Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners

Date: October 4, 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.: 2019-0756-RUL

Subject: Commission Approval for Proposed Rulemaking
         Chapter 295, Water Rights, Procedural
         Extensions of Time for the Construction of Certain Water Supply Reservoirs
         Rule Project No. 2019-109-295-OW

Background and reason(s) for the rulemaking:
A petition for rulemaking was filed with the Texas Commission on Environmental Quality (TCEQ or commission) on February 5, 2019 by Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of the City of Wichita Falls (petitioner). The petitioner requested that §295.159 be amended to include an exception from the notice requirements for amendments to permits to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water (Project Number 2019-098-PET-NR). This rulemaking was opened pursuant to the commission's order dated March 28, 2019 in which the commission granted the petition considered at a March 27, 2019 public meeting.

Scope of the rulemaking:
Existing §295.159(a) requires published notice and mailed notice (to the same persons to whom notice of the original application for the permit was mailed) for a request for an extension of time to construct if the new date of proposed commencement of construction is more than four years from the date of issuance of the permit or if the new proposed completion time is more than five years from the date of completion required in the original permit. Existing §295.159(b) states that the notice must provide that the commission shall consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay. The commission proposes to add §295.159(c) which would provide that the notice requirements in §295.159(a) and (b) do not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

A.) Summary of what the rulemaking will do:
The rulemaking will provide an exception from notice requirements in §295.159(a) and (b) relating to an application for an extension of time to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

B.) Scope required by federal regulations or state statutes:
Texas Water Code (TWC), §11.145 provides that the commission may, by entering an order of record, extend the time for beginning construction of a reservoir, but does not require notice for such extensions. TWC, §11.146, provides that if a permittee fails to begin construction within the time specified in TWC, §11.145, the permittee forfeits all rights to the permit, subject to notice and hearing as prescribed by this section. However,
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TWC, §11.146(g) provides an exemption from forfeiture under this section for a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water. Therefore, the proposed addition of §295.159(c) would exempt such reservoirs from notice for extension of time for commencement or completion of construction is consistent with the TWC.

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

Statutory authority:
TWC, §§5.013, 5.102, 5.103, 5.105, 11.145, and 11.146.

Effect on the:

A.) Regulated community:
There are four entities (cities and districts) which have a permit to construct a reservoir that is designed for storage or more than 50,000 acre-feet of water which could be affected by the proposed rule. Costs of published notice and mailed notice (varies) will no longer apply to these applications.

B.) Public:
Taxpayers and water customers may save costs if the cost savings are passed on by the local governments.

C.) Agency programs:
None

Stakeholder meetings:
An informal stakeholder meeting was held at the TCEQ on June 13, 2019 and comments were accepted by the commission until June 27, 2019. All stakeholder comments were supportive of the rulemaking.

Additionally, a rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:
None known.

Will this rulemaking affect any current policies or require development of new policies?
No, none.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
Failure to move forward would be in contradiction to the commission order which requires the rulemaking. There are no alternatives to rulemaking.
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Key points in the proposal rulemaking schedule:
- **Anticipated proposal date:** October 23, 2019
- **Anticipated Texas Register publication date:** November 8, 2019
- **Anticipated public hearing date (if any):** December 3, 2019
- **Anticipated public comment period:** November 8 - December 16, 2019
- **Anticipated adoption date:** April 22, 2020

Agency contacts:
- Kathy Ramirez, Rule Project Manager, Water Availability Division, (512) 239-6757
- Robin Smith, Staff Attorney, (512) 239-0463
- Paige Bond, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:
- City of Wichita Falls Petition
- City of Wichita Falls Order

cc: Chief Clerk, 2 copies
- Executive Director’s Office
- Jim Rizk
- Martha Landwehr
- Brody Burks
- Office of General Counsel
- Kathy Ramirez
- Paige Bond