

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE B. WATER RIGHTS

CHAPTER 11. WATER RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. VESTED RIGHTS NOT AFFECTED. (a) Nothing in this code affects vested private rights to the use of water, except to the extent that provisions of Subchapter G of this chapter might affect these rights.

(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.002. DEFINITIONS. In this chapter and in Chapter 12 of this code:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.

(5) "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.

(6) "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a

person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

(7) Renumbered as subd. (6) by Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985.

(8) "Conservation" means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(9) "Conserved water" means that amount of water saved by a holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application.

(10) "Surplus water" means water in excess of the initial or continued beneficial use of the appropriator.

(11) "River basin" means a river or coastal basin designated by the board as a river basin under Section [16.051](#). The term does not include waters originating in the bays or arms of the Gulf of Mexico.

(12) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management;

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and

(G) aquaculture, as defined by Section [134.001](#), Agriculture Code.

(13) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(14) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(15) "Environmental flow analysis" means the application of a scientifically derived process for predicting the response of an ecosystem to changes in instream flows or freshwater inflows.

(16) "Environmental flow regime" means a schedule of flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section [11.1471](#).

(18) "Advisory group" means the environmental flows advisory group.

(19) "Science advisory committee" means the Texas environmental flows science advisory committee.

(20) "Best management practices" means those voluntary efficiency measures developed by the commission and the board that save a quantifiable amount of water, either directly or

indirectly, and that can be implemented within a specified time frame.

(21) "Utility commission" means the Public Utility Commission of Texas.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.01; Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.057, eff. Aug. 12, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 2.02, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.04, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.04, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.001, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.05, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 1, eff. September 1, 2017.

Sec. 11.003. STREAMS THAT FORM BOUNDARIES INCLUDED. This chapter applies to all streams or other sources of water supply lying upon or forming a part of the boundaries of this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.004. COMMISSION TO RECEIVE CERTIFIED COPIES OF JUDGMENTS, ETC. When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the commission is given supervision by law, the clerk of the court shall immediately transmit to the commission a certified copy of the judgment, decree, or order.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985.

Sec. 11.005. APPLICABILITY TO WORKS UNDER FEDERAL RECLAMATION ACT. This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 et seq.), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. RIGHTS IN STATE WATER

Sec. 11.021. STATE WATER. (a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.022. ACQUISITION OF RIGHT TO USE STATE WATER. The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.023. PURPOSES FOR WHICH WATER MAY BE APPROPRIATED.

(a) To the extent that state water has not been set aside by the commission under Section [11.1471\(a\)\(2\)](#) to meet downstream instream flow needs or freshwater inflow needs, state water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

(6) recreation and pleasure;

(7) public parks;

(8) game preserves; and

(9) recharge into an aquifer underlying this state other than an aquifer described under Subsection (c) through surface infiltration or an aquifer recharge project as defined by Section [27.201](#).

(b) State water also may be appropriated, stored, or diverted for any other beneficial use.

(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water

can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

(d) When it is put or allowed to sink into the ground, water appropriated under Subsections (a)(9) and (c) loses its character and classification as state water, storm water, or floodwater and is considered percolating groundwater.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code. The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.03, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.02, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.05, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.05, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 1, eff. June 10, 2019.

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being. The legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d) The legislature has not expressly authorized granting water rights exclusively for:

- (1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or
- (2) other similar beneficial uses.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1351
(H.B. 3), Sec. 1.06

(d-1) The legislature has determined that existing water rights that are converted to water rights for environmental purposes should be enforced in a manner consistent with the enforcement of water rights for other purposes as provided by the laws of this state governing the appropriation of state water.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1430
(S.B. 3), Sec. 1.06

(d-1) The legislature has determined that existing water rights that are amended to authorize use for environmental purposes should be enforced in a manner consistent with the enforcement of

water rights for other purposes as provided by the laws of this state governing the appropriation of state water.

(d-2) The legislature finds that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available.

(d-3) The legislature finds that:

(1) in those basins in which water is available for appropriation, the commission should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water that will be set aside for instream flow and freshwater inflow protection is not sufficient to fully satisfy the environmental flow standards established by the commission, a variety of market approaches, both public and private, for filling the gap must be explored and pursued.

(d-4) The legislature finds that while the state has pioneered tools to address freshwater inflow needs for bays and estuaries, there are limitations to those tools in light of both scientific and public policy evolution. To fully address bay and estuary environmental flow issues, the foundation of work accomplished by the state should be improved. While the state's instream flow studies program appears to encompass a comprehensive and scientific approach for establishing a process to assess instream flow needs for rivers and streams across the state, more extensive review and examination of the details of the program, which may not be fully developed until the program is under way, are needed to ensure an effective tool for evaluating riverine environmental flow conditions.

(d-5) The legislature finds that the management of water to meet instream flow and freshwater inflow needs should be evaluated on a regular basis and adapted to reflect both improvements in science related to environmental flows and future changes in

projected human needs for water. In addition, the development of management strategies for addressing environmental flow needs should be an ongoing, adaptive process that considers and addresses local issues.

(d-6) The legislature finds that recommendations for state action to protect instream flows and freshwater inflows should be developed through a consensus-based, regional approach involving balanced representation of stakeholders and that such a process should be encouraged throughout the state.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process.

(f) The legislature recognizes that effective implementation of the approach provided by this chapter for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

Added by Acts 2003, 78th Leg., ch. 1242, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.06, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 5, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.06, eff. September 1, 2007.

Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the environmental flows advisory group.

(b) The advisory group is composed of nine members as follows:

(1) three members appointed by the governor;

(2) three members of the senate appointed by the lieutenant governor; and

(3) three members of the house of representatives appointed by the speaker of the house of representatives.

(c) Of the members appointed under Subsection (b)(1):

(1) one member must be a member of the commission;

(2) one member must be a member of the board; and

(3) one member must be a member of the Parks and Wildlife Commission.

(d) Each member of the advisory group serves at the will of the person who appointed the member.

(e) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the advisory group.

(f) A member of the advisory group is not entitled to receive compensation for service on the advisory group but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory group, as provided by the General Appropriations Act.

(g) The advisory group may accept gifts and grants from any source to be used to carry out a function of the advisory group.

(h) The commission shall provide staff support for the advisory group.

(i) The advisory group shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the advisory group determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the advisory group shall take notice of the strong public policy imperative that exists in this state

recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. The advisory group shall specifically address:

(1) ways that the ecological soundness of those systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently.

(j) The advisory group may adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections [11.02361](#) and [11.02362](#).

(k) Chapter [2110](#), Government Code, does not apply to the size, composition, or duration of the advisory group.

(l) Not later than December 1, 2008, and every two years thereafter, the advisory group shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the advisory group;

(2) any studies conducted by the advisory group;

(3) any legislation proposed by the advisory group;

(4) progress made in implementing Sections [11.02361](#) and [11.02362](#); and

(5) any other findings and recommendations of the advisory group.

(m) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. [1397](#)), Sec. 21(1), eff. September 1, 2023.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. [3](#)), Sec. 1.07, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 1.07, eff. September 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. [1397](#)), Sec. 21(1),

eff. September 1, 2023.

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) The Texas environmental flows science advisory committee consists of at least five but not more than nine members appointed by the advisory group.

(b) The advisory group shall appoint to the science advisory committee persons who will provide an objective perspective and diverse technical expertise, including expertise in hydrology, hydraulics, water resources, aquatic and terrestrial biology, geomorphology, geology, water quality, computer modeling, and other technical areas pertinent to the evaluation of environmental flows.

