

SUBCHAPTER C: USE EXEMPT FROM PERMITTING

§§297.21 - 297.27

Effective December 31, 2009

§297.21. Domestic and Livestock and Wildlife Permit Exemptions.

(a) In accordance with Texas Water Code (TWC), §11.303(1), a person may directly divert and use water from a stream or watercourse for domestic and livestock purposes on land owned by the person and that is adjacent to the stream without obtaining a permit. Manner of diversion may be by pumping or by gravity flow. Such riparian domestic and livestock use is a vested right that predates the prior appropriation system in Texas and is superior to appropriative rights. A vested riparian right is only to the normal flow in the stream, not to the storm water, floodwater, or authorized releases from storage for downstream use.

(b) In accordance with TWC, §11.142, a person may construct on the person's own property a dam or reservoir with a normal storage of not more than 200 acre-feet of state water for domestic and livestock purposes without obtaining a permit. The reservoir may be on-channel, adjacent to the stream, or on a contiguous piece of property through which flows the stream from which the water is diverted. For purposes of this subsection, normal storage means the conservation storage of the reservoir, i.e., the amount of water the reservoir may hold before water is released uncontrolled through a spillway or into a standpipe. A person who temporarily stores more than 200 acre-feet of water in a dam or reservoir having a normal storage of greater than 200 acre-feet is not required to obtain a permit for the dam or reservoir if the person can demonstrate through reservoir capacity data and monthly reservoir water level records maintained by the owner that the person has not stored in the dam or reservoir more than 200 acre-feet of state water on average in any 12-month cycle. Selection of the 12-month cycle shall be at the owner's discretion, but must be consistent from year to year. This exemption does not apply to a commercial operation. Use of land for livestock purposes is not a commercial operation. This domestic and livestock exemption is not available to owners or property sold by a municipality having a population of 250,000 or less and owning land within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage capacity, if the property was sold without notice or the solicitation of bids to the person leasing the land, in accordance with Local Government Code, §272.001(h).

(c) A dam constructed in accordance with subsection (b) of this section may not be located on a navigable stream.

(d) The use of a reservoir by free-ranging wild game and fur-bearing animals that may be harvested by hunters and trappers who pay a fee or other compensation to hunt or trap on the property does not constitute a use for which a permit must be obtained for an otherwise exempt domestic and livestock reservoir. Additionally, the use of water that is used in making products from a family garden or orchard that are traded with a neighbor or used in a local bake sale or potluck dinner does not constitute a use for which a permit must be obtained for an otherwise exempt domestic and livestock reservoir.

(e) In accordance with TWC, §11.142(b), a person may construct on the person's property a dam or reservoir with normal storage of not more than 200 acre-feet of water for wildlife management as defined in Texas Tax Code (TTC), §23.51(7), and for fish management purposes, excluding aquaculture or fish farming purposes, if the property on which the dam or reservoir will be constructed is qualified

open-space land, as defined by TTC, §23.51. For purposes of this subsection, normal storage means the conservation storage of the reservoir, i.e., the amount of water the reservoir may hold before water is released uncontrolled through a spillway or into a standpipe. This exemption does not apply to a commercial operation. For the purposes of this subsection, commercial operation means the use of land for industrial facilities, industrial parks, aquaculture facilities, fish farming facilities, or housing developments. The incidental use of the reservoir in a manner that does not remove the land from the definition of qualified open-space land as defined by TTC, §23.51, including using a photograph in advertising, does not constitute a use for which a permit must be obtained for an otherwise exempt reservoir.

Adopted July 24, 2002

Effective August 15, 2002

§297.22. Storage in Another's Reservoir.

A permit is required to appropriate state water for storage in another's lawful reservoir and to divert and use water therefrom. Consent of the reservoir owner must be obtained in writing and provided to the executive director. If the reservoir is a project of the Natural Resources Conservation Service, U. S. Department of Agriculture, consent must be obtained from the local, sponsoring Soil and Water Conservation District or any others having ownership or control over the reservoir before a permit can be acquired.

Adopted January 20, 1999

Effective February 24, 1999

§297.23. Spreader Dams, Contouring, Terracing.

No permit shall be required to construct or maintain any system of contouring, terracing, spreader dams or other such practices designed to make maximum beneficial use of diffused surface water and overbank flooding and to implement any generally accepted conservation practices necessary to prevent or reduce erosion on one's own property.

Adopted January 20, 1999

Effective February 24, 1999

§297.24. Permit Exemption for Mariculture Activities.

