

SUBCHAPTER E: ISSUANCE AND CONDITIONS OF WATER RIGHTS

§§297.41 - 297.59

Effective August 31, 2006

§297.41. General Approval Criteria.

(a) Except as otherwise provided by this chapter, the commission shall grant an application for a water right only if:

(1) the application conforms to the requirements prescribed by Chapter 295 of this title (relating to Water Rights, Procedural) and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers the assessments performed under Texas Water Code (TWC), §§11.147(d) and (e), and 11.150 - 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement;

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions); and

(5) the applicant has completed and returned all Texas Water Development Board surveys of groundwater and surface water use required since September 1, 2001 under TWC, §16.012.

(b) Beginning January 5, 2002, the commission will not issue a water right for municipal purposes in a region that does not have an approved regional water plan in accordance with TWC, §16.053(i) unless the commission determines that new, changed, or unaccounted for conditions warrant the waiver of this requirement.

§297.42. Water Availability.

(a) Except as provided by Texas Water Code (TWC), §11.1381, and §297.19 of this title (relating to Term Permit Under Texas Water Code §§11.1381 and 11.153, 11.155), an application for a new or increased appropriation will be denied unless there is a sufficient amount of unappropriated water available for a sufficient amount of the time to make the proposed project viable and ensure the beneficial use of water without waste.

(b) A new water right may be conditioned as appropriate to protect instream uses, water quality, aquatic and wildlife habitat, and freshwater inflows to bays and estuaries as provided by TWC, §§11.147, 11.150, 11.152, and 16.059.

(c) For the approval of an application for a direct diversion from a stream without sufficient on or off channel water storage facilities for irrigation, approximately 75% of the water requested must be available approximately 75% of the time when distributed on a monthly basis and based upon the available historic stream flow record. Lower availability percentages may be acceptable if the applicant can demonstrate that a long-term, reliable, alternative source or sources of water of sufficient quantity and quality are economically available to the applicant to make the proposed project viable and ensure the beneficial use of state water without waste.

(d) Projects that are not required to be based upon the continuous availability of historic, normal stream flow include, but are not limited to: the artificial recharge of the Edwards Aquifer under TWC, §11.023(c); conjunctive ground and surface water management projects such as aquifer storage and recovery projects; diversions or impoundments at times of above-normal stream flow (e.g., "scalping" operations) for seasonal or supplemental use; a system operation in conjunction with other water rights; non-consumptive instream uses; or other similar type projects. The required availability of unappropriated water for these special type projects shall be determined on a case-by-case basis based upon whether the proposed project can be viable for the intended purposes and the water will be beneficially used without waste.

(e) For an application for an on-channel storage facility to be authorized for domestic or municipal water use, the proposed diversion right of the reservoir must be equal to its firm yield. The purpose of this limitation is to ensure a secure and dependable source of water supply for uses necessary to protect the public health, safety, and welfare (see also 30 TAC §290.41(b) requiring public water systems to have a "safe" yield capable of supplying the maximum daily demands during extended periods of peak usage and "critical hydrologic conditions"). Such reservoir may be authorized in excess of its firm yield when the implementation of a drought management plan or alternative sources of water supply such as groundwater, other reservoir systems, or other means are available to satisfy water needs during drought periods when the reservoir's normal supply capabilities would be exceeded.

(f) Except for an application for an emergency, temporary, seasonal, or term permit, or as provided by this section, the commission may require an applicant to provide storage sufficient to yield the requested annual diversion.

(g) In order to make the optimum beneficial use of available water, a water right may be granted based upon the availability of return flows or discharges. However, a water right granted upon return flows or discharges that may cease in the future because of new or increased direct reuse (i.e., the lawful reuse of water before it is returned or discharged into the stream) or that may cease for other lawful reasons will be granted with the express provision that the water available for the water right is dependent upon potentially interruptible return flows or discharges.

Adopted July 24, 2002

Effective August 15, 2002

§297.43. Beneficial Uses.

