

# TCEQ Interoffice Memorandum

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**To:** Commissioners

**Thru:** Bridget Bohac, Chief Clerk  
Zak Covar, Executive Director

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

**Date:** October 11, 2012

**Subject:** Docket No. 2012-1395-MIS  
Evaluation of river basins for the need for Watermaster programs -  
Work Session follow up

## **Background**

Section 5.05 of House Bill (HB) 2694 of the 82nd Legislature added the following language to Chapter 11, Subchapter G, §11.326(g)(h) of the Texas Water Code (TWC).

(g) For a water basin in which a watermaster is not appointed, the executive director shall:

- (1) evaluate the water basin at least once every five years to determine whether a watermaster should be appointed; and
- (2) report the findings and make recommendations to the commission.

(h) The commission shall:

- (1) determine the criteria or risk factors to be considered in an evaluation under Subsection (g); and
- (2) include the findings and recommendations under Subsection (g) in the commission's biennial report to the legislature.

In 2012, staff evaluated the Brazos River Basin, the Brazos-Colorado Coastal Basin, the Colorado River Basin, and the Colorado-Lavaca Coastal Basin.

On September 14, 2012, staff provided information for discussion at the Commission's work session. The following information is in response to the work session discussion.

## **Stakeholder Involvement**

Consistent with Commission direction to involve stakeholders in the evaluation process, staff:

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1. Created a web page exclusively for the evaluation process, with an opportunity for stakeholders to receive automated updates by email.
2. Mailed out initial outreach letters to the stakeholders in each affected basin on February 17, 2012, and accepted comments until March 31, 2012. Stakeholders include all water right holders, county judges, extension agents, river authorities, agricultural interests, industries, environmental organizations, and other interested parties in the basin.
3. Developed a preliminary evaluation that included four options in each area, and solicited additional input by letter dated May 22, 2012 announcing public meetings and providing the preliminary evaluation along with the options.
4. Between June 4 and June 21, 2012, held nine stakeholder meetings in Rosenberg, San Saba, Lubbock, Big Spring, San Angelo, Wharton, Waco, Fredericksburg, and College Station. A combined total of approximately 252 people attended the stakeholder meetings. In each of these meetings the Watermaster Section Manager, the South Texas Watermaster and either the Director of the Water Availability Division or the Water Rights Permitting & Availability Section Manager were in attendance to present information and answer questions.
5. Final stakeholder comments were due July 6, 2012, but comments received after that date are being considered. A total of 305 comments have been received to date.
6. Based on the stakeholder comments, the majority of water right holders are generally opposed to establishing a watermaster in the Brazos or Colorado Basins. Comments included opposition to the required assessment fees; that adding a watermaster would only bring more regulation and bureaucracy with little or no benefit and that if a watermaster program is created it should be done by petition process. Many stakeholders said the way in which the TCEQ handled the 2009 and 2011 droughts worked very well with no additional costs to the water right holders.
7. During the September 14, 2012 work session, several stakeholders expressed support for a watermaster program, some of whom are water rights holders and some are D&L users. Some of the reasons expressed in comments and at work session included: want more active oversight that would be provided by a watermaster, excessive withdrawals upstream impact downstream users, and seniors needing to purchase water to meet their permitted demand. Watermasters proactively manage river basins.

## **Differences in water rights management in Non-Watermaster Areas vs. Watermaster Areas**

The following table shows the differences between how water rights were administered/enforced during the 2009 and 2011 priority calls versus how watermaster programs manage water rights on a daily basis:

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Non-watermaster Areas	Watermaster Areas
<p>See new Priority Call Response Process for making call response more efficient attached.</p> <p>In normal conditions, in response to complaints, the Office of Compliance and Enforcement (OCE) :</p> <ul style="list-style-type: none"> <li>• performed on-site assessments of river conditions;</li> <li>• reviewed deed records to ensure property boundaries were known; and</li> <li>• when necessary, reviewed, took flow measurements, collected photographic evidence and field notes, and where available, checked USGS flow gauges.</li> </ul> <p>When curtailments were in effect, OCE :</p> <ul style="list-style-type: none"> <li>• formed regional Tiger-Teams focused on curtailment compliance;</li> <li>• obtained permits in curtailment area for review;</li> <li>• performed on-site investigations to ensure compliance;</li> <li>• reviewed USGS gauges to follow the water;</li> <li>• as information from Tiger-Team was received, new assignments were made to address the most current river conditions; and</li> <li>• coordinated with sister agencies to conduct fly-overs to gather additional stream observations.</li> </ul> <p>Under Chapter 36 - in response to a priority call, the ED can request information on water use from any water rights that are not suspended or adjusted for public health and safety reasons.</p> <p>If a junior water right is not suspended or adjusted, the ED can request information on future planning and can also require implementation of water conservation and drought contingency plans at higher levels in order for non-suspended junior water rights to continue to divert.</p>	<p>Watermasters proactively management river basins.</p> <p>A watermaster continuously monitors streamflows, reservoir levels, and water use within a basin, providing hands-on day to day management.</p> <p>As needed, holders of impoundment rights may notify the watermaster when they plan to release sold water. The watermaster can then monitor usage downstream to ensure that the released water reaches the buyer.</p> <p>Before starting their pumps, opening their sluice gates, or starting to divert water in any other way, all water users must notify the watermaster and state how much water they plan to divert.</p> <p>The watermaster determines whether a diversion will remove water that rightfully belongs to another user. If so, the watermaster notifies the user with lower priority to reduce pumping—or, if necessary, to stop pumping altogether.</p> <p>When streamflows diminish, the watermaster allocates available water among the users according to each user's priority date.</p> <p>If a water right holder does not comply with the water right or with TCEQ rules, the executive director may direct a watermaster to adjust the control works, including pumps, to prevent the owner from diverting, taking, storing, or distributing water until the water right holder complies.</p>

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## **Definition of Threatened Water Right**

During the September 14, 2012 work session, the Commission directed staff to utilize the definition of threatened water right from the 2004 Commission Order for the evaluation process.

