

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§288.1-288.6, 288.20-288.22, and 288.30, Water Conservation Plans, Drought Contingency Plans, and Required Submittals. Section 288.4 is adopted with changes to the proposed text as published in the December 3, 1999 issue of the Texas Register (24 TexReg 10801). The remaining sections are adopted without changes and will not be republished.

The commission concurrently approves the rules review of Chapter 288 with amendments under Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13. The adopted notice of review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the amendments is to clarify the rules and incorporate recent legislative changes under Senate Bill 657, 76th Legislature, 1999, which amended Texas Water Code (TWC), §16.053, relating to regional water plans. Additional changes have been made to improve readability, clarify the intent of the rules, and to incorporate minor style changes for consistency with *Texas Register* requirements.

SECTION BY SECTION ANALYSIS

The definition of Wholesale Public Water Supplier in §288.1, Definitions, clarifies that individuals and entities, who merely convey water for which they do not own the water right, are not wholesale public water suppliers. The owner of the conveyed water may have to develop either a water conservation plan or a drought contingency plan because of other provisions of this chapter or because of other rules.

This has consistently been the commission's interpretation of "Wholesale Public Water Supplier" and the commission has included this language to clarify the rule to reflect that interpretation.

The amendments to §288.2(b) clarify that a water conservation plan is to be prepared in accordance with Texas Water Development Board requirements under 31 TAC §363.15.

The amendments to §288.3(4) clarify how a water conservation plan for industrial or mining uses of water shall provide information for leak-detection, repair, and water loss.

The amendments to §288.4(b) clarify that a water conservation plan is prepared in accordance with the rules of the United States Department of Agriculture Natural Resource Conservation Service, the State Soil and Water Conservation Board, or other federal or state agency. The commission changed the name of the Natural Resource Conservation Service in the proposal to the United States Department of Agriculture Natural Resource Conservation Service to reflect the current name of that department.

The amendments to §288.5(1)(G) state that a reservoir systems operations plan can contain recognition of multiple objectives, rather than just the maximization of water supply. The commission understands that in developing an operations plan for reservoirs, trade-offs among several goals such as maximization of supply, cost of production, and water quality must be considered. The commission's intent in this provision is that in a plan for coordinated operations of reservoirs, optimization of water supplies be considered as a significant goal, along with other goals of the system.

The amendments to §288.20(a)(1)(F) eliminate the requirement that municipal-use drought contingency plans contain an assessment of water management strategies to be used when flows are at 75% and 50% of normal. Senate Bill 657, 76th Legislature, 1999, which amended TWC, §16.053 pertaining to the Texas Water Development Board, eliminated the requirement that regional water plans have water management strategies for when flows are 75% and 50% of normal. Section 11.1272 of the Water Code requires drought management plans to be consistent with regional water plans. Therefore, the commission is adopting the elimination of this requirement for local drought contingency plans to remain consistent with the appropriate approved regional water plan as required by TWC, §11.1272. However, the rules require the water plans to address the drought of record.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule.” The amendments eliminate a requirement in existing rules, and clarify the intent of existing rules. The rules do not add additional regulatory requirements for protection of the environment or reduction of risks to human health from environmental exposure. Because they do not add or reduce regulatory requirements, the rules will have no material effect on the items listed in the definition of major environmental rule. The rules simply clarify terms and delete the trigger levels that had to be addressed in the drought contingency plan. Furthermore, there will be no adverse impact to the economy, job productivity, or the environment because there are no additional costs to the affected persons to comply with these amendments. Affected persons will still have to file plans; the deletion of the required trigger levels allows more flexibility in preparing the plan. In addition, the rules do not meet any of the four

applicability requirements listed in §2001.0225(a) in that the water conservation and drought contingency plan rules are specifically required by TWC, §11.1271 and §11.1272; the proposed amendments do not exceed any express requirements of state law; and the proposed amendments do not involve any delegation agreements or contracts.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these amendments under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purposes of the amendments are to clarify the definition of Wholesale Public Water Supplier and to clarify that reservoir systems operations plans must include the maximization of water supplies as one of the significant goals of the plan. The amendments parallel the requirements of regional water plans as directed by TWC, §11.1272 by eliminating the requirements that drought contingency plans for municipal uses have water management strategies for use when flows are at 75% and 50% of normal. The rules will substantially advance these specific purposes and promulgation and enforcement of these rules will not significantly burden private real property because private real property is not affected by these rules. The preparation of drought management plans by water suppliers protects water under the supplier's water right during times of drought.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed these rules and found that they do not relate to any goals or policies identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or

authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the rules are not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was not required for this rulemaking. The comment period closed January 3, 2000, and the commission received no comments on the proposal.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; §5.120, which requires the commission to administer the law so as to promote the judicious use and maximum conservation of water; and §11.1271 and §11.1272, which require the commission by rule to require submission of certain water conservation plans. Also, §11.134(b), which requires a water right applicant to indicate that it will conserve water, and TWC, §16.053, which provides requirements for regional water plans required by the Texas Water Development Board, are related to this rulemaking.

SUBCHAPTER A: WATER CONSERVATION PLANS

30 TAC §§288.1-288.6

§288.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Conservation** - Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(2) **Drought contingency plan** - A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(3) **Industrial use** - The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.

(4) **Irrigation use** - The use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

(5) **Irrigation water use efficiency** - The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(6) **Mining use** - The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(7) **Municipal per capita water use** - The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.

(8) **Municipal use** - The use of potable water within or outside a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity as well as the use of sewage effluent for certain purposes, including the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of potable water in

industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens.

(9) **Pollution** - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(10) **Public Water Supplier** - an individual or entity that supplies water to the public for human consumption.

(11) **Regional Water Planning Group** - A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(12) **Retail Public Water Supplier** - An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(13) **Reuse** - The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(14) **Water conservation plan** - A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(15) **Wholesale Public Water Supplier** - An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

§288.2. Water Conservation Plans for Municipal Uses by Public Water Suppliers.

(a) A water conservation plan for municipal water use by public water suppliers shall provide information, where applicable, in response to the following.

(1) **Minimum requirements.** All water conservation plans for municipal uses by public drinking water suppliers shall include the following elements:

(A) a utility profile including, but not limited to, information regarding population and customer data, water use data, water supply system data, and wastewater system data;

(B) specification of conservation goals including, but not limited to, municipal per capita water use goals, the basis for the development of such goals, and a time frame for achieving the specified goals;

(C) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(D) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(E) measures to determine and control unaccounted-for uses of water (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections, abandoned services, etc.);

(F) a program of continuing public education and information regarding water conservation;

(G) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(H) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(I) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(J) documentation of coordination with the Regional Water Planning Groups for the service area of the public water supplier in order to insure consistency with the appropriate approved regional water plans.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next ten years subsequent to the effective date of the plan shall include the following elements:

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system in order to control unaccounted-for uses of water;

(B) a record management system to record water pumped, water deliveries, water sales, and water losses which allows for the desegregation of water sales and uses into the following user classes:

(i) residential;

(ii) commercial;

(iii) public and institutional; and

(iv) industrial; and

(C) a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter; if the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements in paragraphs (1) and

(2) of this subsection, if they are necessary to achieve the stated water conservation goals of the plan.

The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or greywater;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) A water conservation plan prepared in accordance with 31 TAC §363.15 (relating to Required Water Conservation Plan) of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements pursuant to a memorandum of understanding between the commission and the Texas Water Development Board.

§288.3. Water Conservation Plans for Industrial or Mining Use.

A water conservation plan for industrial or mining uses of water shall provide information, where applicable, in response to each of the following elements:

(1) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

(2) specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;

(3) a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

(4) leak-detection, repair, and accounting for water loss in the water distribution system;

(5) application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(6) any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

§288.4. Water Conservation Plans for Irrigation Use.

(a) A water conservation plan for irrigation uses of water shall provide information shall provide information in response to the following applicable subsections.

(1) For an individual user:

(A) a description of the agricultural production process which shall include, but is not limited to, the type of crops and acreage of each crop to be irrigated, monthly irrigation diversions, any seasonal or annual crop rotation, and soil types of the land to be irrigated;

(B) a description of the irrigation method or system and equipment including pumps, flow rates, plans, and/or sketches of the system layout;

(C) a description of the device(s) and/or methods within an accuracy of plus or minus 5.0%, to be used in order to measure and account for the amount of water diverted from the source of supply;

(D) specification of conservation goals including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan;

(E) water-conserving irrigation equipment and application system or method including, but not limited to, surge irrigation, low pressure sprinkler, drip irrigation, and nonleaking pipe;

(F) leak-detection, repair, and water-loss control;

(G) scheduling the timing and/or measuring the amount of water applied (for example, soil moisture monitoring);

(H) land improvements for retaining or reducing runoff, and increasing the infiltration of rain and irrigation water including, but not limited to, land leveling, furrow diking, terracing, and weed control;

(I) tailwater recovery and reuse; and

(J) any other water conservation practice, method, or technique which the user shows to be appropriate for preventing waste and achieving conservation.