(c) Members of the science advisory committee serve five-year terms expiring March 1. A vacancy on the science advisory committee is filled by appointment by the co-presiding officers of the advisory group for the unexpired term.

(d) Chapter [2110](#), Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) The science advisory committee shall:

(1) serve as an objective scientific body to advise and make recommendations to the advisory group on issues relating to the science of environmental flow protection; and

(2) develop recommendations to help provide overall direction, coordination, and consistency relating to:

(A) environmental flow methodologies for bay and estuary studies and instream flow studies;

(B) environmental flow programs at the commission, the Parks and Wildlife Department, and the board; and

(C) the work of the basin and bay expert science teams described in Section [11.02362](#).

(f) To assist the advisory group to assess the extent to which the recommendations of the science advisory committee are considered and implemented, the commission, the Parks and Wildlife Department, and the board shall provide written reports to the advisory group, at intervals determined by the advisory group, that describe:

(1) the actions taken by each agency in response to each recommendation; and

(2) for each recommendation not implemented, the reason it was not implemented.

(g) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 21(2), eff. September 1, 2023.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.07, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.07, eff. September 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 21(2), eff. September 1, 2023.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) For the purposes of this section, the advisory group, not later than November 1, 2007, shall define the geographical extent of each river basin and bay system in this state for the sole purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) The advisory group shall give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, and

the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) For the river basin and bay systems listed in Subsection (b)(1):

(1) the advisory group shall appoint the basin and bay area stakeholders committee not later than November 1, 2007;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2008;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the advisory group, and the commission not later than March 1, 2009, except that at the request of the basin and bay area stakeholders committee for good cause shown, the advisory group may extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee shall submit to the commission its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2009; and

(5) the commission shall adopt the environmental flow standards as provided by Section [11.1471](#) not later than September 1, 2010.

(d) The advisory group shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2) not later than September 1, 2008, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2009. The advisory group shall establish a schedule for the performance of the tasks listed in Subsections (c)(2) through (5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the

advisory group with regard to the schedule applicable to that river basin and bay system. The advisory group shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the advisory group shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The advisory group shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the board, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The advisory group may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the advisory group has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The advisory group shall appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Chapter [2110](#), Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The membership of each committee must:

(1) reflect a fair and equitable balance of interest groups concerned with the particular river basin and bay system for which the committee is established; and

(2) be representative of appropriate stakeholders, including the following if they have a presence in the particular river basin and bay system for which the committee is established:

(A) agricultural water users, including representatives of each of the following sectors:

(i) agricultural irrigation;
(ii) free-range livestock; and
(iii) concentrated animal feeding operation;

(B) recreational water users, including coastal recreational anglers and businesses supporting water recreation;

(C) municipalities;

(D) soil and water conservation districts;

(E) industrial water users, including representatives of each of the following sectors:

(i) refining;
(ii) chemical manufacturing;
(iii) electricity generation; and
(iv) production of paper products or timber;

(F) commercial fishermen;

(G) public interest groups;

(H) regional water planning groups;

(I) groundwater conservation districts;

(J) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and

(K) environmental interests.

(g) Members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(h) Meetings of a basin and bay area stakeholders committee must be open to the public.

(i) Each basin and bay area stakeholders committee shall establish a basin and bay expert science team for the river basin and bay system for which the committee is established. The basin and bay expert science team must be established not later than six

months after the date the basin and bay area stakeholders committee is established. Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Each basin and bay expert science team must be composed of technical experts with special expertise regarding the river basin and bay system or regarding the development of environmental flow regimes. A person may serve as a member of more than one basin and bay expert science team at the same time.

(j) The members of a basin and bay expert science team serve five-year terms expiring April 1. A vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) The science advisory committee shall appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. The commission, the Parks and Wildlife Department, and the board shall provide technical assistance to each basin and bay expert science team, including information about the studies conducted under Sections 16.058 and 16.059, and may serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Where reasonably practicable, meetings of a basin and bay expert science team must be open to the public.

(m) Each basin and bay expert science team shall develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. In developing the analyses and recommendations, the science team must consider all reasonably available science, without regard to the need for the water for other uses, and the science team's recommendations must be based solely on the best science available. For the Rio Grande below Fort Quitman, any uses attributable to Mexican water flows must be excluded from environmental flow regime recommendations.

(n) Each basin and bay expert science team shall submit its

environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the advisory group, and the commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). The basin and bay area stakeholders committee and the advisory group may not change the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. For the Rio Grande, the basin and bay area stakeholders committee shall also consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The Rio Grande basin and bay expert science team may not recommend any environmental flow regime that would result in a violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission and to the advisory group in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to the commission, each basin and bay area stakeholders committee, with the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the advisory group a work plan. The work plan must:

(1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;

(2) prescribe specific monitoring, studies, and activities; and

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the advisory group, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the advisory group shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section [11.1471](#). Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) Notwithstanding the other provisions of this section, in the event the commission, by permit or order, has established an estuary advisory council with specific duties related to implementation of permit conditions for environmental flows, that council may continue in full force and effect and shall act as and perform the duties of the basin and bay area stakeholders committee under this section. The estuary advisory council shall add members from stakeholder groups and from appropriate science and technical groups, if necessary, to fully meet the criteria for membership established in Subsection (f) and shall operate under the provisions of this section.

(s) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. [1397](#)), Sec. 21(3), eff. September 1, 2023.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. [3](#)), Sec. 1.07, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 1.07,

eff. September 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 21(3),
eff. September 1, 2023.

Sec. 11.02363. PERIODIC REVIEW OF ENVIRONMENTAL FLOW STANDARDS; STATEWIDE WORK PLAN. (a) Periodically, the advisory group shall review the environmental flow standards for each river basin and bay system adopted by the commission under Section 11.1471. In conducting a review of the environmental flow standards, the advisory group shall:

(1) work with the science advisory committee and the pertinent basin and bay area stakeholder committees and basin and bay expert science teams in a manner similar to that provided by Section 11.02362;

(2) take into consideration the work plans developed under Section 11.02362(p);

(3) analyze previous environmental flow recommendations and standards;

(4) prescribe future monitoring, studies, and activities needed to better understand the environmental flow; and

(5) validate or refine:

(A) the environmental flow recommendations;

(B) the environmental flow standards adopted by the commission; and

(C) strategies to achieve the environmental flow standards.

(b) The advisory group shall develop a biennial statewide work plan to prioritize and schedule the review of environmental flow standards under Subsection (a). The work plan must establish:

(1) the methodology used to prioritize the review of the environmental flow standards of each river basin and bay system; and

(2) a timeline for the review of the environmental flow standards of each river basin and bay system.

(c) The advisory group shall submit to the commission:

(1) any review conducted under Subsection (a),

including recommendations to the commission for use in adopting rules under Section [11.1471](#); and

(2) the biennial work plan developed under Subsection (b).

Added by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. [1397](#)), Sec. 16, eff. September 1, 2023.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. The commission may approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section [11.042](#)(a-1), (b), or (c), [11.046](#)(b), [11.085](#)(k)(2)(F), [11.134](#)(b)(3)(D), [11.147](#), [11.1471](#), [11.1491](#), [11.150](#), [11.152](#), [16.058](#), [16.059](#), or [18.004](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. [3](#)), Sec. 1.07, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 1.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1016 (H.B. [4231](#)), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. [2031](#)), Sec. 5, eff. June 17, 2015.

