

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §303.2, Definitions; §303.21, Accounts - Amistad/Falcon Reservoirs; §303.22, Allocations to Accounts; §303.41, Sale of Water Rights; and §303.42, Amendments. The commission proposes these amendments to correct the spelling of two of the reaches in the Rio Grande, limit the conveyance of water rights until all fees are paid, prohibit the transfer of water rights from the Upper Rio Grande to the Lower or Middle Rio Grande below International Amistad Reservoir unless the transfer request utilizes a conversion factor approved by the commission which would not impair other water rights or water available for allocation, and adjust the minimum operating reserve from 150,000 to 75,000 acre feet.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Water rights in the portions of the Rio Grande Basin and the Nueces - Rio Grande Basin which are regulated by this chapter are allocated by a watermaster employed by the commission. Water rights in these basins were allocated under the provisions of a judicial adjudication of water rights. *State v. Starley*, 413 S.W.2d 451 (Tex.Civ.App.-Corpus Christi 1967) (*Starley*), and *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969) (*Hidalgo*). Water in portions of the Rio Grande River is shared with the United States of Mexico (Mexico) under several treaties, including the Treaty of 1944 which most specifically addresses the issue of water allocation. The International Boundary and Water Commission (IBWC) oversees the allocations of water between the United States and Mexico, and notifies the watermaster of the amounts of water available for allocation to water rights holders under the jurisdiction of the United States (U.S.).

Water for the allocated water rights in these basins is stored in two international reservoirs, Amistad and Falcon. The U.S. portion of the water is allocated under a schedule established in *Hidalgo*. In these cases, the court created several classes of water rights holders under the jurisdiction of the U.S. which have since been modified to Domestic, Municipal, and Industrial (DMI) water users, and Class A and Class B water users. The DMI users have priority rights over Class A and B water users. Rules under Chapter 303 apply only to water under U.S. jurisdiction and are not applicable to the Mexican portion of water in the International Amistad and Falcon Reservoirs.

Under the provisions of this chapter, the commission sets an operating reserve and a DMI reserve for the minimum amount of water under U.S. jurisdiction which must be stored in the reservoirs to ensure that DMI users have adequate water. The current DMI reserve is 225,000 acre feet and remains unchanged in this proposal. The operating reserve is a minimum volume of acre feet of water which is required to be maintained in the reservoirs to allow for losses of water from evaporation, seepage, and conveyance; to allow for emergencies; and for adjustments of storage accounts. If the unallocated water in the reservoirs drops to the minimum operating reserve, the watermaster adjusts allocations for the Class A and Class B water users by deducting water from their account balances (called negative allocations) to ensure that sufficient water is available for losses due to evaporation, seepage, and conveyance; to allow for emergencies; and for adjustments of storage accounts.

When the court determined the allocation of water rights in these basins in the *Hidalgo* adjudication, the court established a DMI reserve of 60,000 acre feet. In 1986, the commission promulgated rules setting the operating reserve between 275,000 and 380,000 acre feet, and under drought conditions,

setting the operating reserve at 150,000 acre feet. In this proposal the commission proposes changing the operating reserve to 75,000 acre feet.

Because of the existence of severe to extreme drought conditions in the Middle and Lower Rio Grande Basins over the past six years, the commission determined there was a need to assess the operational requirements of this system. Staff reviewed historic data showing actual uses of water in the Rio Grande and Nueces - Rio Grande Basins from 1988 - 1998, system inflows reported by the IBWC, and other hydrologic data for the same period. After reviewing this data, the commission proposes to modify Chapter 303 to lower the existing operating reserve to 75,000 acre feet. This modification will relieve some of the economic effects of the drought on Class A and Class B water rights holders in these basins. Additionally, the commission proposes to lower the trigger for negative allocations to zero acre feet in the operating reserve from 150,000 acre feet and to create a minimum restoration volume of 48,000 acre feet. A negative allocation occurs when the watermaster subtracts allocations from storage accounts to ensure that sufficient water is available for losses due to evaporation, conveyance, seepage, and emergencies. The commission proposes to require that the operating reserve must be reestablished to 75,000 acre feet by inflows before the watermaster can make any allocations to Class A and Class B accounts.

