

Buddy Garcia, *Chairman*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 1, 2009

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

Dear Water Right Holder:

By letter dated August 10, 2009, you were originally notified that your diversion of state surface water from the Brazos River Basin has been suspended. The Texas Commission on Environmental Quality (TCEQ) has received a priority call on surface water from senior water rights downstream of your diversion point in the basin. In accordance with Texas Water Code (TWC), Section 5.013(a)(1), the TCEQ is responsible for protecting senior surface water rights, therefore, action was taken by the TCEQ in response to the senior priority call.

The priority doctrine established in TWC, Section 11.027, determines that the most senior water rights will be served first during times of drought. As a result, junior water rights, or those rights issued most recently, will be suspended or curtailed before the senior water rights in the area. Furthermore, in accordance with the TWC, the flows of the Brazos River must be available for use by land owners with property adjacent to the Brazos River for domestic and livestock (D&L) use as part of their inherent riparian rights. As such, D&L users have superiority over any appropriated water rights.

The lack of significant rainfall in the area and the declining flow of the Brazos River have impacted many water rights containing flow restrictions; therefore, these permittees are currently not allowed to divert any surface water. In addition, all temporary water rights in the basin have been suspended and no additional temporary permits are being approved at this time. The TCEQ continues to monitor the situation on a daily basis 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 legal authority. However, should drought conditions continue to persist, additional suspensions of remaining junior water rights may be necessary.

With no immediate relief forecasted, the TCEQ requires that you take immediate action to suspend **all non-municipal** diversions from the Brazos River with a **priority date of 1980 and later** until further notice. Should your water right permit include authorization for impoundment of water, please note that you are **not** required to release any previously stored water; however, you are required by law under a senior call to pass any current inflows to your impoundment downstream in order to meet senior needs. Failure to comply with this suspension could result in TCEQ taking enforcement action including but not limited to penalties for documented violations.

Should senior needs not be fulfilled as a result of suspension of these diversions, please be aware that TCEQ may take additional actions, including suspension of junior municipal diversions, in order to protect the senior priority call. You may find additional drought information on the TCEQ's drought web page, located at: <http://www.tceq.state.tx.us/agency/drought.html> or by contacting the TCEQ Drought Hotline at 800-447-2827. Should you no longer be the owner of this water right permit, please contact the Water Right Permitting Team at 512-239-4619 to discuss options for change of ownership. We thank you for your cooperation.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Mark R. Vickery".

Mark R. Vickery, P.G.  
Executive Director