

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §293.23.

Amended §293.23 is adopted *without changes* to the proposed text as published in the January 30, 2026, issue of the Texas Register (51 TexReg 521) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rule adoption is to implement the provisions of House Bill (HB) 2080, passed during the 89th Legislature’s Regular Session in 2025. This bill provides additional information and requirements regarding TCEQ’s process for reviewing a petition for inquiry filed by an affected person pertaining to the actions of a groundwater conservation district (GCD).

HB 2080 amended Texas Water Code (TWC) §36.3011(d) and added §36.3011 (d-1), (d-2), (d-3), (e-1), (e-2), (e-3), and (e-4). Specifically, amended TWC §36.3011(d) requires the recording secretary of a review panel to be an employee of the commission. TWC §36.3011(d-1) clarifies that the review panel is an advisory board and not a governmental body. TWC §36.3011(d-2) requires TCEQ to reimburse a member appointed to the review panel for actual expenses incurred. TWC §36.3011(d-3) requires the records and documents of the recording secretary to be provided to the executive director and specifies that these records are public information. TWC §36.3011(e-1) requires the executive director to provide notice of review panel public

meetings and public hearings. TWC §36.3011(e-2) states that the review panel may request technical assistance related to the petition from the Texas Water Development Board (TWDB) and that if assistance is requested, the deadline for the review is extended. TWC §36.3011(e-3) states that a member of the review panel can request legal advice and assistance on a matter pertaining to the petition from the TCEQ's Office of Public Interest Counsel (OPIC). Lastly, TWC §36.3011(e-4) states that subsections (e-2) and (e-3) do not prohibit members of the review panel from using their own technical consultants or legal counsel.

Section by Section Discussion

The adopted amendment to §293.23, Petition Requesting Commission Inquiry, updates subsection (g) to implement HB 2080. Specifically, the rulemaking adoption amends paragraph §293.23(g) to clarify that the panel is an advisory board and not a governmental body. It also amends subsection §293.23(g)(2) to require that the recording secretary be a TCEQ employee and to specify that records maintained by the recording secretary must be provided to the executive director and are public documents. Section §293.23(g)(3) is amended to include notice requirements for meetings or hearings held by the review panel. The adoption also adds subsection §293.23(g)(5) to require the commission to reimburse review panel members for actual expenses incurred while engaging in activities on behalf of the panel. Once the commission appoints a panel, information about reimbursable expenses and the process for getting reimbursed will be provided and will generally follow agency procedures. Reimbursable expenses will be limited to those associated with meals,

travel, and lodging.

The amendment adoption also adds §293.23(g)(6), which allows the review panel to request technical assistance from TWDB and extends the timeframe for the commission’s review of the petition following such a request. The amendment adoption also adds §293.23(g)(7) to specify that the review panel may request legal assistance from the commission’s OPIC. Lastly, the adopted amendment adds §293.23(g)(8) which clarifies that the review panel is not prohibited from seeking technical assistance or legal advice from entities other than TWDB and OPIC.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to TGC, §2001.0225. TGC, §2001.0225 applies to a “Major environmental rule” which is defined in Texas TGC, §2001.0225(g)(3) as a rule with a specific intent “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.”

First, the rulemaking adoption does not meet the statutory definition of a “Major environmental rule” because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this

rulemaking is to amend existing rules to implement HB 2080, 89th Texas Legislature (2025), which provided revised requirements for TCEQ's review of a petition filed by an affected person pertaining to the actions of a GCD.

Second, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rule adoption will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the rule adoption will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking adoption does not meet any of the four applicability requirements for a "Major environmental rule" listed in TGC, §2001.0225(a). TGC, §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. This rulemaking adoption does not meet any of the four preceding applicability requirements because this

rulemaking: 1) does not exceed any standard set by federal law for the regulation of groundwater conservation districts; 2) does not exceed any express requirements of state law related to the regulation of groundwater conservation districts; 3) does not 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; and 4) is not adopted solely under the general powers of the agency.