The proposed rule changes are based on historic data, and for the first time, models of actual reservoir operations over the past six years. Evaluation of this data reveals several important facts which were considered. The greatest amount of evaporative losses which would have occurred in this system was during May 1998, when the total losses from evaporation, conveyance, channel operation, and

emergencies would have reduced the operating reserve to 34,471 acre feet, well above the proposed zero acre feet in the operating reserve which will trigger the implementation of negative allocation as contemplated by this proposed rule.

Historic data also shows that monthly evaporative losses average 39,623 acre feet. The minimum average monthly inflow into the reservoirs is 66,000 acre feet. Since the average monthly evaporative loss is approximately 40,000 acre feet, and the average monthly inflow is 66,000 acre feet, it is anticipated that the inflow of any one month will exceed the evaporative loss for that month. A minimum operating reserve of 75,000 acre feet should exceed the difference between the evaporative loss and restorative inflow of any one month. Based on this data, the commission has determined that the operating reserve may be safely changed to 75,000 acre feet with a trigger for negative allocations at zero acre feet, while still protecting DMI water rights. The commission proposes to establish a restoration operating reserve of 48,000 acre feet, which is anticipated to provide sufficient water reserves for any single month's evaporative losses. Based on this data, the commission also anticipates that monthly inflows will then reestablish the operating reserve at 75,000 acre feet within one month, since the average monthly inflow has always exceeded the average monthly evaporative loss.

SECTION BY SECTION DISCUSSION

Section 303.2 is proposed to be amended to delete the phrase "unless the context clearly indicates otherwise," to eliminate ambiguity.

Section 303.2(11)(C) is proposed to correct the spelling of "Progreso" in Progreso Bridge.

Section 303.2(11)(D) is proposed to correct the spelling of “Progreso” in Progreso Bridge.

Section 303.2(22) is proposed to be amended to add subparagraphs (A) and (B), which define Class A and Class B water rights. Class A and B water rights are rights in the Lower and Middle Rio Grande River held under certificates of adjudication that were granted either in the adjudication of the Lower and Middle Rio Grande River in *State v. Hildalgo Co. Water Con. & I. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex. Civ. App. - Corpus Christi 1969, writ ref'd n.r.e.), or issued by the commission. The majority of these water rights are irrigation rights, but in recent years some have been converted to other uses. These definitions are being added to define the terms “Class A” and “Class B” water rights, which are currently used in the rules, but not defined.

Section 303.21(b)(2) is proposed to establish an operating reserve of 75,000 acre feet. This is a change from the current reserve which fluctuates between 380,000 and 275,000 acre feet, or under drought conditions, as low as 150,000 acre feet. This change is based in part on recommendations from the Region M Water Planning Group and the Rio Grande Watermaster Advisory Committee to provide additional water to Class A and Class B water rights holders. That recommendation was based at least in part on a study of previous droughts, system inflows, and analyses of the water levels in the system. According to historical data during drought conditions, and modeling of water use in this basin, this change should not affect DMI users. A portion of §303.21(c) is proposed for deletion from the rule. This language describes the calculating process for the fluctuating operating reserve which is proposed for change. This portion of the rule will no longer be necessary. The new operating reserve will be established as 75,000 acre feet.

Section 303.22(a) is proposed to be amended to clarify that dead storage is water behind the dams that cannot be released due to hydrologic restrictions.

Sections 303.22(a)(3) and (4) (relating to Allocations to Accounts) describe how the water for the accounts described in §303.21(b) (relating to Operating Reserve), will be calculated and allocated.

Section 303.22(a)(3) is changed to reflect the change in the operating reserve. Paragraph (4) changes irrigation and mining to Class A and Class B accounts. This paragraph is also proposed to be amended to clarify that the remaining amount of water will be allocated after the deduction of the operating reserve.

