

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§295.13, 295.155, and 295.161; and also adopts new §295.114.

New §295.114 is adopted *with changes* to the proposed text as published in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8192). Sections 295.13, 295.155, and 295.161 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 2009, the 81st Legislature passed House Bill (HB) 4231, relating to the conveyance or transfer in Texas of water imported into Texas from a source located outside the state. HB 4231 amends Texas Water Code (TWC), §11.042 and §11.085. TWC, §11.042 is amended to add §11.042(a-1), which authorizes the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state. TWC, §11.085 is amended to add §11.085(v)(5), which provides an exemption from the requirements of TWC, §11.085(b) - (u) for water imported from a source located wholly outside of the state. The commission's procedural rules related to water rights are in Chapter 295.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts amendments to 30 TAC Chapter 297, Water Rights, Substantive.

SECTION BY SECTION DISCUSSION

The commission adopts amendments to §295.13, Interbasin Transfers, to add §295.13(c)(5), which grants an exemption from the application requirements in §295.13(b) for transfers of imported water into Texas.

Adopted §295.13(c)(2) is amended to correct the title of the reference to §297.17.

Adopted §295.13(c)(5) reflects the new TWC, §11.085(v)(5) created by HB 4231. This change is necessary to adopt the statutory requirement.

The commission adopts new §295.114, Application to Convey Imported Water in Bed and Banks, to define the application requirements for an application under TWC, §11.042(a-1). These requirements are necessary to provide an applications process for a bed and banks authorization for imported water.

Adopted new §295.114(a) indicates that the purpose of §295.114 is to provide the application content requirements for a bed and banks authorization under TWC, §11.042(a-1).

Adopted new §295.114(b) lists the application requirements for a bed and banks authorization under TWC, §11.042(a-1).

Adopted new §295.114(b)(1) requires the applicants to provide their name, mailing address, and telephone number. This information is necessary for agency staff to be able to contact the applicant.

Adopted new §295.114(b)(2) requires the applicant to provide the name of the stream and the locations of the point of discharge and diversion as identified on a United States Geological Survey 7.5 minute topographical map(s). This information is necessary for the agency to know where the imported water will be transported, and to be better able to manage the waters of the state.

Adopted new §295.114(b)(3) requires the applicant to indicate the source, amount, and rates of discharge and diversion. This information is necessary for the agency to calculate any water losses that may result from the bed and banks transfer.

Adopted new §295.114(b)(4) requires the applicant to provide a description of the water quality of the water discharged and, if applicable, the permit number and name of any related discharge permit. This information is necessary for the agency to ensure that there will be no significant impact to the water quality of the river by the bed and banks transfer.

Adopted new §295.114(b)(5) requires the applicant to provide a copy of the legal authorization for the imported water from the source state. This information is necessary for the agency to know that it is issuing a valid authorization for water from another state.

Adopted new §295.114(b)(6) requires the applicant to indicate the estimated amount of water that will be lost to transportation, evaporation, seepage, channel, or other associated carriage losses from the point of discharge to the point of diversion. This information is necessary for the agency to calculate any water losses that may result from the bed and banks transfer.

Adopted new §295.114(b)(7) requires the applicant to provide an accounting plan demonstrating that no state water will be diverted under this rule. This information is necessary to ensure that the applicant is only taking water imported from another state, and no state water is being taken without authorization. In response to comments, the commission has removed §295.114(b)(7) and §25.114(9), as they appeared in

the proposal. Those subsections as proposed were determined to be beyond the scope of the provisions in HB 4231 because they were not included in the statute.

Adopted new §295.114(c) indicates that nothing in §295.114 shall be construed to affect an existing project for which all required water rights and reuse authorizations have been granted by the commission prior to September 1, 1997. This language is necessary to be consistent with TWC, §11.042(d) and §295.112 and §295.113, which provide the same requirements for other types of bed and banks authorizations.

Adopted new §295.114(d) indicates that the method and calculation of carriage losses under §295.114 is subject to the review and approval of the executive director. This language is necessary for staff to be able to adequately calculate carriage losses from the transport of this water.