- (a) State water may be appropriated, stored, or diverted for the following purposes of use:
- (1) domestic and municipal;
 - (2) industrial;
 - (3) agriculture;
 - (4) mining and the recovery of minerals;
 - (5) hydroelectric power;
 - (6) navigation;
 - (7) recreation and pleasure;
 - (8) public parks;
 - (9) game preserves;
 - (10) instream uses, water quality, aquatic and wildlife habitat, or freshwater inflows to bays and estuaries; and
 - (11) other beneficial purposes of use recognized by law.
- (b) Unappropriated storm water and floodwater may be appropriated to recharge freshwater bearing sands and aquifers in the portion of the Edwards Aquifer located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays Counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a water right holder for this recharge purpose.
- (c) The amount of water appropriated for each purpose listed under this section shall be specifically appropriated for that purpose. The commission may authorize the appropriation of a single

amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

(d) State policy regarding preferences for certain type uses provided by Texas Water Code (TWC), §11.024 does not alter the basic principle of priority based upon first in time established under TWC, §11.027. Rather, such preferences will be used, in part, by the commission in determining which competing new uses will be granted water rights as provided by TWC, §11.123.

(e) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

Adopted July 24, 2002

Effective August 15, 2002

§297.44. Subject to Prior and Superior Water Rights.

(a) Except as provided by subsection (b) of this section, a certificate of adjudication, permit, certified filing or unadjudicated claim to appropriate state water is subject to all prior and vested riparian rights of others using water on the stream or other source of supply.

(b) Except for water rights granted on the mainstem of the Rio Grande below the Amistad Reservoir (see, generally, Chapter 303 of this title relating to Operation of the Rio Grande) and certain uses exempt from permitting under Texas Water Code §§11.142, 11.1421 and 11.1422 (see, generally, Subchapter C of this Chapter), as between appropriators, first in time is first in right.

(c) The time priority of an appropriation of water dates from the filing of the related application with the commission or as determined with a final decree in accordance with Texas Water Code §11.323. The application is considered filed after the application has been declared administratively complete in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness) and filed with the chief clerk.

Adopted January 20, 1999

Effective February 24, 1999

§297.45. "No Injury" Rule.

(a) The granting of an application for a new water right or an amended water right shall not cause an adverse impact to an existing water right as provided by this section. An application for an amendment to a water right requesting an increase in the appropriative amount, a change in the point of diversion or return flow, an increase in the consumptive use of the water based upon a comparison between the full, legal exercise of the existing water right with the proposed amended right, an increase in the rate of diversion, or a change from the direct diversion of water to on-channel storage shall not be granted unless the commission determines that such amended water right shall not cause adverse impact to the uses of other appropriators. For the purposes of this section, adverse impact to another appropriator includes: the possibility of depriving an appropriator of the equivalent quantity or quality

of water that was available with the full, legal exercise of the existing water right before the change; increasing an appropriator's legal obligation to a senior water right holder; or otherwise substantially affecting the continuation of stream conditions as they would exist with the full, legal exercise of the existing water right at the time of the appropriator's water right was granted.

(b) Subject to meeting all other applicable requirements for an application to amend an existing water right, an amendment to a water right, except for the increase in the appropriative amount or diversion rate, shall be approved as provided by Texas Water Code §11.122(b) if the requested change will not cause such adverse impact on other water right holders or the environment of the stream of greater magnitude than under circumstances in which the water right being sought for amendment was fully exercised according to its terms and conditions as they existed prior to the amendment.

(c) If it is determined that a proposed amendment for a change in the diversion point may adversely affect existing water rights, the amendment, if approved, shall be subordinate only to such affected water rights and the amended water right shall otherwise retain its priority date.

(d) The burden of proving that no adverse impact to other water right holders or the environment will result from the approval of the application is on the applicant.

(e) In granting an application, the commission may direct that stream flow restrictions, return flows, and other conditions and restrictions be placed in the permit being issued to protect senior water rights.

Adopted January 20, 1999

Effective February 24, 1999

§297.46. Consideration of Public Welfare.

The commission may grant an application for a new or amended water right only if it finds that it would not be detrimental to the public welfare.

Adopted August 9, 2006

Effective August 31, 2006

§297.47. Impacts on Groundwater.

