties did not have the staff to review projects that were part of a plan of reclamation, so the commission conducted the reviews. Most counties now have staff available to review construction plans and engineering reports, which have replaced the plans of reclamation. Additionally, counties are responsible for flood-related issues under the Federal Emergency Management Agency and, therefore, already review projects that are included in an engineer's report.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with the CMP goals and policies, because these rules do not create or have a direct or significant adverse affect on any coastal natural resource areas, and because the rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers.

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

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on November 18, 2004, at 10:00 a.m. at the Texas Commission on Environmental Quality complex in Building E, Room 254S, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will

be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-015-293-WT. Comments must be received by 5:00 p.m. on November 29, 2004. For further information, please contact Debra Barber, Office of Environmental Policy, Analysis, and Assessment, (512) 239-0412.

SUBCHAPTER A: GENERAL PROVISIONS

§§301.1, 301.2, 301.3, 301.4, 301.6

STATUTORY AUTHORITY

The amendments are proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed amendments implement TWC, §5.103, relating to Rules.

§301.1. Interpretation of Legislative Authority.

The legislature of the State of Texas [has] manifested an intention to protect the public interest by establishing a centralized and coordinated method for planning and review of drainage and reclamation activity. The legislature [has] demonstrated such an intent by causing levees or other improvements [and levee improvement district plans of reclamation] and associated projects to be subject always to the supervision of a central statewide authority. It is the purpose of the commission under [Texas Water Commission pursuant to the] Texas Water Code, Chapters 5, 16, and 57, to implement this policy by the promulgation of these sections.

§301.2. Definitions.

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

(1) **As-built plans** - The engineering plans and specifications for levees or other improvements which reflect the structures as actually built, for which preliminary plans and final plans were approved, and which are submitted to the executive director [of the Texas Water Commission]_for [his] issuance of notice of final approval.

(2) **Final plans** - The final engineering plans and specifications for levees or other improvements submitted to the executive director [of the Texas Water Commission] for [his] review[,] and approval_ if not an exempt structure under [the] Texas Water Code, §16.236.

(3) **Levee(s) or other improvement(s)** - Any levee or other improvement, including channel improvements, drainage works, or other projects on, along, or near any stream in this state that is subject to floods, freshets, or overflows, constructed so as to control, regulate, or otherwise change the floodwater of the stream. However, the term does not include:

(A) levees or other improvements for which approval by the commission [Texas Water Commission] is not required under [pursuant to the] Texas Water Code, §16.236;

(B) - (F) (No change.)

(G) levees and landfills located within the 100-year flood-fringe area, as defined in clauses (i) - (iv) of this subparagraph, as determined by a registered professional engineer using the United States Army Corps of Engineers Hydrologic Engineering Center I and II procedures or other standard procedure acceptable to the executive director; [of the Texas Water Commission.]

(i) **100-year flood** - The [the] peak flood discharge of a stream, based upon statistical data, which would have a 1.0% chance of occurring in any given year;

(ii) **100-year flood fringe** - That [that] area of the 100-year floodplain outside the 100-year floodway;

(iii) **100-year floodplain** - That [that] area along a stream during the time the stream is subject to the statistical 100-year flood, as determined by a registered professional engineer using the United States Army Corps of Engineers Hydrologic Engineering Center I and II procedures or other standard procedure acceptable to the executive director [of the Texas Water Commission];

(iv) **100-year floodway** - The [the] channel of a stream and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively

increasing the water surface elevation more than one foot above the 100-year flood elevation prior to encroachment.

(4) **Levee improvement district or district** - Any levee improvement district organized under the provisions of [the] Texas Water Code, Chapter 57.

[5) **Plan of reclamation** - The proposed plan of reclamation after approval by the Texas Water Commission.]

~~(5)~~ [(6)] **Preliminary plans** - The preliminary engineering plans for levees or other improvements submitted for approval by the commission under [Texas Water Commission pursuant to the] Texas Water Code, Chapter 16, as required by §301.33 of this title (relating to Preliminary Plans: Data To Be Submitted).