The commission adopts amendments to §295.155, Notice for Interbasin Transfers, to add an exemption for imported water from its requirements. Adopted §295.155(a) will add subsection (d)(5) to this list of subsections exempt from §295.155 requirements. This change is necessary to implement the exemption in new TWC, §11.085(v)(5).

Adopted §295.155(d)(5) will grant an exemption from the notice requirements defined in §295.155(b). This change is also necessary to implement the exemption in new TWC, §11.085(v)(5).

Adopted §295.155(d)(2) is amended to correct the title of the reference to §297.17.

The commission adopts amendments to §295.161, Notice of Application to Convey Water in Bed and Banks, to add imported water to the types of water to which it applies. Adopted §295.161(a) will add imported water to the list of types of water excepted from its requirements. Adopted §295.161(b) will add imported water, pursuant to TWC, §11.042(a-1), to the provision requiring notice for new or future increases in groundwater discharges. These changes are necessary to provide notice for bed and banks authorizations for imported water under new TWC, §11.042(a-1). Adopted §295.161(f) will correct a statutory reference.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules require a regulatory impact analysis under Texas Government Code, §2001.0225. The adopted rules are not a "major environmental rule" under Texas Government Code, §2001.0225. The purpose of the rulemaking is to implement HB 4231 to authorize with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state and to exempt those transfers from the requirements of TWC, §11.085. The specific intent of allowing the use of the bed and banks of a river to convey water from out of state and exempting the transfer from interbasin transfer requirements is not to protect the environment or reduce risks to human health from environmental exposure, and the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state sources. These adopted rules in Chapter 295 are procedural requirements for these authorizations. Also, these rules do not exceed a standard set by federal law not required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a

state and federal program, and are not being adopted solely under the general powers of the agency instead of under a specific state law. Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to establish procedural requirements to implement HB 4231, which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state, and the exemption of those transfers from interbasin transfer requirements in TWC, §11.085. The adopted rules would substantially advance this stated purpose by establishing procedural requirements for obtaining these authorizations. The addition of the exemption from interbasin transfer requirements for this transfer does not impact real property rights. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The use of the bed and banks of state watercourses to

transport water is already authorized by state law for in-state water. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rule, 31 TAC §505.11(b)(4), relating to Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with CMP goals and policies because the rulemaking is unlikely to be of environmental significance to the coastal natural resource areas.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

The commission held a public hearing on January 5, 2010 in Austin, Texas. At the hearing the commission received comments from the National Wildlife Federation (NWF). The comment period closed on January 11, 2010.

The commission received written comments from: Lloyd Gosselink on behalf a coalition of the firm's clients, including cities, regional water districts, and river authorities (Coalition); the National Wildlife Federation on behalf of the NWF, the Caddo Lake Institute, Lone Star Chapter of the Sierra Club, Texas Conservation Alliance, and the Environmental Defense Fund (collectively referred to as the Commenting Parties); the Tarrant Regional Water District (TRWD); and, the Texas Parks and Wildlife Department (TPWD). TPWD stated that it adopts and fully supports the changes proposed by the Commenting Parties.

The Coalition and the Commenting Parties generally support the rules. The Coalition, the Commenting Parties, TPWD, and TRWD all suggested changes to the rule as described in the RESPONSE TO COMMENTS section of the preamble.

RESPONSE TO COMMENTS

Fiscal Note

TRWD commented that the fiscal note mentions buying water outside the state but does not mention that water may also be obtained via permit from another state. TRWD suggests that the comparable language from the Chapter 297 fiscal note should be used.

The commission respectfully disagrees that the language from the Chapter 297 fiscal note should be used in Chapter 295. The fiscal note for Chapter 295 addresses the cost of permitting bed and banks authorizations in Texas. The cost of acquiring water outside the state is not being authorized by this rule and is, therefore, not covered by this fiscal note. The reference to the high cost of

buying water out of state was included to support the conclusion that there will be few applications under these rules. No change was made in response to this comment.

§295.114, Application to Convey Imported Water in Bed and Banks

The TPWD and the Commenting Parties stated that because the water source will be outside of the Texas, the commission will not have easy access to water quality information and that it should be the responsibility of the applicant to provide this information to the commission.

