



Questions from the TCEQ’s Workshops on Drought Emergency Planning: Answers to Help Drinking-Water Systems Prepare for Emergencies

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Rates

Can investor-owned utilities (IOUs) charge customers a penalty if it is not stated in the tariff?

No, penalties must be included in the tariff. Additionally, you may want to update your service agreements to include language about penalties. Any amendments to the service agreement must be signed by the customer.

Can our IOU put conservation rates in place? If so, how do we do that?

You may include a surcharge in your tariff. A water-supply corporation or an IOU must go through the process of changing rates to initiate a conservation rate.

We can help water providers set up a conservation rate. Call Stacy Foster, coordinator in TCEQ's Financial, Managerial, and Technical program, at 512-239-3105.

Water Rights

Who authorizes and enforces water rights (rights to surface water)?

While our TCEQ water-rights staff authorizes water rights, our TCEQ watermasters, watermaster deputies, and TCEQ regional staff members are responsible for enforcing those water rights.

Our permitting staff for water rights processes applications for new or amended water rights. In Texas, we are guided by the priority doctrine, which—when simplified—explains that each appropriated water right is like a ticket for a place in line for available water.

The older, or more senior water-right holders are entitled to water before newer, or more recently issued—“junior”—water-right holders. A senior water-right holder can make a priority call when it is not getting its authorized water.

A priority call is a request from a senior water-right holder that water rights be suspended or adjusted so that the senior water right can get its water. When a call is received, TCEQ personnel look at streamflow conditions and water use, among other factors outlined in Title 30, Texas Administrative Code, Chapter 36 (30 TAC 36), to determine the appropriate response to the call.

In areas of the state with a watermaster, the watermaster monitors diversions and enforces water-right permits. In other areas of the state, TCEQ regional staff members enforce water rights.

How does the agency determine whether to issue water-right suspensions or adjustments? How are suspensions and adjustments enforced?

When a water-right holder requests a priority call—or “makes a senior call”—for water, we review all permits in the area affected by the call and collect information on priority dates, amounts, diversion rates, type of use, and current water use. We also collect information from the water-right holder to determine how much water is needed. Based on this information, the TCEQ suspends or adjusts water rights to make water available for the senior caller while affecting the fewest water rights. In addition, as during the 2011 drought, our regional staff members investigate unauthorized diversions.

Where would I find rules for water-right suspensions?

TCEQ's Chapter 36 rules govern suspensions or adjustments in non-watermaster areas. House Bill 2694 (the TCEQ sunset bill that passed in 2011) required new rules to define “drought” and “emergency shortage of water” as well as establish procedures for water-right calls. These rules became effective on May 3, 2012.

Can water rights be taken away?

In accordance with Texas Water Code 11.173, a water right may be cancelled, in whole, or in part, if it has not been put to beneficial use for 10 years. Notice and a hearing, in accordance with TWC 11.175–176, must precede the cancellation.

How is contract water affected by a priority call?

Water under a contract can be affected by a priority call if the underlying water right is affected. For example, a water supplier affected by a priority call may need to reduce the amount of water it sends to its customers, based on the river authority's drought contingency planning and its contracts with its customers.

How is the watermaster program funded?

Through fees. Specifically, appropriated water-right holders in a watermaster area must pay an annual fee.

Drought Contingency Plans and Conservation

Will the TCEQ update templates for drought contingency plans to include nonessential water use—such as washing sidewalks and cars—and to address water availability?

Templates for drought contingency plans were originally designed to be short term.

The TCEQ is updating the templates for drought contingency plans; however, every plan should change as your water system changes or as conditions change. The Office of Water can help you develop an appropriate drought contingency plan.

Groundwater conservation districts and the TCEQ have requirements for drought contingency plans. Which authority's rules apply?

Water systems should use the most restrictive set of rules. We conduct administrative reviews of drought contingency plans for compliance with 30 TAC 288. The TCEQ does not enforce compliance of the rules required by a groundwater conservation district. The Office of Water can answer your questions about complying with the TCEQ's rules for drought contingency plans. Contact your local groundwater conservation district about compliance with its rules.