Section 303.22(b) clarifies that the remaining water available for allotment after the deductions under §331.22(a), shall be divided into Class A and Class B water rights, which are defined. The proposed amendment deletes the phrase “for irrigation and mining uses” which is unnecessary because the commission has added definitions for Class A and Class B water rights holders.

Section 303.22(f)(2) is proposed to be added as new language. The rule states that the watermaster may not allocate water to Class A and Class B water rights holders until the operating reserve is 75,000 acre feet, which is the new operating reserve amount proposed in this rulemaking.

Section 303.22(f)(3) is renumbered and proposed to modify the amount of the operating reserve. Under this chapter, the commission sets an operating reserve and a DMI reserve for the minimum amount of water which must be stored in the reservoirs to ensure that DMI users have adequate water. The

operating reserve is a minimum volume of acre feet of water which is required to be maintained in the reservoir to allow for losses of water from evaporation, seepage, and conveyance; to allow for emergencies; and for adjustments of storage accounts. The new operating reserve is proposed to be 75,000 acre feet. The trigger for negative allocations will be zero acre feet in the operating reserve. If the operating reserve is reduced to zero acre feet, the watermaster adjusts, through negative allocations, the Class A and Class B water accounts to restore the operating reserve to 48,000 acre feet. When the operating reserve has been restored to 48,000 acre feet, negative allocations will cease. Inflows must restore the operating reserve to 75,000 acre feet before any positive allocations may be made. Only Class A and Class B accounts are subject to negative allocations.

Section 303.41 is proposed to clarify that all fees must be paid prior to the sale of water rights. This change is necessary because payment of fees before use is a statutory requirement in Texas Water Code (TWC), §11.329(e).

Section 303.42 has been rearranged for clarity. To create a logical flow, new paragraphs (3) and (4) have been created, and some language has been moved from the existing §303.42 to paragraph (1) and to new paragraph (3) of this section. Section 303.42 currently prohibits the transfer of the water rights from the point of diversion, or place of use of water rights from the Lower and Middle Rio Grande Basins to above International Amistad Reservoir. New language is proposed in §303.42(4) to define the conditions for an inverse sale (from above International Amistad Reservoir to the Lower and Middle Rio Grande Basins). These transfers would be prohibited unless the transfer request uses a conversion factor approved by the commission which would not impair other water rights or water available for

allocation. This change is necessary to clarify that such a transfer is not allowed without an approved conversion factor and a showing of no impairment of other water rights because water rights in the Lower and Middle Rio Grande Basins are administered under a totally different system than exists above International Amistad Reservoir. These rights can only be transferred in a manner that ensures protection of other water rights.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments are in effect there will be fiscal implications, which are not anticipated to be significant, for units of state and local government as a result of administration and enforcement of the proposed amendments.

The proposed amendments would lower the operating reserve required to be maintained in the Amistad and Falcon reservoirs from 150,000 acre feet to 75,000 acre feet of water, which could potentially provide up to an additional 75,000 acre feet of water for each allocation of water to the water right holders within the Rio Grande and Nueces - Rio Grande River Basins. No change is proposed regarding the current DMI reserve volume. Additionally, the proposed amendments would prohibit the sale of water rights from above International Amistad Reservoir to the Lower and Middle Rio Grande Basins. This is intended to bring consistency to the rules since water rights sales from the Lower and Middle Rio Grande Basins to above International Amistad Reservoir are already prohibited.

The area within the Rio Grande and Nueces - Rio Grande River Basins affected by the proposed amendments include the following counties: Hudspeth, Jeff Davis, Presidio, Brewster, Terrell, Edwards, Kinney, Dimmit, Webb, Jim Hogg, Cameron, Hidalgo, Kinney, Maverick, Starr, Val Verde, Webb, Willacy, and Zapata.