The commission agrees that it could be difficult to gain access to information about the water quality of specific water bodies located outside of Texas. Because of that, the commission does require that the applicant provide water quality information. Section 295.114(b)(4) requires the applicant to provide a description of the water quality discharged and, if applicable, the permit number and name of any related discharge permit. The executive director will use this information during his review of the application to determine the water quality of the water being imported into the state. No change was made in response to this comment.

The TPWD and the Commenting Parties stated that special emphasis is needed on water quality and invasive species concerns. The TPWD and the Commenting Parties requested that the commission require additional information from applicants in §295.114(b), including: the name and location of the out-of-state source of water; water quality monitoring data; information about invasive species; and a description of the conveyance, and any proposed water quality control measures.

The TWC, §11.042(a-1)(2), as amended by HB 4231, allows the commission to include special conditions adequate to prevent a significant impact to the quality of water of the state. In §295.114(b)(4), the commission included the requirement that the applicant provide a description of the water quality of the discharged water and, if applicable, the permit number and name of any related discharge permit. This provision is sufficient to include invasive species and the potential impact of invasive species can be evaluated in the technical review of an application as necessary. Concerning the additional information that the TPWD and the Commenting Parties requested be included in §295.114(b), these provisions would go beyond the scope of the amendments made to TWC, §11.042, by HB 4231, so those items have not been included in the requirements of this rule. No change was made in response to this comment.

The Coalition requested that §295.114(b)(7) be deleted. The Coalition stated that HB 4231 only requires that carriage losses be accounted for and that there will be no significant water quality impact resulting from a proposed HB 4231 conveyance. The Coalition stated that §295.114(b) which requires accounting for carriage losses and §295.114(b)(4) which requires describing the water quality of the water proposed to be transported should be sufficient to ensure compliance with the provisions of HB 4231. TRWD commented that proposed §295.114(b)(7) significantly expands HB 4231. TRWD stated that HB 4231 only requires that carriage losses be accounted for and there will be no significant water quality impact. TRWD stated that other parts of this proposed section require this information and therefore, §295.114(b)(7) should be deleted.

The TWC, §11.042(a-1)(2), allows the commission to include special conditions adequate to prevent a significant impact to the quality of water in the state. Section 295.114(b)(4) requires the applicant

to provide a description of the water quality of the discharged water and, if applicable, the permit number and name of any related discharge permit. Using these provisions, the executive director will be able to consider the water quality of the imported water; therefore, the commission will delete §295.114(b)(7).

TRWD stated that §295.114(b)(9) allows the executive director to request any other information the executive director may need to complete an analysis of the application. TRWD commented that as proposed §295.114(b)(9) could be used to expand the scope of the executive director's review. TRWD commented that the provisions that are necessary to comply with HB 4231 are contained elsewhere in §295.114 and therefore, §295.114(b)(9) should be deleted.

The intent of the proposed provision was not to expand the scope of the executive director's review. TWC, §11.042(a-1)(2), as amended by HB 4231, provides that the commission can allow for diversion of only water put into the watercourse and can include special conditions adequate to prevent a significant impact to the quality of water of the state. The provisions necessary to comply with HB 4231 are contained elsewhere in §295.114, therefore the commission will delete §295.114(b)(9).

The TPWD and the Commenting Parties stated that §295.114(b) should require an applicant to provide a proposed monitoring and corrective action plan to address water quality issues, including invasive species, and that §295.114(d) should provide the executive director clear authority to review the adequacy of such plans.

This rule provides the executive director the authority to review water quality information related to imported water. Section 295.114(b)(4) requires the applicant to provide information on the water quality of the discharged water. The executive director will use this information during its review of the application to determine the water quality of the water being imported into the state. If the technical review identifies water quality impacts, including those from invasive species, special conditions can be included in a permit to mitigate those impacts. No change was made in response to this comment.

§295.161, Notice of Application to Convey Water in Bed and Banks

The TPWD and the Commenting Parties stated that these types of conveyances have significant potential to impact downstream water rights holders because of potential water quality impacts, including invasive species. The TPWD and the Commenting Parties stated that notice solely to diverters of record in the reach between the proposed point of discharge and the proposed diversion point would not be sufficient to allow those who might adversely be affected to protect their interests. The TPWD and the Commenting Parties requested that an application to convey imported water be subject to a requirement for mailed notice to dischargers downstream of the proposed discharge point. Further, the TPWD and the Commenting Parties stated that the notice requirement for an application to convey imported water is not appropriately lumped with notice requirements for a "written statement of a proposed conveyance."