(a) In its review and action on an application for a new or amended water right, the commission shall consider the hydrological connection between surface and groundwater and the effects, if any, from the granting of the application on groundwater use, quality, or recharge. In its assessment, the commission shall consider whether the proposed diversion is from a stream that provides significant recharge to a "sole source" aquifer as designated under the federal Safe Drinking Water Act, an aquifer for which there is a certified groundwater management plan under Texas Water Code Chapter 36, or an aquifer that is located within all or part of a priority groundwater management area designated under Texas Water Code Chapter 35.

(b) If the commission determines that the granting of an application for a new or amended water right would significantly impair existing uses of groundwater, groundwater quality, or springflow

upon which existing surface rights, water quality, aquatic and wildlife habitat, or bays and estuaries depend, the commission may deny the application or place restrictions and limitations in the water right necessary to prevent or mitigate such impacts.

(c) In determining the extent of the protection to be provided in a proposed new or amended water right to existing downstream water rights or environmental water needs, the commission may take into consideration instream losses because of recharge occurring in the bed of the stream downstream of the proposed diversion.

Adopted January 20, 1999

Effective February 24, 1999

§297.48. Waste Prevention.

(a) The waste of water is prohibited and is an unlawful use of state water. A water right holder using state water shall use those measures necessary to ensure the beneficial use of water without waste in accordance with these rules and the terms and conditions of the water right and applicable law.

(b) The use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose constitutes waste. Waste also includes the diversion or use of water in any manner that causes or threatens to cause pollution of water in violation of applicable rules and standards.

(c) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks commits waste, and the commission may declare the waste to be a public nuisance. Faulty design or negligent operation shall include, but not be limited to, the design or operation of waterworks not in accordance with applicable state or federal law, commission rules, plumbing fixture codes or ordinances, or other applicable law or, in the absence of such law, not in accordance with commonly accepted industry standards, engineering principles, and best management practices.

(d) The commission or a person injured by the waste of water as provided by subsection (c) of this section may seek civil action in the appropriate state district court to have the nuisance abated and the commission may direct the person supplying the water to close the gates of the person wasting the water and keep them closed until the commission determines that the unlawful use of water is corrected.

(e) The right to appropriate that amount of water not beneficially used cannot be perfected and is subject to limitation, cancellation, or forfeiture as provided by law.

Adopted January 20, 1999

Effective February 24, 1999

§297.49. Return and Surplus Waters.

(a) A right to take and use water is limited to the extent and purposes authorized in the water right. Except as specifically provided otherwise in the water right, state water appropriated under a water right may be beneficially used and reused by the water right holder in accordance with the water

right prior to its release into a watercourse or stream. Once water has been diverted under a water right and then returned to a watercourse or stream, however, it is considered surplus water and, therefore, subject to maintaining instream uses, beneficial inflows to bays and estuaries, or appropriation by others unless expressly provided otherwise in the water right.

(b) A person who takes or diverts water from a watercourse or stream shall conduct surplus water back to the watercourse or stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so. In addition, the commission may include in the water right a specific amount or percentage of water diverted to be returned and the return point on the stream or watercourse, if necessary to protect senior downstream water rights or to provide flows for instream uses and bays and estuaries.

(c) Return waters must meet water quality standards provided by Chapter 307 of this title (relating to Texas Surface Water Quality Standards) prior to their discharge into water in the state. Additionally, such discharge shall not impair an existing or potential beneficial use of groundwater as to its water quality. Nothing in this chapter affects the obligation to obtain a permit under Texas Water Code Chapter 26, if required.

(d) Water appropriated under a water right that is recirculated within a reservoir for cooling purposes shall not be considered to be surplus for purposes of this section.

Adopted January 20, 1999

Effective February 24, 1999

§297.50. Consideration of Water Conservation Plans.

(a) Information in the water conservation plan provided by a water right applicant shall be considered by the commission in determining whether any practicable alternative to the requested appropriation exists, whether the requested amount of appropriation as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right, and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the commission shall determine whether to deny or grant, in whole or in part, the requested appropriation.

