

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 3, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2013-0948-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 303, Operation of the Rio Grande
Contractual Sales in the Rio Grande Relating to Documents Needed to File
Rule Project No. 2013-031-303-OW

Background and reason(s) for the rulemaking:

This rulemaking will remove the one-year limitation for certain water contracts in the Rio Grande Watermaster Program. Under the existing rule, water contracts in the Rio Grande may also serve as pushwater contracts to move municipal water through irrigation conveyances. These contracts have a maximum duration of one year as per 30 TAC §303.53(a)(8). With this one-year limitation, unused water purchased by a municipality under contract is returned to the system and no longer available to the municipality. By removing the one-year limitation, the water rights holders' investments will be better protected and reduce the risk of losing part of the monetary investment in contract water.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: The proposed rulemaking would amend §303.53(a)(8) to remove the requirement that contracts for the purchase of all or a part of the annual authorized amount of use for a water right in the Middle or Lower Rio Grande be limited to one year.

The commission also proposes to add §303.53(d) to clarify that all contracts for water would remain subject to §303.22, Allocations to Accounts. This would maintain the requirement that allocations of water be put to beneficial use within two consecutive calendar years; otherwise, the account will be reduced to zero as per §303.22.

The proposed amendment will not allow for speculative purchase and resale of water under contract. The change would not remove any other requirements related to water contracts. The change also would not apply to contracts for Domestic, Municipal, and Industrial (DMI) water. These DMI contracts expire on the last Saturday of the year.

B.) Scope required by federal regulations or state statutes: There are no changes required by federal regulations or state statutes.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

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Statutory authority:

TWC, §§5.103, 5.102, and 11.3271.

Effect on the:

A.) Regulated community: This rulemaking would affect holders of Class A and B water rights on the Middle and Lower Rio Grande, as well as holders of municipal, domestic, and industrial water rights, by removing the one-year limitation for water contracts.

B.) Public: With the removal of the one-year limitation, municipalities will not be forced to purchase multiple contracts if they do not use all of the contract water before a year is expired. The purchases of these contracts are often passed on to the municipalities' customers to recover some of the costs. By allowing contracts for more than a year, the municipalities would likely be able to lessen the increased expense on their customers.

C.) Agency programs: Rio Grande Watermaster Program forms and procedures would need to be updated. The Texas Watermaster Accounting System (TXWAS) would require an update for the contract expiration field.

Stakeholder meetings: There will be no stakeholder meetings associated with this rulemaking; however, there will be a rule public hearing on September 10, 2013.

General information on the proposed rule change will be communicated to water right holders in the Rio Grande Watermaster area by mail through the monthly reports. In addition, information about this rule change will also be included in the mailing for the budgets assessments scheduled to be sent this summer.

Potential controversial concerns and legislative interest:

Staff does not expect any controversial concerns.

Staff does expect some legislative interest as the water issues facing the Rio Grande System have had high legislative interest in the recent months.

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

The TCEQ Rio Grande Watermaster program's policy regarding contractual sales will change with this rule. This policy change may require some changes to forms and will require a change to TXWAS to allow for contracts to extend past one year.

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

A rule change would be necessary to remove the one-year contract term limit. If no action is taken, then certain cities may be required to purchase multiple contracts if they are not able to utilize the entire contracted amount during the one-year term of the contract.

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During a drought situation and under an emergency proclamation by the governor, the executive director may be provided the authority to suspend certain rules or regulations that may inhibit or prevent prompt response to the drought.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 26, 2013

Anticipated *Texas Register* publication date: August 16, 2013

Anticipated public hearing date (if any): September 10, 2013

Anticipated public comment period: August 16, 2013 - September 16, 2013

Anticipated adoption date: November 6, 2013

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