

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§297.200 - 297.210.

### **Background and Summary of the Factual Basis for the Proposed Rules**

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031 and HB 4097. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater. HB 4097 addresses seawater desalination for industrial purposes.

In HB 2031, the legislature declared that: "With this state facing an ongoing drought, continuing population growth, and the need to remain economically competitive, every effort must be made to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water." The legislature also declared that: "In this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." To that end, the legislature stated the purpose of HB 2031 was to "... streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

In HB 2031, the legislature created new Texas Water Code (TWC), Chapter 18, to address marine seawater desalination projects. HB 2031 also amended TWC, §5.509,

Temporary or Emergency Order Relating to Discharge of Waste or Pollutants; TWC, §5.551, Permitting Procedures; Applicability; TWC, §7.302, Grounds for Revocation or Suspension of Permit; TWC, §11.0237, Water Rights for Instream Flows Dedicated to Environmental Needs or Bay and Estuary Inflows; TWC, §11.082, Unlawful Use: Civil Penalty; TWC, §11.0842, Administrative Penalty; TWC, §11.121, Permit Required; TWC, §16.053, Regional Water Plans; and, TWC, §26.0291, Water Quality Fee. In addition, HB 2031 amended Texas Health and Safety Code (THSC), Chapter 341, Subchapter C, by adding THSC, §341.0316, Desalination of Marine Seawater for Drinking Water, and repealed TWC, §16.060, Desalination Studies and Research.

TWC, §18.003(a), requires a person to obtain a permit to divert and use state water that consists of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids (TDS) concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter (mg/L). TWC, §18.003(b), creates an exemption from permitting to divert and use marine seawater if TWC, §18.003(a), does not apply. In addition, TWC, §18.005(c), requires a person to obtain a permit to discharge: 1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or 2) waste resulting from the desalination of treated marine seawater into the Gulf of Mexico.

HB 2031 also directs the commission to issue a bed and banks permit to convey treated marine seawater in any flowing natural stream or lake, reservoir, or other impoundment. The bill prohibits: 1) the discharge of treated marine seawater into a flowing natural stream and impoundment for conveyance purposes without a discharge permit issued under TWC, Chapter 18; and 2) the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater in a bay and estuary under the expedited permit process as allowed by TWC, Chapter 18. A person has the option to submit an application under TWC, Chapter 11 or 26 to seek a permit to divert or discharge in a bay or estuary.

Further, HB 2031 directs the commission to adopt rules to expedite permitting and related processes for the diversion of marine seawater and the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18. In addition, the bill requires the commission to establish reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater.

Finally, HB 2031 requires that the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and for the discharge of waste resulting from the desalination of marine seawater and for the commission to adopt

rules designating diversion zones by September 1, 2020. Under TWC, §18.003(j) and §18.005(g), an applicant for a permit to divert marine seawater must consult with the TPWD and the GLO regarding the point(s) of diversion or discharge until such time as the commission adopts rules designating diversion or discharge zones.

HB 4097 relates to seawater desalination projects. This bill creates TWC, §11.1405, Desalination of Seawater for Use for Industrial Purposes, and TWC, §26.0272, Permits Authorizing Discharges from Certain Seawater Desalination Facilities; and amends TWC, §27.021, Permit for Disposal of Brine from Desalination Operations or Drinking Water Treatment Residuals in Class I Injection Wells, and TWC, §27.025, General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, to address seawater desalination for industrial purposes.

TWC, §11.1405(a), requires a person to obtain a permit to divert and use state water that consists of seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a TDS concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 mg/L. TWC, §11.1405(b) creates an exemption from permitting to divert and use seawater if TWC, §11.1405(a) does not apply. When a permit application is required, TWC, §11.1405(e) specifies that the application does not require a finding of

water availability and TWC, §11.1405(f) requires the permit to be consistent with the commission's adopted environmental flow standards in 30 TAC Chapter 298, Environmental Flow Standards for Surface Water. TWC, §11.1405(h), directs the commission to adopt rules to expedite permitting and related processes for the diversion of seawater.

