

Bryan W. Shaw, Ph.D., *Chairman*
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Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 8, 2011

CERTIFIED MAIL

Re: Alert for Permitted State Surface Water Diversions in the Brazos River Basin

Dear Water Right Holder:

By letters dated May 18 and June 27, 2011, the Texas Commission on Environmental Quality (TCEQ) notified affected water right holders in the middle and lower Brazos River Basin that certain non-municipal diversions of state surface water had been suspended due to a senior priority call. In accordance with the Texas Water Code (TWC), §5.013(a)(1), the TCEQ is responsible for enforcing water rights, which requires protecting senior surface water rights, and must take action in response to the senior priority call.

With no immediate relief forecasted, the TCEQ is now suspending certain diversions in the upper-middle Brazos Basin below Lake Possum Kingdom. Suspended water rights include water right permits with a priority date of 1960 and later (excluding those for municipal uses and power generation), term water right permits, and temporary water right permits. Domestic and livestock diversions are not subject to this suspension. Water right permits 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. The most senior water rights are served first during times of drought with domestic and livestock uses superior to any appropriated rights. Water rights are suspended or curtailed by priority date, with the most recently issued – or “junior” – priority users suspended before senior water rights in the area.

At this time, **you are *not* required to suspend your surface water diversion for municipal or domestic use or power generation** even though all or part of your water right is junior to the senior priority call. **However, to ensure we can continue to maintain adequate supplies of surface waters for diverters, the TCEQ is now requiring that all municipalities in senior call areas that have not been suspended due to the senior call must implement mandatory water use restrictions in their drought contingency plans that include prevention of outdoor lawn watering. This will assist the TCEQ in managing the surface water flows in the basin and may help avoid curtailment of junior municipal surface water rights. This action is required because the TCEQ cannot continue to protect municipalities under its concern for and duty to protect public health and welfare if the municipalities are still allowing outdoor watering of lawns and landscapes.**

Please notify the TCEQ that you have implemented mandatory provisions of your drought contingency plan that prevent outdoor lawn watering. You can notify us by using the online form available on the agency’s drought page at: <http://www.tceq.texas.gov/response/drought>. If you

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need assistance with completing the form or to provide notification and to answer any of your questions, you can call our Small Business and Local Government Assistance hotline at 1-800-441-2827.

The TCEQ continues to monitor the situation closely and strives to balance protection of the senior surface water rights while attempting to minimize the impact to junior water right holders, within TCEQ's authority. Should senior needs not be fulfilled as a result of suspension of these diversions, please be aware that TCEQ may take additional actions in order to protect the senior priority call.

You may find additional drought information on TCEQ's drought web page, located at: <http://www.tceq.texas.gov/agency/drought.html> or by contacting the TCEQ Drought Hotline at 1-800-447-2827. You may also contact your TCEQ Regional Office or Amy Settemeyer, Water Rights Liaison, at the TCEQ Central Office in Austin at 512-239-2588 should you have additional questions on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Vickery". The signature is written in a cursive style with a large, looping "y" at the end.

Mark R. Vickery, P.G.
Executive Director