In 2004, the Commission issued an order in response to petitions in the Concho River watershed. The language from the order is as follows and will be utilized in the evaluations:

“Threat” to the rights of senior water rights holders as used in Chapter 11, Subchapter I, of the Water Code implies a set of circumstances creating the possibility that senior water rights holders may be unable to fully exercise their rights – not confined to situations in which other people or groups convey an actual intent to harm such rights. Specifically, in time of water shortage, the rights of senior water rights holders in the basin are threatened by the situation of less available water than appropriated water rights; the disregard of prior appropriation by junior water rights holders; the storage of water; and the diversion, taking, or use of water in excess of the quantities to which other holders of water rights are lawfully entitled.

Senior water rights were threatened in 2009 and in 2011 in the Brazos Basin and in 2011 in the Colorado Basin.

During the work session, the Commission encouraged water right holders and domestic and livestock users to exercise their rights under the TWC to file complaints or initiate senior calls if there is a concern. Water right holders may also petition the Commission for creation of a watermaster.

## **Strategy For Responding to Priority Calls**

The average response to priority calls took an average of 41 days including obtaining information from the entity making the call, technical analysis, investigations, and review of area specific information. The Commissioners noted during the work session that the agency did a great job responding to the worst one-year drought on record and commended staff's efforts. Moving forward, the Commissioners instructed staff to refine the priority call response process and look for efficiencies to expedite the response.

The Office of Water (OW) has worked with OCE and OLS to develop a new process that establishes a Drought Response Task Force whose job is to respond to senior calls as soon as possible, with a goal of less than 10 calendar days. OW, OCE and OLS will work concurrently on the major elements including technical and legal analysis as well as field investigations. The new Task Force is a subgroup of the well-established agency-wide drought team. The new process is attached.

OCE has also developed a proactive surface water management process for areas outside a watermaster program. In an effort to improve the agency's responsiveness to potential impacts to surface water availability and to provide information critical for the agency's evaluation and determination of priority calls in areas of the state outside the jurisdiction of a Watermaster Program, OCE proposes to conduct activities to promote more proactive water management. To accomplish this goal, OCE will utilize existing resources by acknowledging a connection between

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current regional water quality efforts and field observations to provide data necessary to address surface water availability.

OCE's approach will utilize United States Geological Survey (USGS) data as well as Surface Water Quality Monitoring (SWQM) data to assist in determining impacts to flow trends. In addition, OCE will increase regional knowledge of water rights and water quantity management by enhancing water right training for regional staff. By partnering with OW and SBEA, OCE will expand its awareness of impacts to surface water availability, such as permitted industrial uses, agricultural irrigation trends, water reuse authorizations, and drought contingency planning for public water systems.

The key to successful proactive water management in the absence of a Watermaster Program is timely and accurate communication among multiple offices across the agency. By coordinating and communicating data currently captured for water quality, the agency can more efficiently address water right issues while minimizing impacts to resources required for continued success in meeting commitments and performance measures. The process outline is attached.

## **Water Use Data**

A review of water use data revealed that approximately 60% of water right holders outside of watermaster area reported their annual water use as required by the TWC **by March 1 of each year**. Because this information is used for various purposes in the administration of water rights, including responses to priority calls during a drought, having more complete data is key. OW has developed the following Water Use Data Collection Process to address this important issue which was discussed during the work session.

**Please also note that a copy of the revised letter which was mailed to non-compliant water right holders on October 3, 2012 is attached. This letter was revised to emphasize the cancellation language in the statute. Staff is also pursuing a legislative recommendation for changing the penalty for non-compliance with reporting water use data. These revisions were discussed during work session.**

## **Water Use Data Collection Process**

TWC, § 11.031, requires that each water right holder submit an annual water use report to the TCEQ.

Under TWC, § 11.031(b), the penalty for failing to file an annual report with the TCEQ is \$25, plus \$1 per day for each day after the due date of **March 1**, to a maximum of \$150. Failure to submit water use reports may result in water right cancellation proceedings under TWC, Section 11.174.

To address the issues of non-reporting of water use by water right holders, OW proposes utilizing a "find it, fix it" approach by taking the following steps:

1. OW will send a letter to water right holders who did not submit a water use report for 2011.

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The letter will explain the applicable statutes and penalties for non-compliance. Blank water use reports and tips for completing the reports will be enclosed with the letter.

2. OW will work with SBEA to develop an outreach strategy that:
  - Develops additional tools (e.g. record keeping forms, plain language instructions for reporting and general requirements)
  - Develops a reminder post card to be sent in early February
    - Post card could also be used as a hand out for extension agents, agency employees etc.
  - Partners with county extension agents to disseminate the information and provide assistance to irrigators (This may include workshops to educate the agents on the requirements)
  - Prioritizes the list of non-irrigation permits that have still not reported after the Water Availability Division sends an additional letter specifying a deadline for submittal of the report; begins calling water right holders on this list directly (Please note: in cases where the agency does not have a phone number for the water right holder, it may take significant time and resources to identify the appropriate contact.)
3. After initial outreach and “find it, fix it” efforts are complete, OCE will initiate proper enforcement action on water right holders who fail to report water use. Enforcement strategy will be as follows:
  - OW will identify non-reporters who did not respond to initial efforts by the specified timeframe; and
  - OCE will initiate proper enforcement action as warranted through Notices of Violation
4. OW/OCE are pursuing a proposal to change TWC, §11.031(b) to increase penalties for non-reporting. A possible recommendation is to delete the specific penalty structure for non-reporting and allow the administrative penalty in §11.0842 to take precedence as the penalty structure. Penalties for non-reporting would then be calculated in accordance with the Commission’s Penalty Policy, taking into account the Palmer Drought Index level for penalty enhancements and as outlined by statute would not exceed \$5,000 per day/per violation.

## **Questions Raised During Work Session**

### **Petition Information**

The following is background information on petitions that have been received previously and more recently.

For the Concho watershed, there were three petitions filed:

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1. Filed August 23, 1999, by 47 petitioners, including both Domestic and Livestock (D&L) users and water right holders. The specific break down is unavailable, but they were primarily D&L users.
2. Filed January 21, 2000, by 34 water right holders.
3. Filed June 26, 2001, by three water right holders and 104 D&Ls.