It is important for entities affected by the requirements in this rulemaking to receive notice of activities covered by this rulemaking. The TWC, as amended by HB 4231, does not address notice; therefore, the commission had to decide how to incorporate notice provisions for imported water into this rulemaking. The commission regards imported water as most similar to new privately-

owned groundwater because both types of water are new to the stream. Notice for privately-owned groundwater is governed by the requirements in §295.161(b). To establish appropriate notice provisions for imported water, the commission followed its already existing model in §295.161(b). This type of notice to other water right holders is adequate because the water is new to the stream -- no water right holders downstream of the diversion point should be harmed. With regard to environmental impacts from water quality, §295.114(b)(4) requires the applicant to provide information on the water quality of the discharged water. The executive director will use this information during his review of the application to determine the water quality of the water being imported into the state and any potential impacts on the downstream environment. No change was made in response to this comment.

SUBCHAPTER A: REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL

PROVISIONS

DIVISION 1: GENERAL REQUIREMENTS

§295.13

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also adopted under TWC, §11.085(v)(5), which exempts from the interbasin transfer requirements of TWC, §11.085 transfers of water from out of state into this state using the bed and banks of any flowing natural stream located in this state.

The adopted amendment implements TWC, §11.085(v)(5).

§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) the contract price of the water to be transferred;

(2) a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;

(3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users;

(4) the projected effect on user rates and fees for each class of ratepayers;

(5) an analysis of whether and to what extent there is the need for the water in the basin of origin and in the proposed receiving basin based upon the period for which the transfer is requested, but not to exceed 50 years;

(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 is not required to be submitted.):

(A) an analysis of the availability of feasible and practicable alternative supplies in the receiving basin for which the water is needed;

(B) the amount and purposes of use in the receiving basin for which the water is needed;

(C) the proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(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, §§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) 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) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(8) the continued need to use the water for the purposes authorized under the existing water right if an amendment to an existing water right is being sought; and

(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 or other applicable law.

(c) Subsection (b) of this section shall not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water under §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139));

(3) a proposed transfer from a basin to its adjoining coastal basin;

(4) a proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county or municipality and the municipality's retail service area not within the basin. For purposes of this paragraph, a county, municipality, or municipality's service area refers to a geographic area; or

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state.

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

**DIVISION 11: REQUIREMENTS FOR APPLICATIONS FOR AUTHORIZATIONS TO USE
BED AND BANKS**

§295.114

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The new section is also adopted under TWC, §11.042(a-1), which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state.

The adopted new section implements TWC, §11.042(a-1).

§295.114. Application to Convey Imported Water in Bed and Banks.

(a) The purpose of this section is to provide the application content requirements for a bed and banks authorization under Texas Water Code, §11.042(a-1).

(b) A person wishing to place water imported into the state from a source located wholly outside the state into a stream or watercourse, convey the imported water in the watercourse or stream, and

subsequently divert such water shall file an application with the commission containing the following information:

- (1) the name, mailing address, and telephone number of the applicant;
- (2) the name of the stream and the locations of the points of discharge and diversion as identified on a United States Geological Survey 7.5 minute topographical map(s);
- (3) the source, amount, and rates of discharge and diversion;
- (4) a description of the water quality of the water discharged and, if applicable, the permit number and name of any related discharge permit;
- (5) a copy of the legal authorization for the imported water from the source state;
- (6) the estimated amount of water that will be lost to transportation, evaporation, seepage, channel, or other associated carriage losses from the point of discharge to the point of diversion; and
- (7) an accounting plan demonstrating that no state water will be diverted under this rule.

(c) Nothing in this section shall be construed to affect an existing project for which all required water rights and reuse authorizations have been granted by the commission prior to September 1, 1997.

(d) The method and calculation of carriage losses under this section is subject to the review and approval of the executive director.

