

**SUBCHAPTER C: NOTICE REQUIREMENTS FOR WATER RIGHT
APPLICATIONS**

**§§295.151 - 295.161
Effective August 28, 2014**

§295.151. Notice of Application and Commission Action.

(a) At the time that the technical review of an application for a permit to use state water has been completed and the technical memoranda have been filed by the executive director with the chief clerk of the commission, the commission shall give notice by mail to those persons specified in §295.153 of this title (relating to Notice By Mail). At such time, the chief clerk shall furnish a copy of the notice to the applicant, and the applicant shall cause such notice to be published, pursuant to §295.152 of this title (relating to Notice by Publication).

(b) The notice must:

- (1) state the name and address of the applicant;
- (2) state the date on which the application was received by the commission;
- (3) state the date the application was filed by the executive director with the chief clerk as required by §281.17(a) or (b) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness);
- (4) state that the executive director has determined that the technical review of the application is complete;
- (5) state the application number;
- (6) state the type of permit the applicant is seeking;
- (7) state the purpose and extent of the proposed appropriation of water;
- (8) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (9) state the executive director's recommendation regarding the application;

(10) state that an affected person may request a hearing as set out in Chapter 55, Subchapter G of this title (relating to Requests for Contested Case Hearing and Public Comment on Certain Applications);

(11) give a general description of the location and area of any land to be irrigated;

(12) include the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain future information; and

(13) give any additional information the commission considers necessary.

Adopted December 9, 2009

Effective December 31, 2009

§295.152. Notice By Publication.

(a) If notice by publication is required, the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within the section of the state where the source of water is located.

(b) The date of publication shall be on or before the date of publication directed by the chief clerk of the commission. In any event, the date of publication shall be not less than 30 days before the date set for commission consideration of the application.

§295.153. Notice By Mail.

(a) If notice by mail is required, the commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this section for each type of application. The commission shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) For an application for a permit pursuant to the Texas Water Code, §11.121, or for an amendment to a Texas Water Code, §11.121 permit, a certified filing, or a certificate of adjudication pursuant to the Texas Water Code, §11.122 and §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(2) all navigation districts within the river basin concerned; and

(3) other persons who in the judgment of the commission might be affected.

(c) For an application for a permit pursuant to the Texas Water Code, §11.143, or for an amendment pursuant to the Texas Water Code §11.122, to a Texas Water Code, §11.143, permit or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under the Texas Water Code, §11.142, and pursuant to §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each person whose claim or appropriation has been filed with the commission or its predecessor agencies and whose diversion point is downstream from the location of the dam or reservoir as described in the application; and

(2) other persons who in the judgment of the commission might be affected.

(d) For an application to amend a certified filing authorizing diversions from a reservoir which is exempted under the Texas Water Code, §11.142, which, if granted, will cause a change in the reservoir so that it would no longer be exempt under the Texas Water Code, §11.142, notice shall be mailed to the persons listed in subsection (b) of this section.

(e) For an application to authorize the use of state water for domestic and livestock use from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued, the commission shall issue such notice as it deems appropriate.

§295.154. Notice for Temporary Water Use Permit.

(a) For an application for a temporary water use permit for which a hearing is required, notice of the hearing shall be sent by first-class mail to each complainant under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit) and to diverters of record with the commission who are located below the applicant's proposed point of diversion and who would, in the judgment of the commission, be affected by the applicant's withdrawals. The notice shall be mailed not less than 15 days (including Saturdays, Sundays, and holidays) prior to the date set for hearing.

(b) Notice of a hearing on an application for a temporary water use permit need not be published in any newspaper unless so ordered by the commission.

(c) Notice of a hearing on an application for a temporary water use permit shall contain a general statement regarding the proposed quantities, use, and period

of use of the requested water, and a statement of the date, time, and place of the hearing.

(d) No mailed notice is required in connection with an application for an extension of time for a temporary permit.

§295.155. Notice for Interbasin Transfers.

(a) The notice requirements of this subchapter for an application for a new or amended water right, as applicable, shall apply to an application for an interbasin transfer except as otherwise provided by this section. In addition, notice shall be given to users of record in the receiving basin who are located below the point of introduction except for interbasin transfers described under subsection (d)(2) - (5) of this section. For purposes of this section, a river basin is defined and designated by the Texas Water Development Board by rule pursuant to Texas Water Code, §16.051. An increase in the amount of water being transferred to the receiving basin under an existing water right constitutes a new interbasin basin transfer for purposes of this section.

