

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§295.9, 295.13, 295.31, 295.32, 295.51, 295.71, 295.72, 295.133, and 295.202.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 2, 77th Legislature, 2001, made numerous significant changes to the Texas Water Code (TWC). Among those changes to surface water law in Texas was the elimination of irrigation as a type of use for which one could obtain a permit to use state water. In the place of the old irrigation use, SB 2, §§2.01 - 2.03, created the new use category of agricultural use. This new agricultural use category included irrigation use and provided a detailed listing of other activities that are included in the agricultural use category, including floriculture, viticulture, silviculture, horticulture, nursery operations, raising of animals for production of food and fiber, raising equine animals, wildlife management, and planting of cover crops. Some of these types of use, such as raising of animals in confined animal feeding operations (CAFOs) or certain types of nursery operations, could have been permitted under the industrial use category prior to September 1, 2001. Most of the proposed amendments to Chapter 295 relate to implementing this change from irrigation use to agricultural use and providing for the transition.

Other provisions of SB 2 implemented by this proposed rulemaking include amendments to TWC, §11.146 and §11.177, related to forfeiture and cancellation of water rights. SB 2 also exempted certain water right applications from the one-time use fee at the time of the applications. These provisions are implemented in this proposed rulemaking.

Also as part of this rulemaking implementing House Bill 247, 77th Legislature, 2001, and portions of SB 2, the commission proposes revisions to Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, and Chapter 297, Water Rights, Substantive. These proposed revisions are also published in this issue of the *Texas Register*.

## SECTION BY SECTION DISCUSSION

### *Subchapter A: Requirements of Water Rights Applications General Provisions*

#### *Division 1: General Requirements*

The proposed amendments to §295.9, Water Conservation and Drought Contingency Plans, revise the term “irrigation use” to “agricultural use” to implement the new agricultural use category that expanded the existing irrigation use to include other types of agricultural activities.

The proposed amendment to §295.13, Interbasin Transfers, is necessary to correct the section title in a reference to §297.52. The title of §297.52 is proposed to become Suppliers of Water for Agriculture.

#### *Division 3: Additional Requirements for Irrigation*

The title of Division 3 is proposed to be changed to Additional Requirements for Agriculture to reflect the revisions proposed in the division.

The proposed amendment to §295.31, Ownership Information Required; Exceptions, changes the phrase “irrigation of” to “agricultural use on” to reflect the new agricultural use category created by SB

The proposed amendment to §295.32, Documents and Information To Be Submitted, revises the term “irrigation” to “agricultural use” to reflect the new agricultural use category created by SB 2.

The proposed amendment to §295.51, Application for Texas Water Code, §11.143, Permit, rewords subsection (a)(9) to clarify that the information required in paragraph (9) is required only for applicants who intend to use water to irrigate under the new agricultural use category.

The proposed amendment to §295.71, Applications To Amend a Permit, tracks new language in TWC, §11.122. That language is proposed to be placed in the rules to clarify that existing water right holders of industrial or irrigation permits are not required to seek an amendment to their permit if their actual use would be classified as an agricultural use. Holders of existing certified filings or certificates of adjudication that were classified as industrial or irrigation before September 1, 2001, but would now be classified as agricultural may choose to file an application for an amendment to change the use to an agricultural use. Such applications are considered by the commission as minor amendments not requiring notice.

The proposed amendments to §295.72, Applications for Extension of Time, clarify commission intent and provide an additional cross-reference. In subsections (a) and (b), the term “due diligence” is replaced with “reasonable diligence” to follow the wording of TWC, §11.146 and §11.177, in order to clarify that the commission does not intend to set a different standard for cancellation of water rights for failure to begin or complete construction than is expressed in TWC, §11.177 for cancellation of a water right. The proposed amendment to subsection (c) adds an additional reference to the substantive rules

related to forfeiture of water rights so as to avoid repeating new limitations of forfeiture that are proposed in §297.74.