The commission estimates there are currently 1,096 Class A and Class B water rights holders that will be affected by the proposed amendments, 11 of which are units of state and local government. The commission estimates there will be economic benefits, which are not anticipated to be significant, for the Texas Parks and Wildlife Department (TPWD) and approximately ten municipalities in the affected regions. The TPWD and the municipalities hold several Class A and Class B water rights in the region. The total Class A and Class B water rights held by affected units of state and local government are expected to be small compared to private agricultural and mining operations. The commission estimates that if affected units of state and local government receive additional water, it would be used to maintain wildlife areas and municipal green spaces and would not result in significant economic benefits.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be increased amounts of water for Class A and Class B water right holders, which is intended to help alleviate drought-related business losses in the Rio Grande and Nueces - Rio Grande River Basins.

The proposed amendments would establish a new operating reserve level of 75,000 acre feet of water required to be maintained in the International Amistad and Falcon Reservoirs, which provide water for users in the affected river basins. Lowering the operating reserve to 75,000 acre feet of water could potentially provide up to 75,000 acre feet of additional water for each allocation of water to Class A and Class B users. The commission estimates there are 1,085 privately-owned and operated Class A and Class B water rights holders that will be affected by the proposed amendments. This additional water is expected to have a beneficial economic impact to irrigation and mining water users in the affected river basins. There are at least four coal/lignite mines in the affected counties: three in Webb County and one in Maverick County. These are smaller mines that require approximately 150 acre feet of water per year to operate. Although these mines have water rights for the required amount of water, drought conditions over the past few years have made it difficult for these mines to be allocated their water rights. Lowering the operating reserve level to 75,000 acre feet of water could potentially help alleviate the shortage of water for mining operations in the region.

The primary beneficiary of the increased water supply is expected to be agricultural irrigators in the affected regions. According to a report produced by the Texas Water Development Board (TWDB), the Department of Agricultural Economics, Texas A&M University, and the Texas Water Resource Institute at Texas A&M University titled "*The Value of Applied Irrigation Water and the Impact of Shortages on Rio Grande Valley Agriculture, 2001,*" \$652 could be gained in gross regional product from the sale of irrigated crops for every acre-foot of applied irrigation to the affected areas.

Allocation of the additional 75,000 acre feet of water, less any potential evaporation and transportation losses, is anticipated to result in an economic gain of approximately \$37 million generated from the production and sale of irrigated crops. The total amount of additional water available for allocation due to lowering the operating reserve depends on water levels within the International Amistad and Falcon Reservoirs. The DMI and operating water reserves must both be maintained prior to any water being allocated for Class A and Class B users; therefore, the actual economic gain could increase, or decrease, depending on the reservoir levels.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse economic effects to small or micro-business as a result of the implementation of the proposed amendments. The rulemaking would establish a new operating reserve level of 75,000 acre feet of water required to be maintained in the International Amistad and Falcon Reservoirs, which provide water for users in the Rio Grande and portions of the Nueces - Rio Grande Basins. Lowering the operating reserve from 150,000 acre feet to 75,000 acre feet of water could potentially provide up to 75,000 acre feet of water for allocation to Class A and Class B water rights users.

According to a report produced by the TWDB, the Department of Agricultural Economics, Texas A&M University, and the Texas Water Resource Institute at Texas A&M University titled "*The Value of Applied Irrigation Water and the Impact of Shortages on Rio Grande Valley Agriculture, 2001*," \$652 could be gained in gross regional product from the sale of irrigated crops for every acre-foot of applied irrigation to the affected areas.

The commission estimates there are 1,085 Class A and Class B private water rights holders that will be affected by the proposed amendments, the majority of which will probably be small and micro-businesses. Allocation of the additional 75,000 acre feet of water, less any potential evaporation and transportation losses, is anticipated to result in an economic gain of approximately \$37 million generated from the production and sale of irrigated crops. However, the total amount of additional water available for allocation due to lowering operating reserve depends on water levels within the International Amistad and Falcon Reservoirs. The DMI and operating water reserves must be maintained prior to any water being allocated for Class A and Class B users; therefore, the actual economic gain could increase, or decrease, depending on the reservoir levels.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that a full regulatory impact analysis (RIA) is not required for the changes currently proposed to 30 TAC Chapter 303.