What can we do about customers who don't cut back on their usage?

You must address the penalties for violations of water-use restrictions in the drought contingency plan. Systems may impose surcharges for excessive water use.

Is there a certain time when cities need to start restricting water use, or is it up to city management to make that call?

The city should follow its drought contingency plan to implement various stages of restrictions. Review your plan to make sure the triggers are reasonable and timely enough to ensure that water will be available for your community. Plans must include water restrictions.

If a mobile-home park purchases water, and the system it purchases from moves to a different stage in its drought contingency plan, does the mobile-home park also switch? Does it need to notify its tenants?

Yes, the park should follow what its supplier is doing and implement the appropriate level of water-use restrictions. This requires notification of the tenants.

What steps do we take to proceed with emergency water conservation and drought management activities?

You should follow your drought contingency plan and implement restrictions to prevent an emergency. Notify the TCEQ when you change your drought stages.

Part of a good plan involves education and outreach to help residents understand when and why they would be asked to follow water use restrictions. The TCEQ can help you update your drought contingency plan.

If you find yourself in a water emergency, contact the TCEQ Office of Water 512-239-4691.

Do you foresee any state-mandated conservation efforts?

Not at this time. The TCEQ can only recommend that systems implement their drought contingency plans.

Property Rights

What rights do property owners have when investigators are on their property?

The TCEQ has the authority to conduct investigations to ensure compliance. While the TCEQ does not go through locked gates, these investigations may be unannounced.

What are vested groundwater rights? Who manages and regulates their use?

Vested water rights involve groundwater that is brought to the surface. Groundwater production and use is managed and regulated by local or regional groundwater conservation districts.

Groundwater conservation districts were first formed after the record drought in the 1950s. There are currently 99 groundwater conservation districts in Texas, each with its own rules.

Areas that are not within a groundwater conservation district are subject to the *rule of capture* that essentially provides that groundwater, once it has been captured by a well and brought to the surface, belongs to the landowner.

Future Water Planning

What is being done at the state level to develop water resources?

The state water plan, developed by the Texas Water Development Board identifies reservoirs that may need to be developed for water supply in the future. It's a long process, and it will be many years before a reservoir is ready. In the meantime, the TWDB is aggressively looking into innovative technologies and water reuse.

Are there any incentives for cities to regionalize their supplies?

Financial savings are one incentive. Regionalization can cut some of the operating costs for individual systems.

Funding Options

Would it be possible to distribute loans through the local councils of governments instead of the Governor's Land Office, giving cities more local control to speed up the process? Can we use the funds set aside by the governor to improve our water reclamation plants for reusing our effluent?

Money has been funneled to emergency agencies like fire and police with the past promise that federal grant money will be available to small utilities.

Are any grants available through the Texas Water Development Fund?

Grants are very limited. Most funds are available as loans.

If the municipality cannot afford to drill new water wells, will financial assistance be available from a state agency or fund?

There is some assistance available through the Texas Department of Agriculture and the Texas Water Development Board. There are requirements, deadlines, and a specific application process. Contact the TWDB by e-mail, <Financial_Assistance@twdb.texas.gov>, or call 512-463-7853. Contact Tom Entsminger at the Texas Department of Agriculture, Community Development Block Grants, <Tom.Entsminger@TexasAgriculture.gov>, or call him at 512-936-7891. Funding is limited.

Groundwater Planning

Where can I get specific information on planning for groundwater drought emergencies?

Decisions on groundwater are mostly made at a local or regional level. Water systems are encouraged to contact their local groundwater conservation districts for information. If you are not located within a groundwater conservation district, contact the Texas Water Development Board for assistance.

Who can we contact to check the water level or health of our well?

