

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 7, 2021

RE: Alert for Permitted State Surface Water Diversions

Dear County Judge:

Drought conditions currently exist across most of Texas. The National Weather Service's Climate Prediction Center seasonal drought outlook predicts that dry conditions will continue to persist in the coming months. Persistent drought conditions can result in low or reduced stream flows and shortages can impact senior and superior water rights. The Texas Commission on Environmental Quality (TCEQ) is closely monitoring the situation.

As a first response, the TCEQ is notifying water right holders throughout the state about potential impacts to water rights. On the reverse, you will find that notification letter for your reference. Additional information can also be found at the TCEQ's website at: <http://www.tceq.texas.gov/response/drought>. This site will be updated as the drought continues.

If you have any questions regarding this process, please contact Earl Lott, Director, Office of Water at (512) 239-2047.

Sincerely,

A handwritten signature in black ink that reads "Toby Baker".

Toby Baker
Executive Director

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The TCEQ is responsible for protecting senior and superior water rights, as well as for ensuring water right holders divert state water only in accordance with their permits. Texas water law 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, exempt domestic and livestock uses are superior to permitted rights.

If the TCEQ suspends water rights in response to drought conditions, it must be done according to the priority doctrine, which is first in time, first in right. Under the *TCEQ v. Texas Farm Bureau* decision, the TCEQ will not be able to exempt any junior water rights based on public health, safety, or welfare concerns, including junior water rights used for municipal purposes or power generation, if suspension is necessary to satisfy senior or superior water rights.

It is not possible to predict how severe drought conditions may become, or how long conditions will persist. You may wish to investigate alternative sources of water, particularly if your water right is your sole source of supply. Additionally, we strongly encourage public water systems to review, update, and implement Drought Contingency Plans, as necessary, to prepare for the possibility of worsening and/or prolonged drought conditions. General information about the drought may be found on the TCEQ's website at: <http://www.tceq.texas.gov/response/drought>. This site will be updated as the drought continues.

If you have any questions regarding this issue, please contact the Water Rights Permitting Team at (512) 239-4600.

Sincerely,

A handwritten signature in black ink, appearing to read "Toby Baker".

Toby Baker
Executive Director