(2) For a system providing irrigation water to more than one user:

(A) a system inventory for the supplier's:

(i) structural facilities including the supplier's water storage, conveyance, and delivery structures;

(ii) management practices, including the supplier's operating rules and regulations, water pricing policy, and a description of practices and/or devices used to account for water deliveries; and

(iii) a user profile including square miles of the service area, the number of customers taking delivery of water by the system, the types of crops, the types of irrigation systems, the types of drainage systems, and total acreage under irrigation, both historical and projected;

(B) specification of water conservation goals, including maximum allowable losses for the storage and distribution system;

(C) a description of the practice(s) and/or device(s) which will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) a monitoring and record management program of water deliveries, sales, and losses;

(E) a leak-detection, repair, and water loss control program;

(F) a program to assist customers in the development of on-farm water conservation and pollution prevention plans and/or measures;

(G) a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter; if the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(H) official adoption of the water conservation plan and goals, by ordinance, rule, resolution, or tariff, indicating that the plan reflects official policy of the supplier;

(I) any other water conservation practice, method, or technique which the supplier shows to be appropriate for achieving conservation; and

(J) documentation of coordination with the Regional Water Planning Groups in order to insure consistency with the appropriate approved regional water plans.

(b) A water conservation plan prepared in accordance with the rules of the United States Department of Agriculture Natural Resource Conservation Service, the State Soil and Water Conservation Board, or other federal or state agency and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements pursuant to a memorandum of understanding between the commission and that agency.

§288.5. Water Conservation Plans for Wholesale Water Suppliers.

A water conservation plan for a wholesale water supplier shall provide information, where applicable, in response to each of the following paragraphs.

(1) Minimum requirements. All water conservation plans for wholesale water suppliers shall include the following elements:

(A) a description of the wholesaler's service area, including population and customer data, water use data, water supply system data, and wastewater data;

(B) specification of conservation goals including, where appropriate, target per capita water use goals for the wholesaler's service area, maximum acceptable unaccounted-for water, the basis for the development of said goals, and a time frame for achieving those goals;

(C) a description as to which practice(s) and/or device(s) will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) a monitoring and record management program for determining water deliveries, sales, and losses;

(E) a program of metering and leak detection and repair for the wholesaler's water storage, delivery, and distribution system;

(F) a requirement in every water supply contract entered into or renewed after official adoption of the water conservation plan, and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements of this chapter. If the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the

water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(G) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin. The reservoir systems operations plans shall include optimization of water supplies as one of the significant goals of the plan;

(H) a means for implementation and enforcement, which shall be evidenced by: a copy of the ordinance, rule, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(I) documentation of coordination with the Regional Water Planning Groups for the service area of the wholesale water supplier in order to insure consistency with the appropriate approved regional water plans.

(2) Additional conservation strategies. Any combination of the following strategies shall be selected by the water wholesaler, in addition to the minimum requirements of paragraph (1) of this section, if they are necessary in order to achieve the stated water conservation goals of the plan. The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the conservation plan to be achieved:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) a program to assist customers in the development of conservation pollution prevention and abatement plans;

(C) a program for reuse and/or recycling of wastewater and/or greywater; and

(D) any other water conservation practice, method, or technique which the wholesaler shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

§288.6. Water Conservation Plans for Any Other Purpose or Use.

A water conservation plan for any other purpose or use not covered in this subchapter shall provide information where applicable about those practices, techniques, and technologies that will be used to reduce the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water.

SUBCHAPTER B: DROUGHT CONTINGENCY PLANS

30 TAC §§288.20-288.22

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; §5.120, which requires the commission to administer the law so as to promote the judicious use and maximum conservation of water; and §11.1272, which requires the commission by rule to require submission of certain drought contingency plans.

§288.20. Drought Contingency Plans for Municipal Uses by Public Water Suppliers.

(a) A drought contingency plan for a retail public water supplier, where applicable, shall provide information in response to each of the following.

(1) Minimum requirements. Drought contingency plans shall include the following minimum elements.

