

**SUBCHAPTER G: CANCELLATION, REVOCATION, ABANDONMENT, AND  
FORFEITURE OF WATER RIGHTS**

**§§297.71 - 297.75**

**Effective August 31, 2006**

**§297.71. Cancellation in Whole or in Part.**

(a) Except as provided by subsection (b) of this section, if all or part of a water right has not been put to beneficial use during a consecutive ten-year period, such water right is subject to cancellation in whole or in part as provided by this subchapter.

(b) A water right is not subject to cancellation as provided by subsection (a) of this section to the extent that such nonuse is the result of:

(1) the water right holder's participation in the Conservation Reserve Program authorized by 16 United States Code, §§3831 -3836, Food Security Act of 1985 or a similar governmental program;

(2) a significant portion of the water right has been used in accordance with a specific recommendation for meeting a water need included in the applicable regional water plan approved under Texas Water Code (TWC), §16.053;

(3) the deposit of the water right in the Water Trust for the maintenance of environmental flow needs in accordance with TWC, §15.7031;

(4) the deposit of the water right in the Texas Water Bank and the water right is protected from cancellation in accordance with TWC, §15.703;

(5) the water right was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the water right holder, and the water right is consistent with projections of future water needs contained in the state water plan;

(6) the water right was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the water right, as part of the water right holder's long-term water planning; or

(7) the implementation of water conservation measures under a water conservation plan submitted by the holder of the permit, certified filing, or certificate of adjudication as evidenced by implementation reports submitted by the holder.

**§297.72. Notice and Hearing.**

(a) When commission records show that all or part of a water right has not been used during the past ten years, the executive director may file a petition with the commission for a hearing before the commission to show cause why the water right should not be canceled. Except as specifically provided otherwise by this Subchapter, such proceedings shall be held in accordance with the general hearing provisions of Chapter 50 of this title (relating to Action on Applications) of the commission rules.

(b) At least 45 days before the date of the hearing, the commission shall send notice of the petition and hearing to the affected water right holder. Notice shall be sent by registered mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all water right holders in the same watershed.

(c) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least thirty (30) days before the date of the hearing, in a newspaper published in each county in which the diversion of water from the source of supply was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

(d) Except as provided by subsection (e) of this section, the commission shall hold a hearing and shall give the affected water right holder and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

(e) A hearing on the cancellation of the water right is unnecessary if the right to such hearing is expressly waived by the affected water right holder.

(f) A water right for a term does not vest in the water right holder any right to the diversion, impoundment, storage, taking or use of water for longer than the term of the water right and shall expire and be canceled in accordance with its terms without further need for notice or hearing.

Adopted January 20, 1999

Effective February 24, 1999

**§297.73. Commission Finding; Action.**

(a) At the conclusion of the hearing, the commission shall cancel the water right in whole or in part to the extent that it finds that:

(1) the water or any portion of the water under the water right has not been put to an authorized beneficial use during the ten-year period; and

(2) the water right holder has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use or is otherwise unjustified in the nonuse as provided by subsection (b) of this section.

(b) In determining what constitutes reasonable diligence or a justified nonuse as provided in subsection (a)(2) of this section, the commission shall give consideration to:

(1) whether sufficient water is available in the source of supply to meet all or part of the appropriation during the ten-year period of nonuse;

(2) whether the nonuse is justified by the water right holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by §297.71 of this title (relating to Cancellation in Whole or In Part);

(3) whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Texas Water Code (TWC), §16.053;

(4) whether the water right has been deposited into the Texas Water Bank or Water Trust as provided by TWC, §15.7031 and §15.704 or whether it can be shown by the water right holder that the water right or water is currently being made available for purchase through private marketing efforts at fair market value and under reasonable terms and conditions; or

(5) whether the water right has been reserved for instream uses or beneficial inflows for bays and estuaries.

(c) Regardless of the other provisions of this subchapter, no portion of a water right held by a city, town, village, or municipal water district authorizing the use of water for municipal purposes shall be canceled if the water has been put to beneficial use under the water right at any time during the ten-year period immediately preceding the initiation of cancellation proceedings.

(d) Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any water right in whole or in part.

(e) Once cancellation proceedings have been initiated against a particular water right and a hearing has been held, further cancellation proceedings shall not be initiated against the same water right within the five-year period immediately following the date of the hearing.

Adopted July 24, 2002

Effective August 15, 2002

**§297.74. Forfeiture and Revocation of Water Right.**

(a) A water right may be forfeited for failure to timely commence or complete construction of the diversion facilities as provided by §295.72 of this title (relating to Applications for Extension of Time).

(b) A temporary or term permit may be revoked or suspended upon written or verbal notice by the executive director or watermaster, as applicable, without hearing if necessary to protect senior and vested water rights or instream uses and freshwater inflow needs for bays and estuaries. Notice of such

revocation shall also be provided to the affected water right holder by registered mail, return receipt requested.

(c) Authorization to divert water from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued or a reservoir permitted for storage solely for the purpose of optimum development of the project may be revoked when compliance with the conditions contained in the letter authorizing the diversion of water is not occurring or, in the case of authorized diversions for domestic use, water becomes reasonably available through a water supply system. Revocation shall be made by a letter setting forth the basis of the revocation signed by a commissioner. Upon receipt of the letter, the user shall cease diverting water and remove diversion facilities.

(d) This section does not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

Adopted July 24, 2002

Effective August 15, 2002

**§297.75. Abandonment of Water Right.**

(a) A water right shall be determined to have been abandoned if the water right holder:

- (1) has the intent to knowingly relinquish the water right; and
- (2) the water right has not been used for a consecutive three-year period or more.

(b) The requisite intent for abandonment can be shown by express statements of the water right holder.

(c) Petition, notice and hearing under this section shall be provided in the same manner as the cancellation of a water right provided by §297.72 of this title (relating to Notice and Hearing).

(d) If the commission's records reflect that the amount of water authorized to be appropriated under a water right is not being used, either in whole or in part, the executive director may send an appropriate form to the holder of the water right by which the holder or the holder's authorized agent may request cancellation of the unused portion of the right or the entire right.

Adopted January 20, 1999

Effective February 24, 1999