

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
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Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 10, 2011

CERTIFIED MAIL

Re: Alert for Permitted State Surface Water Diversions in the Neches River Basin

Dear Water Right Holder:

By letter dated April 11, 2011, you were alerted that diversions of state surface water may be suspended or curtailed due to drought conditions. The Texas Commission on Environmental Quality (TCEQ) has now received a priority call on surface water from a senior water right holder. In accordance with the Texas Water Code (TWC), §5.013(a)(1), the TCEQ is responsible for enforcing water rights, which requires protecting senior surface water rights, and must take action in response to the senior priority call.

With no immediate relief forecasted, the TCEQ is now suspending certain diversions in the Neches River Basin. Suspended water rights include water right permits with a priority date of August 13, 1913 and later (excluding those for municipal uses and power generation), term water right permits, and temporary water right permits. Domestic and livestock diversions are not subject to this suspension. Water right permits issued with multiple uses may continue to divert water for municipal, domestic, and power generation purposes only. Junior permit holders with impoundments are not required to release any previously stored water; however, new inflows to impoundments must be passed downstream in order to meet senior needs.

These actions are guided by the priority doctrine, established in TWC §11.027. The most senior water rights are served first during times of drought with domestic and livestock uses superior to any appropriated rights. Water rights are suspended or curtailed by priority date, with the most recently issued – or “junior” – priority users suspended before senior water rights in the area.

At this time, **you are *not* required to suspend your surface water diversion for municipal or domestic use or power generation** even though all or part of your water right is junior to the senior priority call. **In order to continue your municipal diversions, you should be taking strong measures to conserve water. In recognition of the severity of the drought, you should be implementing those mandatory provisions of your drought contingency plan (DCP) that limit outdoor sprinkler lawn watering to once a week. You may allow handheld hose watering for both residential and commercial users consistent with your DCP.** You should be using your surface water rights to protect public health and safety needs. Public health and safety can include needs such as drinking water, fire protection, hospital use, tree preservation, foundation watering, necessary domestic uses, and other uses that you determine to be vital to the protection of public welfare.

Please notify the TCEQ that you have implemented mandatory provisions of your DCP that limit outdoor sprinkler lawn watering to once a week. You may allow handheld hose watering for both residential and commercial users consistent with your DCP. You can notify the TCEQ by using the online form available on the agency's drought page at: <http://www.tceq.texas.gov/response/drought>. If you need assistance with completing the form or to provide notification and to answer any of your questions, you can call our Small Business and Local Government Assistance hotline at 1-800-447-2827.

The TCEQ continues to monitor the situation closely and strives to balance protection of the senior surface water rights while attempting to minimize the impact to junior water right holders, within TCEQ's authority. Should senior needs not be fulfilled as a result of suspension of these diversions, please be aware that TCEQ may take additional actions in order to protect the senior priority call.

You may find additional drought information on TCEQ's drought web page, located at: <http://www.tceq.texas.gov/agency/drought.html> or by contacting the TCEQ Drought Hotline at 1-800-447-2827. You may also contact your TCEQ Regional Office or Ms. Amy Settemeyer, Water Rights Liaison, at the TCEQ Central Office in Austin at 512-239-2588 should you have additional questions on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Vickery". The signature is written in a cursive, flowing style with a large loop at the end.

Mark R. Vickery, P.G.
Executive Director