(b) A water conservation plan submitted with an application requesting an appropriation for new or additional state water must include data and information which:

(1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed appropriation; and

(3) evaluates other feasible alternatives to new water development, including but not limited to, waste prevention, recycling and reuse, water transfer and marketing, reservoir system operations, and optimum water management practices and procedures. It shall be the burden of proof

of the applicant to demonstrate that the requested amount of appropriation is necessary and reasonable for the proposed use.

(c) Any water conservation measures prescribed by the commission shall be implemented as required by the terms and conditions of a commission order or water right, or by rule. The holder of a water right for which a conservation or drought contingency plan is required to be submitted in accordance with §288.30 or §295.95 of this title (relating to Required Plans and Water Conservation and Drought Contingency Plans, respectively) shall install and maintain a measuring device at such point or points as may be determined by the executive director or water master, as applicable, to be necessary for the proper and efficient administration of water rights. All such measuring devices shall be subject to approval of the executive director or watermaster, as applicable. The measuring devices shall measure within 5.0% accuracy unless otherwise approved by the executive director or watermaster. The diverter shall provide reasonable access to such measuring device.

Adopted January 20, 1999

Effective February 24, 1999

§297.51. Time Limitations for Commencement or Completion of Construction.

When a water right is issued for appropriation by direct diversion or construction, modification or repair of a storage reservoir, or any work in which a time limitation is set by the water right for commencement or completion of construction, a water right holder shall commence and complete actual construction of the proposed facilities within the time fixed by the commission. Failure to commence or complete construction within the time specified in the permit or extension granted by the commission shall cause the water right holder to forfeit all rights to the permit, subject to the provisions of §295.72 of this title (relating to Applications for Extensions of Time) and the provisions of §297.74 of this title (relating to Forfeiture and Revocation of Water Right).

Adopted July 24, 2002

Effective August 15, 2002

§297.52. Suppliers of Water for Agriculture.

Persons supplying state water for agriculture purposes shall charge the purchaser on a volumetric basis. The commission may direct suppliers of state water to implement appropriate procedures for determining the volume of water delivered.

Adopted July 24, 2002

Effective August 15, 2002

§297.53. Habitat Mitigation.

(a) In its consideration of an application for a new or amended water right to store, take, or divert state water in excess of 5,000 acre-feet per year, the commission shall assess the effects, if any, of the granting of the application on fish and wildlife habitats. The commission shall also consider whether the proposed project would affect river or stream segments of unique ecological value as identified by the applicable approved regional water plan and designated as such by the Texas Legislature in accordance with Texas Water Code §16.051(e).

(b) For an application for a new or amended water right to store, take, or divert state water, the commission may require the applicant to take reasonable actions to mitigate adverse impacts, if any, on fish and wildlife habitat.

(c) An assessment under this section shall include the project site as well as potentially impacted habitat upstream, adjoining, and downstream of the project site.

(d) In determining whether to require an applicant to mitigate adverse impacts on a habitat, the commission may consider any net environmental benefit to the habitat produced by the project. The commission shall offset any mitigation it requires by any mitigation required by the United States Fish and Wildlife Service pursuant to 33 Code of Federal Regulations §§320-330.

(e) The goal of the mitigation of wetlands is to achieve “no net loss” of wetland functions and values. In addition to aquatic and wildlife habitat, wetland functions also include, but are not limited to, water quality protection through sediment catchment and filtration, storage plans for flood control, erosion control, groundwater recharge, and other uses.

(f) In case of unavoidable wetlands loss, impacts to wetland habitat are mitigated in accordance with the following guidelines:

(1) Wetlands shall be classified using the USFWS’s “Classification of Wetlands and Deepwater Habitats of the United States” (USFWS 1979). Specific functions and values for wetlands habitats shall be determined on an individual case basis using the most technically appropriate habitat evaluation methodology (e.g., USFWS’s Habitat Evaluation Procedures and Wetlands Evaluation Techniques; TPWD’s Wildlife Habitat Appraisal Procedure).

