

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to Subchapter G, Financing Watermaster Operations, §304.61, Costs of Administration. This amendment is being made concurrently with amendments to Chapters 220 and 303. Section §304.61 is adopted *without changes* to the proposed text as published in the September 7, 2001 issue of the *Texas Register* (26 TexReg 6855) and will not be republished.

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

Chapter 304 implements the duties and responsibilities of watermaster operations. Under Texas Water Code (TWC), §11.329, holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. This amendment implements Senate Bill (SB) 289 of the 77th Legislature, 2001, which amends TWC, §11.329, to provide that the watermaster shall not assess fees against hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. This will be a change from the existing rules, which provide that watermaster costs shall be established for each water right holder for each water right authorized by category of use. Subchapter G establishes the procedures for establishing accounts, commission approval of assessments and budget, and assessment of costs of watermaster operations. The existing rule provides that costs shall be established for each water right holder for each water right authorization by category of use. This adopted rule would amend §304.61 to specify that the commission may not assess costs for a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

## SECTION DISCUSSION

Section 304.61 is amended to add the provision that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This amendment implements SB 289, and deletes an obsolete requirement.

## FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 that statute because the specific intent of this amendment is not to protect the environment or reduce risks to human health from environmental exposure. The intent of the amendment is to exempt small privately-owned hydroelectric facilities from paying watermaster fees.

## TAKINGS IMPACT ASSESSMENT

The commission evaluated this adopted rule and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the rulemaking action is to implement legislation which changes who may be assessed fees for a watermaster. This rulemaking substantially advances this purpose by amending §304.61 of the watermaster rules to provide that a watermaster may not assess fees against small privately-owned hydroelectric facilities.

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rule because this rule amendment does not affect any private real property that is the subject of this rulemaking 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. This rulemaking only relates to fees charged for the services of a watermaster.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules 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 Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

#### HEARING AND COMMENTERS

A public hearing was held on this rulemaking on October 4, 2001 in San Antonio. No oral comments were received at the hearing, and no written comments were received on the proposed rule amendment.

#### STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency;

and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.0135, which requires assessments of fees against water right holders and wastewater permit holders to pay for the administrative costs of periodic monitoring and assessment of water quality conditions in each watershed and river basin in the state.

## **SUBCHAPTER G: FINANCING WATERMASTER OPERATIONS**

### **§304.61**

#### **§304.61. Costs of Administration.**

Under Texas Water Code, §11.329, all holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. An assessment account shall be established for each water right holder for each water right authorization by category of use. The commission shall not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. The assessment for each assessment account shall be the sum of a uniform base charge and, as applicable for that assessment account, either a use fee or a storage fee, or both. The executive director shall file with the commission a copy of the proposed budget. Following a public meeting, the commission shall issue an order for each water division or group of water divisions, as the commission may determine to be appropriate, approving the assessment income needed for the watermaster operations for the assessment period under consideration. The order shall also specify the base charge per assessment account and the reinstatement fee for delinquent assessment payment.