

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** February 7, 2014

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

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

**Docket No.:** 2013-1976-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 295, Water Rights, Procedural  
Chapter 297, Water Rights, Substantive  
HB 3233: Interbasin Transfers of Surface Water  
Rule Project No. 2013-055-295-OW

### **Background and reason(s) for the rulemaking:**

In 2013, the 83rd Legislature passed House Bill (HB) 3233, relating to interbasin transfers of state water. HB 3233 amended Texas Water Code (TWC), §11.085. The commission's procedural rules related to interbasin transfers are in Chapter 295, Water Rights, Procedural, and Chapter 297, Water Rights, Substantive. Rulemaking is required in these two chapters to reflect the changes to the TWC made by HB 3233.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

This rulemaking will implement provisions of HB 3233, which amended TWC, §11.085, to:

- remove the requirement that an application for an interbasin transfer include the projected effect on user rates and fees for each class of ratepayers;
- limit consideration of issues in an evidentiary hearing to those requirements included in TWC, §11.085;
- clarify the length of notice publication;
- describe geographic areas exempt from the provisions of TWC, §11.085;
- specify that the benefits to the receiving basin and the detriments to the basin of origin considered in an application for an interbasin transfer be based on the factors described in TWC, §11.085(k); and
- clarify that interbasin transfers based on contracts can be extended as contracts are renewed or extended.

#### **B.) Scope required by federal regulations or state statutes:**

There are no changes required by federal rule. The proposed rulemaking will implement HB 3233.

#### **C.) Additional staff recommendations that are not required by federal rule or state statute:**

Staff has no additional recommendations.

#### **Statutory authority:**

TWC, §§5.102, 5, 5.102, 5, 103, and 5.105

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**Effect on the:**

**A.) Regulated community:**

Applicants may realize shorter permitting process as a result of the changes to TWC, §11.085.

**B.) Public:**

The proposed rules are not expected to have any impact on the public.

**C.) Agency programs:**

The proposed rules are not expected to have any impact on agency programs.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period on April 10, 2014 in Austin.

**Potential controversial concerns and legislative interest:**

There are no controversial issues associated with this rulemaking.

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

This rulemaking will not affect any current policies or require development of new policies.

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

If this rulemaking does not go forward, the commission's rules will be inconsistent with statute. There are no alternatives to this rulemaking.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** February 26, 2014

**Anticipated *Texas Register* publication date:** March 14, 2014

**Anticipated public hearing date (if any):** April 10, 2014

**Anticipated public comment period:** March 14, 2014 - April 14, 2014

**Anticipated adoption date:** July 9, 2014

**Agency contacts:**

Tracie Donnelly, Rule Project Manager, (512) 239-0083, Water Availability Division  
Dinniah Tadema, Staff Attorney, (512) 239-0617  
Derek Baxter, Texas Register Coordinator, (512) 239-2613

**Attachments**

House Bill 3233

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cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall  
John Bentley  
Office of General Counsel  
Tracie Donnelly  
Derek Baxter