*Subchapter B: Water Use Permit Fees*

The amendments to §295.133, One-Time Use Fees, include changes to clarify that all of the fees listed in the section must be submitted at the time an application is filed, even if those fees can be considered use fees. The proposed amendments also include changing the one-time irrigation use fee to a one-time agricultural use fee to reflect the new agricultural use created by SB 2. The proposed amendments also add a waiver of the one-time use fee for applications for instream use water rights to be deposited into the Texas Water Trust. The amendment is necessary to implement the waiver in TWC, §5.235(j).

*Subchapter F: Miscellaneous*

The proposed amendments to §295.202, Reports, correct an obsolete reference.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or other units of state and local government due to implementation of the proposed amendments.

The proposed amendments implement certain provisions of SB 2. The bill made numerous changes to the TWC, including eliminating irrigation and in its place creating agricultural as a type of use for

which an entity could obtain a permit to use state water. Additionally, SB 2 exempted certain water right applications from the one-time use fee.

The proposed amendments would apply to all units of state and local government seeking surface water use permits or amendments and those units of government seeking a permit or to amend a permit to place water rights into the Texas Water Trust.

The proposed amendments would update existing commission procedural water rights rules to reflect the water use classification change. These revisions only change the categories of water use and do not introduce any new permit requirements. Therefore, the commission does not anticipate significant fiscal implications for units of state and local government due to implementation of these provisions.

The proposed amendments would also restate that applicants seeking a permit or permit amendment to place water rights into the Texas Water Trust for beneficial instream use would be exempt from the one-time use fee. This would protect the water rights from cancellation and benefit the aquatic life. This is not a new provision, but is included in this rulemaking to reinforce that this exemption exists. No significant fiscal implications to units of state or local government are anticipated due to implementation of this provision.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined 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 the clarification

of water use categories, which is intended to provide affected individuals and businesses with a clearer understanding of which requirements apply to them. Additionally, the exemption of the one-time use fee for rights placed into the Texas Water Trust may encourage placement of unused or underutilized water rights into the trust, which could potentially improve the environmental condition of streams, bays, or estuaries.

The proposed amendments implement certain provisions of SB 2, which made numerous changes to the TWC, including eliminating irrigation and in its place creating agricultural as a type of use for which an entity could obtain a permit to use state water. Additionally, SB 2 exempted certain water right applications from the one-time use fee.

The proposed amendments would apply to all applicants seeking surface water use permits or amendments and those individuals and businesses seeking a permit or to amend a permit to place water rights into the Texas Water Trust.

The proposed amendments would update existing commission procedural water rights rules to reflect the water use classification change. These revisions only change the categories of water use and do not introduce any new permit requirements. Therefore, the commission does not anticipate significant fiscal implications for individuals and businesses due to implementation of these provisions.

The proposed amendments would also restate that applicants seeking a permit or permit amendment to place water rights into the Texas Water Trust for beneficial instream use would be exempt from the

one-time use fee. This would protect the water rights from cancellation and benefit the aquatic life.

This is not a new provision, but is included in this rulemaking to reinforce that this exemption exists.

No significant fiscal implications to individuals and businesses are anticipated due to implementation of this provision.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are no adverse fiscal implications anticipated for small or micro-businesses due to the implementation of the proposed amendments, which are intended to implement certain provisions of SB

2. The bill made numerous changes to the TWC, including eliminating irrigation and in its place creating agricultural as a type of use for which an entity could obtain a permit to use state water.

Additionally, SB 2 exempted certain water right applications from the one-time use fee.

The proposed amendments would apply to all applicants seeking surface water use permits or amendments and those small and micro-businesses seeking a permit or to amend a permit to place water rights into the Texas Water Trust.

The proposed amendments would update existing commission procedural water rights rules to reflect the water use classification change. These revisions only change the categories of water use and do not introduce any new permit requirements. Therefore, the commission does not anticipate significant fiscal implications for small and micro-businesses due to implementation of these provisions.

