

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §297.58, relating to Emergency Suspension of Permit Conditions.

The purpose of this proposed rule is to clarify existing commission criteria used to determine whether to grant a petition for the temporary suspension of all or part of conditions in a water right relating to beneficial inflows to bays and estuaries and instream uses if the commission finds an emergency exists and there is no feasible, practicable alternative to the suspension pursuant to §11.148 Texas Water Code.

Steve Minick, Budget and Planning Division, has determined that there will be no fiscal impacts to the state or local governments or to local businesses as a result of the adoption of these proposed amendments.

The public benefit anticipated as a result of the amendments would be the clarification of commission interpretation and application of its rules, the Water Code, and other applicable law.

Comments on the proposed amendments may be submitted to Lutrecia Oshoko, Office of Policy and Regulatory Development, Texas Natural Resource Conservation Commission, MC 204, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-4900. To be considered, comments must be received within thirty (30) days from the date of publication of the proposed rules.

These rules are proposed under Texas Water Code §5.103, 5.105, and 5.120 which provide the commission with the authority to promulgate rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State.

There are no other rules, codes or statutes that will be affected by this proposal.

**SUBCHAPTER E: ISSUANCE AND CONDITIONS OF  
WATER RIGHTS OR CERTIFICATE OF ADJUDICATION**

**§297.58**

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**§297.58. Emergency Suspension of Permit Conditions.**

(a) The purpose of this section is to implement Texas Water Code §11.148 to protect public health, safety, and welfare during an emergency.

(b) Upon petition filed by the affected water right holder in accordance with this section, the commission may consider and approve the temporary suspension of all or a part of conditions in a water right relating to beneficial inflows to affected bays and estuaries and instream uses if the commission finds that an emergency exists and there is no feasible, practicable alternative to the suspension. For purposes of this section, an emergency is a condition which constitutes an imminent peril to the public health, safety, or welfare and may include the reduction of public water supplies to critical levels as a result of a severe and sustained drought.

(c) The petition must be sworn and contain the following information:

(1) the name of the petitioner and copies of the affected permits, certificates of adjudication, or certified filings;

(2) a detailed description of the emergency and its impact on public health, safety, and welfare;

(3) a summary of existing water supplies available to the petitioner and their use;

(4) a complete summary of the examination made by the petitioner of whether feasible, practicable alternatives exist to the suspension of permit conditions;

(5) copies of the water right holder's water conservation and drought contingency plans, if any, and a detailed summary of their status and implementation;

(6) a copy of the reservoir operating procedures, if applicable; and

(7) the proposed conditions and trigger levels for the suspension and reinstatement of the releases.

(d) A copy of the petition must be filed with the Texas Parks and Wildlife Department (TPWD) at the same time it is filed with the commission.

(e) Notice of commission action on the proposed suspension shall be provided to TPWD not less than 72 hours prior to the time the commission takes such action. The TPWD shall be provided an opportunity to submit comments on the proposed suspension prior to the commission taking action.

(f) The commission may suspend the conditions in the water right without notice to any other interested party other than TPWD. However, all affected persons shall be notified by the petitioner immediately by publication in a newspaper of general circulation in the affected area. Such published notice must contain a summary of the information contained in the petition as provided by subsection (b) and the date and location of the commission hearing provided by subsection (f). Such publication shall occur not later than seven calendar days prior to such hearing.

(g) The commission shall conduct a hearing within 15 days of the date on which the order to suspend is issued to determine whether the suspension should be continued.

(h) In determining whether feasible, practicable alternatives exist to the suspension of water right conditions, the commission shall examine the amount and purposes of use for water currently being used by the petitioner, all evidence relating to the availability of alternative, supplemental water supplies to the petitioner, and the petitioner's efforts to curtail water use not essential for the protection of the public health, safety, and welfare. If the water right holder has a water conservation plan and/or drought contingency plan, the suspension of water right conditions may be contingent upon the full implementation of such plans and measures corresponding to the staged reduction of releases for existing instream uses and beneficial inflows. If the water right holder does not have a water conservation plan and drought

contingency plan in accordance with Chapter 288 of this title (relating to Water Conservation Plans, Guidelines and Requirements), the commission order granting a petition under this section shall require the permittee to develop and implement such plans within a prescribed time period as provided in the order.

(i) In granting a petition, all existing instream flows shall be passed up to that amount necessary to the maintain water quality standards for the affected stream. Additional flows necessary to protect a species in accordance with the federal Endangered Species Act or other species that are considered to be of "high interest" (wild populations that are unique to the affected stream or have significant scientific or commercial value) may also be required.

(j) In order to assist in the preparation and planning for water management during an emergency, the commission may provide conditions in a water right necessary for relief consistent with applicable portions of this section when the water right is initially granted or subsequently amended. These conditions may include a staged approach to the reduction in the pass-through amounts that provide for the pass-through of water for instream uses and bays and estuaries when it is available, and allow water to be captured or diverted for the protection of the public health, safety and welfare during an emergency, subject to the protection of streamflows necessary for the maintenance of water quality standards. Such conditions may also include full implementation by the water right holder of water conservation and drought contingency plans as a precondition for obtaining relief.

(k) If the petitioner's water right already contains provisions for the temporary, total or partial suspension of permit conditions for the maintenance of instream flows or freshwater inflows to bays and

estuaries, further or different relief requested in the petition may be denied unless the petitioner can show new or changed circumstances or an emergency condition not contemplated when the water right condition was issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency authority to adopt.

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