In October 2015, the commission held a stakeholder meeting to solicit comments regarding the implementation of HB 2031 and HB 4097. The executive director based these proposed rules on consideration of the comments received from the stakeholders, sound science and other public interest and relevant factors.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission also proposes new sections in 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges to implement HB 2031 and HB 4097.

## **Section by Section Discussion**

### *Subchapter K: Desalination, Substantive*

The commission proposes new Subchapter K in Chapter 297 to contain the approval criteria for a water right application to divert marine seawater and seawater and a water right application to convey treated marine seawater in the bed and banks of a

watercourse. The commission must adopt rules to implement TWC, §11.1405 and Chapter 18. The commission specifically invites commenters to provide any relevant information that may differ from its proposed rules, which in the commenter's opinion would assist the commission in deciding on adopted rules for water right applications to divert marine seawater or seawater and for water right applications to convey treated marine seawater in the bed and banks of a watercourse. The adopted rules may differ from this proposed rule and may include additional components based on public comment. The commission invites comments on all aspects of the proposed rules.

*§297.200, Applicability*

The commission proposes new §297.200 to describe the purpose of Subchapter K. Subchapter K is intended to provide the approval criteria for an authorization to divert and use state water that consists of marine seawater or seawater and to convey treated marine seawater in the bed and banks of a watercourse.

*§297.201, Definitions*

The commission proposes new §297.201. The proposed section has definitions of terms that only apply to Subchapter K. In §297.201(1) the commission proposes a definition of "Marine seawater" consistent with TWC, §18.001(2). In §297.201(2) the commission proposes a definition of "Seawater" as water that is derived from a bay or arm of the Gulf of Mexico.

*§297.202, Approval Criteria for Diversion of Marine Seawater and Seawater*

The commission proposes new §297.202. The proposed section sets out the approval criteria for a water rights application to divert marine seawater or seawater that will apply only to applications considered under Subchapter K. In §297.202, the commission proposes that an application for diversion of marine seawater or seawater may only be granted if the application conforms to the requirements in 30 TAC §295.302 to ensure that the commission considers only applications that meet the requirements in its rules and the requirements of TWC, §18.002(a)(1).

*§297.203, Water Availability*

The commission proposes new §297.203 stating that a finding of water availability is not required for an application for a water right permit to divert marine seawater or seawater in accordance with TWC, §11.1405(e).

*§297.204, Applicability of Environmental Flow Standards*

The commission proposes new §297.204 stating that it will evaluate whether a water right application for diversion of marine seawater or seawater is consistent with the commission's rules in 30 TAC Chapter 298 (Environmental Flow Standards for Surface Water). The new section allows the commission to include provisions in a water rights permit to divert marine seawater or seawater to comply with Chapter 298 rules in

accordance with TWC, §11.1405(f) and (g).

*§297.205, Determination of Total Dissolved Solids Concentration*

The commission proposes new §297.205 to specifically state that it will review water quality information submitted under §295.302(i) to ensure that any permit issued meets the requirements for an expedited permit under TWC, §11.1405(a)(2) and §18.003(a)(2).

The commission proposes §297.205(b) to ensure that if the application is an amendment to an existing water right, the commission's review of the application is in accordance with TWC, §11.122(b).

*§297.206, Treatment of Diverted Marine Seawater and Seawater*

The commission proposes new §297.206 to ensure that any permit issued under 30 TAC Chapter 295, Subchapter G, complies with TWC, §18.003(d).

*§297.207, Diversion of Marine Seawater and Seawater*

The commission proposes new §297.207 to ensure that the proposed point of diversion for an application submitted under Chapter 295, Subchapter G, is not located in a bay or estuary in accordance with TWC, §18.003(f) unless the diversion is for industrial use under TWC, §11.1405.

*§297.208, Consideration of Water Conservation*

The commission proposes new §297.208 to provide that the water conservation requirements for an application to divert marine seawater or seawater are those requirements under Chapter 295, Subchapter G. The commission proposes that the water conservation review would determine whether there are practicable alternatives, whether the amount requested in the application is reasonable and necessary and whether the applicant will use reasonable diligence to avoid waste and achieve water conservation. The commission proposes new §297.208(b) to provide that the contents of the water conservation plan are those required under §295.302. HB 2031, Section 1(a) states the purpose of the act is not to hinder efforts to conserve or develop other surface water supplies. Under TWC, §18.002(a)(1), TWC, Chapter 11 applies to a permit to divert marine seawater.