(a) Without obtaining a permit from the commission, a person engaged in mariculture activities on land may take an appropriate amount of water from the Gulf of Mexico or adjacent bays and arms of the Gulf of Mexico for that purpose if:

(1) prior to the first taking of water, the person gives notice to the commission of the proposed appropriation including:

- (A) the name and address of the person(s);
- (B) the location of the project;
- (C) the name of the water source;

(D) the maximum annual amount of water to be appropriated and the basis for calculating the amount needed; and

(E) the month and year of the first appropriation.

(2) the person submits annual water use reports as required by §295.202 of this title (relating to Reports).

(b) After notice and hearing, if the commission determines that low freshwater inflows resulting from an appropriation authorized under subsection (a) of this section are interfering with natural productivity of bays and estuaries, the commission shall issue an order requiring interruption or reduction of the use of water under this section.

Adopted January 20, 1999

Effective February 24, 1999

§297.25. Permit Exemption for Drilling and Producing of Petroleum.

Without obtaining a water use permit from the commission, a person engaged in drilling for petroleum, or producing petroleum, may take for those purposes not to exceed one acre-foot of water per 24-hour period from the Gulf of Mexico or from the adjacent bays and arms of the Gulf of Mexico. A person using water for such purposes is not required to file water use reports.

Adopted January 20, 1999

Effective February 24, 1999

§297.26. Permit Exemption to Use State Water for Fire and Emergency Use.

Without obtaining a permit from the commission, county and rural community fire departments and other emergency service providers may divert and use state water from streams and reservoirs, including exempt domestic and livestock reservoirs for fire and emergency purposes. Emergency purposes under this rule include use of water to fight fires, manage chemical spills, and as needed to deal with emergency public welfare concerns. Emergency purposes does not include domestic, livestock or other purposes defined by §297.1 of this title (relating to Definitions). Rural emergency service providers (entities) may also establish "Dry Hydrant" installations in streams and reservoirs, including exempt reservoirs. Dry hydrant installations shall be exempt from permitting requirements provided that:

(1) Hydrant locations are identified and documented by the installing entities and the entities file the identification codes and location descriptions with the executive director within 120 days after completion of an installation;

(2) Facilities installed before the adoption of this rule are documented within six months after the rule is adopted;

(3) Ingress and egress authorizations are obtained from private property owners and/or public entities on whose property the installations are located;

(4) Installations conform to design and installation requirements and guidelines recommended by the USDA, Natural Resources Conservation Service; and

(5) Diversions from dry hydrant installations are reported to the executive director by the using entities within sixty (60) days of use. Pump testing of facilities is not required to be reported.

(A) Local offices of the USDA, Natural Resources Conservation Service can provide technical assistance and recommendations for installation of dry hydrant facilities.

(B) Hydrant facilities which do not meet the above minimum requirements must be authorized by Water Code, §11.121 permits granted by the commission.

Adopted January 20, 1999

Effective February 24, 1999

§297.27. Permit Exemptions for Use of State Water for Irrigation of Certain Historic Cemeteries and for Sedimentation Control Structures within Surface Coal Mining Operations.

(a) Permit Exemption for Use of State Water for Irrigation of Certain Historic Cemeteries.

(1) Without obtaining a water use permit from the commission, a tax-exempt non-profit corporation that owns a cemetery may divert from a stream not more than 200 acre-feet of water each year to irrigate the grounds of the cemetery if the cemetery:

(A) borders the stream; and

(B) is more than 100 years old.

(2) If the executive director, or a watermaster who has jurisdiction over the stream from which a cemetery diverts water under this section, determines that the diversion will harm a person downstream of the cemetery who acquired a water right before May 23, 1995, the executive director or the watermaster may order the cemetery to restrict the diversion to the extent and duration of the harm. The executive director may also request appropriate commission action.

(3) Any person dissatisfied with the action taken by the executive director or the watermaster pursuant to paragraph (2) of this subsection may appeal to the commission for relief.

(b) Permit Exemption to Use State Water for Sediment Control, Fire Suppression, or Dust Suppression Purposes within a Surface Coal Mining Operation. Without obtaining a permit from the commission, a person may construct or maintain a reservoir as part of a surface coal mining operation under Natural Resources Code, Chapter 134, if the water in the reservoir is used solely for:

(1) sediment control; or

(2) compliance with applicable laws, rules, or regulations relating to fire or dust suppression.

Adopted December 9, 2009

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