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TITLE 30

ENVIRONMENTAL QUALITY

PART 1

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 293

WATER DISTRICTS

SUBCHAPTER C

SPECIAL REQUIREMENTS FOR GROUNDWATER
CONSERVATION DISTRICTS

RULE §293.23

**Petition Requesting Inquiry in Groundwater Management
Area**

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

(b) Petition requesting commission inquiry. A GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if a district or districts refused to join in the GMA planning process or the GMA planning process failed to result in adequate planning. After the desired future conditions for the GMA have been adopted, a GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if the GMA planning process does not establish reasonable future desired conditions for the aquifers in the GMA.

(1) The petition must include documentation that demonstrates that joint planning meetings have been conducted by the presiding officers, or their designees, of each district located in whole or in part in the GMA. Documentation shall include:

(A) a certified copy of the board resolutions calling for the joint planning between the districts in the GMA;

(B) evidence that joint planning meeting notice was received by the districts in the GMA such as a return receipt for certified mail service;

(C) publishers' affidavits of joint planning meeting notice; and

(D) copies of joint planning meeting minutes and accepted handouts certified by the districts that attended the meetings.

(2) The petition must include a certified statement from the petitioning district's board of directors or from the person with a legally defined interest in the groundwater within the GMA that describes why the petitioner believes that adequate planning was not achieved in the GMA.

(3) The petition must provide evidence that:

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

(B) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the GMA established during the joint planning process;

(C) the groundwater in the management area is not adequately protected by the rules

adopted by a district; or

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

(4) The petitioner shall provide a copy of the filed petition to all groundwater conservation districts within the groundwater management area 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 the petitioner's GMA.

(5) Any GCD that is within 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 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.

(c) 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 is not sufficient to show that the items contained in subsection (b)(1), (2), or (3) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

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

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

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

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

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

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

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

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

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

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

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

(e) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if the items contained in subsection (b)(1) - (3) of this section apply. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (e) of this title.

Source Note: The provisions of this §293.23 adopted to be effective August 29, 2002, 27 TexReg 7942; amended to be effective October 26, 2006, 31 TexReg 8699

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