Sec. 11.024. APPROPRIATION: PREFERENCES. In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals, it being the

public policy of the state and for the benefit of the greatest number of people that in the appropriation of water as herein defined, the appropriation of water for domestic and municipal uses shall be and remain superior to the rights of the state to appropriate the same for all other purposes;

(2) agricultural uses and industrial uses, which means processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

(6) recreation and pleasure; and

(7) other beneficial uses.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 5460, ch. 1026, Sec. 1, eff. Aug. 29, 1983; Acts 2001, 77th Leg., ch. 966, Sec. 2.03, eff. Sept. 1, 2001.

Sec. 11.025. SCOPE OF APPROPRIATIVE RIGHT. A right to use state water under a permit or a certified filing is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation, and all water not so used is considered not appropriated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.026. PERFECTION OF AN APPROPRIATION. No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated in the original declaration of intention to appropriate water or stated in a permit issued by the commission or one of its predecessors.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.027. RIGHTS BETWEEN APPROPRIATORS. As between

appropriators, the first in time is the first in right.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.0275. FAIR MARKET VALUE. Whenever the law requires the payment of fair market value for a water right, fair market value shall be determined by the amount of money that a willing buyer would pay a willing seller, neither of which is under any compulsion to buy or sell, for the water in an arms-length transaction and shall not be limited to the amount of money that the owner of the water right has paid or is paying for the water.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 2.04, eff. Sept. 1, 1997.

Sec. 11.029. TITLE TO APPROPRIATION BY LIMITATION. When an appropriator from a source of water supply has used water under the terms of a certified filing or a permit for a period of three years, he acquires title to his appropriation by limitation against any other claimant of water from the same source of water supply and against any riparian owner on the same source of water supply.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.030. FORFEITURE OF APPROPRIATION. If any lawful appropriation or use of state water is wilfully abandoned during any three successive years, the right to use the water is forfeited and the water is again subject to appropriation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.031. ANNUAL REPORT. (a) Not later than March 1 of each year, each person who has a water right issued by the commission or who impounded, diverted, or otherwise used state water during the preceding calendar year shall submit a written report to the commission on a form prescribed by the commission. The report shall contain all information required by the commission to aid in administering the water law and in making inventory of the

state's water resources. However, with the exception of those persons who hold water rights, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the commission as required by Subsection (a) or fails to timely comply with a request by the commission to make information available under Subsection (d) is liable for a penalty for each day the person fails to file the statement or comply with the request after the applicable deadline in an amount not to exceed:

(1) \$100 per day if the person is the holder of a water right authorizing the appropriation of 5,000 acre-feet or less per year; or

(2) \$500 per day if the person is the holder of a water right authorizing the appropriation of more than 5,000 acre-feet per year.

(b-1) The state may sue to recover a penalty under Subsection (b).

(c) The commission may waive the requirements of Subsection (a) of this section for a person who has a water right or uses state water in an area of the state where watermaster operations are established.

(d) Each person who has a water right issued by the commission or who impounds, diverts, or otherwise uses state water shall maintain water use information required under Subsection (a) on a monthly basis during the months a water rights holder uses permitted water. The person shall make the information available to the commission on the commission's request. The executive director shall establish a reasonable deadline by which a person must make available information requested by the commission under this subsection.

(e) Except as provided by Subsection (a), the commission may request information maintained under Subsection (d) only during a drought or other emergency shortage of water or in response to a complaint.

(f) Subsection (e) does not affect the authority of a watermaster to obtain water use information under other law.

(g) The commission shall establish a process by which a

report required under Subsection (a) may be submitted electronically through the Internet.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.003, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 427, Sec. 1, 2, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1020 (H.B. 2615), Sec. 1, eff. September 1, 2013.

Sec. 11.032. RECORDS. (a) A person who owns and operates a system of waterworks used for a purpose authorized by this code shall keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year can be determined.

(b) If the water is used for irrigation, the record must show the number of acres irrigated, the character of the crops grown, and the yield per acre. No survey is required to determine the exact number of acres irrigated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.033. EMINENT DOMAIN. The right to take water necessary for domestic and municipal supply purposes is primary and fundamental, and the right to recover from other uses water which is essential to domestic and municipal supply purposes is paramount and unquestioned in the policy of the state. All political subdivisions of the state and constitutional governmental agencies exercising delegated legislative powers have the power of eminent domain to be exercised as provided by law for domestic, municipal, and manufacturing uses and for other purposes authorized by this code, including the irrigation of land for all requirements of agricultural employment.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.034. RESERVOIR SITE: LAND AND RIGHTS-OF-WAY. An appropriator who is authorized to construct a dam or reservoir is granted the right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any public school land, university land, or asylum land of this state and the use of the rock, gravel, and timber on the site and right-of-way for construction purposes, after paying compensation as determined by the commission. An appropriator may acquire the reservoir site and rights-of-way over private land by contract.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.035. CONDEMNATION OF PRIVATE PROPERTY. (a) An appropriator may obtain rights-of-way over private land and may obtain the land necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

(b) The party obtaining private property by condemnation shall cause damages to be assessed and paid for as provided by the statutes of this state relating to eminent domain.

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the commission for the condemnation.

(d) The executive director shall have the proposed condemnation investigated. After the investigation, the commission may give notice to the party owning the land proposed to be condemned and hold a hearing on the proposed condemnation.

(e) If after a hearing the commission determines that the condemnation is necessary, the executive director may institute condemnation proceedings in the name of the State of Texas for the use and benefit of the party who applied for the condemnation and all others similarly situated.

(f) The parties at whose instance a condemnation suit is instituted shall pay the costs of the suit and condemnation in proportion to the benefits received by each party as fixed by the commission. Before using any of the condemned rights or property, a party receiving the rights or property shall pay the amount of costs

fixed by the commission.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the commission for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.004, eff. Sept. 1, 1985.

Sec. 11.036. CONSERVED OR STORED WATER: SUPPLY CONTRACT.

(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

(b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If the contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

(c) The terms of a contract may expressly provide that the person using the stored or conserved water is required to develop alternative or replacement supplies prior to the expiration of the contract and may further provide for enforcement of such terms by court order.

(d) If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.05, eff. Sept. 1, 1997.

Sec. 11.037. WATER SUPPLIERS: RULES AND REGULATIONS. (a) Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter shall make and publish reasonable rules and regulations relating to:

- (1) the method of supply;
- (2) the use and distribution of the water; and
- (3) the procedure for applying for the water and for paying for it.

(b) Each person, association of persons, corporation, and district authorized by law to carry out irrigation powers that is conserving or supplying water for any of the purposes authorized by this chapter may make and publish reasonable rules relating to water conservation, as defined by Subdivision (8)(B), Section [11.002](#), of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.10.

Sec. 11.038. RIGHTS OF OWNERS OF LAND ADJOINING CANAL, ETC.

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for agricultural uses, mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of the person's contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for agricultural uses, mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if the person has any water not contracted to others, shall furnish the water

necessary for these purposes at reasonable and nondiscriminatory prices.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 966, Sec. 2.04, eff. Sept. 1, 2001.

Sec. 11.039. DISTRIBUTION OF WATER DURING SHORTAGE. (a) If a shortage of water in a water supply not covered by a water conservation plan prepared in compliance with Texas Natural Resource Conservation Commission or Texas Water Development Board rules results from drought, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

(b) If a shortage of water in a water supply covered by a water conservation plan prepared in compliance with Texas Natural Resource Conservation Commission or Texas Water Development Board rules results from drought, accident, or other cause, the person, association of persons, or corporation owning or controlling the water shall divide the water to be distributed among all customers pro rata, according to:

(1) the amount of water to which each customer may be entitled; or

(2) the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation plan.

(c) Nothing in Subsection (a) or (b) precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 1126, Sec. 1, eff. June 15, 2001.

Sec. 11.040. PERMANENT WATER RIGHT. (a) A permanent water right is an easement and passes with the title to land.