[(7) **Proposed plan of reclamation** - The application filed by a levee improvement district for approval by the Texas Water Commission, which is composed of the district engineer's reclamation report (termed "engineer's report" in the Texas Water Code, §57.154) which shall include economic data as specified in §301.23, maps and profiles of results of land surveys, and which shall include preliminary plan data required by §§301.31 - 301.46 of this title (relating to Approval of Levees and Other Improvements).]

§301.3. Authority To Go on Land.

The [Representatives of the] executive director [of the Texas Water Commission] may enter any land or go on any water with appropriate equipment for the purpose of surveillance and inspection with reference to the proposed location of levees or other improvements.

§301.4. Approvals Required.

[In accordance with the Texas Water Code, Chapters 16 and 57, the approvals set forth in paragraphs (1) and (2) of this section are required:]

(a) [(1)] The approval of the commission is required [Texas Water Commission] for preliminary plans for construction of levees and other improvements other than those which are exempt under Texas Water Code, §16.236. The procedure for submission and approval of preliminary plans for levees and other improvements other than those which are exempt is set forth in Subchapter C of this chapter (relating to Approval of Levees and Other Improvements.) [the following:]

[(A) Levee improvement district proposed plans of reclamation. The procedure for submission and approval of district proposed plans of reclamation is set forth in §301.5 of this title (relating to Proposed Plan of Reclamation: Consolidated Proceeding) and in §§301.21-301.23 of this title (relating to Levee Improvement Districts and Approval of District Plans of Reclamation).]

[(B) Preliminary plans for construction of levees or other improvements other than those which are exempt under the Texas Water Code, §16.236. The procedure for submission and

approval of preliminary plans for levees and other improvements other than those which are exempt is set forth in §§301.31 - 301.46 of this title (relating to Approval of Levees and Other Improvements).]

(b) [(2)] The review and/or approval of the executive director is required for final plans for levees and other improvements. The procedure for submission, review, and approval, if required, is set forth in §301.38 of this title (relating to Procedures Subsequent to Approval of Preliminary Plans).

§301.6. Injunction and Monetary Penalties.

In accordance with [Pursuant to the] Texas Water Code (TWC), §16.236(b) and (c), the executive director [of the Texas Water Commission] may request the attorney general to file suit in a district court of Travis County to enjoin any such violation or threatened violation of TWC [the Texas Water Code], §16.236, to seek monetary penalties, or both.

SUBCHAPTER A: GENERAL PROVISIONS

§301.5

STATUTORY AUTHORITY

The repeal is proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed repeal implements TWC, §5.103, relating to Rules.

§301.5. Proposed Plan of Reclamation: Consolidated Proceeding.

**SUBCHAPTER B: LEVEE IMPROVEMENT DISTRICTS AND FORMATION [APPROVAL]
OF DISTRICT [PLANS OF RECLAMATION]**

§301.21

STATUTORY AUTHORITY

The amendment is proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed amendment implements TWC, §5.103, relating to Rules.

§301.21. Procedures Concerning Formation of District.

(a) Levee improvement districts to which this subchapter applies are formed in accordance with the procedures set forth in [the] Texas Water Code (TWC), Chapter 57.

(b) Upon petitioning the county commissioner's court for the creation of the district under TWC [pursuant to the Texas Water Code], Chapter 57, and giving the notice required by TWC [the Texas Water Code], §57.015, the person or persons petitioning the county commissioner's court shall file with the executive director [of the Texas Water Commission] notice of the hearing before the county commissioner's court on the creation of the district. The notice must [shall] state that the petition has been filed with the appropriate county commissioner's court and must [shall] include a statement of the petition's general purpose and the time and place of the hearing.

(c) In accordance with TWC [the Texas Water Code], §57.016, [a representative of] the executive director [of the Texas Water Commission] shall attend the hearing before the county commissioner's court on the petition to create the district and shall file a written report with the county commissioner's court concerning the necessity, feasibility, probable costs of reclaiming the land of the district from overflow and of draining it properly, and costs of organizing the district and maintaining it for two years. The executive director shall furnish the county commissioner's court with any additional information that is required.

**SUBCHAPTER B: LEVEE IMPROVEMENT DISTRICTS AND APPROVAL OF DISTRICT
PLANS OF RECLAMATION**

§301.22, §301.23

STATUTORY AUTHORITY

The repeals are proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed repeals implement TWC, §5.103, relating to Rules.