For the San Saba watershed, a watermaster petition was filed on January 22, 2001, by 12 water right holders and 43 D&Ls. The petition was subsequently withdrawn. A new watermaster petition for the San Saba watershed with the signatures of 19 D&L users on what appear to be 14 separate tracts of property was submitted on September 14, 2012. An additional petition from what appears to be 30 D&L users was filed with the Chief Clerk on October 10, 2012 and it is being reviewed by staff.

Some Concho area stakeholders initially had concerns about the creation of the watermaster program in that area. The legislation creating the program included a provision in TWC, §11.559 allowing for a referendum on the continuation of the watermaster program upon petition by at least 50 percent of the water right holders. To date, none of the water right holders has exercised this option, and in fact each year, the budget is approved by a nearly unanimous vote of the Concho Watermaster Advisory Committee.

## **Who can petition?**

Under TWC, Chapter 11, Subchapter I, 25 or more holders of water rights in a river basin or segment of a river basin may submit a petition requesting that a watermaster be appointed. For the purposes of Subchapter I, the term “holders of water rights” does not include riparian D&L users because Subchapter I distinguishes between a holder of a water right (TWC, § 11.453(b)(1)) and a riparian landowner (TWC, § 11.453(b)(3)).

## **Can more than one owner of an undivided water right be counted as a separate petitioner?**

No. The term “water right” is defined in Texas Water Code Section 11.002(5) as “a right acquired under the laws of this state to impound, divert, or use state water.” However, the term “water right holder” is defined in TCEQ’s Chapter 304 rules on Watermaster Operations as “(a) person or entity that owns a water right. In the case of divided interests, this term will apply to each separate owner.” 30 TAC Section 304.3(18). Accordingly, for undivided water rights the term water right holder does not apply separately to each owner. Therefore, each owner of an undivided water right should not be counted as a separate petitioner. “For example, a married couple who both sign a watermaster petition should not be counted as two separate water right holders when their water right is undivided.”

## **Evaluation Process –Agency Involvement**

- The watermaster program transferred from OCE to the OW in September, 2011.
- OW will work with OCE and the Office of Legal Services (OLS) to create the letters and information that will be provided to stakeholders prior to the stakeholder meetings. This information will also be included on the watermaster evaluation webpage.

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- Watermasters/Senior Deputy Watermasters and OCE Region staff involved in water right investigations will give presentations at the stakeholder meetings on how water rights administration/enforcement works with and without a watermaster program.
- OW, OCE and OLS will review the comments and all other information (costs, complaints, threats, etc.) received during the stakeholder process. Intergovernmental Relations (IGR), Agency Communications and SBEA will be requested to provide support/input where necessary.

## **Who pays for a watermaster program?**

Permitted water right holders pay the fees for watermaster programs. While D&L users are considered superior rights and may make a priority call on other water right holders, D&L users do not pay watermaster program fees.

## **For the priority calls that were declared futile in 2011 and 2012, would the answer have been the same with or without a watermaster?**

A watermaster has the ability to identify and adjust diversions more quickly than in non-watermaster areas which may have resulted in a longer period of time before the calls became futile. Additionally, had a watermaster been in place, the need for a priority call potentially could have been delayed. However, in cases such as the two D&L calls in the upper Brazos Basin in 2011, dry conditions and travel distance made it unlikely the answer would have been different.

## **What does Chapter 36 of the Commission's rules mean for how much water is in the stream for water rights during drought?**

If a senior water right is unable to get the water it needs and can beneficially use the water, the senior water right can make a priority call. The Executive Director (ED) investigates and responds to priority calls in accordance with the Chapter 36 rules and may curtail the use of water by junior water rights.

## **What does Chapter 36 do?**

Before Chapter 36, the ED had the authority to suspend water rights based on the priority doctrine and the TCEQ's authority over enforcement of water rights. Chapter 36 clarifies and further defines this authority by establishing criteria, such as a definition of drought and emergency water shortage, and procedures the ED will use to respond to priority calls. Chapter 36 gives the ED additional tools to manage water rights.



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Under Chapter 36, in response to a priority call, the ED can request information on water use from any water rights that are not suspended or adjusted for public health and safety reasons. If a junior water right is not suspended or adjusted, the ED can request information on future planning and can also require implementation of water conservation and drought contingency plans at higher levels in order for non-suspended junior water rights to continue to divert. Specifically, the ED's ability under Chapter 36 to adjust water rights in non-watermaster areas is a substantial tool. Chapter 36 also requires the ED to issue an order to suspend or adjust water rights and that the commission hold a hearing on the order.

Chapter 36 provided new tools and procedures, such as the issuance of an order and the adjustment of water rights for drought management that were previously not available to the ED outside of watermaster areas.

Watermasters provide proactive water management decisions in river basins. Watermasters communicate daily with water right holders and this effort helps to facilitate effective water management. In watermaster areas, water rights are managed on a real-time basis because water right holders must declare their intent to divert before the diversion of water. Therefore, the watermaster has information on how much water each water right intends to divert and can make active water management decisions. A watermaster continuously monitors streamflows, reservoir levels, and water use within a basin, providing hands-on day to day management, as needed. Holders of impoundment rights may notify the watermaster when they plan to release water they have sold. The watermaster can then monitor usage downstream to ensure that the released water reaches the buyer. When streamflows diminish the watermaster allocates available water among the users according to each user's priority date. The watermaster determines whether a diversion will remove water that rightfully belongs to another user. If so, the watermaster notifies the user with lower priority to reduce pumping, or, if necessary, to stop pumping altogether. Watermasters can coordinate diversions in the basin, ensuring that all water users get the best overall value from the water available to them. With their real-time monitoring of local streamflows, watermasters can quickly identify and stop illegal diversions.

## **How do we currently address illegal diversions? How bad is the problem? How would a watermaster program address it? How would we better address it outside of a watermaster program?**

In most cases, investigations of these diversions occur as a result of a complaint. Suspected illegal water diversions outside watermaster areas are currently addressed by OCE based on one of the following scenarios: normal conditions, no curtailment in effect in response to a priority call; or priority call conditions, curtailment in effect due to active priority call.

