

SUBCHAPTER B: CLASSES OF WATER RIGHTS
§§297.11 - 297.19
Effective May 19, 2016

§297.11. General Authorization to Divert, Store or Use State Water, Texas Water Code, §11.121.

Except as provided under Texas Water Code §§11.142, 11.1421 and 11.1422, no person may divert, store, impound, take or use water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a water right. Such authorization may be with or without a term, on an annual or seasonal basis, or on a temporary or emergency basis as provided by this chapter.

Adopted January 20, 1999

Effective February 24, 1999

§297.12. Seasonal Permit under the Texas Water Code, §11.137.

A seasonal permit limits the diversion of state water to the portion or portions of the calendar year stated in the permit. (This type of permit is usually granted where irrigation is desired for seasonal crops or where the applicant proposes to appropriate water to fill an off-channel reservoir during the wet season for later use.)

Effective May 29, 1986

§297.13. Temporary Permit under the Texas Water Code, §11.138.

(a) A commissioner may authorize temporary permits under this section for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on a stream from which water is to be diverted under such temporary water rights or environmental flow needs. A temporary permit is primarily designed for those persons who require state water for highway construction, oil or gas well drilling projects, hydro-static tests for pipelines, and other types of short duration projects.

(b) A temporary permit may not be granted for a period of time exceeding three years and shall be junior to all affected prior appropriations and vested rights on a stream. This permit does not vest in the holder any permanent right to the use of state water and expires in accordance with its terms and may be suspended upon notice by the executive director or watermaster, as applicable, in order to protect senior water rights. The permit may also have conditions for the protection

of instream uses, water quality, aquatic and wildlife habitat, and freshwater inflows to bays and estuaries.

(c) The period of time to use water authorized by a temporary permit which was initially granted for a period of less than three years may be extended by the commission upon written request by the permittee, but in no event shall the entire period including the initial period as well as any extension exceed three years nor shall an extension of time seek a change of diversion rate, diversion point, or additional water.

(d) A temporary permit for the use of ten acre-feet or less for a period of one calendar year or less may be authorized without notice and hearing upon the 30th day after a registration and fee as provided by §295.132 of this title (relating to Filing, Recording, and Notice Fees) is filed with the TCEQ regional director or the watermaster, as applicable, unless the applicant is notified by the regional director or watermaster within the thirty day period that the registration is denied for failure to meet the requirements of this section. The registration must contain a sworn statement by the applicant containing the following minimum information:

- (1) the name, mailing address and telephone number of the applicant;
- (2) the diversion point and location of use as indicated on a United States Geological Survey 7.5 minute map(s);
- (3) the purpose of use, as authorized under Texas Water Code, §11.023;
- (4) the proposed maximum diversion rate;
- (5) amount of water to be diverted not to exceed ten acre-feet per year; and
- (6) the period for which the water is to be used, not to exceed one year from the 30th day from the date the registration is filed with the TCEQ regional director or watermaster, as applicable.

Adopted April 27, 2016

Effective May 19, 2016

§297.14. Contractual Permit.

A contractual permit authorizes the use of state water where the source of supply is water lawfully authorized for the use of another person and a written agreement has been entered into with said person. The permit is for a period of

time limited by the contract, and no permanent right is acquired by the holder. See Subchapter J of this chapter (relating to Water Supply Contracts and Amendments).

Adopted January 20, 1999

Effective February 24, 1999

§297.15. Permit For Use of Water from Exempt Dam or Reservoir for Nonexempt Purposes, Texas Water Code, §11.143.

A Texas Water Code (TWC), §11.143, permit authorizes anyone owning a dam or reservoir on the person's own property with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes or wildlife management purposes, to take state water therefrom for any lawful purpose authorized in the permit. (A permit is not required to use water from such a reservoir for domestic and livestock or wildlife management purposes.) Reservoirs on navigable streams are not exempt under TWC, §11.142. Application requirements and procedures are less detailed than those required for TWC, §11.121, permits. It may be permanent in nature, seasonal, or granted for a term of years. The owner of an exempt impoundment under TWC, §11.142, who subsequently desires to use state water therefrom for other than domestic and livestock, or wildlife management purposes may elect to apply for a permit under TWC, §11.143, or proceed under the provisions of TWC, §11.124, et seq.