The proposed amendments would also restate that applicants seeking a permit or permit amendment to place water rights into the Texas Water Trust for beneficial instream use would be exempt from the one-time use fee. This would protect the water rights from cancellation and benefit the aquatic life. This is not a new provision, but is included in this rulemaking to reinforce that this exemption exists. No significant fiscal implications to small or micro-businesses are anticipated due to implementation of this provision.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed the proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT 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. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that 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 section of the state. The rule amendments in Chapter 295 are procedural in nature, relating to filing applications and procedural requirements for certain actions, and

do not adversely affect the economy, productivity, competition, jobs, the environment, or public health and safety.

In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. These amendments are necessary to implement state law, do not exceed any requirements of that law, and do not involve federal law.

The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a preliminary takings impact assessment for these rule amendments under Texas Government Code, §2007.43. The purpose of these amendments is to implement procedural amendments made by SB 2 in TWC, Chapter 11. These amendments relate to changing and adding to the definition of irrigation and agriculture and making changes to procedural rules for cancellation of water rights. These amendments do not adversely affect private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. In accordance with the regulations of the Coastal Coordination Council, the commission reviewed the proposed rulemaking for consistency with the CMP goals and policies. The CMP goal applicable to this rulemaking is the goal in 31 TAC §501.12(l) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). The CMP policies applicable to this rulemaking are the policies in 31 TAC §501.14(r), regarding appropriations of water.

The purpose of the proposed rules is to implement portions of SB 2. More specifically, the proposed rules include changes and additions to the definition of irrigation and agriculture and changes to procedural rules for cancellation of water rights. Promulgation and enforcement of the proposed rules will not have a direct or significant adverse effect on any CNRAs, nor will the rulemaking have a substantive effect on commission actions subject to the CMP. No new uses for water rights are authorized by these amendments. In accordance with SB 2, certain types of uses that were formally industrial or irrigation uses are now reclassified as agricultural uses. Therefore, the rulemaking is consistent with the applicable goals and policy. The commission seeks public comment on this preliminary consistency determination.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 9, 2002 at 2:00 p.m., Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion 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.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-031-297-WT. Comments must be received by 5:00 p.m., May 13, 2002. For further information, please contact Jill Burditt, Regulation Development Section, (512) 239-0560.

**SUBCHAPTER A: REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL  
PROVISIONS  
DIVISION 1: GENERAL REQUIREMENTS**

**§295.9, §295.13**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state.

Specific statutory authorization is derived from TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03.

The proposed amendments implement TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03. These rules also affect TWC, §11.143.

**§295.9. Water Conservation and Drought Contingency Plans.**

An application relating to the appropriation or use of state water must include water conservation and drought contingency plans meeting applicable requirements contained in this section. An application not accompanied by such plans is not administratively complete and shall not be considered by the commission, unless expressly exempted by this section. The water conservation plan must demonstrate that reasonable diligence will be used to avoid waste and achieve water conservation in order that appropriated waters will be beneficially used for the authorized purposes. Conservation

means those practices, techniques, and technologies that will reduce the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water so that a water supply is made available for future or alternative uses for the benefit of the public health, safety and welfare, and of the environment.

(1) Applications to appropriate or to use water for municipal use, industrial or mining use, or agricultural use, including irrigation use. The water conservation and drought contingency plans submitted with an application to appropriate or to use state water for municipal use, industrial or mining use, or agricultural [irrigation] use must be submitted in accordance with the guidelines set forth in Chapter 288 of this title (relating to Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements).

(2) - (5) (No change.)

**§295.13. Interbasin Transfers.**

(a) An applicant seeking to transfer state water from one basin to another basin shall so state in the application. For purposes of this section, a river basin is defined and designated by the Texas Water Development Board by rule pursuant to Texas Water Code (TWC), §16.051. The application content requirements contained in this chapter for a new or amended water right, as applicable, shall apply to all applications for an interbasin transfer unless otherwise provided.

(b) In addition to the application requirements for a new or amended water right contained in this chapter, the application must also include the following unless exempted by subsection (c) of this section:

(1) - (5) (No change.)