- **Normal Conditions – No Curtailment in Effect:** Water diversions outside watermaster areas are currently addressed by regional field staff on a complaint response basis. No daily information on diversions are currently received or reviewed by OCE field staff. Investigations of water right holders are currently non-routine and are initiated only in response to reported conditions.

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- **Priority Call Conditions – Curtailment in Effect:** Tools used by OCE during times of curtailment in response to a priority call include frequent tracking of available flow gauges, observations by flyovers and “boots on the ground” to monitor river conditions, and coordination with sister agencies to obtain and track information. OCE tracks flow gauges during these priority call conditions using the “follow the water” concept to identify specific segments of a river that should be focused upon for closer observations of potentially illegal diversions and investigations of both water right holders and non-permitted persons.

Whether in normal conditions or in priority call conditions, OCE addresses potentially illegal diversions as a minor field citation violation for 0 to 0.5 acre-feet of impacted water and with a major field citation violation for 0.5 to 10 acre-feet of impacted water. In areas where a watermaster is active, the watermaster receives daily information on diversions as water right holders are required to contact the watermaster prior to diversion. In addition, watermasters can require diversions to be metered. Watermasters conduct site investigations of permitted water rights diversions on a regular basis, and therefore know how much water a permittee has used as well as how much water is available.

## **Can you provide a breakdown of the comments received during the stakeholder process?**

The following table provides information on all of the comments received during the evaluation process to date (includes late comments). The “total count” numbers that are not water right holders may include D&L users, state or local officials and interested persons.

Standing	BRAZOS			COLORADO			TOTAL BOTH BASINS	
	Total Count	No. of WR Holders	D&L Users*	Total Count	No. of WR Holders	D&L Users*	Total Count	No. of WR Holders
In Favor	14	7	0	27	2	11	41	9
Opposed	42	23	0	214	46	3	256	69
Neutral	4	4	0	4	4	0	8	8
TOTAL	60	34	0	245	52	14	305	86

\* Those that specifically identified themselves in their comment letter as D&L users are identified in this column. In some cases, it is not clear whether a commenter is a D&L user.

## **Water Divisions**

A discussion on water divisions is attached.

## **Cost Differences Summary**

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It is difficult to establish the cost benefits of having a watermaster vs. not having one as there are differences in the benefits provided under each program. Staff took a historical view of the last three years. The following tables will show the agency's drought response costs, the costs for having a watermaster for the entire basin, and the differences between a watermaster and a non-watermaster area. For smaller geographical areas, these costs would be reduced.

### Outside Watermaster Areas (Agency Drought Response costs)

Year	Cost (Total)	Brazos	Colorado
2009	\$283,328*	\$283,328*	n/a
2010	No additional costs	No additional costs	No additional costs
2011	\$794,769*	\$513,874*	\$280,895*

\*These costs were to administer calls where water rights were suspended and reflect the same areas in the table below.

### Watermaster Areas

Year	Cost Estimate Brazos – From Possum Kingdom Reservoir and Below	Cost Estimate Colorado –Upper Colorado – described in No 2 below
2009	\$449,768	\$464,768
2010	\$449,768	\$464,768
2011	\$449,768	\$464,768

The past dates indicate what a watermaster program might have cost had a program been in place using estimates provided to stakeholders. These costs are for established watermaster programs after the first year start-up costs. These costs were estimated using current costs of the South Texas Watermaster program. In a smaller geographical area, these costs would be reduced as outlined here:

1. A watermaster program that includes the portion of the Brazos River from Possum Kingdom Reservoir (PKR) and below plus the Brazos-Colorado Coastal Basin. Approximate first year cost for this option: \$595,977. Approximate cost for subsequent years: \$449,768.
2. A watermaster program that includes the portion of the Colorado River Basin above Lake Buchanan plus the Llano River watershed prior to its confluence with the main stem of the Colorado River. This proposal would not include the Colorado-Lavaca Coastal Basin in a watermaster program. Approximate first year cost for this option: \$610,977. Approximate cost for subsequent years: \$464,768.
3. A watermaster program that includes the entire Colorado or Brazos River Basins and the associated coastal basins. Approximate first year cost for this option in the Brazos Basin is \$674,431 and \$729,064 in the entire Colorado Basin. Approximate cost for subsequent years is \$500,709 in the Brazos Basin area and \$492,329 in the Colorado Basin area.

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4. A watermaster program that includes only the San Saba watershed in the Colorado River Basin. Approximate first year cost for this option is \$112,554. Approximate cost for subsequent years: \$77,041.
5. A program with no more than 3-4 people for the entire Brazos or Colorado Basin which could be centrally located, with no requirement for ongoing regularly scheduled investigations. A program of this scale would likely monitor diversions and streamflows from a central location and would act in the event of low flows to adjust diversion and manage priority calls. Approximate first year cost for this option: \$227,197 - \$292,880 (depending on 3 or 4 staff). Approximate cost for subsequent years: \$232,897 - \$300,139.
6. Expand the Concho Watermaster to the Upper Colorado. Approximate first year cost for this option: \$152,587 - \$228,832 (depending on the addition of 2 or 3 staff). Approximate cost for subsequent years: \$99,361 - \$148,993.

Associated with costs identified in the preceding items 1-6, the following is a table that shows the differences in water management approaches.

### **Executive Director's (ED) Recommendation**

There are currently three successful watermaster programs in the state which were created by various methods. The Rio Grande program was established by court action. South Texas program was established in response to a declared water division. The Concho River program was established by both a petition of at least 25 water right holders who successfully proved at a hearing that their water rights were threatened and by legislative action. At this time, the ED recommends that the Commission not move forward on its own motion with the creation of a watermaster program in either basin area. Creation of a watermaster program by the Commission requires a hearing be held to determine if water rights were threatened. A follow-up consideration is the need for the creation of a new Watermaster program, associated new fees and a new regulatory structure for the impacted basins. In proving threat to water rights, the Commission on its own motion would bear the burden of proof of impact to water right holders. This burden of proof can best be articulated by those water right holders that were actually impacted. The Texas Water Code allows them to petition the Commission for such action.

