

**SUBCHAPTER J: WATER SUPPLY CONTRACTS AND AMENDMENTS**

**§§297.101 - 297.108**

**Effective August 15, 2002**

**§297.101. General; Exceptions.**

(a) General. In order for the commission to exercise effective supervision over all uses of state water, each supplier of treated or untreated state water possessing a valid water right shall make application for an amendment based upon the supplier's contractual arrangements with a purchaser and/or shall submit a copy of the contract in accordance with §295.101 of this title (relating to Documents To Be Filed). The contract must be submitted and/or the application approved by the commission before deliveries or diversions under the contract may be made lawfully. If a contract meets the requirements of these rules and is consistent with the authorizations of the base water right, the executive director will place a copy of the contract on file with the commission records and shall so notify the supplier.

(b) Exceptions. The rules of this subchapter shall not apply to the following:

(1) Sales of untreated water conveyed by the supplier through a canal, pipeline or aqueduct for the purpose and for use in the area authorized in the water right; or

(2) Sales of treated water supplied through a public or private municipal distribution system or through a rural water supply system for the purpose and for use in the area authorized in the water right;

(3) Deliveries of treated sewage effluent for the purpose and use authorized and in the area authorized in the water right;

(4) Short term (three years or less) sales of untreated water from the perimeter of a reservoir for any purpose authorized in the water right in amounts not exceeding 10 acre-feet per annum; or

(5) Sales of untreated water from the Lower and Middle Rio Grande.

**§297.102. When Application Required.**

(a) If the exercise of rights under the contract between the supplier and the purchaser would require amendment of the appropriative right on which the sale is based, the supplier shall submit an application for an amendment in accordance with §295.101 of this title (relating to Documents To Be Filed).

(b) If the exercise of rights under the contract between the supplier and the purchaser would not require amendment of the appropriative right on which the sale is based or would require amendment of

the appropriative right only by adding a diversion point or by changing the place of use of a water right which authorizes storage, the supplier shall submit a copy of the executed contract to the executive director and shall not have to submit an application for an amendment.

(c) If the supplier is not the holder of the appropriative right on which the sale is based and if the exercise of rights under the contract between the supplier and the purchaser would require an amendment to alter the appropriative right:

(1) the holder of the appropriative right on which the sale is based shall apply to amend the right in accordance with §295.71 of this title (relating to Applications To Amend a Permit), and the supplier shall submit a copy of the contract and/or an application for a permit in accordance with §295.101 of this title (relating to Documents To Be Filed); or

(2) the holder of the appropriative right on which the sale is based shall join with the supplier in the application for amendment.

(d) See §295.158 of this title (relating to Notice of Amendments to Water Rights) for notice requirements and Subchapter B of Chapter 295 of this title (relating to Water Rights, Procedural) for required fees.

**§297.103. Special Requirements for Downstream Sales of Water from a Storage Reservoir.**

(a) If a contract which obligates a supplier to supply water from storage to a purchaser does not provide for or contemplate diversions of water by the purchaser from streamflows other than those resulting from releases of water from storage under the contract, the supplier shall make releases of water to the extent of the purchaser's downstream diversions within the limits of the supplier's water right or the contract, except as follows:

(1) Nothing in these rules shall require a seller to release water to satisfy contractual obligations when such release would aggravate existing flooding conditions, and the purchaser may divert water during such conditions pursuant to the contract;

(2) The executive director may recommend a condition to be included in the contractual amendment which establishes stream flood stages for purposes of this section. The commission may include such a condition in each amendment which authorizes such a downstream sale of water from storage.

(b) If a contract which obligates a supplier to supply water from storage to a purchaser provides for or contemplates diversions of water by the purchaser from streamflows other than those resulting from releases of water from storage for the purchaser's use under the contract, and if neither the purchaser nor the supplier possesses a valid appropriative right authorizing such diversions:

(1) The purchaser shall obtain a regular, term or temporary permit to appropriate water to the extent of his maximum annual diversions of water not released from storage before the supplier's amendment, if any, may be approved; or

(2) The supplier shall apply for a regular, term or temporary permit or an amendment to the supplier's water right to appropriate water to the extent of the purchaser's maximum annual diversions of water not released from storage; provided that the contract specifies that the supplier shall have or shall apply for such permit or amendment and that the purchaser shall divert water not released from storage only pursuant to such permit or amendment.

(c) If any contract required to be filed under this subchapter does not specify which party will bear transportation and evapotranspiration losses from a reservoir to a downstream point of diversion, the supplier shall bear such losses.

**§297.104. Special Requirements for Upstream Sales of Water from Storage.**

If a contract provides that a purchaser may divert water upstream of a supplier's storage reservoir in a manner which impairs the supplier's water right:

(1) the purchaser shall obtain a permit to the extent of the person's maximum annual diversions of water for the term of the contract; or

(2) the supplier shall obtain a permit or an amendment to the extent of the purchaser's maximum annual diversions of water for the term of the contract; provided that the contract specifies that the supplier shall apply for such permit or amendment and that the purchaser shall divert water only under such permit or amendment.

Adopted July 24, 2002

Effective August 19, 2002

**§297.105. Effective Date of Water Supply Contract Rules.**

The requirements of §295.101-295.104 of this title (relating to Documents To Be Filed; When Application Required; Special Requirements for Downstream Sales of Water from a Storage Reservoir; and Special Requirements for Upstream Sales of Water from Storage) apply to all contracts for sales of treated or untreated state water entered into after January 2, 1964.

**§297.106. Perfection and Priority of Water Right.**

(a) Unless exempted by these rules, no treated or untreated state water hereafter supplied under a contract shall be deemed to be in perfection of the supplier's appropriative right under which the water is supplied, unless and until the contractual amendment is granted by the commission or the contract is submitted to the executive director in accordance with §295.101 this title (relating to Documents To Be Filed).

(b) If the supplier or the purchaser is required by §297.103 of this title (relating to Special Requirements for Downstream Sales of Water from a Storage Reservoir) to obtain a regular, term or temporary permit or an amendment to the extent of the purchaser's maximum annual diversions of water not released from storage, the regular, term or temporary permit or amendment shall be perfected by the purchaser's diversions of water not released from storage.

(c) If a supplier enters into a contract which authorizes a purchaser to divert water upstream of the supplier's storage reservoir in a manner which impairs the supplier's water right, all diversions made by the purchaser shall be deemed for perfection purposes to be diversions from the perimeter of the reservoir.

(d) Nothing contained in this subchapter shall be construed as affecting in any way the perfection of rights exercised prior to January 2, 1964 in a manner not in compliance with §295.101 of this title (relating to Documents To Be Filed), §297.103 of this title (relating to Special Requirements for Downstream Sales of Water from a Storage Reservoir) and §297.104 of this title (relating to Special Requirements for Upstream Sales of Water from a Storage Reservoir).

(e) The commission shall include the priority date in each contractual amendment.

**§297.107. Reports.**

Both the purchaser and seller of water under a water supply contract shall submit annual reports to the commission in accordance with §295.202 of this title (relating to Reports).

**§297.108. Effect on Existing Contractual Permits.**

Nothing contained in these rules shall be construed to invalidate contractual permits or other authorizations which have been obtained prior to the effective date of these rules.