(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the

commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The utility commission may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The commission may either return the deposit or pay it into the State Treasury.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.06, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 6, eff. September 1, 2013.

Sec. 11.042. DELIVERING WATER DOWN BANKS AND BEDS. (a) Under rules prescribed by the commission, a person, association of persons, corporation, water control and improvement district, water improvement district, or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion point of the appropriator.

(a-1) With prior authorization granted under rules prescribed by the commission, a person, association of persons, corporation, water control and improvement district, water improvement district, or irrigation district supplying water imported from a source located wholly outside the boundaries of

this state, except water imported from a source located in the United Mexican States, may use the bed and banks of any flowing natural stream in the state to convey water for use in this state. The authorization must:

(1) allow for the diversion of only the amount of water put into a watercourse or stream, less carriage losses; and

(2) include special conditions adequate to prevent a significant impact to the quality of water in this state.

(b) A person who wishes to discharge and then subsequently divert and reuse the person's existing return flows derived from privately owned groundwater must obtain prior authorization from the commission for the diversion and the reuse of these return flows. The authorization may allow for the diversion and reuse by the discharger of existing return flows, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these return flows. Special conditions may also be provided to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to divert and reuse future increases of return flows derived from privately owned groundwater must obtain authorization to reuse increases in return flows before the increase.

(c) Except as otherwise provided in Subsection (a) of this section, a person who wishes to convey and subsequently divert water in a watercourse or stream must obtain the prior approval of the commission through a bed and banks authorization. The authorization shall allow to be diverted only the amount of water put into a watercourse or stream, less carriage losses and subject to any special conditions that may address the impact of the discharge, conveyance, and diversion on existing permits, certified filings, or certificates of adjudication, instream uses, and freshwater inflows to bays and estuaries. Water discharged into a watercourse or stream under this chapter shall not cause a degradation of water quality to the extent that the stream segment's classification would be lowered. Authorizations under this section and water quality authorizations may be approved in a consolidated permit proceeding.

(d) Nothing in this section shall be construed to affect an existing project for which water rights and reuse authorizations have been granted by the commission before September 1, 1997.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.006, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 2.06, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1016 (H.B. [4231](#)), Sec. 2, eff. June 19, 2009.

Sec. 11.043. RECORDATION OF CONVEYANCE OF IRRIGATION WORK.

(a) A conveyance of a ditch, canal, or reservoir or other irrigation work or an interest in such an irrigation work must be executed and acknowledged in the same manner as a conveyance of real estate. Such a conveyance must be recorded in the deed records of the county in which the ditch, canal, or reservoir is located.

(b) If a conveyance of property covered by Subsection (a) of this section is not made in the prescribed manner, it is null and void against subsequent purchasers in good faith and for valuable consideration.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.044. ROADS AND HIGHWAYS. (a) An appropriator has the right to construct ditches, canals, or pipelines along or across all roads and highways necessary for the construction of waterworks. Bridges, culverts, or siphons shall be constructed at all road and highway crossings as necessary to prevent any impairment of the uses of the road or highway. Approval of the construction plans and specifications shall be obtained from the owner of the road or highway prior to the installation of conveyance facilities.

(b) If any public road, highway, or public bridge is located on the ground necessary for a damsite, reservoir, or lake, the commissioners court shall change the road and remove the bridge so that it does not interfere with the construction of the proposed

dam, reservoir, or lake. The party desiring to construct the dam, reservoir, or lake shall pay the expense of moving the bridge or roadway.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 939, ch. 353, Sec. 1, eff. Aug. 31, 1981.

Sec. 11.045. DITCHES AND CANALS. An appropriator is entitled to construct ditches and canals along or across any stream of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.046. RETURN SURPLUS WATER. (a) A person who takes or diverts water from a watercourse or stream for the purposes authorized by this code shall conduct surplus water back to the watercourse or stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so.

(b) In granting an application for a water right, the commission may include conditions in the water right providing for the return of surplus water, in a specific amount or percentage of water diverted, and the return point on a watercourse or stream as necessary to protect senior downstream permits, certified filings, or certificates of adjudication or to provide flows for instream uses or bays and estuaries.

(c) Except as specifically provided otherwise in the water right, water appropriated under a permit, certified filing, or certificate of adjudication may, prior to its release into a watercourse or stream, be beneficially used and reused by the holder of a permit, certified filing, or certificate of adjudication for the purposes and locations of use provided in the permit, certified filing, or certificate of adjudication. Once water has been diverted under a permit, certified filing, or certificate of adjudication and then returned to a watercourse or stream, however, it is considered surplus water and therefore subject to reservation for instream uses or beneficial inflows or to appropriation by others unless expressly provided otherwise in

the permit, certified filing, or certificate of adjudication.

(d) Water appropriated under a permit, certified filing, or certificate of adjudication which is recirculated within a reservoir for cooling purposes shall not be considered to be surplus for purposes of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.07, eff. Sept. 1, 1997.

Sec. 11.047. FAILURE TO FENCE. If a person, association of persons, corporation, or water improvement or irrigation district that owns or controls a ditch, canal, reservoir, dam, or lake does not keep it securely fenced, there is no cause of action against the owner of livestock that trespass.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.048. COST OF MAINTAINING IRRIGATION DITCH. (a) If an irrigation ditch is owned or used by two or more persons, mutual or cooperative companies, or corporations, each party who has an interest in the ditch shall pay his proportionate share of the cost of operating and maintaining the ditch.

(b) If a person who owns a joint interest in a ditch refuses to do or to pay for his proportionate share of the work that is reasonably necessary for the proper maintenance and operation of the ditch, the other owners may, after giving him 10 days written notice, proceed themselves to do his share of the necessary work and recover from him the reasonable expense or value of the work or labor performed. The action for the cost of the work may be brought in any court having jurisdiction over the amount in controversy.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.049. EXAMINATION AND SURVEY. A person may make any necessary examination and survey in order to select the most advantageous sites for a reservoir and rights-of-way to be used for any of the purposes authorized by this chapter, and for this purpose

a person may enter the land or water of any other person.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.050. TIDEWATER GATES, ETC. (a) An appropriator authorized to take water for irrigation, subject to the laws of the United States and the regulations made under its authority, may construct gates or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

(b) The work shall be done in such a manner that navigation of vessels on the stream is not obstructed, and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.051. IRRIGATION: LIEN ON CROPS. (a) A person who constructs a ditch, canal, dam, lake, or reservoir for the purpose of irrigation and who leases, rents, furnishes, or supplies water to any person for irrigation, with or without a contract, has a preference lien superior to every other lien on the irrigated crops. However, when any irrigation district or conservation and reclamation district obtains a water supply under contract with the United States, the board of directors of the district, by resolution entered in its minutes, with the consent of the secretary of the interior, may waive the preference lien in whole or in part.

(b) To enforce the lien, the lienholder has all the rights and remedies prescribed by Articles 5222 through 5239, Revised Civil Statutes of Texas, 1925.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff.

Sept. 1, 1977.

Sec. 11.052. ACTIVITIES UNDER THE FEDERAL RECLAMATION ACT. The Secretary of the Interior of the United States is authorized to conduct any activities in this state necessary to perform his duties under the federal reclamation act, as amended (43 U.S.C. Section 371 et seq.).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a) During a period of drought or other emergency shortage of water, as defined by commission rule, the executive director by order may, in accordance with the priority of water rights established by Section [11.027](#):

(1) temporarily suspend the right of any person who holds a water right to use the water; and

(2) temporarily adjust the diversions of water by water rights holders.