While the statute requires the agency to evaluate the need for a watermaster in those basins without a watermaster program at least every five years, there is no prohibition against evaluating a basin sooner on an as needed basis. The ED can review this decision and evaluate additional threats to senior water rights as they occur and also consider area stakeholder input. It is important to have stakeholder support in articulating the threat and need to establish a new program as they will be responsible for paying a new fee to support the new regulatory program.

As stated above, the ED is always open to any additional information stakeholders may want to provide and 25 water right holders may petition the agency at any point to consider creation a watermaster program. Once a petition from 25 water right holders is received, the Commission

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will refer the issue to the State Office of Administrative Hearings for a complete administrative hearing and recommendation to the Commissioners for consideration.

# Water Right Priority Calls

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*Response to a water right priority call is the highest priority for the Drought Response Task Force involved in the process.*

## Drought Response Task Force

In order to provide the best possible response to drought conditions that continue to persist state-wide and facilitate response to water right priority calls, the agency is creating the Drought Response Task Force. This is a separate subgroup of the agency-wide drought meeting. This subgroup (also multi-office) is comprised of the agency's "go-to" staff with water rights expertise and is focused solely on responding to priority calls.

**Executive Sponsors/Co-chairs:** L'Oreal Stepney and Ramiro Garcia

**Other Members:** Kellye Rila, Ron Ellis, Randy Ammons, Susan Jablonski, Kelly Keel, David Ramirez, Caroline Sweeney, Robert Martinez, Kathleen Decker, Robin Smith, and Isaac Jackson.

**Meeting Schedule:** Meetings of the Task Force will be on Tuesdays at 3:00 p.m.

## Water Right Priority Call - Response Process Timeline

The total response timeframe has a goal of 10 calendar days – steps should be completed faster when possible.

Priority Call Review Steps	Calendar days
1. OCE Receives Priority Call and is Distributed to Exec, OW, IGR, SBEA, OLS and Media Relations	Immediately
2. Concurrently, OW begins review with OCE initiating investigation, and results sent to OW/OLS	No more than 7 days
3. OW completes preliminary recommendation along with draft letters.	No more than 2 days
4. OLS will prepare draft order including working with OGC to expedite agenda setting.	
5. OW, OCE, OLS, and IGR meet to discuss preliminary recommendation. Then meet with ED/DED and a decision is made on priority call response. Signature and IGR notifications to follow.	No more than 1 day

# Water Right Priority Calls - Response Process

Each of the steps below will be prioritized and expedited.

1. **Priority Call Received:** Priority calls are received by the Office of Compliance and Enforcement (OCE). Upon receipt of a call, OCE immediately informs: Exec, OW, IGR, SBEA, OLS, and Media Relations. OCE will immediately request responses to priority call questionnaire (which can be done through email or direct discussion between investigator and person making the senior call). Upon receipt, OCE immediately forwards questionnaire responses to OW and OLS.
2. **Expedited Programmatic Evaluations** (*No more than 7 cal. days*):
  - **Permit Review** (*7 cal. days – concurrent with Field Investigation*): OW reviews the following:
    - drought and emergency shortage of water criteria in Chapter 36 to make assessment;
    - water right permits to identify affected permits and any special conditions effecting the call;
    - GIS tools to identify the geographic scope; creates maps of permits and reservoirs;
    - water use data, watershed information such as drainage area and losses, reservoir information, and area-specific issues;
    - any power or municipal water rights that may be affected by the call; and
    - prepares draft letter to senior water right holder(s), affected water right holders, juniors not curtailed if applicable, and any other notifications.
  - **Field Investigation** (*5 cal. days – concurrent with Permit Review*): Within 24 hours, OCE begins an investigation of on the ground conditions at the location of the priority call and upstream locations where stream access is immediately accessible. Receiving timely consent to access property is critical for completion of the task. OLS is available to pursue administrative search warrant (civil-not criminal) to assist in gaining access. OCE sends the results and photographs of the field investigation to OW and OLS when completed.
3. **Preliminary Recommendation** (*No more than 2 cal. days*): OW reviews investigation results and completes a preliminary recommendation. OW sends the preliminary recommendation to OCE, OLS, and IGR for review and comment. OLS prepares a draft order, if applicable, and sends copy to OW. OLS coordinates with OGC to expedite setting an agenda date and drafts the hearing notice. Media Relations prepares a draft press release if needed. If a priority call is not substantiated, OCE will conduct a complaint investigation. OCE has reduced the water rights complaint investigation timeframe from 30 days to 10 days.
4. **Finalization of Recommendation** (*No more than 1 cal. day*): OW, OCE, OLS, and IGR will meet to discuss and finalize the preliminary recommendation. Representatives of the Drought Response Task Force will meet with the ED and DED to discuss the preliminary recommendation during the same day, if possible. ED makes final decision on the priority call, signs letter/issues order (if applicable).
5. **Notifications**
  - Signed ED letters/orders are provided to IGR. IGR notifies state and local leadership, state agencies, agriculture extension agents, and county judges.
  - Media Relations issues press release and updates the TCEQ Drought Webpage with copies of all letters/notifications.
  - **Water Right Owner Notification:** OW mails letters.
6. **Enforcement (on-going):** OCE follows up with enforcement of suspensions/adjustments and with senior water right holder.
7. **Agenda:** OW, OCE, OLS participate in agenda to discuss suspension or adjustment if they occur under Chapter 36

# Office of Compliance and Enforcement

## River Basin Monitoring Activities

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**GOAL:** To conduct more proactive water management in areas of the state outside the jurisdiction of a Watermaster Program in order to increase agency awareness of potential impacts to surface water and to provide information critical for the agency's evaluation and determination of priority calls on surface water.