(6) factors identified in the applicable approved regional water plans which address the following (Regional water management plans must be submitted to the Texas Water Development Board for review and approval not later than September 1, 2000. If applicable approved regional water management plans do not exist at the time the application is submitted, the following information under this paragraph [subparagraph] is not required to be submitted.):

(A) - (E) (No change.)

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under TWC [Texas Water Code], §§11.147, 11.150, and 11.152 and related commission rules contained in §§297.49 - 297.52 of this title (relating to Return and Surplus Waters, Consideration of Water Conservation Plans, Time Limitations for Commencement or Completion of Construction, Suppliers of Water for Agriculture [Irrigation]) in each basin. If the water sought to be transferred is currently authorized to be used under an existing water right, such impacts

shall only be considered in relation to that portion of the water right proposed for transfer and shall be based on historical uses of the water right for which amendment is sought.

(7) - (8) (No change.)

(9) any other related information the executive director or commission may require to review the application to make recommendation or determine, as applicable, whether it meets all applicable requirements of the TWC [Texas Water Code] or other applicable law.

(c) (No change.)

**DIVISION 3: ADDITIONAL REQUIREMENTS FOR AGRICULTURE [IRRIGATION]**

**§295.31, §295.32**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state. Specific statutory authorization is derived from TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03.

The proposed amendments implement TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01-2.03, 2.05, 2.07, 2.10, 2.13, and 4.03. These rules also affect TWC, §11.143.

**§295.31. Ownership Information Required; Exceptions.**

An applicant, seeking the use of state water for agricultural use on [irrigation of] particular tracts of land, shall be required to offer proof to substantiate his or her ownership of the land, except as otherwise provided herein. This section does not apply to an applicant which is a water corporation, water district, river authority, or governmental entity authorized to supply water to others.

**§295.32. Documents and Information To Be Submitted.**

(a) An application to irrigate particular tracts of land shall contain the following information concerning the lands proposed to be irrigated:

(1) - (4) (No change.)

(5) if the application includes agricultural use [irrigation] of any land not owned by applicant, a consent agreement from the landowner, stating that the landowner recognizes that the permit will be owned by applicant and will not become appurtenant to the land. Renewal of a term permit issued under this chapter will require current documentation of consent agreements. This paragraph does not apply to an applicant who is a water corporation, water district, river authority, or governmental entity authorized to supply water to others or applicants diverting state water from the Rio Grande downstream of Amistad Reservoir.

(b) - (c) (No change.)

**DIVISION 5: REQUIREMENTS FOR APPLICATIONS FOR PERMITS UNDER TEXAS  
WATER CODE, §11.143**

**§295.51**

**STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state.

Specific statutory authorization is derived from TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03.

The proposed amendment implements TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01-2.03, 2.05, 2.07, 2.10, 2.13, and 4.03. These rules also affect TWC, §11.143.

**§295.51. Application for Texas Water Code, §11.143, Permit.**

(a) An applicant for a permit under [the] Texas Water Code, §11.143, shall submit to the executive director a sworn application on a form furnished by or acceptable to the executive director and containing the following information:

(1) - (8) (No change.)

(9) if the permit is sought for irrigation under an agricultural use:

(A) - (D) (No change.)

(b) (No change.)

**DIVISION 7: REQUIREMENTS FOR APPLICATIONS FOR AMENDMENTS TO WATER  
USE PERMITS AND EXTENSIONS OF TIME**

**§295.71, §295.72**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state. Specific statutory authorization is derived from TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03.

The proposed amendments implement TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01-2.03, 2.05, 2.07, 2.10, 2.13, and 4.03. These rules also affect TWC, §11.143.

**§295.71. Applications To Amend a Permit.**

An applicant for an amendment to a water use permit or certificate of adjudication shall file an application prepared in the manner of an original application for a permit. However, the title of the application should be altered to reflect the fact that it is a request for an amendment. A proposed amendment, including an amendment on the motion of the executive director, shall be recorded in the same manner as a permit application. Without obtaining an amendment, the holder of a permit,

certified filing, or certificate of adjudication that includes industrial or irrigation use may use or supply water for an agricultural use that was classified as industrial or irrigation before September 1, 2001.