Adopted July 24, 2002

Effective August 15, 2002

§297.16. Conveyance of Water Down Bed and Banks.

(a) A person who wishes to discharge treated wastewater derived from privately owned groundwater into a stream or other state watercourse and then subsequently divert and reuse such water must obtain prior authorization from the commission for the discharge, conveyance and diversion of this water. The authorization may allow for the diversion by the discharger of existing discharges, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these discharges. Special conditions may also be included in the permit to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to divert and reuse future increases of discharged wastewater derived from privately owned groundwater must obtain authorization to divert and reuse such increases in discharges before the increase occurs.

(b) Except as provided by Subchapter I of this chapter (relating to Conveying Stored Water) for the conveyance of stored or conserved water, a person who wishes to convey and subsequently divert water in a watercourse or stream must obtain the prior approval of the commission through a bed and banks authorization. The authorization shall allow to be diverted only the amount of water put into a

watercourse or stream, less carriage losses and subject to any special conditions that may address the impact of the discharge, conveyance, and diversion on existing water rights, instream uses, and freshwater inflows to bays and estuaries.

(c) Water discharged into a watercourse or stream under this section shall not cause a degradation of water quality as provided by §307.5 of this title (relating to Antidegradation). Authorizations under this section and water quality authorizations may be approved in a consolidated permit proceeding. Nothing in this chapter affects the obligation to obtain and comply with a permit under Texas Water Code, Chapter 26 or other applicable law.

(d) With prior authorization, a person, association of persons, corporation, water control and improvement district, or irrigation district supplying water imported from a source located wholly outside the boundaries of this state, except water imported from a source located in the United Mexican States, may use the bed and banks of any flowing natural stream in the state to convey water for use in this state. The authorization must:

(1) allow for the diversion of only the amount of water put into a watercourse or stream, less carriage losses; and

(2) include special conditions adequate to prevent a significant impact to the quality of water in this state.

(e) Authorizations under subsection (d) of this section are not subject to the requirements of subsections (a) - (c) of this section.

(f) Nothing in this section shall be construed to affect an existing project for which water rights and reuse authorizations have been granted by the commission before September 1, 1997.

Adopted April 14, 2010

Effective May 6, 2010

§297.17. Emergency Authorization (Texas Water Code, §11.139).

(a) An authorization under this section may be for an emergency appropriation of water or the emergency use of water appropriated by someone other than the applicant.

(b) An emergency authorization provides for the use of state water for an initial period of not more than 120 days if the commission finds emergency conditions to exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible, practicable alternatives to the emergency authorization.

Such emergency action may be renewed once for not longer than sixty (60) days. Feasible, practicable alternatives include, but are not limited to, the implementation of water conservation and drought contingency measures or the purchase of water or water rights at a reasonable and affordable price to the applicant.

(c) If the commission finds the applicant's statements required under §295.91 of this title (relating to Application for Emergency Authorization) to be correct, the commission may grant the emergency authorization after notice has been provided in accordance with §295.156 of this title (relating to Notice for Emergency Water Use).

(d) If the commission grants an emergency authorization under this section without a hearing, the authorization shall fix a time and place for a hearing to be held before the commission. The hearing shall be held as soon after the emergency authorization is granted as practicable but not later than twenty (20) days after the emergency authorization is granted.

(e) At the hearing, the commission shall affirm, modify, or set aside the emergency authorization. Any hearing on an emergency authorization shall be conducted in accordance with Chapter 2001, Government Code, and rules of the commission. Additionally, in the case of an emergency transfer of water, the commission shall also issue an order notifying water right holders from which the water is being transferred of the emergency transfer and directing them to limit the exercise of their water rights to the extent necessary to provide for the emergency transfer of water.

(f) If an imminent threat to the public health and safety exists which requires emergency action before the commission can take action as provided by subsections (c) - (e) of this section and there are no feasible alternatives, the executive director may grant an emergency authorization after notice to the governor. If the executive director issues an emergency authorization under this subsection, the commission shall hold a hearing as provided by subsections (d) and (e) of this section. The application requirements of §295.91 of this title (relating to Application for Emergency Authorization) must be satisfied before action is taken by the executive director on the request for emergency authorization.