1. United States Geological Survey (USGS) gages and Continuous Water Quality Monitoring (CWQM) stations – online activity
  - a. For specific USGS gages and for CWQM stations capturing streamflow measurements, check reported flows on a monthly basis and enter the data into the designated spreadsheet
    - i. The specified USGS gages are also being used by Office of Water (OW) for the monthly Drought Activities Update for the Drought Preparedness Council
      1. These gages have been selected because they have long periods of record and have shown to be representative of flow trends across the state
    - ii. Additional USGS gages may be added to the specified list for as needed to provide data on a case-by-case basis
  - b. Establish alert email to indicate when flows reach a specified minimum level
    - i. When flows fall below the long term monthly median for that month, begin checking reported flow data on a weekly basis and enter the data into the designated spreadsheet
      1. A clear declining flow trend is indicated when flows fall below the 40<sup>th</sup> percentile for the month
    - ii. Notify Area Director (AD), OCE Deputy Director, OW, and Office of Legal Services (OLS) when the 40<sup>th</sup> percentile trigger is met
      1. The Drought Response Task Force will determine whether a drought alert letter should be sent based on the flow data and information from the Drought Monitor
        - a. OW will send the drought alert letter to water right holders in the river basin
    - iii. Communicate weekly flow monitoring to AD, OCE Deputy, and OW to identify if additional actions need to be initiated
      1. If water rights are suspended or adjusted, reported flow data will be checked daily and communicated with AD, OCE Deputy, OW, and OLS



# **Office of Compliance and Enforcement**

## **River Basin Monitoring Activities**

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2. Surface Water Quality Monitoring (SWQM) – onsite activity
  - a. For SWQM stations capturing streamflow measurements that are monitored by Regional staff, enter reported flows into the designated spreadsheet immediately after a routine monitoring event (majority of events are conducted quarterly). SWQM data will be used to confirm and support USGS gage flow data and to potentially provide a more targeted response
3. Increase Regional awareness of water rights and water quantity management
  - a. Direct Training and Presentations
    - i. Provide guidance to Regional management for implementation of water quantity management activities
    - ii. Provide enhanced water rights training to Regional staff during annual investigator training events
      1. Water Quality Annual Training
    - iii. Provide individual Regional training events as necessary
  - b. Coordination with Office of Water (OW)
    - i. Increase Regional awareness of significant permitted water rights in specific areas (ie. power plants, public water supplies, industry, agriculture, etc)
    - ii. Continued OCE participation in the TCEQ Emergency Drinking Water Task Force
    - iii. In cooperation with the Water Quality Division, increase regional coordination with municipalities and industrial facilities obtaining Water Quality Water Reuse Authorizations that potentially impact surface water supplies
  - c. Coordination with County Extension Agents
    - i. By partnering with Small Business and Environmental Assistance (SBEA), increase regional coordination with local county extension agents to educate Regional staff on surface water needs and irrigation schedules specific to local crop mixes and land conditions
  - d. Enhanced coordination with public water systems (PWSs) utilizing surface water as primary source
    - i. Increase regional understanding and awareness of drought contingency plans in order to provide guidance to PWSs
    - ii. Increase regional coordination with PWSs regarding need for alternative sources of water

# **Office of Compliance and Enforcement**

## **River Basin Monitoring Activities**

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- e. Designation of Points of Contact
  - i. Each Region will identify a primary and a secondary point of contact for water rights issues
  - ii. Each AD will serve as a point of contact with the OCE Deputy Director's office for water rights issues within his/her area

#### **4. Flow of Information**

- a. Since river basins can span multiple Regions, Regions and Areas within a common river basin will coordinate in order to be aware of flow conditions in one Region that may impact senior water rights in another Region
- b. Success of more proactive water management is dependent on timely flow of information among OCE, OW, OLS and SBEA
  - i. Based on input from all impacted offices, additional outreach, modified triggers, and/or enhanced guidance may result on a region-specific basis

Bryan W. Shaw, Ph.D., *Chairman*  
Carlos Rubinstein, *Commissioner*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 3, 2012

Re: 2011 Water Use Reports

Dear Water Right Holder:

Texas Water Code (TWC), Section 11.031, requires that each water right holder submit an annual water use report to the Texas Commission on Environmental Quality (TCEQ). Our records indicate that you have not submitted an annual water use report for 2011 for your water right or contract.

Enclosed are blank 2011 water use reports for your water right(s) and an instruction page for your reference. Please complete and submit each of these reports.

Under TWC, Section 11.031(b), the penalty for failing to file an annual report with the TCEQ is \$25, plus \$1 per day for each day after the due date of March 1, to a maximum of \$150. Additionally, under TWC, Section 11.173(a), a water right that is not used for a period of ten years may be subject to cancellation by the TCEQ. Years in which water use is not reported are considered to be years of non-use by the TCEQ.

Please note that state water must be diverted and used only in accordance with the terms and conditions of your water right. Violations of permit terms, such as over-use, are subject to enforcement under TWC Chapter 11, Subchapter C.

Surface water is a precious resource that we all need to protect. Please do your part to ensure the integrity of water rights in Texas is maintained.

Please submit the enclosed water use report(s) by November 30, 2012. If the report(s) are not received by that date, you may be subject to enforcement action.

If you have questions or need assistance completing the report form, please contact the Water Rights Permitting Team at (512) 239-4691.

Sincerely,

Ron Ellis, Manager  
Water Rights Permitting and Availability Section

Enclosures

## CREATION OF A WATER DIVISION

### Statutory and Regulatory Authority

Tex. Water Code Section 11.325 provides that the commission shall divide adjudicated segments or river basins into water divisions. The commission must find that that the divisions would secure the best protection to the holders of water rights and the most economical supervision on the part of the state. However, there are no statutory provisions setting out the process for creating these water divisions. In addition, the Commission has not adopted procedural rules for creating water divisions.

### Prior Water Divisions

The Commission has created two water divisions under this statutory authority. The South Texas Water Division was created by order dated July 12, 1988. The Colorado-Lavaca Water Division was created by order dated January 12, 1990. The orders do not state whether petitions were filed requesting the water divisions or the notice that was provided. The Commission orders creating each water division are attached.