SUBCHAPTER C: NOTICE REQUIREMENTS FOR WATER RIGHT APPLICATIONS

§295.155, §295.161

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendments are also adopted under TWC, §11.042(a-1), which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state, and TWC, §11.085(v), which exempts from the interbasin transfer requirements of TWC, §11.085 transfers of water from out of state into this state using the bed and banks of any flowing natural stream located in this state.

The adopted amendments implement TWC, §11.042(a-1) and §11.085(v)(5).

§295.155. Notice for Interbasin Transfers.

(a) The notice requirements of this subchapter for an application for a new or amended water right, as applicable, shall apply to an application for an interbasin transfer except as otherwise provided by this section. In addition, notice shall be given to users of record in the receiving basin who are located below the point of introduction except for interbasin transfers described under subsection (d)(2) - (5) of this section. 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, §16.051. An increase in the amount of water

being transferred to the receiving basin under an existing water right constitutes a new interbasin basin transfer for purposes of this section.

(b) In addition to the notice requirements provided by subsection (a) of this section, notice of an application for an interbasin transfer shall also include the following unless exempted by subsection (d) of this section:

(1) notice of the application shall be mailed to:

(A) all holders of water rights located in whole or in part in the basin of origin if not already provided under subsection (a) of this section;

(B) each county judge of a county located in whole or in part in the basin of origin;

(C) each mayor of a city with a population of 1,000 or more based upon the most recent estimate of the U.S. Census Bureau located in whole or in part in the basin or origin; and

(D) all groundwater conservation districts located in whole or in part in the basin of origin;

(E) each state legislator in both basins; and

(F) the presiding officer of each affected regional water planning group in both basins.

(2) the applicant shall cause notice of the application to be published once a week for two consecutive weeks in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin and the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices; and

(3) the notice of the application must state how a person may obtain from the applicant, without cost, information relating to the contract price of the water to be transferred; a statement of each general category of proposed use of the water to be transferred, and a detailed description of the proposed uses and users under each category; the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and the projected effect on user rates and fees for each class of ratepayers.

(c) The applicant shall pay the cost of notice required to be provided under this section.

(d) Subsection (b) of this section shall not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water under §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139));

(3) a proposed transfer from a basin to its adjoining coastal basin; or

(4) a proposed transfer from a basin of origin to a county or municipality or the municipality's retail service area that is partially within the basin of origin for use in that part of the county or municipality and the municipality's retail service area not within the basin of origin. The further transfer and use of this water outside of such county or municipal retail service area as existing at the time of the transfer or as may exist in the future other than back to the basin of origin shall not be exempt under this paragraph. For purposes of this paragraph, a county, municipality, or municipality's retail service area refers to a geographic area.

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state.

§295.161. Notice of Application to Convey Water in Bed and Banks.

(a) Except for an application to convey imported water, new or future increases of groundwater-based effluent or other groundwater as provided in subsection (b) of this section, notice of an application to convey groundwater-based effluent or other water in the bed and banks of a stream or watercourse pursuant to Texas Water Code, §11.042(b) and (c) shall be provided by first class mail, postage prepaid, by the commission to every water right holder of record downstream of the discharge point at least thirty (30) days prior to commission consideration of the application.

(b) If the commission has received a written statement of a proposed conveyance of imported water pursuant to Texas Water Code, §11.042(a-1), or new or future increases in groundwater-based effluent or other groundwaters in the bed and banks of a stream or watercourse pursuant to Texas Water Code, §11.042(b), it shall send notice to each diverter of record on the watercourse between the proposed point of discharge and the proposed point of diversion. The notice shall set forth the approximate time that deliveries of such water will occur, the legal consequences that could result from the unlawful diversion and taking of such water in transit, and other details the commission considers appropriate.

(c) Notice of an application for a bed and banks permit under this section shall also be provided to the Texas Parks and Wildlife Department and the Public Interest Counsel.

(d) No published notice shall be required for an application under this section.

(e) The applicant shall be responsible for the costs of providing notice under this section. (For notice requirements relating to the conveyance of stored water under Texas Water Code, §11.042(a), see §295.160 of this title (relating to Notice of Applications to Convey Stored Water).)

(f) Nothing in this section is intended to deny any additional notice to an affected person that may be required under the Texas Administrative Procedure Act.