The commission's determination is based upon the premise that an RIA is required only for a rule amendment meeting the definition of "major environmental rule" in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225(g)(3) states that for a rule change to qualify under that definition, its specific intent would have to be "to protect the environment or reduce risks to human health from environmental exposure." Additionally, the same subsection requires that, once either or both of those two intentions exist, the possibility must exist that the amended rule "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.”

Generally speaking, the proposed changes impact Chapter 303 in three ways by: 1) reducing the Rio Grande system’s arbitrarily determined minimum operating reserve, the impact of which is to reduce waste in the reservoir system and to increase the amount of water available for Class A and Class B water rights holders in times of drought; 2) providing procedures for the maintenance and replenishment of an appropriate operating reserve once reservoir levels fall below a specified minimum amount of acre feet; and 3) clarifying the limits on the ability of the holders of Rio Grande water rights upstream of International Amistad Reservoir to transfer water through the system, or to convert such water rights for use and withdrawal from the reservoirs or downstream from International Amistad Reservoir, a potentiality that has never been allowed by the watermaster because the Lower and Middle Rio Grande is a court-adjudicated, administratively-closed system.

Since none of these rule amendments are specifically intended to protect the environment or reduce risks to human health from environmental exposure, none of the amendments meet the definition of “major environmental rule” in Texas Government Code, §2001.0225, and further analysis of impact is unwarranted. The commission invites public comment on its draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is a modification of a program or regulation that does not rise to the level of a recognized interest in private real property, §2007.003(b)(5), and because the government action being taken does not affect an owner's real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the action, §2007.002(5)(B)(i).

Among other things, Texas Government Code, §2007.043 (Takings Impact Assessment) requires: a description of the specific purpose of the proposed action; an identification of how the action substantially advances its stated purpose; a description of the burdens imposed on private real property, if any, "...resulting from the proposed use of private real property..." Texas Government Code, §2007.043(b)(1)(B); and a determination of whether the proposed action will constitute a taking.

For the purpose of this assessment, the actions being taken constitute the following: changes to required procedures and volumes related to the Rio Grande system's minimum operating reserve; and clarification of the watermaster's position regarding the conversion of water rights upstream from the International Amistad Reservoir and the transfer of water rights by owners with unpaid fees. The purpose of the operating reserve changes is to reduce waste in the reservoir system and to increase the amount of water available for Class A and Class B water rights holders in times of drought. The

purpose of the clarification of water rights is to bring consistency to the rules' application to water rights in the Lower, Middle, and Upper Rio Grande Basins.

With regard to the changes in the operating reserve volume and procedures, these changes do not affect any private real property in any manner that restricts or limits any owner's right to such property that would exist in the absence of these changes. If anything, the reduction of the operating reserve will result in an increase in the likelihood that private rights will be fully satisfied. No private property right exists to water contained in the operating reserve; it cannot be allocated for private use. Thus, these changes do not constitute a taking under Texas Government Code, §2007.002(5)(B)(i).

Since water rights are included in the definition of "private real property" in Texas Government Code, §2007.002(4), the clarification of the right to convert or transfer those water rights requires a more detailed analysis. The proposed language is intended to clarify the conditions under which water from upstream water rights holders could be sent to downstream users. The watermaster has not allowed such a transfer in the past, nor does the watermaster intend to allow such a transfer in the future absent an approved conversion factor or a showing that existing water rights below International Amistad will not be impaired because of the uniqueness of the court-adjudicated system of allocation. Likewise, a water rights owner could currently believe that his or her rights may be conveyed prior to all delinquent fees and penalties being paid. Such a belief is contrary to TWC, §11.329(e). Therefore, these amendments do not affect an owner's real property in a manner which restricts or limits the owner's right to the property that would otherwise exist in the absence of the rulemaking.