### Potential Process

The Executive Director could file a petition with the Chief Clerk requesting the Commission to create of one or more water divisions in the state. The petition could then be considered at Commission agenda. Alternatively, the Commission, on its own motion, could direct the General Counsel to set an item on the agenda for the creation of a water division.

Seven-day notice of the agenda item to consider the water division would be given under the Open Meeting Act. No formal notice (other than Open Meetings Act notice) or contested case hearing is required for creation of a water division or appointment of a watermaster under Chapter 11, Subchapter G of the Water Code. However, notice to the water right holders in the proposed division could be provided.

At the agenda meeting, the Commission could approve an Order creating a water division upon finding that the area has been adjudicated and that the division would secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Water Commission document, the original of which is filed in the permanent records of the Commission.  
Given under my hand and the seal of  
Office on



JAN 12 1990

*Brenda W. Foster*  
Brenda W. Foster, Chief Clerk  
Texas Water Commission

AN ORDER CREATING  
THE COLORADO-LAVACA WATER DIVISION

WHEREAS, pursuant to the Water Rights Adjudication Act of 1967, final judgements have been issued by district courts adjudicating water rights in the following river segments, watersheds, or basins: the Upper Colorado River Segment, the Middle Colorado River Segment, the Concho River Segment, the Pecan Bayou Watershed, the San Saba River Watershed, the Llano River Watershed, the Pedernales River Watershed, the Lower Colorado River Segment, the Lavaca River Basin, the Colorado-Lavaca Coastal Basin, and the Brazos-Colorado Coastal Basin; and,

WHEREAS, the area adjudicated in the Upper Colorado River Segment consists of the Colorado River and its tributaries from the Texas-New Mexico boundary downstream to its confluence with the Concho River, and includes all or parts of Concho, Runnels, Coleman, Taylor, Nolan, Coke, Tom Green, Sterling, Mitchell, Scurry, Garza, Borden, Howard, Glasscock, Upton, Midland, Martin, Dawson, Lynn, Hockley, Terry, Gaines, Andrews, Ector, Winkler, Yoakum, and Cochran Counties; and

WHEREAS, the area adjudicated in the Middle Colorado River Segment consists of the Colorado River and its tributaries from the confluence of the Colorado and Concho Rivers downstream to and including Mansfield Dam, excluding the watersheds of Pecan Bayou, the Llano River, the San Saba River, and the Pedernales River, and includes all or parts of Runnels, Concho, Gillespie, Coleman, McCulloch, Brown, San Saba, Mills, Lampasas, Burnet, Llano, Blanco, and Travis Counties; and

WHEREAS, the area adjudicated in the Concho River Segment, consists of the Concho River and its tributaries from their headwaters downstream to the confluence of the Concho River and the Colorado River, and includes all or parts of Concho, Runnels, Tom Green, Coke, Schleicher, Irion, Crockett, Reagan, Upton, Midland, Glasscock, Howard, and Sterling Counties; and

WHEREAS, the area adjudicated in the Pecan Bayou Watershed consists of Pecan Bayou and its tributaries from their headwaters downstream to the confluence of Pecan Bayou with the Colorado River, and includes parts of Brown, Callahan, Coleman, Comanche, Eastland, Mills, Runnels, and Taylor Counties; and

WHEREAS, the area adjudicated in the San Saba River Watershed consists of the San Saba River and its tributaries from their headwaters downstream to the confluence of the San Saba River with the Colorado River, and includes parts of Sutton, Schleicher, Menard, Concho, McCulloch, Mason, and San Saba Counties; and

WHEREAS, the area adjudicated in the Llano River Watershed consists of the Llano River and its tributaries from their headwaters downstream to the backwater of Lake Lyndon B. Johnson, and includes parts of Sutton, Edwards, Real, Kimble, Kerr, Menard, Mason, Gillespie, San Saba, and Llano Counties; and

WHEREAS, the area adjudicated in the Pedernales River Watershed consists of the Pedernales River and its tributaries from their headwaters downstream to the backwater of Lake Travis, and includes parts of Blanco, Burnet, Gillespie, Hays, Kendall, Kerr, Kimble, and Travis Counties; and

WHEREAS, the area adjudicated in the Lower Colorado River Segment consists of the Colorado River and its tributaries below Mansfield Dam downstream to the Gulf of Mexico, and also includes all of the Lower Colorado River Authority's water rights for the Highland Lakes (Lake Buchanan, Inks Lake, Lake Lyndon B. Johnson, Lake Marble Falls and Lake Travis), and includes parts of Hays, Travis, Caldwell, Bastrop, Lee, Fayette, Colorado, Wharton, and Matagorda Counties; and

WHEREAS, the area adjudicated in the Lavaca River Basin consists of the Lavaca River and its tributaries from their headwaters downstream to Lavaca Bay, and includes all or parts of Fayette, Colorado, Gonzales, Lavaca, Dewitt, Victoria, Jackson, and Wharton Counties; and

WHEREAS, the area adjudicated in the Colorado-Lavaca Coastal Basin consists of the entire coastal basin, and includes parts of Wharton, Jackson, Calhoun, and Matagorda Counties; and

WHEREAS, the area adjudicated in the Brazos-Colorado Coastal Basin consists of the entire coastal basin, and includes parts of Austin, Colorado, Wharton, Fort Bend, Brazoria, and Matagorda Counties; and

WHEREAS, water use permits have been granted after certificates were issued in some of the river segments, watersheds, and basins in the proposed Colorado-Lavaca Water Division; and

WHEREAS, pursuant to Sections 11.325 and 11.336 of the Texas Water Code, the Commission is required to divide the state into water divisions for the purpose of administering adjudicated water rights and the Commission may also administer permits to appropriate water from an adjudicated stream; and


WHEREAS, a watermaster operation in the Colorado-Lavaca Water Division will provide the best administration of state water and protection for holders of water rights within the division.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

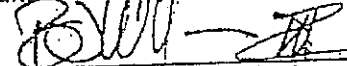
- (1) The Colorado-Lavaca Water Division is established to consist of all of the Texas portion of the Colorado River Basin, all of the Lavaca River Basin, and all of the Colorado-Lavaca and the Brazos-Colorado Coastal Basins; and
- (2) The Colorado-Lavaca Water Division is established for the purpose of administering all existing and future water rights in the division which may be subject under law to administration by the Commission.