*§297.209, Impingement and Entrainment*

The commission proposes new §297.209 to require that an applicant for a water rights permit to divert marine seawater or seawater take reasonable measures to avoid impingement and entrainment in accordance with TWC, §18.003(h).

*§297.210, Approval Criteria for an Application to Convey Treated Marine Seawater in the Bed and Banks*

The commission proposes new §297.210. The proposed section sets out the approval criteria for a water rights application to convey treated marine seawater in the bed and

banks that will apply only to applications considered under Subchapter K. In §297.210(1) - (3), the commission proposes that an application for conveyance of treated marine seawater may only be granted if the application conforms to the requirements in §295.305 to ensure that the commission considers only applications that meet the requirements in its rules and the requirements in TWC, §18.004(a) and (c). In §297.210(4) and (5), the commission proposes that its decision to grant an application to convey treated marine seawater in the bed and banks consider whether losses are reasonable and appropriate and whether the accounting plan has been approved by the executive director. This will ensure that existing water rights are not affected by an application to convey treated marine seawater as the commission proposes in §297.210(6).

**Fiscal Note: Costs to State and Local Government**

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement HB 2031 and HB 4097. HB 2031 establishes an expedited permitting process for marine seawater desalination projects. HB 4097

addresses seawater desalination as it is used for industrial purposes. The proposed rules implement a new expedited permitting process that will be applied by TCEQ staff during the administrative and technical reviews of applicable water rights applications associated with the diversion of marine seawater, the conveyance of treated marine seawater in the bed and banks of a watercourse, and the diversion of seawater for desalination and use for industrial purposes. The rulemaking does not propose any new fees.

Although the permitting process is expedited, the agency does not expect the need for additional resources to issue any permits under the proposed rules as staff does not expect a significant number of permit applications. The rulemaking will require the applicant to consult with the TPWD and the GLO in accordance with the provisions of HB 2031 prior to submitting an application. The permit application fee for a water rights permit under this expedited permitting process would not change from the current fee for applying for a water rights permit.

Although governmental entities could apply for a water rights permit under the proposed expedited permitting process, no state or local governments are anticipated to do so at this time. Because few marine seawater diversion, conveyance, or industrial use permit applications are expected under the proposed rules, no significant fiscal implications are anticipated for the agency.

### **Public Benefits and Costs**

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and a streamlined regulatory process for marine seawater desalination that would assist the state to develop new water supplies to meet the ever-increasing demand for water.

No fiscal implications are anticipated for businesses or individuals as a result of the administration and enforcement of the proposed rules. The proposed rules would affect businesses or individuals who apply for water rights permits associated with the diversion of marine seawater, the conveyance of treated marine seawater in the bed and banks of a watercourse, and the diversion of seawater for desalination and its use for industrial purposes.

The proposed rules would require any person or business entity that plans to divert and use state water that consists of marine seawater to determine the TDS concentrations of the seawater at the water source by monthly analysis and sampling for a period of one year. The data collected is to be provided to TCEQ in accordance with provisions in HB 2031 and HB 4097. Costs associated with TDS sampling would include monthly sample collection for one year, sampling equipment, laboratory costs, data analysis and

submittal to TCEQ. The proposed rules require reasonable measures to minimize impingement and entrainment and also allow that marine seawater may be diverted for any beneficial purpose (if the seawater is treated before it is used). Personnel costs for the required sample collection and data analysis, as well as laboratory costs and reasonable measures to minimize impingement and entrainment will be specific to each applicant. These specific costs are context dependent and can't be quantified without knowing the specific nature of each application.

#### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the administration and enforcement of the proposed rules. The proposed rules would have the same effect on a small business as it does on a large business. It is not known how many small or micro-businesses would submit water rights applications under the proposed rules. The proposed rules do not increase the regulatory burden on small or micro-businesses unless they intend to obtain water rights permits associated with the diversion of marine seawater, the conveyance of treated marine seawater in the bed and banks of a watercourse, or the diversion of seawater for desalination and its use for industrial purposes. If a small or micro-business does apply for such a water rights permit, then it is assumed that any costs would be recovered through increased costs passed on to its customers.

### **Small Business Regulatory Flexibility Analysis**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are necessary in order to comply with state law and does not adversely affect small or micro-businesses in a material way for the first five years that the proposed rules are in effect.

### **Local Employment Impact Statement**

The commission has reviewed this 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 has reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and has determined that this rulemaking is not a "major environmental rule." The legislature enacted HB 2031, creating TWC, Chapter 18, which relates to marine seawater desalination, and HB 4097, creating TWC, §11.1405, relating to seawater desalination projects for industrial purposes. HB 2031 states that the purpose of the new law is to remain economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. The legislature also stated that in this state,

marine seawater is a potential new source of water for drinking and other beneficial uses, and that this state has access to vast quantities of marine seawater from the Gulf of Mexico. The legislature stated that the purpose of HB 2031 was to "... streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

Therefore, the purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way 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 sector of the state" (Texas Government Code, §2001.0225(g)(3)). The purpose of this rulemaking is to establish the requirements for obtaining permits for the diversion and transport of marine seawater and the diversion of seawater. The proposed rules in Chapter 297 are for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits.

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a

federal program, and is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031 and HB 4097.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated these proposed rules and performed analysis of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits. The proposed rules would substantially advance this stated purpose by adding requirements for the diversion or transport of marine seawater under TWC, Chapter 18, and the diversion of seawater for industrial purposes under TWC, §11.1405.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because these rules do not impact private real property. In HB 2031, the legislature expressed that "In this state, marine seawater is a

potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights, real property rights that have been granted for use of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, very few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent or minimal because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water. Water for municipal and domestic needs will not be taken from this part of the Gulf of Mexico.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and

enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rules include those contained in 31 TAC §501.33(a). The proposed rules implement HB 2031 and HB 4097, which direct the TCEQ to regulate the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater through expedited permitting and related processes. In HB 2031, the legislature finds "...that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections, ..." Since one of the purposes of the proposed rules is to protect coastal natural resources, the rules are consistent with the CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because one of the purposes of the proposed rules is to protect coastal and natural resources.

Written comments on the consistency of this rulemaking may be submitted to the

contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on June 21, 2016, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. 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 discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

*<http://www1.tceq.texas.gov/rules/ecomments/>*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-029-295-OW. The comment period closes on July 5, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *[http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html)*. For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757 or Kathy Alexander, Water Availability Division, at (512) 239-0778.

**SUBCHAPTER K: DESALINATION, SUBSTANTIVE**

**§§297.200 - 297.210**

**Statutory Authority**

The rules are proposed 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; TWC, §5.013(a)(1), concerning the TCEQ's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; and TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes.

The proposed rules implement House Bill (HB) 2031 and HB 4097 (84th Texas Legislature, 2015).

**§297.200. Applicability.**

This subchapter only applies to diversion and use of marine seawater and seawater and conveyance of treated marine seawater in the bed and banks of a watercourse. The requirements for an application to divert marine seawater and seawater and to convey treated marine seawater in the bed and banks of a watercourse are in Chapter 295, Subchapter G of this title (relating to Desalination, Procedural).

**§297.201. Definitions.**

The following words or phrases have the following meanings in this subchapter unless the context clearly indicates otherwise:

(1) Marine seawater--Water that is derived from the Gulf of Mexico.

(2) Seawater--Water that is derived from a bay or arm of the Gulf of Mexico.