(A) Preparation of the plan shall include provisions to actively inform the public and affirmatively provide opportunity for public input. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.

(B) Provisions shall be made for a program of continuing public education and information regarding the drought contingency plan.

(C) The drought contingency plan must document coordination with the Regional Water Planning Groups for the service area of the retail public water supplier to insure consistency with the appropriate approved regional water plans.

(D) The drought contingency plan shall include a description of the information to be monitored by the water supplier, and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.

(E) The drought contingency plan must include drought or emergency response stages providing for the implementation of measures in response to at least the following situations:

(i) reduction in available water supply up to a repeat of the drought of record;

(ii) water production or distribution system limitations;

(iii) supply source contamination; or

(iv) system outage due to the failure or damage of major water system components (e.g., pumps).

(F) The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:

(i) curtailment of non-essential water uses; and

(ii) utilization of alternative water sources and/or alternative delivery mechanisms with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

(G) The drought contingency plan must include the procedures to be followed for the initiation or termination of each drought response stage, including procedures for notification of the public.

(H) The drought contingency plan must include procedures for granting variances to the plan.

(I) The drought contingency plan must include procedures for the enforcement of any mandatory water use restrictions, including specification of penalties (e.g., fines, water rate surcharges, discontinuation of service) for violations of such restrictions.

(2) Privately-owned water utilities. Privately-owned water utilities shall prepare a drought contingency plan in accordance with this section and shall incorporate such plan into their tariff.

(3) Wholesale water customers. Any water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.

(b) A wholesale or retail water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.

(c) The retail public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as the adoption or revision of the regional water plan.

§288.21. Drought Contingency Plans for Irrigation Use.

(a) A drought contingency plan for an irrigation use, where applicable, shall provide information in response to each of the following.

(1) Minimum requirements. Drought contingency plans for irrigation water suppliers shall include policies and procedures for the equitable and efficient allocation of water on a pro rata

basis during times of shortage in accordance with Texas Water Code, §11.039. Such plans shall include the following elements as a minimum.

(A) Preparation of the plan shall include provisions to actively inform and to affirmatively provide opportunity for users of water from the irrigation system to provide input into the preparation of the plan and to remain informed of the plan. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the water users and providing written notice to the water users concerning the proposed plan and meeting.

(B) The drought contingency plan must document coordination with the Regional Water Planning Groups to insure consistency with the appropriate approved regional water plans.

(C) The drought contingency plan shall include water supply criteria and other considerations for determining when to initiate or terminate water allocation procedures, accompanied by an explanation of the rationale or basis for such triggering criteria.

(D) The drought contingency plan shall include methods for determining the allocation of irrigation supplies to individual users.

(E) The drought contingency plan shall include a description of the information to be monitored by the water supplier and the procedures to be followed for the initiation or termination of water allocation policies.

(F) The drought contingency plan shall include procedures for use accounting during the implementation of water allocation policies.

(G) The drought contingency plan shall include policies and procedures, if any, for the transfer of water allocations among individual users within the water supply system or to users outside the water supply system.

(H) The drought contingency plan shall include procedures for the enforcement of water allocation policies, including specification of penalties for violations of such policies and for wasteful or excessive use of water.

(2) Wholesale water customers. Any irrigation water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.

(3) Protection of public water supplies. Any irrigation water supplier that also provides or delivers water to a public water supplier(s) shall consult with that public water supplier(s) and shall include in the plan mutually agreeable and appropriate provisions to ensure an uninterrupted supply of water necessary for essential uses relating to public health and safety. Nothing in this provision shall be construed as requiring the irrigation water supplier to transfer irrigation water supplies to non-irrigation use on a compulsory basis or without just compensation.

(b) Irrigation water users shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as adoption or revision of the regional water plan.

§288.22. Drought Contingency Plans for Wholesale Water Suppliers.

(a) A drought contingency plan for a wholesale water supplier shall include the following minimum elements.

(1) Preparation of the plan shall include provisions to actively inform the public and to affirmatively provide opportunity for user input in the preparation of the plan and for informing wholesale customers about the plan. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.

(2) The drought contingency plan must document coordination with the Regional Water Planning Groups for the service area of the wholesale public water supplier to insure consistency with the appropriate approved regional water plans.

(3) The drought contingency plan shall include a description of the information to be monitored by the water supplier and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.