Since this rulemaking adoption does not meet the statutory definition of a “Major environmental rule” nor does it meet any of the four applicability requirements for a “Major environmental rule,” this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comments regarding the Draft Regulatory Impact Analysis Determination during the public comment period, and no comments were received on that determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the adopted rule will constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article

I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that the rule adoption will not constitute a taking as that term is defined under TGC, §2007.002(5). Specifically, the rule adoption will not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the adopted amendments to 30 TAC §293.23. The adopted amendments solely address the review of the duties of a groundwater conservation district.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comments regarding the consistency with the CMP

during the public comment period, and no comments were received regarding the CMP.

Public Comment

The commission held a public hearing virtually and in person on February 24, 2026. The comment period closed on March 3, 2026. The commission received comments from Warren Bernhardt, Brian Sledge, and Prairielands Groundwater Conservation District (GCD). Three commentors were in support of the rulemaking and none were against. One commentor suggested changes to the proposal.

Response to Comments

Comment

Warren Bernhardt commented that the proposed rule amendment would provide greater clarity and structure to the process for handling petitions filed by affected persons regarding the actions of a GCD. The commenter also asked the commission to ensure the final rule provides clear guidance to petitioners and districts while maintaining due process and administrative efficiency.

Response

The commission acknowledges this comment. In addition, the commission notes that the rulemaking adoption is limited to the requirements established in HB 2080 related to review panels, and additional changes are outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment

Prairielands GCD commented that the proposed rulemaking provides clarity regarding timelines, evidentiary standards, and the scope of commission review while balancing state oversight and local control under TWC, Ch. 36.

Response

The commission acknowledges the comment.

Comment

Brian Sledge commented that he supported the rulemaking and thanked commission staff for their work.

Response

The commission acknowledges the comment.

SUBCHAPTER C: SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

§293.23

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over groundwater; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §36.3011, which establishes the commission's authority to, upon petition by an affected person, select a review panel to review activities regarding the management planning or rules of a groundwater conservation district.

These adopted amendments implement House Bill 2080, 89th Texas Legislature (2025).

§293.23. Petition Requesting Commission Inquiry.

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and

executive director actions under Texas Water Code (TWC), §36.3011. An affected person means, with respect to a management area:

(1) an owner of land in the management area;

(2) a GCD or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area; or

(5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted desired future conditions;

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

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

(c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

(d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

(e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report. A review panel established under this section is an advisory body to the commission and not a governmental body under Chapter 551 or 552, Government Code.

(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 that is not an affected person as defined by subsection (a) of this section and is not 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 must[may] be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel. The records and documents of the recording secretary of the proceedings of the review panel must be provided to the executive director and are public information under Chapter 552, Texas Government Code.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition. The executive director shall provide notice of any public meeting or public hearing the review panel is directed to conduct not later than the seventh day before the date of a public meeting or public hearing. The executive director shall provide notice by:

(A) Posting notice on the commission's Internet website; and

(B) Delivering notice by regular mail to:

(i) the district that is the subject of the petition;

(ii) the petitioner; and

(iii) the county clerk of each county in the district that is the subject of the petition.

(4) In accordance with TWC, §36.3011, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(5) The commission shall reimburse a member appointed to the review panel for actual expenses incurred while engaging in activities on behalf of the review panel.

(A) To be eligible for reimbursement, a review panel member must file with the executive director a signed verified statement which shall include any relevant receipts describing the expenses incurred.

(B) A member appointed to the review panel is not entitled to a fee of office or other compensation for serving on the review panel.

(6) The commission or the review panel may submit a written request to the executive administrator of the Texas Water Development Board for assistance on a technical issue related to the petition. A deadline under subsections (g), (h), and (i) of this section is extended by 120 days if a request for technical assistance is submitted to the executive administrator during the review phase under that subsection.

(7) On request from a member of the review panel, the office of public interest counsel of the commission shall provide legal advice and assistance to the review panel. The office of public interest counsel:

(A) may not participate as a party in an inquiry under this section;
and

(B) has no duty or responsibility to represent the public interest or otherwise in an inquiry except as provided by this subsection.

(8) Paragraphs (6) and (7) of this subsection do not prohibit a member of the review panel from using the member's own technical consultant or legal counsel.

(h) 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.

(i) 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 a cause contained in subsection (b)(1) - (9) of this section applies. 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) - (h) of this title.