(b) The executive director in ordering a suspension or adjustment under this section shall ensure that an action taken:

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders;

(3) prevents the waste of water;

(4) takes into consideration the efforts of the affected water rights holders to develop and implement the water conservation plans and drought contingency plans required by this chapter;

(5) to the greatest extent practicable, conforms to the order of preferences established by Section [11.024](#); and

(6) does not require the release of water that, at the time the order is issued, is lawfully stored in a reservoir under water rights associated with that reservoir.

(c) The commission shall adopt rules to implement this section, including rules:

(1) defining a drought or other emergency shortage of water for purposes of this section; and

(2) specifying the:

(A) conditions under which the executive director may issue an order under this section;

(B) terms of an order issued under this section, including the maximum duration of a temporary suspension or adjustment under this section; and

(C) procedures for notice of, an opportunity for a hearing on, and the appeal to the commission of an order issued under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.03, eff. September 1, 2011.

SUBCHAPTER C. UNLAWFUL USE, DIVERSION, WASTE, ETC.

Sec. 11.081. UNLAWFUL USE OF STATE WATER. No person may wilfully take, divert, or appropriate any state water for any purpose without first complying with all applicable requirements of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 3, eff. Sept. 1, 1997.

Sec. 11.082. UNLAWFUL USE: CIVIL PENALTY. (a) A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a civil penalty of not more than \$5,000 for each day he continues the taking, diversion, or appropriation.

(a-1) Notwithstanding Section 18.002, this section does not apply to a violation of:

(1) Section 18.003 or a permit issued under that section; or

(2) Section 18.004 or an authorization granted under that section.

(b) The state may recover the penalties prescribed in Subsection (a) by suit brought for that purpose in a court of competent jurisdiction. The state may seek those penalties regardless of whether a watermaster has been appointed for the

water division, river basin, or segment of a river basin where the unlawful use is alleged to have occurred.

(c) An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1997, 75th Leg., ch. 1010, Sec. 3.01, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.08, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.08, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 6, eff. June 17, 2015.

Sec. 11.083. OTHER UNLAWFUL TAKING. (a) No person may wilfully open, close, change, or interfere with any headgate or water box without lawful authority.

(b) No person may wilfully use water or conduct water through his ditch or upon his land unless he is entitled to do so.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 4, eff. Sept. 1, 1997.

Sec. 11.084. SALE OF PERMANENT WATER RIGHT WITHOUT A PERMIT. No person may sell or offer to sell a permanent water right unless he has perfected a right to appropriate state water by a certified filing, or unless he has obtained a permit from the commission, authorizing the use of the water for the purposes for which the permanent water right is conveyed.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 5, eff. Sept. 1, 1997.

Sec. 11.0841. CIVIL REMEDY. (a) Nothing in this chapter

affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

(b) A district court may award the costs of litigation, including reasonable attorney fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of this chapter or a rule adopted pursuant to this chapter.

(c) For purposes of this section, the Parks and Wildlife Department has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right;

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.02, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.09, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.09, eff. September 1, 2007.

Sec. 11.0842. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236, or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this

section. The commission may assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

(a-1) Notwithstanding Section 18.002, this section does not apply to a violation of:

(1) Section 18.003 or a permit issued under that section; or

(2) Section 18.004 or an authorization granted under that section.

(b) The penalty may be in an amount not to exceed \$5,000 for each day the person is in violation of this chapter, the rule or order adopted under this chapter, or the permit, certified filing, or certificate of adjudication issued under this chapter. The penalty may be in an amount not to exceed \$1,000 for each day the person is in violation of the rule or order adopted under Section 16.236 of this code. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts, with special emphasis on the impairment of an existing permit, certified filing, or certificate of adjudication or the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the impact of the violation on the instream uses, water quality, fish and wildlife habitat, or beneficial freshwater inflows to bays and estuaries;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) demonstrated good faith, including actions

taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director shall issue a preliminary report stating the facts on which that conclusion was based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of the penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section and shall analyze each factor for the benefit of the commission.

(e) No later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) No later than the 20th day after the date on which notice is received, the person charged may either give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice of its decision to the person charged.

(h) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that a violation has occurred and may assess a penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and assesses an administrative penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court

for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commission by certified mail.

(1) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, it may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(o) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(p) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any penalty imposed under this section.

(q) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.02, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.10, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.10, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 7, eff. June 17, 2015.

Sec. 11.0843. FIELD CITATION. (a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, the executive director or a person designated by the executive director, including a watermaster or the watermaster's deputy, may issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator the option of either:

(1) without admitting to or denying the alleged violation, paying an administrative penalty in accordance with the predetermined penalty amount established under Subsection (b) and taking remedial action as provided in the citation; or

(2) requesting a hearing on the alleged violation in accordance with Section 11.0842.

(b) By rule the commission shall establish penalty amounts corresponding to types of violations of this chapter or rules or orders adopted or water rights issued under this chapter.

(c) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 3.02, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.11, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.11, eff. September 1, 2007.

Sec. 11.085. INTERBASIN TRANSFERS. (a) No person may take or divert any state water from a river basin in this state and transfer such water to any other river basin without first applying for and receiving a water right or an amendment to a permit, certified filing, or certificate of adjudication from the commission authorizing the transfer.

(b) The application must include:

(1) the contract price of the water to be transferred;

(2) a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category; and

(3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users.

(c) The applicant shall provide the information described by Subsection (b) of this section to any person on request and without cost.

(d) Prior to taking action on an application for an interbasin transfer, the commission shall conduct at least one public meeting to receive comments in both the basin of origin of the water proposed for transfer and the basin receiving water from the proposed transfer. Notice shall be provided pursuant to Subsection (g) of this section. Any person may present relevant information and data at the meeting on the criteria which the commission is to consider related to the interbasin transfer.

(e) In addition to the public meetings required by Subsection (d), if the application is contested in a manner requiring an evidentiary hearing under the rules of the commission, the commission shall give notice and hold an evidentiary hearing, in accordance with commission rules and applicable state law. An evidentiary hearing on an application to transfer water authorized under an existing water right is limited to considering issues related to the requirements of this section.

(f) Notice of an application for an interbasin transfer shall be mailed to the following:

(1) all holders of permits, certified filings, or certificates of adjudication located in whole or in part in the basin of origin;

(2) each county judge of a county located in whole or in part in the basin of origin;

(3) each mayor of a city with a population of 1,000 or more located in whole or in part in the basin of origin; and

(4) all groundwater conservation districts located in whole or in part in the basin of origin; and

(5) each state legislator in both basins.

(g) The applicant shall cause the notice of application for an interbasin transfer to be published in two different weeks within a 30-day period in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices.

(h) The notice of application must state how a person may obtain the information described by Subsection (b) of this section.

(i) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

(j) In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall:

(1) request review and comment on an application for an interbasin transfer from each county judge of a county located in whole or in part in the basin of origin. A county judge should make comment only after seeking advice from the county commissioners court; and

(2) give consideration to the comments of each county judge of a county located in whole or in part in the basin of origin

prior to taking action on an application for an interbasin transfer.

(k) In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall weigh the effects of the proposed transfer by considering:

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years;

(2) factors identified in the applicable approved regional water plans which address the following:

(A) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;

(B) the amount and purposes of use in the receiving basin for which water is needed;

(C) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections [11.147](#), [11.150](#), and [11.152](#) of this code in each basin. If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;

(3) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(4) the continued need to use the water for the purposes authorized under the existing permit, certified filing, or certificate of adjudication, if an amendment to an existing water right is sought; and

(5) the information required to be submitted by the applicant.