(2) Mitigation for wetland habitat loss shall seek first to be an on-site and in-kind replacement of lost wetland function and value whenever possible. Habitat mitigation shall be considered only after the complete sequencing (avoidance, minimization or modification, and compensation/replacement) process has been performed in accordance with 40 CFR §230.10 et seq.

(3) Habitats shall be evaluated using the most appropriate methodology (e.g., USFWS’s Habitat Evaluation Procedures and Wetlands Evaluation Techniques; TPWD’s Wildlife Habitat Appraisal Procedure). Total habitat value for each habitat type shall be determined on an individual case basis for the area impacted by a project.

(4) Mitigation for terrestrial and riparian habitat loss shall be based upon on-site and in-kind replacement of lost habitat whenever possible. Habitat mitigation shall be considered only after it has been established that habitat impacts are unavoidable and there is suitable mitigation habitat available for complete compensation for the lost habitat. Where on-site, in-kind replacement of habitat is not possible, mitigation shall be limited to the same watershed and ecoregion.

(5) Replacement of affected terrestrial and riparian habitats shall be of equal or greater value with respect to affected habitat. Mitigation will not be limited to a total habitat replacement, but will consider the threatened or endangered nature of the habitat(s) being lost or degraded and the

limiting effects of surrounding land use on success compensation. Buffer zones around the mitigation area may be required to fully compensate for the total habitat loss.

(6) Water right permit reviews shall examine both direct and indirect impacts to terrestrial and riparian habitats, as well as long and short-term effects to the watershed or ecoregion that may result from the permitted activity.

(7) Habitat mitigation plans and agreements shall be ensured through binding legal contracts, permit provisions, and detailed management plans and shall include goals and schedules of completion of those goals. The mitigation habitat shall be managed in perpetuity by a party approved by the commission to maintain the habitat value lost because of project impacts.

(g) The assessment of and conditions upon a proposed amendment to a water right under this section shall be limited by §297.45(b) of this title (relating to “No Injury” Rule) as provided by Texas Water Code §11.122(b).

Adopted January 20, 1999

Effective February 24, 1999

§297.54. Water Quality Effects.

(a) In its consideration of an application for a new or amended water right to store, take or divert water, the commission shall assess the effects, if any, of the granting of the application on water quality of the stream or river to which the application applies, as well as associated bays and estuaries. Assessment of water quality impacts shall consider the maintenance of State of Texas Surface Water Quality Standards provided by Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and the need for all existing instream flows to be passed up to that amount necessary to maintain the water quality standards for the affected stream. Such flows may also be used to protect uses of existing, downstream water rights by providing water of a usable quality and to provide, in part, for the protection of vested riparian water rights and domestic and livestock uses.

(b) The assessment of any conditions upon a proposed amendment to a water right under this section shall be limited by §297.45(b) of this title (relating to “No Injury” Rule) as provided by Texas Water Code §11.122(b).

Adopted January 20, 1999

Effective February 24, 1999

§297.55. Estuarine Considerations.

(a) In its consideration of an application for a new or amended water right to store, take, or divert water, the commission shall assess the effects, if any, of the granting of the application on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the water right, to the extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(b) For purposes of making a determination under this section, the commission shall consider:

(1) the need for periodic freshwater inflows to supply nutrients, sediments, and modify salinity to preserve the sound environment of the bay and estuary, using any available information, including studies and plans specified in Texas Water Code §11.1491 and other studies considered by the commission to be reliable; together with existing circumstances, natural or otherwise, that may prevent the conditions imposed from producing benefits;

(2) the ecology and productivity of the affected bay and estuary system;

(3) the expected effects on the public welfare of not including in the water right some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary system;

(4) the quantity of water requested and the proposed use of the water by the applicant, as well as the needs of those who would be served by the applicant;

(5) the expected effects on the public welfare of the failure to issue all or part of the water right being considered; and

(6) the declarations as to preferences for competing uses of water as found in Texas Water Code §§11.023 and 11.024 as well as the policy statement in Texas Water Code §11.003.

