

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 16, 2009

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting and Registration

Docket No.: 2009-0988-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 295, Water Rights, Procedural
Chapter 297, Water Rights, Substantive
HB 4231: Imported Water
Rule Project No. 2009-040-295-PR

Reasons for the rule package:

House Bill (HB) 4231, 81st Legislative Session, 2009, amends Texas Water Code (TWC), §11.042 and §11.085. This proposal amends commission rules in Chapter 295, Water Rights, Procedural, and Chapter 297, Water Rights, Substantive, to reflect those changes to the TWC.

Under what authority are we proposing these changes?

TWC, §§5.013, 5.103, 11.024, and 11.085.

Is this rulemaking required by federal rule or state statute? Which ones?

Yes. HB 4231 amendments to TWC, §11.042 and §11.085.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective? No.

What issue(s) or problem(s) are we trying to solve?

In the future, water suppliers such as cities and regional water authorities may purchase water from other states. HB 4231 has amended TWC, §11.042 and §11.085 to make provisions for importing such water to Texas. This proposal amends commission rules to reflect those changes to the TWC.

Why is it important that we do this rule package?

It is important to do this rulemaking package to define the application and notice requirements for applications that may be received to transfer and convey imported water pursuant to TWC, §11.042 and §11.085.

Other important background or historical information.

HB 4231 was authored by Representative Allan Ritter and sponsored by Senator Kevin Eltife.

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Scope of the rulemaking:

Changes required by federal rule:

There are no changes required by federal rule.

Changes required by state statute:

Define the application and notice requirements for transfers into the state and conveyances within the state of water imported from sources located wholly outside of the state pursuant to the amendments to TWC, §11.042 and §11.085, effected by HB 4231.

Staff recommendations that are not expressly required by federal rule or state statute: None.

Impact on the regulated community:

Who will be affected?

Water suppliers such as cities and regional water authorities who wish to transfer water from sources outside of Texas and convey that imported water using the beds and banks of streams within Texas.

Does it create a group of affected persons who were not affected previously? How? No.

Will there be a fiscal impact? If so, estimate. No.

Impact on the public:

Who will be affected?

The public will not be affected.

Does it create a group of affected persons who were not affected previously? How? No.

Will there be a fiscal impact? If so, estimate. No.

Impact on agency programs:

For the Water Supply Division's Water Rights Permitting and Availability Section the rulemaking would define the processing requirements for applications pursuant to TWC, §11.042(a-1) and §11.085(v)(5). Changes to procedures, staff requirements, guidance documents, and agency funding will not be necessary.

Stakeholder meetings:

Have any stakeholder meetings been held? No.

With whom? Not applicable.

What were the general sentiments? Not applicable.

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Were any changes made in response to stakeholder concerns? Not applicable.

Policy issues:

What policy issues are affected? None.

Are any policies that are not currently based on rule being made into a rule? No.

What are the consequences if this rulemaking is not approved to go forward?

TWC, §11.042(a-1) indicates that authorization to use beds and banks for conveyance of imported water will be granted under rules prescribed by the commission. Without this rulemaking the TCEQ will not have specific rules to grant such authorizations. TWC, §11.085(v) exempts transfers of water imported into the state from the requirements in TWC, §11.085(b) – (u). Without this rulemaking, our rules will be inconsistent with the statute.

Are there alternatives? No.

Potentially controversial matters:

There was no opposition expressed during the legislative hearings for HB 4231.

Key points in proposed rulemaking schedule:

Anticipated proposal date:	November 4, 2009
Anticipated <i>Texas Register</i> publication date:	November 20, 2009
Public hearing date (if any):	January 5, 2010
Public comment period:	November 20, 2009 – January 11, 2010
Anticipated adoption date:	April 14, 2010

Agency contacts:

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Attachments

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