The TWC, §11.122(a) (Amendments to Water Rights Required) requires that holders of permits, certified filings, and certificates of adjudication “shall obtain from the commission, authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right.” The Austin Court of Civil Appeals held that these limitations on water rights do not constitute a taking. *Clark v. Briscoe Irr. Co.*, 200 S.W.2d 674 (Tex.Civ.App.–Austin 1947). Thus, a holder of water rights in the upper regions of the Rio Grande has a defined right to divert a specific volume of water from a specific diversion point and use that water for a specific authorized purpose. However, the holder *does not* have an absolute right to change the point of diversion or the purpose of use because the possibility/probability exists that an amendment for the purpose of making such changes would not be granted. Under TWC, §11.134, water rights amendments are not authorized if other water rights would be impaired. No such amendments of Upper Rio Grande rights have ever been granted. The granting of such amendments would require complicated calculations in order to ensure that other rights would not be affected. No conversion factors currently exist for volumes of water transferred into the system. Such conversion factors would have to be formulated to determine the amount of water that could be diverted hundreds of miles downstream. The reality is that the Amistad/Falcon system is already a fully allocated administratively-closed system and the introduction of new water rights into the system is currently unworkable without impairing existing rights to water already allocated within the system. The commission would only consider granting such a transfer if it had a workable approved conversion factor and a showing that no water rights in the system would be impaired.

In summary, the proposed changes do not constitute a taking. The changes related to the operating reserve pertain to water owned by the State of Texas. The clarification related to Upper Rio Grande water rights is not a taking because there is no absolute right to transfer this water without the express approval of both the Rio Grande Watermaster and the commission. No mechanism currently exists for calculating either the reduction of water volume from upstream through the administratively-closed and fully-allocated system or the extent of impairment of existing allocated water rights.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The executive director reviewed the proposed 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 proposed rules are not subject to the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held in Harlingen on February 23, 2001, at 2:00 p.m. at the commission's regional office located at 1804 West Jefferson Avenue. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing. A Spanish translator will be provided by the commission at the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-041-303-WT. Comments must be received by 5:00 p.m., February 26, 2001. For further information contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

Chapter 303 is applicable to water rights in portions of the Rio Grande Basin and portions of the Nueces - Rio Grande Coastal Basin. Chapter 303 establishes the regulatory functions of the watermaster in these basins. The amendment is proposed 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §§11.325 - 11.458, which establish the duties of the watermaster. For additional legal authority, refer to *State v. Starley*, 413 S.W.2d 451 (Tex.Civ.App.-Corpus Christi 1967), and *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969).

No other codes or statutes are affected by this proposal.

SUBCHAPTER A: INTRODUCTORY PROVISIONS

§303.2

§303.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings[, unless the context clearly indicates otherwise].

(1) - (10) (No change.)

(11) Lower Rio Grande Valley - That portion of the Rio Grande Basin, including tributaries, in Texas from Falcon Dam downstream to the Gulf of Mexico, including that portion of the Nueces-Rio Grande Coastal Basin located in Starr, Hidalgo, Willacy, and Cameron Counties, Texas, whose source of water is the Rio Grande.

(A) - (B) (No change.)

(C) Reach III is that portion of the Lower Rio Grande between Anzalduas Dam and the Progreso [Progresso] Bridge.

(D) Reach IV is that portion of the Lower Rio Grande between the Progreso [Progresso] Bridge and the International Boundary and Water Commission streamflow gage near San Benito.

(E) - (G) (No change.)

(12) - (21) (No change.)

(22) Water right - A right acquired under the laws of the state to impound, divert, and/or use water.

(A) Class A water right - A water right in the Lower or Middle Rio Grande Basin designated as a Class A right and held under a certificate of adjudication, granted in the Adjudication of the Lower and Middle Rio Grande River in State v. Hildalgo Co. Water Con. & Irr. Dist. No. Eighteen, 443 S.W.2d 728 (Tex. Civ. App. - Corpus Christi 1969, writ ref'd n.r.e.), or issued. If converted to a domestic, municipal, and industrial (DMI) water right, a Class A water right is converted to 50% of the existing water right.