(4) The drought contingency plan shall include a minimum of three drought or emergency response stages providing for the implementation of measures in response to water supply conditions during a repeat of the drought-of-record.

(5) The drought contingency plan shall include the procedures to be followed for the initiation or termination of drought response stages, including procedures for notification of wholesale customers regarding the initiation or termination of drought response stages.

(6) The drought contingency plan shall include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:

(A) pro rata curtailment of water deliveries to or diversions by wholesale water customers as provided in Texas Water Code, §11.039; and

(B) utilization of alternative water sources with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

(7) The drought contingency plan shall include a provision in every wholesale water contract entered into or renewed after adoption of the plan, including contract extensions, that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code, §11.039.

(8) The drought contingency plan shall include procedures for granting variances to the plan.

(9) The drought contingency plan shall include procedures for the enforcement of any mandatory water use restrictions including specification of penalties (e.g., liquidated damages, water rate surcharges, discontinuation of service) for violations of such restrictions.

(b) The wholesale public water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.

(c) The wholesale public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as adoption or revision of the regional water plan.

SUBCHAPTER C: REQUIRED SUBMITTALS

30 TAC §288.30

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; §5.120, which requires the commission to administer the law so as to promote the judicious use and maximum conservation of water; §11.1271, which requires the commission by rule to require

submission of certain water conservation plans, and §11.1272, which requires the commission by rule to require submission of certain drought contingency conservation plans.

§288.30. Required Submittals.

In addition to the water conservation and drought contingency plans required to be submitted with an application under §295.9 of this title (relating to Water Conservation and Drought Contingency Plans), water conservation and drought contingency plans are required as follows.

(1) Water conservation plans. The holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other non-irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter (relating to Water Conservation Plans). The water conservation plan shall be submitted to the executive director not later than September 1, 1999. The requirement for a water conservation plan under this rule shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(2) Water conservation plans. The holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 10,000 acre-feet a year or more for irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter. The water conservation plan shall be submitted to the executive director not later than September 1, 1999. The requirement for a water

conservation plan under this rule shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(3) Drought contingency plans for retail public water suppliers. Retail public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter (relating to Drought Contingency Plans) to the executive director after adoption by its governing body. The retail public water system shall provide a copy of the plan to the Regional Water Planning Group for each region within which the water system operates. These drought contingency plans shall be submitted as follows.

(A) For retail public water suppliers providing water service to 3,300 or more connections, the drought contingency plan shall be submitted to the executive director not later than September 1, 1999. Thereafter, any revised plans shall be submitted to the executive director within 90 days of adoption by the community water system. Any new retail public water suppliers providing water service to 3,300 or more connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and submit the plan to the executive director within 90 days of adoption.

(B) For all the retail public water suppliers, the drought contingency plan shall be prepared and adopted not later than September 1, 2000 and shall be available for inspection by the executive director upon request. Thereafter, any new retail public water supplier providing water service to less than 3,300 connections shall prepare and adopt a drought contingency plan within 180

days of commencement of operation, and shall make the plan available for inspection by the executive director upon request.

(4) Drought contingency plans for wholesale public water suppliers. Wholesale public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than September 1, 1999, after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, any new or revised plans shall be submitted to the executive director within 90 days of adoption by the governing body of the wholesale public water supplier. Wholesale public water suppliers shall also provide a copy of the drought contingency plan to the Regional Water Planning Group for each region within which the wholesale water supplier operates.

(5) Drought contingency plans for irrigation districts. Irrigation districts shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than September 1, 1999, after adoption by the governing body of the irrigation district. Thereafter, any new or revised plans shall be submitted to the executive director within 90 days of adoption by the governing body of the irrigation district. Irrigation districts shall also provide a copy of the plan to the Regional Water Planning Group for each region within which the irrigation district operates.

(6) Other submissions. A water conservation plan or drought contingency plan required to be submitted with an application in accordance with §295.9 of this title (relating to Water

Conservation and Drought Contingency Plans) shall also be subject to review and approval by the commission.

(7) Existing permits. The holder of an existing permit, certified filing, or certificate of adjudication shall not be subject to enforcement actions nor shall the permit, certified filing, or certificate of adjudication be subject to cancellation, either in part or in whole, based on the non-attainment of goals contained within a water conservation plan submitted with an application in accordance with §295.9 of this title or by the holder of an existing permit, certified filing, or certificate of adjudication in accordance with the requirements of this section.