(b) In addition to the notice requirements provided by subsection (a) of this section, notice of an application for an interbasin transfer shall also include the following unless exempted by subsection (d) of this section:

(1) notice of the application shall be mailed to:

(A) all holders of water rights located in whole or in part in the basin of origin if not already provided under subsection (a) of this section;

(B) each county judge of a county located in whole or in part in the basin of origin;

(C) each mayor of a city with a population of 1,000 or more based upon the most recent estimate of the U.S. Census Bureau located in whole or in part in the basin of origin;

(D) all groundwater conservation districts located in whole or in part in the basin of origin;

(E) each state legislator in both basins; and

(F) the presiding officer of each affected regional water planning group in both basins;

(2) the applicant shall cause notice of the application to be published in two different weeks within a 30-day period in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin and the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices; and

(3) the notice of the application must state how a person may obtain from the applicant, without cost, information relating to the contract price of the water to be transferred; a statement of each general category of proposed use of the water to be transferred, and a detailed description of the proposed uses and users under each category; the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and the projected effect on user rates and fees for each class of ratepayers.

(c) The applicant shall pay the cost of notice required to be provided under this section.

(d) Subsection (b) of this section shall not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water under §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139));

(3) a proposed transfer from a basin to its adjoining coastal basin; or

(4) a proposed transfer from the part of the geographic area of a

county or municipality, or the part of the retail service area of a retail public utility as defined by Texas Water Code, §13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin. The further transfer and use of this water outside of such county, municipality, or the part of the retail service area of a retail public utility as defined by Texas Water Code, §13.002 as existing at the time of the transfer or as may exist in the future other than back to the basin of origin shall not be exempt under this paragraph;

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state.

Adopted August 6, 2014

Effective August 28, 2014

§295.156. Notice for Emergency Water Use.

(a) An initial emergency authorization for the diversion and use of state water for a period of not more than 120 days under the Texas Water Code, §11.139, may be granted after notice to the governor and without the necessity of issuing the notice required for other water rights issued by the commission.

(b) Notice of the hearing at which the commission determines whether to affirm, modify or set aside the emergency authorization is not subject to the requirements of Texas Water Code §11.132, but such general notice of the hearing shall be given as the commission deems practicable and meets the requirements of Texas Government Code, Chapter 2001. In the case of an emergency transfer, such notice shall be provided, at a minimum, to the water right holders whose right to use water is being temporarily transferred and to the governor.

Adopted January 20, 1999

Effective February 21, 1999

§295.157. Notice of Hearing.

A hearing on an application may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest advocate and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk of the commission will mail such notice to these persons not less than 10 days before the date of the hearing.

§295.158. Notice of Amendments to Water Rights.

(a) On motion of executive director.

(1) If the executive director determines to file a petition to amend a water right, notice of the determination stating the grounds therefore and a copy of a proposed amendment draft shall be personally served on or mailed by certified mail to the water right holder at the last address of record with the commission.

(2) This notice shall be given at least 15 days before a petition is filed with the commission.

(b) Requiring mailed and published notice. Unless authorized by subsection (c) of this section, applications for amendments to permits, certified filings, or certificates of adjudication, including, but not limited to, those of the following nature, must comply with requirements for a water use permit, including the notice requirements in the Texas Water Code, §11.132, and this subchapter:

(1) to change the place of use when other water users of state water may be affected;

(2) to increase an appropriation and/or rate or period of diversion;

(3) to change the purpose of when the change would authorize a greater consumption of state water or would materially alter the period of time when state water could be diverted;

(4) to add points of diversion which would result in a greater rate of diversion or impair other water rights;

(5) to remove or modify the requirements or conditions of a water right which were included for the protection of other water rights;

(6) to change a point of diversion which may impair other water rights;

(7) to relocate or enlarge a reservoir; or

(8) to extend the period of duration of any term permit.

(c) Not requiring mailed and published notice.