§301.22. Procedures Subsequent to Formation of District; Applications for Approval of District Plans of Reclamation.

§301.23. Data Required for Applications for Proposed Plans of Reclamation and Criteria Applicable to Proposed Plans of Reclamation.

SUBCHAPTER C: APPROVAL OF LEVEES AND OTHER IMPROVEMENTS

§§301.31, 301.38, 301.43, 301.45

STATUTORY AUTHORITY

The amendments are proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed amendments implement TWC, §5.103, relating to Rules.

§301.31. Application for Approval of Preliminary Plans for Levees and Other Improvements.

Any person who seeks approval of the commission under [Texas Water Commission required by the] Texas Water Code, §16.236, for construction of any levee or other improvement shall file an application with the executive director [of the commission], together with a set of preliminary plans for the levee or other improvement, in duplicate. The preliminary data so submitted must be in sufficient detail to permit the executive director to evaluate the project. Ordinarily, existing maps and information are adequate for the development of acceptable preliminary plans without the necessity of extensive site clearing or detailed surveys. The application and preliminary plans must comply with Subchapter D [§ 301.51 - 301.57] of this chapter [title] (relating to Notice and Hearing). [When a levee improvement district has submitted preliminary plans as a part of the district's proposed plan of reclamation, and such plans and the proposed plan of reclamation have been approved by the commission in one step as provided in §301.5 of this title (relating to Proposed Plan of Reclamation:

Consolidated Proceeding), the district shall proceed to the steps set forth in §301.38 of this title (relating to Procedures Subsequent to Approval of Preliminary Plans).]

§301.38. Procedures Subsequent to Approval of Preliminary Plans.

(a) Final approval of engineering plans and specifications for levees and other improvements for which commission approval is required; submission of final plans for exempt levees and other improvements.

(1) Following approval by the commission of a proposed levee or other improvement under [pursuant to the] Texas Water Code (TWC), §16.236, the applicant shall submit final engineering plans and specifications to the executive director for [his] approval prior to beginning construction.

(2) For levees and other improvements which are exempt under TWC [the Texas Water Code], §16.236, final engineering plans and specifications shall be submitted to the executive director prior to beginning construction for [his] review to ensure [insure] compliance with [a related plan of reclamation and] preliminary plans submitted thereunder and to carry out the executive director's inspection duties under TWC [pursuant to the Texas Water Code], §57.117, but approval of these final plans by the executive director is not required.

(3) In addition to the submission of final plans, the applicant shall also provide the executive director with proof of ownership or right to construct on the project site prior to beginning

construction. Upon [his] review and approval of the final plans of the applicant, the executive director shall notify the applicant in writing that construction may proceed.

(b) Criteria for review and/or approval of final plans [Review and/or Approval of Final Plans].

Final plans of the proposed works must adequately illustrate pertinent features of the project such as planned elevations, profiles, dimensional typical cross-sections, and other features such as outlet works, drains, overflow relief structures, landfills, and roads so that an understandable project concept can be discerned. The requirements [listed here] are to be considered guidelines and may be varied according to the requirements of any particular project at the discretion of the executive director. Final plans for such features as excavated channels or constructed embankments will be reviewed as to their structural integrity in accordance with the degree of hazard inherent with the project.

(1) Normal requirements for final channel excavation plans are as follows_ [:]

(A) Information is to be provided to indicate the type and/or classification of the soil to be excavated in the channel according to the unified soil classification system. Depth of exploratory borings shall be [to] at least five feet below planned channel bottom grade.

(B) - (G) (No change.)

(2) Normal requirements for final levee or dike construction plans are as follows_ [:]

(A) For purposes of review, final plans of dikes and levees will be classified into one or a combination of the following:

(i) the dike that holds back water at all times: [.]

(I) (No change.)

(II) without landfill:

(-a) high-risk [high risk] protection (dwelling or high value land);

(-b) low-risk [low risk] protection (agricultural);

(ii) the levee that holds back water only during floods:

(I) (No change.)

(II) without landfill:

(-a) high-risk [high risk] protection (dwelling or high value land);

(-b-) low-risk [low risk] protection

(agricultural).

(B) Normal requirements are [to be] as follows.

(i) - (x) (No change.)