(c) Five percent (5%) of the annual firm yield of water in any reservoir or associated works on which construction began on or after September 1, 1985, and which is constructed with state financial participation and is located within 200 river miles from the coast, to commence from the mouth of the river thence inland, is appropriated to the Texas Parks and Wildlife Department for use to make releases to bays and estuaries and instream uses. This five percent figure may not be indicative of the full instream needs or the freshwater inflow needs of the affected bay or estuary system and the commission may impose additional water right conditions to provide a greater amount of water for this purpose, if necessary and appropriate after considering all the factors provided by subsection (b) of this section.

(d) Pursuant to Texas Water Code, §16.195, unallocated water and other water of the state permitted to the Texas Water Development Board and stored in any facility acquired by and under the control of the Texas Water Development Board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or other calamity including, but not limited to, insufficient flows for existing instream uses and beneficial inflows for the maintenance of bays and estuaries, if the commission first determines the existence of the emergency and requests the Texas Water Development Board to release the water. Such release may not impair a contractual obligation of the Texas Water Development Board. The Texas Parks and Wildlife Department may also petition the commission to request such release for the maintenance of existing instream uses and beneficial inflows to bays and estuaries.

(e) The assessment of and conditions upon a proposed amendment to a water right under subsections (a) and (b) of this section shall be limited by §297.45(b) of this title (relating to “No Injury” Rule) as provided by Texas Water Code §11.122(b).

Adopted January 20, 1999

Effective February 24, 1999

§297.56. Instream Uses.

(a) In its consideration of an application for a new or amended water right to store, take, or divert water, the commission shall consider the effects, if any, of the granting of the application on existing instream uses of the stream or river to which the application applies. In its determination of flows necessary to maintain recreational and navigational flows, the commission shall consider, but not be limited to, the designation of major waterways by the Texas Parks and Wildlife Department in its publication entitled “An Analysis of Texas Waterways” (1979), and as revised, and the definition of “navigable” stream provided by Texas Natural Resources Code §21.001(3). Additionally, flows necessary to protect a federally listed species under the Endangered Species Act or other species that are considered to be of “high interest” (such as state listed endangered and threatened species, self-sustaining wild populations that are endemic to the affected stream or have significant scientific or commercial value) shall also be protected.

(b) The assessment of and conditions upon a proposed amendment to a water right under this section shall be limited by §297.45(b) of this title (relating to “No Injury” Rule) as provided by Texas Water Code §11.122(b).

Adopted January 20, 1999

Effective February 24, 1999

§297.57. Emergency Suspension of Permit Conditions.

The commission or executive director may review and act, under Texas Water Code, §5.506 and §11.148, and under §35.101 of this title (relating to Emergency Suspension of Permit Conditions Relating to Beneficial Inflows to Affected Bays and Estuaries and Instream Uses) on a petition by a water right holder for the temporary suspension of conditions in the water right relating to beneficial inflows to bays and estuaries and instream uses during an emergency.

Adopted November 18, 1998

Effective December 10, 1998

§297.58. Accounting Water Use.

(a) If the use of the appropriated water is authorized for multiple purposes, the water right shall contain a special condition limiting the total amount of water that may be actually diverted for all the purposes to the amount of the water appropriated.

(b) If a water right has appropriations with different priority dates, the oldest priority water shall be credited against the water first used unless the water right expressly provides otherwise or the

water right holder requested the watermaster to count the water use against the junior portion of the right.

Adopted January 20, 1999

Effective February 24, 1999

§297.59. Additional Limitations.

(a) The commission will incorporate into every permit or certificate of adjudication any condition, restriction, limitation or provision reasonably necessary for the enforcement and administration of the water laws of the state and the rules of the commission.

(b) All dams proposed for authorization by the commission shall provide for outlets of size and location sufficient to pass such flows of water as the commission finds necessary to satisfy the rights of downstream domestic and livestock users, the senior and superior rights of other authorized users, instream flow requirements, water quality, and estuarine inflow requirements.

(c) Acceptance of the water right by the water rights holder will be an acknowledgment and agreement that the holder will comply with all the terms, provisions, conditions, limitations and restrictions embodied in such water right. The exercise of rights under a permit authorizing the inundation or installation of a structure upon the land of another will be conditioned upon the continued effectiveness of an easement or agreement between the parties.

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Effective February 24, 1999