(1) Only an application to amend an existing permit, certified filing, or certificate of adjudication which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Once the technical review of an application is complete and the technical memoranda have been filed with the chief clerk of the commission, the commission shall consider whether additional notice is required based on the particular facts of the application.

(2) Applications of the following descriptions may not require additional notice:

(A) to cure ambiguities or ineffective provisions in a water right;

(B) to reduce an appropriation or rate of diversion;

(C) to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest. If no protest is received, further notice will not be required;

(D) to change the point of diversion when the existing rate of diversion will not be increased and there are no interjacent water users of record between the originally authorized point of diversion and the new one, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(E) to add additional points of diversion where the existing rate of diversion will not be increased and there are no water users of record between any originally authorized point of diversion and the new one to be added, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(F) to increase the rate or period for diversion from a storage reservoir.

Adopted December 9, 2009

Effective December 31, 2009

§295.159. Notice of Extension of Time To Commence or Complete Construction.

(a) 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, notice of an application for extension of time shall be mailed and published as required by the Texas Water Code, §11.132 and §11.143, and §295.151 of this title (relating to Notice of Application and Commission Action), §295.152 of this title (relating to Notice By Publication), and §295.153 of this title (relating to Notice By Mail). The chief clerk shall mail notice of the public hearing to the same persons to whom notice of the application for the permit was mailed. The applicant shall be required to publish notice of the hearing in the same manner in which an applicant for a water use permit is required to publish notice of an application. No other notice is required.

(b) The notice of any application for an extension of time to commence or complete construction must provide that the commission shall also consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

§295.160. Notice of Applications to Convey Stored Water.

If the commission has received a written statement of a proposed conveyance of stored water, it shall send notice to each diverter of record on the watercourse between the origin and terminus of the transit. The notice shall set forth the approximate time that delivery will be commenced and completed, the legal consequences that could result from the unlawful diversion and taking of such water in transit, and other details the commission considers appropriate. The expense of mailing notice shall be charged to the applicant. These provisions may be waived by the commission if an emergency condition exists and time does not permit following the procedure outlined. Further, the requirements of this section are not applicable if water is being released from upstream storage under order of the commission.

§295.161. Notice of Application to Convey Water in Bed and Banks.

(a) Except for an application to convey imported water, new or future

increases of groundwater-based effluent or other groundwater as provided in subsection (b) of this section, notice of an application to convey groundwater-based effluent or other water in the bed and banks of a stream or watercourse pursuant to Texas Water Code, §11.042(b) and (c) shall be provided by first class mail, postage prepaid, by the commission to every water right holder of record downstream of the discharge point at least thirty (30) days prior to commission consideration of the application.

(b) If the commission has received a written statement of a proposed conveyance of imported water pursuant to Texas Water Code, §11.042(a-1), or new or future increases in groundwater-based effluent or other groundwaters in the bed and banks of a stream or watercourse pursuant to Texas Water Code, §11.042(b), it shall send notice to each diverter of record on the watercourse between the proposed point of discharge and the proposed point of diversion. The notice shall set forth the approximate time that deliveries of such water will occur, the legal consequences that could result from the unlawful diversion and taking of such water in transit, and other details the commission considers appropriate.

(c) Notice of an application for a bed and banks permit under this section shall also be provided to the Texas Parks and Wildlife Department and the Public Interest Counsel.

(d) No published notice shall be required for an application under this section.

(e) The applicant shall be responsible for the costs of providing notice under this section. (For notice requirements relating to the conveyance of stored water under Texas Water Code, §11.042(a), see §295.160 of this title (relating to Notice of Applications to Convey Stored Water).)

(f) Nothing in this section is intended to deny any additional notice to an affected person that may be required under the Texas Administrative Procedure Act.

Adopted April 14, 2010

Effective May 6, 2010

Disposition Table
Rule Log No. 96174-050-AD
Permit Endorsements
Adopted April 16, 1997
Effective May 20, 1997

Chapter 295 - Water Rights, Procedural
Subchapter C: Notice Requirements for Water Use Permit Applications

This table is to track sections during and after rule revisions. The column on the left lists the current sections prior to the revision. The column on the right lists where the section is proposed to end up in the final adoption.

Old Section	New Section
§295.158(c)(2)(A) and §295.158(d)	§50.45