(B) Class B water right - A water right in the Lower or Middle Rio Grande Basin designated as a Class B right and held under a certificate of adjudication, granted in the Adjudication of the Lower and Middle Rio Grande River in State v. Hildalgo Co. Water Con. & Irr. Dist. No. Eighteen, 443 S.W.2d 728 (Tex. Civ. App. - Corpus Christi 1969, writ ref'd n.r.e.), or issued by the commission. If converted to a DMI water right, a Class B water right is converted to 40% of the existing water right.

(23) (No change.)

SUBCHAPTER C: ALLOCATION AND DISTRIBUTION OF WATERS

§303.21, §331.22

STATUTORY AUTHORITY

Chapter 303 is applicable to water rights in portions of the Rio Grande Basin and portions of the Nueces - Rio Grande Coastal Basin. Chapter 303 establishes the regulatory functions of the watermaster in these basins. The amendments are proposed under Texas Water Code (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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §§11.325 - 11.458, which establish the duties of the watermaster. For additional legal authority, refer to *State v. Starley*, 413 S.W.2d 451 (Tex.Civ.App.-Corpus Christi 1967), and *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969).

No other codes or statutes are affected by this proposal.

§303.21. Accounts--Amistad/Falcon Reservoirs.

(a) (No change.)

(b) When there is adequate water to do so, the watermaster shall maintain the following accounts:

(1) (No change.)

(2) an operating reserve of 75,000 acre feet [which is to fluctuate between 380,000 acre-feet and 275,000 acre-feet of water based on the monthly levels of the Amistad-Falcon Reservoir system];

(3) (No change.)

(c) [The operating reserve is to be calculated monthly by multiplying the percentage of total U.S. conservation storage capacity in the system times the maximum operating reserve of 380,000 acre-feet. The calculated reserve cannot be less than 275,000 acre-feet of water, except as provided by §303.22(e) of this title (relating to Allocations to Accounts).] The operating reserve is necessary to cover [provide for] losses [loss] of water charged to the United States. These losses are the result of [by] seepage, evaporation, and conveyance; emergency requirements; and adjustments of amounts in storage as may be necessary by finalization of provisional computations by the International Boundary and Water Commission.

§303.22. Allocations to Accounts.

(a) Allocations shall be based on water in the usable storage of Falcon and Amistad Reservoirs. Such storage shall be computed as the total storage in Amistad and Falcon Reservoirs as reported by the International Boundary and Water Commission on the last Saturday of each month, less the amount of

water in dead storage, which is water behind the dams that cannot be released due to hydrologic restrictions. To determine the amount of water to be allocated to the various accounts, computations shall be made in the following sequence:

(1) - (2) (No change.)

(3) from the remaining storage, deduct 75,000 acre feet for the operating reserve [determined in accordance with §303.21(b)(2) of this title (relating to Accounts-Amistad/Falcon Reservoirs)];

(4) after the deduction of the operating reserve, the remaining water [storage] will be allocated to the Class A and Class B [irrigation and mining] accounts.

(b) The water available for allotment after the deductions under subsection (a) of this section, [for irrigation and mining uses] shall be divided into Class A and Class B. Class A rights include all Class A water rights in the Lower and Middle Rio Grande Basins, as defined in §303.2(22)(A) of this title (relating to Definitions); Class B rights include all Class B water rights in the Lower and Middle Rio Grande Basins, as defined in §303.2(22)(B) of this title. Class A allottees shall receive 1.7 times as much water as that allotted to Class B allottees.

(c) - (e) (No change.)

(f) If the amount of usable water is insufficient to carry out all the steps specified in subsections (a) and (b) of this section, the computations will be made in the specified sequence, with the following adjustments.

(1) (No change.)

(2) The watermaster may not allocate water to Class A and Class B water rights users until the operating reserve is at or above 75,000 acre feet.