Signed this the 12th day of January, 1990.

ATTEST:

  
Brenda W. Foster, Chief Clerk

TEXAS WATER COMMISSION

  
B.J. Wynne, III, Chairman.



TEXAS WATER COMMISSION



AN ORDER CREATING  
THE SOUTH TEXAS WATER DIVISION

WHEREAS, pursuant to the Water Rights Adjudication Act of 1967, final judgments adjudicating water rights in the following areas: the Nueces River Basin, including the Upper Nueces River Segment, the Lower Nueces River Segment, and the Frio-Atascosa Rivers Watershed; the San Antonio River Basin including the San Antonio River Watershed, the Medina River Watershed, and the Cibolo Creek Watershed; the Guadalupe River Basin, including the Upper Guadalupe River Segment, the Lower Guadalupe River Segment, and the Blanco-San Marcos Rivers Watershed; the Lavaca-Guadalupe Coastal Basin, part of the water rights being adjudicated with rights in the Lavaca River Basin and part in the Lower Guadalupe River Segment; and, the San Antonio-Nueces Coastal Basin; and,

WHEREAS, a final judgment adjudicating water rights in the Nueces-Rio Grande Coastal Basin was signed by the district court of Nueces County, addressing all but the claims of five parties who filed exceptions with the court; and,

WHEREAS, the area adjudicated in the Upper Nueces River Segment consists of the Nueces River and all its contributing tributaries from the headwaters to the confluence of the Nueces and Frio Rivers, and includes all or parts of Edwards, Real, Duval, Kinney, Uvalde, Maverick, Zavala, Dimmit, La Salle, McMullen, Live Oak and Webb Counties; and

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WHEREAS, the area adjudicated in the Lower Nueces River Segment consists of the Nueces River and its tributaries from the confluences of the Nueces and Frio Rivers downstream to the Gulf of Mexico, and includes all or parts of McMullen, Live Oak, Duval, Karnes, Bee, Jim Wells, San Patricio, and Nueces Counties; and

WHEREAS, the area adjudicated in the Frio-Atascosa Rivers Watershed consists of the Frio River, the Atascosa River and their tributaries, and includes all or parts of Uvalde, Medina, Zavala, Frio, Atascosa, Bexar, Wilson, Karnes, LaSalle, McMullen, Live Oak, and Dimmit Counties; and

WHEREAS, the area adjudicated in the Medina River Watershed consists of the Medina River and its tributaries, and includes all or parts of Bandera, Kerr, Kendall, Medina, Bexar, and Atascosa Counties; and

WHEREAS, the area adjudicated in the Cibolo Creek Watershed consists of Cibolo Creek and its tributaries, and includes all or parts of Kendall, Bexar, Comal, Guadalupe, Wilson, and Karnes County; and

WHEREAS, the area adjudicated in the San Antonio River Watershed consists of the San Antonio River and its tributaries, except the Medina River and the Cibolo Creek Watersheds, and includes all or parts of Bexar, Wilson, Karnes, Dewitt, Coliad, Victoria, and Refugio Counties; and

WHEREAS, the area adjudicated in the Upper Guadalupe River Segment consists of the Guadalupe River and its tributaries from its headwaters downstream to Canyon Lake Dam, and includes all or parts of Kerr, Gillespie, Bandera, Kendall, Blanco, and Comal Counties; and

WHEREAS, the area adjudicated in the Blanco-San Marcos Rivers Watershed consists of the Blanco River and the San Marcos River and their respective tributaries, and includes all or parts of Kendall, Blanco, Hays, Comal, Travis, Gillespie, Guadalupe, Caldwell, and Gonzales counties; and

WHEREAS, the area adjudicated in the Lower Guadalupe River Segment consists of the Guadalupe River and its tributaries from Canyon Lake Dam to the Gulf of Mexico, excluding the Blanco-San Marcos Rivers Watershed, and includes all or parts of Comal, Caldwell, Guadalupe, Wilson, Gonzales, Bastrop, Fayette, Lavaca, Dewitt, Karnes, Goliad, Victoria, Calhoun, and Refugio Counties; and

WHEREAS, the area adjudicated in the Lavaca-Guadalupe Coastal Basin includes all or parts of Lavaca, Dewitt, Jackson, Victoria, and Calhoun Counties; and

WHEREAS, the area adjudicated in the San Antonio-Nueces Coastal Basin includes all or parts of Karnes, Goliad, Bee, Live Oak, San Patricio, Refugio, and Aransas Counties; and

WHEREAS, the area adjudicated in the Nueces-Rio Grande Coastal Basin includes all or parts of Duval, Jim Wells, Nueces, Kleberg, Kenedy, Brooks, Jim Hogg, Webb, Starr, Hidalgo, Willacy, and Cameron Counties; and

WHEREAS, pursuant to Texas Water Code §§ 11.325 and 11.336 the Commission is required to divide the state into water divisions for the purpose of administering adjudicated water rights and the Commission may also administer permits to appropriate water from an adjudicated stream.

08-10-100-10

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WHEREAS, the watermaster operation in the South Texas Water Division can provide the best administration of state water and protection for holders of water rights within the division; and

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

- (1) The South Texas Water Division is established to consist of all of the Nueces, San Antonio, and Guadalupe River Basins, and all of the Lavaca-Guadalupe Coastal Basin, the San Antonio-Nueces Coastal Basin, and the Nueces-Rio Grande Coastal Basin, provided that said Division shall not encompass any parts of Starr, Hidalgo, Willacy, and Cameron Counties; and
- (2) The South Texas Water Division is established for the purpose of administering all existing and future water rights in the division which may be subject under law to administration by the Commission.

Signed this the 12th day of July, 1988.

TEXAS WATER COMMISSION

*Paul Hopkins*  
Paul Hopkins, Chairman

ATTEST:

*Karen A. Phillips*  
Karen A. Phillips, Chief Clerk