Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners

Date: October 18, 2019

Thru: Bridget C. Bohac, Chief Clerk
       Toby Baker, Executive Director

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

Docket No.: 2019-0897-RUL

Subject: Commission Approval for Proposed Rulemaking
         Chapter 295, Water Rights, Procedural
         Chapter 297, Water Rights, Substantive
         Chapter 318, Marine Seawater Desalination Discharges
         Diversion and Discharge Zones for Marine Seawater Desalination Plants
         Rule Project No. 2019-102-295-OW

Background and reasons for the rulemaking:
In 2015, the 84th Texas Legislature passed House Bill (HB or bill) 2031 which 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. The bill required
that the Texas Parks and 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. Prior to this report, the bill required that an applicant
for a permit to divert marine seawater consult with TPWD and GLO regarding the point(s)
of diversion or discharge. After the report is completed, the bill directed the Texas
Commission on Environmental Quality (TCEQ or commission) to adopt rules designating
diversion and discharge zones by September 1, 2020.

On August 27, 2018, TPWD and GLO submitted a final report entitled “Marine Seawater
Desalination Diversion and Discharge Zones Study” to the TCEQ. The report identifies
zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and
for the discharge of marine seawater desalination waste

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:
The proposed rulemaking will amend 30 Texas Administrative Code (TAC) §295.302 and
§297.202; and repeal §318.9 and simultaneously propose new §318.9. These revisions
will adopt the diversion and discharge zones, respectively, that are identified in the TPWD
and GLO final report.

B.) Scope required by federal regulations or state statutes:
The proposed rulemaking will implement the diversion and discharge zones required by
HB 2031.

C.) Additional staff recommendations that are not required by federal rule or state
statute:
None.
Statutory authority:

Effect on the:

A.) Regulated community:
Members of the regulated community who apply for a permit associated with the diversion of marine seawater will be affected by this proposed rulemaking. The rule will require diversions of marine seawater to be located in zones identified in the TPWD and GLO final report.

Applicants who choose to apply for a permit to discharge wastewater from marine seawater desalination projects under the expedited application process in Chapter 318 will be affected by this proposed rulemaking. The rule will limit the locations where marine seawater desalination facilities can discharge the resulting wastewater. The discharges will be required to be located in zones identified in the TPWD and GLO final report. Applicants still retain the option to apply for a discharge permit under TWC, Chapter 26 and 30 TAC Chapter 305. The discharge zones do not apply to applications processed under TWC, Chapter 26 and 30 TAC Chapter 305.

B.) Public:
There are no expected effects on the public.

C.) Agency programs:
The proposed rulemaking will have little impact on agency programs. The Water Availability Division will implement the rules when processing applications associated with the diversion of marine seawater.

The Water Quality Division will verify that discharges are located within the specified discharge zones when processing applications for marine seawater desalination facilities that request a permit under the expedited application process in Chapter 318.

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 in Austin.

Potential controversial concerns and legislative interest:
There is legislative interest regarding the implementation of HB 2031.

Will this rulemaking affect any current policies or require development of new policies?
No
What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
HB 2031 directed the TCEQ to adopt rules designating diversion and discharge zones. This rulemaking complies with that directive. There are no alternatives to this rulemaking.

Key points in the proposal rulemaking schedule:
- **Anticipated proposal date:** November 6, 2019
- **Anticipated Texas Register publication date:** November 22, 2019
- **Anticipated public hearing date (if any):** December 17, 2019
- **Anticipated public comment period:** November 22, 2019 – January 6, 2020
- **Anticipated adoption date:** April 22, 2020

Agency contacts:
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- Robin Smith, Staff Attorney, (512) 239-0463
- Paige Bond, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:
House Bill 2031, 84th Legislature, 2015

cc: Chief Clerk, 2 copies
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