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Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 10, 2009

Re: Suspensions of Permitted State Surface Water Diversions in the Brazos River Basin

Dear Water Right Holder:

By letter dated July 7, 2009, you were alerted that diversions of state surface water from the Brazos River Basin may be suspended. This letter is to now inform you that the Texas Commission on Environmental Quality (TCEQ) has received a priority call on surface water from senior water rights downstream of your diversion point in the basin. In accordance with the Texas Water Code (TWC), Chapter 5.013(a)(1), the TCEQ is responsible for protecting senior surface water rights and must take action in response to the senior priority call.

The priority doctrine established in TWC, Chapter 11.027, determines that the most senior water rights will be served first during times of drought. As a result, junior water rights, or those rights issued most recently, will be suspended or curtailed before the senior water rights in the area. Furthermore, in accordance with the TWC, the flows of the Brazos River must be available for use by land owners with property adjacent to the Brazos River for domestic and livestock (D&L) use as part of their inherent riparian rights. As such, D&L users have superiority over any appropriated water rights.

The lack of significant rainfall in the area and the declining flow of the Brazos River have impacted many water rights written with permitted flow restrictions and these permittees are currently not being allowed to divert any surface water. In addition, all temporary water rights in the basin have been suspended, and no additional temporary permits are being approved at this time. The TCEQ continues to monitor the situation on a daily basis 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 legal authority. However, should drought conditions continue to persist, additional suspensions of remaining junior water rights may be necessary.

With no immediate relief forecasted, the TCEQ requires that you take immediate action to suspend all **non-municipal** diversions from the Brazos River with a **priority date of 1980 and later** until further notice. Should your water right permit include authorization for impoundment of water, please note that you are **not** required to release any previously stored water; however, you are required by law under a senior call to pass any current inflows to your impoundment downstream in order to meet senior needs.

Should senior needs not be fulfilled as a result of suspension of these diversions, please be aware that TCEQ may take additional actions, including suspension of junior municipal diversions, in order to protect the senior priority call. You may find additional drought information on the TCEQ's drought web page, located at: <http://www.tceq.state.tx.us/agency/drought.html> or by contacting the TCEQ Drought Hotline at 800-447-2827 between 8:00 a.m. to noon, and 1:00 p.m. to 5:00 p.m., Monday through Friday. You may also contact your TCEQ Regional Office or Ms. Tracy Miller, Water Rights Liaison, at the TCEQ Central Office in Austin at 512-239-4127 should you have any additional questions on this matter. We thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Vickery", written over a large, stylized flourish.

Mark R. Vickery, P.G.
Executive Director