

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 18, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2013-1976-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 295, Water Rights, Procedural
Chapter 297, Water Rights, Substantive
HB 3233: Interbasin Transfers of Surface Water
Rule Project No. 2013-055-295-OW

Background and reason(s) for the rulemaking:

In 2013, the 83rd Legislature passed House Bill (HB) 3233, relating to interbasin transfers of state water. HB 3233 amended Texas Water Code (TWC), §11.085. The commission's procedural rules related to interbasin transfers are in Chapter 295, Water Rights, Procedural, and Chapter 297, Water Rights, Substantive. Rulemaking is required in these two chapters to reflect the changes to the TWC made by HB 3233.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will implement provisions of HB 3233, which amended TWC, §11.085, to:

- remove the requirement that an application for an interbasin transfer include the projected effect on user rates and fees for each class of ratepayers;
- limit consideration of issues in an evidentiary hearing to those requirements included in TWC, §11.085;
- clarify the length of notice publication;
- describe geographic areas exempt from the provisions of TWC, §11.085;
- specify that the benefits to the receiving basin and the detriments to the basin of origin considered in an application for an interbasin transfer be based on the factors described in TWC, §11.085(k); and
- clarify that interbasin transfers based on contracts can be extended as contracts are renewed or extended.

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

There are no changes required by federal rule. The adopted rulemaking will implement HB 3233.

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

Staff has no additional recommendations.

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Statutory authority:

TWC, §§5.102, 5.103, and 5.105

Effect on the:

A.) Regulated community:

Applicants may experience shorter permitting process as a result of the changes to TWC, §11.085.

B.) Public:

The adopted rules are not expected to have any impact on the public.

C.) Agency programs:

The adopted rules are not expected to have any impact on agency programs.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held during the comment period on April 10, 2014 in Austin.

Public comment:

The commission received one comment that was outside the scope of the rulemaking.

Significant changes from proposal:

No significant changes were made from proposal to adoption.

Potential controversial concerns and legislative interest:

There are no controversial issues associated with this rulemaking.

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

This rulemaking will not affect any current policies or require development of new policies.

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

If this rulemaking does not go forward, the commission's rules will be inconsistent with statute. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** March 14, 2014

Anticipated *Texas Register* adoption publication date: August 22, 2014

Anticipated effective date: August 28, 2014

Six-month *Texas Register* filing deadline: September 14, 2014

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Agency contacts:

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Attachments

House Bill 3233

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Pattie Burnett
Office of General Counsel
Tracie Donnelly
Derek Baxter