(3) [(2)] If the balance available for the operating reserve is less than 75,000 [275,000] acre-feet, but greater than zero [150,000] acre-feet, then that amount will be the amount allocated to the operating reserve. If the operating reserve [it] is less than zero [150,000] acre-feet, the watermaster will deduct from the Class A and Class B [irrigation and mining] accounts, via negative allocations, the amount necessary to provide 48,000 [150,000] acre-feet for the operating reserve account. A negative allocation will be made on a pro rata basis, from all Class A and Class B [irrigation and mining] accounts containing water at the time, based on the amount of water in such accounts. The watermaster will keep accurate records of the negative allocations affecting each Class A and Class B [irrigation and mining] account. When [Once negative allocations have ceased and] the operating reserve has been restored to 48,000 acre feet [sufficient water is available for positive allocations], negative allocations will cease. When the operating reserve has been restored to 75,000 acre feet, and sufficient water is available, all accounts from which water has been deducted will be

restored to the amount of water in each account prior to the negative allocation period and any new allotments will be made in accordance with subsections (a) and (b) of this section.

(g) - (h) (No change.)

SUBCHAPTER E: AMENDMENTS TO AND SALES OF WATER RIGHTS

§§303.41, 331.42

STATUTORY AUTHORITY

Chapter 303 is applicable to water rights in portions of the Rio Grande Basin and portions of the Nueces - Rio Grande Coastal Basin. Chapter 303 establishes the regulatory functions of the watermaster in these basins. The amendments are proposed under Texas Water Code (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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §§11.325 - 11.458, which establish the duties of the watermaster. For additional legal authority, refer to *State v. Starley*, 413 S.W.2d 451 (Tex.Civ.App.-Corpus Christi 1967), and *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969).

No other codes or statutes are affected by this proposal.

§303.41. Sale of Water Rights.

(a) The owner of a water right may convey his water right as provided by §297.81 of this title (relating to General Rules of Conveyance) and §297.82 of this title (relating to Duty to Inform Executive Director), after all outstanding fees, penalties, and interest, if any, as provided by §303.71 and §303.73 of this title (relating to Costs of Administration; and Assessment of Costs) are paid. The

purpose and place of use shall not be changed without authorization from the commission. Owners of water rights shall promptly inform both the executive director and the watermaster of any transfers of water rights. The new owner must file with the executive director all required documents as identified in §297.83 of this title (relating to Recording Conveyances of Water Rights).

(b) (No change.)

§303.42. Amendments.

The commission will consider applications to amend water rights. [Transfer of the point of diversion and/or place of use of water rights from the Lower and Middle Rio Grande to above Amistad Reservoir are prohibited; however, transfers may be made between the mainstem of the Lower Rio Grande and the mainstem of the Middle Rio Grande. Applications must meet all of the requirements for an original water permit as set out in Chapter 295 of this title (relating to Water Rights, Procedural) and Chapter 297 of this title (relating to Water Rights, Substantive).]

(1) An applicant shall submit to the executive director an application prepared to reflect the desired change(s) and executed as provided in these sections. Applications must meet all of the requirements for an original water permit as set out in Chapter 295 of this title (relating to Water Rights, Procedural) and Chapter 297 of this title (relating to Water Rights, Substantive).

(2) (No change.)

(3) Transfer of the point of diversion or place of use of water rights from the Lower and Middle Rio Grande to above International Amistad Reservoir are prohibited; however, transfers may be made between the mainstem of the Lower Rio Grande and the mainstem of the Middle Rio Grande.

(4) Transfers of the point of diversion or place of use of water rights from the Upper Rio Grande into the Middle and Lower Rio Grande below International Amistad Reservoir will be prohibited unless:

(A) an applicable conversion factor has been approved by the commission;

(B) the commission finds that the transfer would not impair other water rights within the Middle and Lower Rio Grande; and

(C) the commission finds that the transfer would not reduce the amount of water available for allocation.