**§295.72. Applications for Extensions of Time.**

(a) If construction work cannot be commenced or completed within the time periods established by a permit, the permittee may, before the expiration of the time period to commence or complete construction, apply for an extension of time in order to preserve the permit. Applications shall be in writing, shall be received by the executive director before the expiration date, and shall set forth the reasons why construction work could not be commenced or completed within the time required. Estimated time of commencement or completion also shall be set out. The application must also contain reasons why the permit should not be forfeited if the commission finds that reasonable [sufficient due] diligence has not been demonstrated.

(b) The commission may grant an extension of the time to commence or complete construction for a reasonable and necessary period if the appropriator demonstrates reasonable [due] diligence towards such commencement or completion and reasonable cause exists for failure to meet the authorized time limitations. The determination of whether an extension should be granted or the right is forfeited is a question of fact to be determined on a case-by-case basis. Reasonable [Due] diligence does not require unusual or extraordinary effort, but it does require a steady application of effort that is usual, ordinary, and reasonable under the circumstances and evidences prosecution of such efforts in good faith. Reasonable causes for delay include, but are not limited to, the operation of legal

proceedings or other causes which were not within the reasonable control of the permittee and which were reasonably unforeseeable at the time the appropriation or the last extension, whichever is applicable, was granted by the commission. Delay in commencement or completion of construction because of financial hardship shall not, by itself, constitute sufficient cause for the granting of an extension.

(c) Consideration by the commission of an application to extend the time for commencement or completion of construction shall include whether the appropriation shall be forfeited as provided in §297.74 of this title (relating to Forfeiture and Revocation of Water Right) for failure by the applicant to demonstrate reasonable [sufficient due] diligence and justification for delay. If the application for extensions is denied, the appropriation may also be forfeited as ordered by the commission.

## **SUBCHAPTER B: WATER USE PERMIT FEES**

### **§295.133**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state. Specific statutory authorization is derived from TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03.

The proposed amendment implements TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01-2.03, 2.05, 2.07, 2.10, 2.13, and 4.03. These rules also affect TWC, §11.143.

#### **§295.133. One-Time Use Fees.**

(a) In addition to the filing, recording, and notice fees stated in §295.132 of this title (relating to Filing, Notice, and Recording Fees), the following [use] fees shall be submitted at the time an application for an appropriation is made:

(1) for the use of state water for agriculture [irrigation], a fee of \$.50 per acre [to be irrigated] each year;

(2) - (3) (No change.)

(4) for other uses of state water not specifically named in this section, a fee of \$1.00 per acre-foot to be diverted annually. However, no political subdivision may be required to pay fees to use water to recharge underground freshwater-bearing sands and aquifers or for the abatement of natural pollution. This fee is waived for applications for instream use water rights deposited into the Texas Water Trust.

(b) - (d) (No change.)

**SUBCHAPTER F: MISCELLANEOUS**

**§295.202**

**STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state. Specific statutory authorization is derived from TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01 - 2.03, 2.05, 2.07, 2.10, 2.13, and 4.03.

The proposed amendment implements TWC, §§5.235(j), 11.002, 11.023, 11.024, 11.085, 11.122, 11.146, and 11.177, as amended by SB 2, §§2.01-2.03, 2.05, 2.07, 2.10, 2.13, and 4.03. These rules also affect TWC, §11.143.

**§295.202. Reports.**

(a) - (d) (No change.)

(e) Operations report for aquifer storage and retrieval projects [Operations Report for Aquifer Storage and Retrieval Projects].

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

(3) The executive director shall review the report described in this subsection. If the executive director determines that the circumstances, under which the permit was granted, have significantly changed, the executive director may pursue an amendment to such permit in accordance with §297.61 [~~§305.62~~] of this title (relating to Amendments by Executive Director [Amendment]).