(g) The commission or executive director may grant an emergency authorization under this section for the temporary transfer of all or part of a water right for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes.

(h) The commission or executive director may direct the applicant to timely pay the amounts for which the applicant may be potentially liable under subsections (k) and (l) of this section and to the extent authorized by law will fully indemnify

and hold harmless the state, the executive director, and the commission from any and all liability for the authorization sought. The commission or the executive director may also order bond or other surety in a form acceptable to the commission or the executive director as a condition for such emergency authorization.

(i) It shall be a condition of granting an emergency authorization under this section that the applicant develop and implement water conservation and drought contingency plans meeting applicable requirements of Chapter 288 of this title (relating to Water Conservation Plans, Drought Contingency Plans, and Guidelines and Requirements), unless the applicant has already done so.

(j) The commission or executive director will not grant an emergency authorization under this section which would cause a violation of a federal regulation.

(k) Before considering an emergency transfer of water, the commission or executive director shall first determine whether there is sufficient available unappropriated water to meet the emergency needs of the applicant as provided under Texas Water Code §11.1381 and, if so, make the applicant aware of this option. In transferring the amount of the water requested by the applicant, the executive director or the commission shall allocate the requested amount among two or more water rights for other than domestic or municipal use. In determining the water rights from which the water will be transferred, the commission shall be guided by the applicable approved regional water plan and statutory preferences of use provided by Texas Water Code, §11.024, and shall also look first to water rights that are unperfected or are not otherwise being used and for which the transfer would not jeopardize existing financial commitments made for the water to be transferred. Nothing in this section is intended to limit a person from demonstrating that the person is an affected person for the purposes of this section.

(l) The person granted an emergency transfer authorization under this section is liable to the affected water right holder and the holder's agent or lessee from whom the use is transferred for the fair market value of the water transferred as well as for any damages caused by the transfer of use. If within sixty (60) days of the termination of the authorization, the parties do not agree on the amount due, or if full payment is not made, either party may file a complaint with the commission to determine the amount due. The commission shall use dispute resolution procedures provided under Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure) for a complaint filed under this subsection. Fair market value shall be determined by the amount of money that a willing buyer would pay a willing seller, neither of which is under any compulsion to buy or sell, for the water in an arms-length transaction and shall not be limited to the amount of money that the owner of the water right has paid or is paying for the water.

(m) The commission designation of affected water right holders under this section does not preclude other water right holders from establishing the impact by the transfer to them through commission proceedings or other appropriate legal means.

(n) After exhausting all administrative remedies under subsections (l) and (m) of this section, a water right holder from which the use is transferred may file suit to recover or determine the amount due in state district court in the county where the owner resides or has its headquarters. The prevailing party in a suit filed under this subsection is entitled to recover court costs and reasonable attorneys fees.

(o) An emergency authorization does not vest in the grantee any continuing right to the diversion, impoundment or use of water and shall expire and be canceled in accordance with its terms. An emergency transfer authorization may be suspended upon notice, as applicable, in order to protect senior water rights. An emergency transfer authorization shall comply with the conditions contained in the water right or rights for which the water is being transferred, including any conditions to protect environmental flow needs.

Adopted January 20, 1999

Effective February 24, 1999

§297.18. Interbasin Transfers, Texas Water Code, §11.085.

(a) No person may take or divert any state water from a river basin and transfer such water to any other river basin without first applying for and receiving a water right or an amendment to a water right authorizing the transfer.

(b) An increase in the authorized amount of water being transferred to the receiving basin under an existing water right constitutes a new interbasin transfer for purposes of this section.

(c) In addition to the other requirements of this chapter relating to the review of and action on an application for a new or amended water right, the commission shall weigh the effects of the proposed transfer by considering:

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years;

(2) factors identified in the applicable approved regional water plans which address the following:

(A) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;

(B) the amount and purposes of use in the receiving basin for which the water is needed;

(C) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries in each basin. If the water sought to be transferred is currently authorized to be used under an existing water right in the basin of origin, such impacts shall only be considered in relation to that portion of the water right proposed for transfer and shall be based on the historical uses of the water right for which amendment is sought.

