

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 19, 2012

CERTIFIED MAIL

Re: Suspensions of Permitted State Surface Water Diversions in the Brazos River Basin

Dear Water Right Holder:

The Texas Commission on Environmental Quality (TCEQ) has received a priority call on surface water from a water right holder in the Brazos River Basin. In accordance with the Texas Water Code (TWC), §5.013(a)(1), the TCEQ is responsible for enforcing water rights, which requires protecting senior and superior surface water rights and must take action in response to the priority call.

With no immediate relief forecasted, I have issued a suspension order suspending certain diversions in the Brazos River Basin below Lake Possum Kingdom. Suspended water rights include water right permits with a priority date of **February 15, 1942 and later** (excluding those for municipal uses, domestic uses and power generation), term water right permits, and temporary water right permits. Exempt domestic and livestock diversions are not subject to this suspension. That order is included in the mailing.

At this time, **you are not required to suspend your surface water diversion for power generation** even though all or part of your water right is junior to the priority call. However, pursuant to 30 TAC Chapter 36.5, we are requiring that you submit the following information to demonstrate that you have made reasonable efforts to conserve water and that you have made reasonable efforts to obtain additional or alternative water sources:

- Water use data indicating the amount, rate of diversion, place and purposes of use of water on a daily basis.
- Information demonstrating that you have made reasonable efforts to obtain alternative water sources within 14 days.
- Information on what you have done to identify long-term additional or alternative water sources within 30 days.

To provide this information, please complete the attached questionnaire and submit it to Ms. Melissa Keller, TCEQ Water Rights Liaison, by electronic mail at melissa.keller@tceq.texas.gov, or by facsimile to 512-239-2249, within 14 days of the date of this letter, with follow-up information provided to TCEQ every 14 days thereafter. Failure to provide this information may result in suspension or adjustment of your water right.

We will consider your responses to the questionnaire in making the decision whether to continue not to suspend or adjust your water right. This will include consideration of your efforts to be proactive in obtaining alternate supplies, conserving limited supplies, and planning for future droughts.

Water Right Holder

Page 2

November 19, 2012

A hearing before the Commission will be held to affirm, modify, or set aside the suspension order. This matter is scheduled for consideration at the Commission Agenda on December 5, 2012, at 9:30 a.m. at 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753.

Water rights issued with multiple uses may continue to divert water for municipal, domestic, and power generation purposes only. Junior permit holders with impoundments are not required to release any previously stored water; however, new inflows to impoundments must be passed downstream in order to meet senior needs.

These actions are guided by the priority doctrine, established in TWC §11.027, which specifies that in times of shortage, permitted water rights will be administered based on the priority date of each water right; that is, the earliest in time is senior. Additionally, certain domestic and livestock uses are superior in priority to permitted rights.

The TCEQ continues to monitor the situation closely. Should senior or superior needs not be fulfilled as a result of these suspensions, please be aware that TCEQ may take additional actions to protect the priority call. If conditions improve, we may be able to lift the suspensions.

You may find additional drought information on TCEQ's drought web page at: <http://www.tceq.texas.gov/response/drought> or by contacting the TCEQ Drought Hotline at 1-800-447-2827. You may also contact your TCEQ Regional Office or Ms. Keller at the TCEQ Central Office in Austin at 512-239-1768 should you have additional questions on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar", with a long horizontal flourish extending to the right.

Zak Covar
Executive Director
Texas Commission on Environmental Quality

Enclosure