Your water conservation district may be able to assist with water levels. They also may look at the health of the existing well. The Texas Water Development Board may be able to provide regional ground water levels. Also, you may access the Texas Department of Licensing and Regulation's State of Texas Well Report Submission and Retrieval System at <www.license.state.tx.us/wwd/wwd.htm>. This program has been developed by the Texas Water Development Board in cooperation with the TDLR and the Texas Water Information Network.

Utilities

How many water systems are there in Texas?

Approximately 7,000.

Exceptions

We have recently drilled an emergency well. We have not received an easement exception yet. If an emergency occurs, can we use the well?

Yes, you may use the well in an emergency. Please inform the TCEQ Water Supply Division if this situation occurs. If any issues arise you may need to increase disinfectant levels or make operational adjustments.

As part of voluntary water restrictions, will the TCEQ allow us to flush dead-end mains less frequently?

The agency has allowed water systems to lengthen the time between flushings; however, water quality must be maintained. Contact your regional office before discontinuing flushing dead end mains.

State Government

How do state agencies keep the governor informed of the situation on the ground?

The State Drought Preparedness Council meets regularly, and the chairman from the Texas Division of Emergency Management is in contact with the Governor's Office.

Emergency Plans

What alternative water sources are available?

Alternative sources could include emergency connections with neighboring communities, or new wells.

How many months in advance should a city begin the process for securing an emergency water supply?

As soon as you are aware you will need another water supply, you should begin to determine what options work best for your system.

You might require an agreement with a nearby system for an interconnection. If hauling water is your best option, we list licensed haulers at the TCEQ website: <www.tceq.texas.gov/assets/public/agency/water_haulers.pdf>. As soon as you have determined your options, send in the appropriate paperwork.

Alternative Sources and Innovative Technology

Has anyone looked at using reverse osmosis or some other method of utilizing the brackish ground water found throughout West Texas?

Reverse osmosis is one technology a system can use, but there is the cost of treatment to consider as well as the amount and type of contaminant and removal of waste. It is up to each system to determine its best option, whether it is blending with an approved source or using another technology.

What progress is being made in assisting communities with desalination projects to produce potable water, both in funding and technology?

Desalination is a local issue in various parts of the state. The Texas Water Development Board does have some funding available for research of effective technologies.

If there is a specific method a system wants to use, the TCEQ may look at it as a pilot project using an innovative technology.

Has desalination been used to recharge large reservoirs or aquifers?

No, because it is cost prohibitive on a large scale. Emergency desalination units are available.

Why can't they use desalination, like on a ship?

Desalinated water quality isn't optimal, and it typically can't meet a large demand. The water is readily available for a ship, but it wouldn't be for a landlocked community.

Some water systems are looking into water reuse from wastewater effluent. How will this affect the downstream water systems and water-right holders?

The effect of water reuse on downstream water systems and water-right holders will depend on the circumstances.

Wastewater effluent that is discharged into a stream adds to the flow of water. Diverting this water from a stream (indirect reuse) requires a water-right permit. Downstream water-right holders can still make a priority call if they were not getting the water they needed.

Direct water reuse requires authorization under Chapter 210 of TCEQ rules. It is possible that systems indirectly reusing water under their water rights could change their authorizations for reuse, so they become direct users. This would remove water from the streamflow. The senior water-right holders could still make a priority call, but the system directly reusing water would not be affected by the call.

Oil and Gas

Are there plans for the TCEQ to regulate oil-company use of fresh water for drilling and hydraulic fracturing?

Not at this time.

Why can oil and gas exploration companies use water without getting permits?

The use of surface water for oil and gas exploration requires a water-use permit.

Oil and gas exploration using groundwater is exempt from permitting. The industry has made efforts to use water more efficiently.

Contacts

Office of Water: 512-239-4691

The Office of Water contains:

Water Rights

Drought Contingency Plans

Public Drinking Water Section

Technical Review and Oversight Team (for exceptions)

Small Business and Local Government Assistance: 800-447-2827

Free, confidential compliance assistance: <TexasEnviroHelp.org>