(1) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period, as determined by the commission based on consideration of the factors described by Subsection (k); and

(2) the applicant for the interbasin transfer has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(m) The commission may grant new or amended water rights under this section with or without specific terms or periods of use and with specific conditions under which a transfer of water may occur.

(n) If the transfer of water is based on a contractual sale of water, the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer shall contain a condition for a term or period not greater than the term of the contract, including any extension or renewal of the contract.

(o) The parties to a contract for an interbasin transfer may include provisions for compensation and mitigation. If the party from the basin of origin is a government entity, each county judge of a county located in whole or in part in the basin of origin may provide input on the appropriate compensation and mitigation for the interbasin transfer.

(p) A river basin may not be redesignated in order to allow a

transfer or diversion of water otherwise in violation of this section.

(q) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by confinement in the county jail for not more than six months.

(r) A person commits a separate offense each day he continues to take or divert water in violation of this section.

(s) Any proposed transfer of all or a portion of a water right under this section is junior in priority to water rights granted before the time application for transfer is accepted for filing.

(t) Any proposed transfer of all or a portion of a water right under this section from a river basin in which two or more river authorities or water districts created under Section 59, Article XVI, Texas Constitution, have written agreements or permits that provide for the coordinated operation of their respective reservoirs to maximize the amount of water for beneficial use within their respective water services areas shall be junior in priority to water rights granted before the time application for transfer is accepted for filing.

(u) An appropriator of water for municipal purposes in the basin of origin may, at the appropriator's option, be a party in any hearings under this section.

(v) The provisions of this section, except Subsection (a), do not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same permit, certified filing, or certificate of adjudication;

(2) a request for an emergency transfer of water;

(3) a proposed transfer from a basin to its adjoining coastal basin;

(4) a proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of

the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin; or

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream located in this state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1010, Sec. 2.08, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 12, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1016 (H.B. [4231](#)), Sec. 3, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1065 (H.B. [3233](#)), Sec. 1, eff. September 1, 2013.

Sec. 11.086. OVERFLOW CAUSED BY DIVERSION OF WATER. (a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river,

creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.087. DIVERSION OF WATER ON INTERNATIONAL STREAM.

(a) When storm water or floodwater is released from a dam or reservoir on an international stream and the water is designated for use or storage downstream by a specified user who is legally entitled to receive it, no other person may store, divert, appropriate, or use the water or interfere with its passage downstream.

(b) The commission may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

(1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;

(2) prescribe the time that releases of water may begin and end;

(3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;

(4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and

(5) establish other requirements the commission considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate its rules under this section shall be mailed by certified mail to each

diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the commission.

(d) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(a)(1), eff. Sept. 1, 1997.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.007, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 6, 60(a)(1), eff. Sept. 1, 1997.

Sec. 11.0871. TEMPORARY DIVERSION OF WATER ON INTERNATIONAL STREAM. (a) The commission may authorize, under conditions stated in an order, a watermaster to provide for the temporary diversion and use by holders of water rights of storm water or floodwater that spills from dams and reservoirs on an international stream and otherwise would flow into the Gulf of Mexico without opportunity for beneficial use.

(b) In an order made by the commission under this section, the commission may not discriminate between holders of water rights from an international stream except to the extent necessary to protect the holders of water rights from the same source of supply.

(c) The commission shall give notice by mail to holders of water rights from an international stream and shall hold an evidentiary hearing before entry of an order under this section.

Added by Acts 1981, 67th Leg., p. 293, ch. 117, Sec. 1, eff. May 13, 1981.

Sec. 11.088. DESTRUCTION OF WATERWORKS. No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for milling, mining, manufacturing, the development of power, domestic purposes, agricultural uses, or stock raising, with intent to:

(1) maliciously injure a person, association,

corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.06, eff. Sept. 1, 2001.

Sec. 11.089. JOHNSON GRASS OR RUSSIAN THISTLE. (a) No person who owns, leases, or operates a ditch, canal, or reservoir or who cultivates land abutting a reservoir, ditch, flume, canal, wasteway, or lateral may permit Johnson grass or Russian thistle to go to seed on the waterway within 10 feet of the high-water line if the waterway crosses or lies on the land owned or controlled by him.

(b) The provisions of this section are not applicable in Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde, and San Saba counties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 8, eff. Sept. 1, 1997.

Sec. 11.090. POLLUTING AND LITTERING. No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, bailing or barbed wire, earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 9, eff. Sept. 1, 1997.

Sec. 11.091. INTERFERENCE WITH DELIVERY OF WATER UNDER

CONTRACT. No person may wilfully take, divert, appropriate, or interfere with the delivery of conserved or stored water under Section 11.042 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 10, eff. Sept. 1, 1997.

Sec. 11.092. WASTEFUL USE OF WATER. A person who owns or has a possessory right to land contiguous to a canal or irrigation system and who acquires the right by contract to use the water from it commits waste if he:

(1) permits the excessive or wasteful use of water by any of his agents or employees; or

(2) permits the water to be applied to anything but a beneficial use.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.093. ABATEMENT OF WASTE AS PUBLIC NUISANCE. (a) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a purpose named in this chapter commits waste, and the commission may declare the works causing the waste to be a public nuisance. The commission may take the necessary action to abate the nuisance. Also, any person who may be injured by the waste may sue in the district court having jurisdiction over the works causing the waste to have the operation of the works abated as a public nuisance.

(b) In case of a wasteful use of water defined by Section 11.092 of this code, the commission shall declare the use to be a public nuisance and shall act to abate the nuisance by directing the person supplying the water to close the water gates of the person wasting the water and to keep them closed until the commission determines that the unlawful use of water is corrected.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.094. PENALTY FOR USE OF WORKS DECLARED PUBLIC

NUISANCE. No person may operate or attempt to operate any waterworks or irrigation system or use any water under contract with any waterworks or irrigation system that has been previously declared to be a public nuisance.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 11, eff. Sept. 1, 1997.

Sec. 11.096. OBSTRUCTION OF NAVIGABLE STREAMS. No person may obstruct the navigation of any stream which can be navigated by steamboats, keelboats, or flatboats by cutting and felling trees or by building on or across the stream any dike, milldam, bridge, or other obstruction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 12, eff. Sept. 1, 1997.

Sec. 11.097. REMOVAL OF OBSTRUCTIONS FROM NAVIGABLE STREAMS. (a) On its own motion or on written request from a commissioners court, the commission shall investigate a reported natural obstruction in a navigable stream caused by the accumulation of limbs, logs, leaves, other tree parts, or other debris. If making the investigation on request of a commissioners court, the commission must make its investigation not later than the 30th day after the date on which it receives the written request from the commissioners court.

(b) On completion of the investigation, if the commission determines that the obstruction is creating a hazard or is having other detrimental effect on the navigable stream, the commission shall initiate action to remove the obstruction.

(c) In removing an obstruction, the commission may solicit the assistance of federal and state agencies including the Corps of Engineers, Texas National Guard, the Parks and Wildlife Department, and districts and authorities created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution. Also, the commission may enter into contracts for services required to remove an obstruction. However, no river

authority may require the removal, relocation, or reconfiguration of a floating structure which was in place before the effective date of this Act and the effective date of any ordinance, rule, resolution, or other act of the river authority mandating such action unless the commission determines the structure is an obstruction to navigation.

Added by Acts 1987, 70th Leg., ch. 295, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. PERMITS TO USE STATE WATER

Sec. 11.121. PERMIT REQUIRED. Except as provided in Sections [11.1405](#), [11.142](#), [11.1421](#), [11.1422](#), and [18.003](#), no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 544, Sec. 1, eff. Aug. 31, 1987; Acts 1995, 74th Leg., ch. 183, Sec. 1, eff. May 23, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. [2031](#)), Sec. 8, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. [4097](#)), Sec. 3, eff. June 17, 2015.