**§297.202. Approval Criteria for Diversion of Marine Seawater and Seawater.**

The commission shall grant an application for a water right to divert marine seawater or seawater only if:

(1) the application conforms to the requirements prescribed by §295.302 of this title (relating to Requirements for Diversion of Marine Seawater and Diversion of Seawater) and is accompanied by the prescribed fee;

(2) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or the marine seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter;

(3) the diverted marine seawater or seawater is intended for a beneficial use and the marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used, before it is used;

(4) the application is not detrimental to the public welfare;

(5) the applicant has consulted with Texas Parks & Wildlife Department and the Texas General Land Office;

(6) the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement; and

(7) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions).

**§297.203. Water Availability.**

The commission is not required to make a finding of water availability for an application under Chapter 295, Subchapter G of this title (relating to Desalination, Procedural).

**§297.204. Applicability of Environmental Flow Standards.**

(a) The commission shall evaluate whether an application for a diversion of marine seawater or seawater under Chapter 295, Subchapter G of this title (relating to Desalination, Procedural) is consistent with any applicable environmental flow standards established under Chapter 298 of this title (relating to Environmental Flow Standards for Surface Water).

(b) The commission may include any provisions in a permit issued under Chapter 295, Subchapter G of this title that the commission considers necessary to comply with the environmental flow standards established under Chapter 298 of this title.

**§297.205. Determination of Total Dissolved Solids Concentration.**

(a) In its consideration of an application for a new or amended water right to divert marine seawater or seawater, the commission shall review the information required under §295.302(i) of this title (relating to Requirements for Diversion of Marine Seawater and Diversion of Seawater) and determine whether the application meets the requirements of Texas Water Code (TWC), §11.1405(a)(2) and §18.003(a)(2).

(b) The assessment of any conditions upon a proposed amendment to a water right under this section shall be limited by §297.45(b) of this title (relating to "No Injury" Rule) as provided by TWC, §11.122(b).

**§297.206. Treatment of Diverted Marine Seawater and Seawater.**

The commission shall review the information submitted under §295.302(f) of this title (relating to Requirements for Diversion of Marine Seawater and Diversion of Seawater) and determine whether the diverted marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used.

**§297.207. Diversion of Marine Seawater and Seawater.**

The commission shall review the information submitted under §295.302(c) of this title (relating to Requirements for Diversion of Marine Seawater and Diversion of Seawater) to ensure that the point of diversion is not located in a bay or estuary unless the application is for industrial use under Texas Water Code, §11.1405.

**§297.208. Consideration of Water Conservation.**

(a) Information in the water conservation plan provided by an applicant for a water right permit to divert marine seawater or seawater shall be considered by the commission in determining whether any practicable alternative exists, whether the requested amount is reasonable and necessary for the proposed use, and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation.

(b) A water conservation plan submitted with an application requesting to divert marine seawater or seawater must include data and information which:

(1) supports the applicant's proposed use of marine seawater or seawater with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed diversion of marine seawater or seawater; and

(3) evaluates other feasible alternatives to new water development. It shall be the burden of proof of the applicant to demonstrate that the requested amount is necessary and reasonable for the proposed use.

**§297.209. Impingement and Entrainment.**

An application to divert marine seawater or seawater under Chapter 295, Subchapter G of this title (relating to Desalination, Procedural) shall include a written statement of facility-specific, reasonable measures to minimize impingement and entrainment that will be implemented at the proposed desalination facility.

**§297.210. Approval Criteria for an Application to Convey Treated Marine Seawater in the Bed and Banks.**

The commission shall grant an application for a water right to convey treated marine seawater in the bed and banks of a watercourse only if:

(1) the application conforms to the requirements prescribed by §295.305 of this title (relating to Requirements for an Authorization to Convey Treated Marine Seawater in Bed and Banks) and is accompanied by the prescribed fee;

(2) the marine seawater to be conveyed is treated so as to meet standards that are at least as stringent as the water quality standards adopted by the commission and applicable to the receiving stream or impoundment;

(3) the treated marine seawater conveyed will only be used by the person to whom the authorization is granted;

(4) the estimate of the amount of treated marine seawater that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses is reasonable and appropriate for the stream in which the treated marine seawater will be conveyed;

(5) the accounting plan submitted required by §295.305(d)(7) of this title has been approved by the executive director; and

(6) the application does not impair existing water rights or vested riparian rights.