

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 1, 2024

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** *CML* Cari-Michel La Caille, Director  
Office of Water

**Docket No.:** 2023-1521-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 230, Groundwater Availability Certifications for Platting  
Groundwater Certification Requirements  
Rule Project No. 2024-006-230-OW

### **Background and reason(s) for the rulemaking:**

The purpose of this rulemaking adoption is to implement the provisions of Senate Bill (SB) 2440, passed during the 88th Texas Legislature's Regular Session in 2023. Local Government Code (LGC) §212.0101 and §232.0032 establish requirements for groundwater availability certification in the municipal and county plat application and approval process for proposed subdivisions when the groundwater beneath the land serves as the source of water supply. SB 2440 amended §212.0101(a) and §232.0032(a) to make groundwater availability certification a mandatory component of the plat application and approval process. SB 2440 also established specific circumstances under which a municipal or county authority may waive the certification requirement by adding §212.0101(a)(1) and (a)(2) and §232.0032(a)(1) and (a)(2). SB 2440 became effective on January 1, 2024, and requires that existing commission rules are continued in effect for plat applications filed before January 1, 2024.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The Texas Commission on Environmental Quality (TCEQ) has adopted rules at 30 Texas Administrative Code (TAC), Chapter 230 that prescribe requirements for groundwater availability certification. This rulemaking will implement SB 2440 by amending the applicability provisions at 30 TAC §230.1 and referenced at 30 TAC §§230.3 - 230.11.

Additional amendments are discussed under Item C, below.

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

Scope of this rulemaking is defined by state statute at LGC, §212.0101 and §232.0032.

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

The charge to TCEQ under LGC, §212.0101(b) and (c) and §232.0032(b) and (c) is limited to adopting rules that establish the form and content of a groundwater availability certification and require transmittal of specific information to the Texas Water Development Board and the applicable groundwater conservation district. Currently, 30 TAC §230.1 and §§230.3 - 230.11 include references to applicability and have embedded forms. Since applicability is addressed by LGC §212.0101(a), (a)(1) and (a)(2) and §232.0032(a), (a)(1) and (a)(2) and TCEQ is not charged by statute with further defining applicability, TCEQ proposes to replace applicability provisions with general provisions that identify the purpose of the rule. And since the current rules specify transmittal requirements and groundwater availability certification contents, TCEQ also proposes to remove the embedded forms and replace those with references to TCEQ forms so that the format of the forms can be updated as technology changes.

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**Statutory authority:**

LGC, Title 7, Subtitle A, Chapter 212, Subchapter A, §212.0101

LGC, Title 7, Subtitle B, Chapter 232, Subchapter A, §232.0032

**Effect on the:**

**A.) Regulated community:**

None beyond the effect of the statute. Municipal and county authorities will need to incorporate these requirements into the subdivision platting process. Some municipalities and counties will be able to absorb the increased work associated with the review of the groundwater availability certification while others will need to hire engineers or professional geoscientists to review the groundwater availability certification applications. Subdivision developers will incur increased costs associated with groundwater availability certification. The new platting approval processes could increase fees from municipal or county platting authorities.

**B.) Public:**

None beyond the effect of the statute. The public that purchases homes in an area platted after January 1, 2024, that rely solely on groundwater will benefit from groundwater availability certifications that confirm groundwater supplies will be available to the home buyer now and in the future.

**C.) Agency programs:**

None

**Stakeholder meetings:**

A public hearing was held on June 24, 2024.

**Public Involvement Plan**

In addition to the statutory public notice requirements, TCEQ developed a public involvement plan which includes a plain language summary.

**Alternative Language Requirements**

Yes, Spanish

**Public comment:**

The comment period closed on June 25, 2024.

The commission received comments from Approach Environmental (Approach), Bluebonnet Groundwater Conservation District (GCD), CenterPoint Committee for Growth and Progress (CPCGP), Clearwater Underground Water Conservation District (CUWCD), Environmental Defense Fund (EDF), Greater Edwards Aquifer Alliance (GEAA), Headwaters GCD, Hill Country Alliance (HCA), Kerr County Engineering (Kerr County), Middle Trinity GCD (MTGCD), Northern Trinity GCD (NTGCD), Parker County Commissioners Court (Parker County), Prairielands GCD, Texas Alliance of Groundwater Districts (TAGD), Texas Association of Builders (TAB), Texas Groundwater Association (TGWA), Texas Rural Water Association (TRWA), Upper Trinity GCD (UTGCD), and Wise County Commissioners Court (Wise County).

During rule proposal, the commission received several comments relating to waiver requirements. Specifically, stakeholders recommended the commission define the term “credible evidence” in rule. After further evaluation of the statute, the commission concluded that the statute does not charge TCEQ with defining applicability or waiver requirements. Because the statute defines applicability and waiver requirements and “credible evidence” is a part of waiver requirements as

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defined by Local Government Code §§212.0101(a-1)(1) and 232.0032(a-1)(1), a definition was not included in the rule adoption.

The scope of this rulemaking was limited to the implementation of SB 2440, 88th Texas Legislature, and included: replacing applicability provisions with general provisions that identify the purpose of the rule and removing the embedded forms and replacing those with references to TCEQ forms. Many of the comments received on this rulemaking requested amendments or additions to the rules that are outside of the scope of this rulemaking. No changes were made to the rules in response to those comments. Although changes to the rule were not made, the merit of the comments was reviewed, and responses were provided where appropriate.

Some commentors requested amendments requiring groundwater district contact information to be submitted as part of the groundwater availability certification. Other comments were received requesting non-substantive clarifications of proposed and existing rule language. Changes to the rules were made in response to these comments.

Some comments supported the removal of embedded forms from the rule and replacing those with references to TCEQ forms so that the format of the forms can be updated as technology changes. Comments on the new TCEQ forms were also received and, where appropriate, changes to those forms were made in response to those comments.

**Significant changes from proposal:**

The following clarifying changes to the proposed rules were made in response to public comment:

Based on a comment received from CPCGP, §230.1(a) was revised to add the following new language at the end of the paragraph to clarify the purpose of the rule: “, which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply.”

In response to comments from TAGD, Middle Trinity GCD, and Northern Trinity GCD, a new §230.4(8) was added to require the name, address, phone number, email address, and facsimile number of the applicable GCD(s) be provided on the Groundwater Availability Certification Form.

Based on a comment from Kerr County, §230.8(a) was updated to add the TCEQ form number after the form title.

In response to a comment from CPCGP, §230.10(c) was revised to clarify the information needed to determine the parameters of the aquifer(s) being considered to supply water to the proposed subdivision for individual water wells and for new and existing public water systems. The changes clarify that determination of aquifer parameters must be made under §§230.7 and 230.8 unless the development is going to be a part of a new or existing PWS.

In reviewing a comment from CPCGP regarding §230.11(b), TCEQ noted an inconsistency in terminology, which was corrected by changing the word “basis” to “conditions.”

**Potential controversial concerns and legislative interest:**

The author of SB 2440, Chairman Perry, is likely to have interest in the rulemaking effort.

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

No.

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

If this rulemaking does not go forward, TCEQ rules in 30 TAC Chapter 230 would be inconsistent with LGC, §§212.0101(a), 212.0101(a)(1) and (a)(2), 232.0032(a), 232.0032(a)(1) and (a)(2).

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: May 24, 2024

Anticipated *Texas Register* adoption publication date: December 6, 2024

Anticipated effective date: December 12, 2024

Six-month *Texas Register* filing deadline: November 25, 2024

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**Attachments:**

SB 2440

cc: Chief Clerk, 2 copies

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