(3) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(4) the continued need to use the water for the purposes authorized under the existing water right if an amendment to an existing water right is sought;

(5) comments received from county judges required to be provided notice of the application as provided by §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139)); and

(6) information required to be submitted by the applicant.

(d) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as determined by the commission based on consideration of the factors described by subsection (c)(1) - (4) and (6) of this section; and

(2) the applicant for the interbasin transfer has prepared drought contingency and water conservation plans meeting the requirements of Chapter 288 of this title (relating to Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements) and has implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(e) The commission may grant new or amended water rights under this section with or without specific terms or periods of use and with specific conditions under which a transfer of water may occur.

(f) If an interbasin transfer of water is based on a contractual sale of water, the new or amended water right authorizing the transfer shall contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract.

(g) The parties to a contract for an interbasin transfer of water may include provisions for compensation and mitigation. If the party from the basin of origin is a governmental entity, each county judge located in whole or in part in the basin of origin may provide comment on the appropriate compensation and mitigation for the interbasin transfer.

(h) A new water right or amendment to an existing water right for a proposed interbasin transfer of water is junior in priority to water rights in the basin of origin granted before the time an administratively complete application for the transfer is filed with the chief clerk in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If an amendment is made to the water right to effectuate an interbasin transfer of water for a term, the affected portion of the water right shall be junior to all existing water rights in the basin of origin only for the term of the amendment.

(i) A new water right or amendment to an existing water right for a transfer of water from a river basin in which two or more river authorities or water districts have written agreements or permits that provide for the coordinated operation of their respective reservoirs to maximize the amount of water for beneficial use within their respective water service areas shall be junior in priority to water rights granted in that basin before the time an administratively complete application for the interbasin transfer is filed with the chief clerk in accordance with §281.17 of this title. If an amendment is made to the water right to effectuate an interbasin transfer of water for a term, the affected portion of the water right shall be junior to all existing water rights in the basin of origin only for the term of the amendment.

(j) An appropriator of water for municipal purposes in the basin of origin may, at the appropriator's option, be a party in any hearings under this section. Nothing in this provision shall be construed as adversely affecting the ability of any other potentially affected person to obtain party status.

(k) The provisions that are contained in subsections (b) - (j) of this section that are in addition to those generally required for an application for a new or amended water right do not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water as provided by §297.17 of this title;

(3) a proposed transfer from a basin to its adjoining coastal basin;

(4) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state; except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state; or

(5) a proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Texas Water Code, §13.002, that is within the basin of origin for use in the part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin. The further transfer and use of this water outside of such county, municipality, or the part of the retail service area of a retail public utility as defined by Texas Water Code, §13.002 as existing at the time of the transfer or as may exist in the future other than back to the basin of origin shall not be exempt under this paragraph.

Adopted August 6, 2014

Effective August 28, 2014

§297.19. Term Permit under Texas Water Code, §11.1381.

(a) The commission may issue a permit for a term of years for the use of unused appropriated water when there is insufficient unappropriated water in the source of supply to satisfy the application.

(b) An application for a term permit under this section shall be denied if:

(1) the commission finds there is a substantial likelihood that the issuance of the term permit will jeopardize financial commitments made for water projects that have been built or that are being built to optimally develop the water resources in the area;

(2) if the holder of an affected unused appropriation can demonstrate that the issuance of the permit would prohibit the holder from beneficially using the water right during the term of the permit. Such demonstration may be made by using water use projections contained in the state or regional water plans, economic indicators, population growth projections, electrical generation needs, or other reasonable projections based on accepted methods;

(3) the proposed permit is not intended for a beneficial use; or

(4) the proposed permit would be detrimental to the public welfare.

(c) A term permit is subordinate to any vested or senior appropriative water right. Additionally, conditions may be placed in the permit as necessary to protect instream uses and freshwater inflows to bays and estuaries.

Adopted April 27, 2016

Effective May 19, 2016