(xi) All specifications to be followed by the contractor shall be included with the plans submitted.

(xii) (No change.)

§301.43. Certification by Executive Director.

After approval for the construction of a project has been obtained by a levee improvement district from the commission, the executive director shall inspect the construction of the project at least once every 60 days after the construction work has commenced, and if the executive director [he] finds that the work has been done in compliance with the construction contract, the executive director [he] shall certify this fact. The certificate shall give a full description of the work done up to the date of inspection. If the executive director finds that the work has not been done in compliance with the construction contract, the executive director [he] shall officially certify this fact to the district and to the

commission. The certificate shall specify how the contractor has failed to comply with the construction contract [approved plan of reclamation].

§301.45. Failure To Comply with Approved Plans and Specifications.

If at any time during construction, enlargement, repair, or alteration of any levee or channel modification, the executive director finds that the work is not being done in accordance with approved plans and specifications [or in accordance with the approved plan of reclamation], the executive director [he] shall give written notice [thereof] and direct compliance by certified mail to the owner. If the owner fails to comply with the directive, the executive director may take appropriate action to assure compliance. Failure to comply with approved plans and specifications is ground for revocation of the order approving the plan and/or civil penalty as provided by law. The commission may order that the structure be removed to eliminate any safety hazard to life and property.

SUBCHAPTER D: NOTICE AND HEARING

§301.51

STATUTORY AUTHORITY

The amendment is proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed amendment implements TWC, §5.103, relating to Rules.

§301.51. Notice Required.

The notice procedures set forth in this subchapter are required for applications for approval of levees and other improvements for which commission approval is required under [pursuant to the] Texas Water Code, §16.236. [For the approval of a district's proposed plan of reclamation not involving levees and other improvements for which approval is required pursuant to the Texas Water Code, §16.236, notice in compliance with the Open Meetings Act shall be sufficient, and the notice procedures set forth in this subchapter shall not be required.]

SUBCHAPTER F: FEES

§§301.71, 301.73, 301.74

STATUTORY AUTHORITY

The amendments are proposed under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The proposed amendments implement TWC, §5.103, relating to Rules.

§301.71. Executive Director To Charge and Collect Fees.

In accordance with [the] Texas Water Code, §5.701 [5.235], the executive director shall charge and collect for the benefit of the state the fees [hereinafter] provided in §301.73 of this title (relating to Fees To Be Paid).

§301.73. Fees To Be Paid.

The following fees shall be submitted with any application required to be filed under this chapter:

- (1) filing fee - the filing fee shall be \$100;

(2) recording fee - the recording fee shall be \$1.25 per page;

(3) fees for mail notice - the [The] cost of mailing notice of the application to persons in the affected or protected area shall be paid by the applicant. The executive director shall advise the applicant of the number of persons and the mailing cost;

(4) fees for publication of notice of application - the cost of publication of the notice of application in a newspaper of paid circulation that [, with which the applicant shall arrange publication, which] is regularly published and generally circulated in the county or counties within the proposed affected or protected area, shall be paid by the applicant; and

(5) fees for publication of notice of hearing - fees for publication of notice of hearing in a newspaper that [, with which the applicant shall arrange publication, which] is regularly published and generally circulated in the county or counties within the affected or protected area, shall be paid by the applicant. [;]

[(6) fees in consolidated proceeding - when approval is sought for a proposed plan of reclamation pursuant to the Texas Water Code, Chapter 57, and for levee(s) or other improvements pursuant to the Texas Water Code, Chapter 16, in a consolidated proceeding, the executive director shall charge and collect a filing fee for the application for the proposed plan of reclamation and a filing fee for approval of the levee(s) or other improvements.]

§301.74. Examples of Applications Subject to Filing, Recording, and Notice Fees.

The following are examples of applications subject to filing, recording, and notice fees: [;]

[~~(1)~~ application for approval of district plans of reclamation;]

~~(1)~~ [~~(2)~~] application for approval of engineering plans and specifications (preliminary and final plans);

~~(2)~~ [~~(3)~~] application to amend a plan approval order;

~~(3)~~ [~~(4)~~] application to alter, enlarge, extend, or otherwise change any levee or other improvement; and

~~(4)~~ [~~(5)~~] application for extension of time.