Sec. 11.122. AMENDMENTS TO WATER RIGHTS REQUIRED. (a) All holders of permits, certified filings, and certificates of adjudication issued under Section [11.323](#) of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right. Without obtaining an amendment, the holder of a permit, certified filing, or certificate of adjudication that includes industrial or irrigation use may use or supply water for an agricultural use that was classified as industrial or irrigation before September 1, 2001.

(b) Subject to meeting all other applicable requirements of this chapter for the approval of an application, an amendment,

except an amendment to a water right that increases the amount of water authorized to be diverted or the authorized rate of diversion, shall be authorized if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment.

(b-1) A holder of a water right that begins using desalinated seawater after acquiring the water right has a right to expedited consideration of an application for an amendment to the water right if the amendment:

(1) authorizes the applicant to divert water from a diversion point that is different from or in addition to the point or points from which the applicant was authorized to divert water before the requested amendment;

(2) authorizes the applicant to divert from the different or additional diversion point an amount of water that is equal to or less than the amount of desalinated seawater used by the applicant;

(3) authorizes the applicant to divert from all of the diversion points authorized by the water right an amount of water that is equal to or less than the amount of water the applicant was authorized to divert under the water right before the requested amendment;

(4) authorizes the applicant to divert water from all of the diversion points authorized by the water right at a combined rate that is equal to or less than the combined rate at which the applicant was authorized to divert water under the water right before the requested amendment; and

(5) does not authorize the water diverted from the different or additional diversion point to be transferred to another river basin.

(b-2) The executive director or the commission shall prioritize the technical review of an application that is subject to Subsection (b-1) over the technical review of applications that

are not subject to that subsection.

(b-3) In addition to an application that meets the requirements of Subsection (b) and for which the commission has determined that notice or an opportunity for a contested case hearing is not required under another statute or a commission rule, an application for an amendment to a water right is exempt from any requirements of a statute or commission rule regarding notice and hearing or technical review by the executive director or the commission and may not be referred to the State Office of Administrative Hearings for a contested case hearing if the executive director determines after an administrative review that the application is for an amendment that:

(1) adds a purpose of use that does not substantially alter:

(A) the nature of the right from a right authorizing only nonconsumptive use to a right authorizing consumptive use; or

(B) a pattern of use that is explicitly authorized in or required by the original right;

(2) adds a place of use located in the same basin as the place of use authorized by the original right; or

(3) changes the point of diversion, provided that:

(A) the authorized rate of diversion is not increased;

(B) the original point of diversion and the new point of diversion are located in the same contiguous tract of land;

(C) the original point of diversion and the new point of diversion are from the same source of supply;

(D) there are no points of diversion from the same source of supply associated with other water rights that are located between the original point of diversion and the new point of diversion;

(E) there are no streamflow gauges located on the source of supply between the original point of diversion and the new point of diversion that are referenced in the original water right or in another water right authorizing a diversion from the same source of supply; and

(F) there are no tributary watercourses that enter the watercourse that is the source of supply located between the original point of diversion and the new point of diversion.

(c) The commission shall adopt rules to effectuate the provisions of this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.008, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 1.03, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.07, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 429 (S.B. 1430), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 17.001, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 534 (H.B. 1964), Sec. 1, eff. June 10, 2019.

Sec. 11.123. PERMIT PREFERENCES. The commission shall give preference to applications in the order declared in Section 11.024 of this code and to applications which will effectuate the maximum utilization of water and are calculated to prevent the escape of water without contribution to a beneficial public service.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.124. APPLICATION FOR PERMIT. (a) An application to appropriate unappropriated state water must:

- (1) be in writing and sworn to;
- (2) contain the name and post-office address of the applicant;
- (3) identify the source of water supply;
- (4) state the nature and purposes of the proposed use or uses and the amount of water to be used for each purpose;
- (5) state the location and describe the proposed

facilities;

(6) state the time within which the proposed construction is to begin;

(7) state the time required for the application of water to the proposed use or uses; and

(8) contain the name and address of the holder of any lien on:

(A) any water right permit, certified filing, or certificate of adjudication to be granted under the permit for which application is made; or

(B) any land to which that water right permit, certified filing, or certificate of adjudication would be appurtenant.

(b) If the proposed use is irrigation, the application must also contain:

(1) a description of the land proposed to be irrigated; and

(2) an estimate of the total acreage to be irrigated.

(c) If the application is for a seasonal permit, under the provisions of Section 11.137 of this code, the application must also state the months or seasons of the year the water is to be used.

(d) If the application is for a temporary permit under the provisions of Section 11.138 of this code, the application must also state the period of the proposed temporary use.

(e) If the application is for a term permit, the application form used must also state that on expiration of a term permit the applicant does not have an automatic right to renew the permit.

(f) If the application is for a permit to construct a storage reservoir, the application must also contain evidence that the applicant has mailed notice of the application to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir, will be located.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 405, Sec. 3, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1010, Sec. 2.09, eff. June 19, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1268 (H.B. 2140), Sec. 1, eff. September 1, 2005.

Sec. 11.125. MAP OR PLAT. (a) The application must be accompanied by a map or plat in the form and containing the information prescribed by the commission.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 7, eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 7, eff. September 1, 2017.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 7, eff. September 1, 2017.

Sec. 11.126. COMMISSION REQUIREMENTS. (a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the executive director.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers,

and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3155, ch. 828, Sec. 2, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.009, eff. Sept. 1, 1985.

Sec. 11.127. ADDITIONAL REQUIREMENTS: DRAINAGE PLANS. If the commission believes that the efficient operation of any existing or proposed irrigation system may be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by an applicant, the commission may require the applicant to submit to the executive director for approval plans for drainage adequate to guard against any injury which the proposed work may entail.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981.

Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS. (a) The commission shall require from an applicant for a new or amended water right the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section [11.002](#), of this code.

(b) The commission shall require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, consistent with the appropriate approved regional water plan, that adopts reasonable water conservation measures as defined by Subdivision (8)(B),

Section [11.002](#), of this code. The requirement for a water conservation plan under this section shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(c) Beginning May 1, 2005, all water conservation plans required under this section must include specific, quantified 5-year and 10-year targets for water savings. The entity preparing the plan shall establish the targets. Targets must include goals for water loss programs and goals for municipal use in gallons per capita per day.

(d) The commission and the board jointly shall identify quantified target goals for water conservation that water suppliers and other entities may use as guidelines in preparing water conservation plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and board jointly shall develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section [16.403](#) to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 1.08. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 1.03, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 688, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 5, eff. September 1, 2011.

Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS. (a) The commission shall by rule require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

(b) The wholesale and retail public water suppliers and irrigation districts shall provide an opportunity for public input during preparation of their drought contingency plans and before submission of the plans to the commission.

(c) By May 1, 2005, a drought contingency plan required by commission rule adopted under this section must include specific, quantified targets for water use reductions to be achieved during periods of water shortages and drought. The entity preparing the plan shall establish the targets.

(d) The commission and the board by joint rule shall identify quantified target goals for drought contingency plans that wholesale and retail public water suppliers, irrigation districts, and other entities may use as guidelines in preparing drought contingency plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and the board jointly shall develop model drought contingency programs for different types of water suppliers that suggest best management practices for accomplishing the highest practicable levels of water use reductions achievable during periods of water shortages and drought for each specific type of water supplier.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 1.03, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 690, Sec. 1, eff. June 20, 2003.

Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS TO CERTAIN WATER MANAGEMENT PLANS. (a) This section applies only

to a water management plan consisting of a reservoir operation plan for the operation of two water supply reservoirs that was originally required by a court order adjudicating the water rights for those reservoirs.

(b) Not later than the first anniversary of the date the executive director determines that an application to amend a water management plan is administratively complete, the executive director shall complete a technical review of the plan.

(c) If the executive director submits a written request for additional information to the applicant, the applicant shall submit the requested information to the executive director not later than the 30th day after the date the applicant receives the request or not later than the deadline agreed to by the executive director and the applicant, if applicable. The review period required by Subsection (b) for completing the technical review is tolled until the date the executive director receives the requested information from the applicant.

(d) The commission shall provide an opportunity for public comment and a public hearing on the application, consistent with the process for other water rights applications.

(e) If the commission receives a request for a hearing before the period for submitting public comments and requesting a hearing expires, the commission shall act on the request for a hearing and, if the request is denied, act on the application not later than the 60th day after the date the period expires. If a request for a hearing is not submitted before the period expires, the executive director may act on the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 5.04, eff. September 1, 2011.

Sec. 11.128. PAYMENT OF FEE. The applicant shall pay the filing fee prescribed by Section 5.701 at the time the application is filed. The commission may not record, file, or consider the application until the executive director certifies to the commission that the fee is paid.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.001, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 4, eff. September 1, 2017.

Sec. 11.129. REVIEW OF APPLICATION; AMENDMENT. The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the commission. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.009, eff. Sept. 1, 1985.

Sec. 11.130. RECORDING APPLICATIONS. (a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the commission office.

(b) The executive director shall have the applications indexed alphabetically in the name of:

- (1) the applicant;
- (2) the stream or source from which the appropriation is sought to be made; and
- (3) the county in which the appropriation is sought to be made.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.010, eff. Sept. 1, 1985.

Sec. 11.131. EXAMINATION AND DENIAL OF APPLICATION WITHOUT HEARING. (a) The commission shall make a preliminary examination of the application, and if it appears that there is no unappropriated water in the source of supply or that the proposed appropriation should not be allowed for other reasons, the commission may deny the application.

(b) If the commission denies the application under this

section and the applicant elects not to proceed further, the commission may order any part of the fee submitted with the application returned to the applicant.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.1311. APPROVAL OF CERTAIN APPLICATIONS WITHOUT HEARING. (a) If a permit for a reservoir project which is listed on the effective date of this section as a recommended project in the current state water plan has been abandoned, voluntarily canceled, or forfeited for failure to commence construction within the time specified by law, and the reservoir project site is owned by a municipality, river authority, other political subdivision, or water supply corporation organized under Chapter 67, the commission may reissue that same permit with a new priority date to the board without notice or hearing, upon submission of an application by the board.

(b) The board may transfer interests in a permit issued under this section to a municipality, river authority, other political subdivision, or water supply corporation organized under Chapter 67 as otherwise provided by law.

(c) A permit issued pursuant to this section shall be administered in accordance with this chapter and as otherwise provided by law.

Added by Acts 1999, 76th Leg., ch. 1291, Sec. 2.01, eff. Sept. 1, 1999.

Sec. 11.132. NOTICE. (a) Notice shall be given to the persons who in the judgment of the commission may be affected by an application, including those persons listed in Subdivision (2), Subsection (d), of this section. The commission, on the motion of a commissioner or on the request of the executive director or any affected person, shall hold a public hearing on the application.

(b) If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(c) In the notice, the commission shall:

- (1) state the name and address of the applicant;
- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (5) identify any proposed alternative source of water, other than state water, identified by the applicant;
- (6) specify the time and location where the commission will consider the application; and
- (7) give any additional information the commission considers necessary.

(d) The commission may act on the application without holding a public hearing if:

- (1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

- (2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to:

- (A) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission;

- (B) each groundwater conservation district with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternative source of water; and

- (C) all navigation districts within the river basin concerned; and

- (3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) The inadvertent failure of the commission to mail a notice under Subdivision (2), Subsection (d), of this section to a navigation district that is not a claimant or appropriator of water does not prevent the commission's consideration of the application.

(f) If, on the date specified in the notice prescribed by Subsection (c) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 3.004, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 4, eff. June 19, 1987.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1157 (S.B. 864), Sec. 1, eff. September 1, 2017.

Sec. 11.133. HEARING. At the time and place stated in the notice, the commission shall hold a hearing on the application. Any person may appear at the hearing in person or by attorney or may enter his appearance in writing. Any person who appears may present objection to the issuance of the permit. The commission may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of the permit, and it may hear arguments.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.134. ACTION ON APPLICATION. (a) After the hearing, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of

supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers any applicable environmental flow standards established under Section 11.1471 and, if applicable, the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Section 11.002(8)(B).

(b-1) In determining whether an appropriation is detrimental to the public welfare under Subsection (b)(3)(C), the commission may consider only the factors that are within the jurisdiction and expertise of the commission as established by this chapter.

(c) Beginning January 5, 2002, the commission may not issue a water right for municipal purposes in a region that does not have an approved regional water plan in accordance with Section 16.053(i) unless the commission determines that conditions warrant waiver of this requirement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 1.09; Acts 1997, 75th Leg., ch. 1010, Sec. 4.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1223, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.08, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.12, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.12, eff.

September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1097 (H.B. 3735), Sec. 5, eff. September 1, 2017.

Sec. 11.135. ISSUANCE OF PERMIT. (a) On approval of an application, the commission shall issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit.

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the original application was filed;

(4) the use or purpose for which the appropriation is to be made;

(5) the amount or volume of water authorized to be appropriated for each purpose; if use of the appropriated water is authorized for multiple purposes, the permit shall contain a special condition limiting the total amount of water that may actually be diverted for all of the purposes to the amount of water appropriated;

(6) a general description of the source of supply from which the appropriation is proposed to be made, including any alternative source of water that is not state water;

(7) the time within which construction or work must begin and the time within which it must be completed; and

(8) any other information the commission prescribes.

(c) If the appropriation is for irrigation, the commission shall also place in the permit a description and statement of the approximate area of the land to be irrigated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.011, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 2.10, eff. June 19, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1157 (S.B. 864), Sec. 2, eff. September 1, 2017.

Sec. 11.1351. PERMIT RESTRICTIONS. In granting an application, the commission may direct that stream flow restrictions and other conditions and restrictions be placed in the permit being issued to protect the priority of senior water rights. Added by Acts 1987, 70th Leg., ch. 404, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.136. RECORDING OF PERMIT. (a) The commission shall transmit the permit by registered mail to the county clerk of the county in which the appropriation is to be made.

(b) When the county clerk receives the permit and is paid the recording fee (as prescribed by Subchapter B, Chapter 118, Local Government Code, he shall file and record the permit in a well-bound book kept for that purpose. He shall index the permit alphabetically in the name of the applicant and of the stream or source of water supply. After he has recorded the permit, the county clerk shall deliver the permit, on demand, to the applicant.

(c) When the permit is filed in the office of the county clerk, it is constructive notice of:

- (1) the filing of the application;
- (2) the issuance of the permit; and
- (3) all the rights arising under the filing of the application and the issuance of the permit.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 149, Sec. 45, eff. Sept. 1, 1987.

Sec. 11.137. SEASONAL PERMITS. (a) The commission may issue seasonal permits in the same manner that it issues regular permits. The provisions of this chapter governing issuance of regular permits apply to issuance of seasonal permits.

(b) The right to take, use, or divert water under seasonal permit is limited to the portion or portions of the calendar year stated in the permit.

(c) In a seasonal permit, the commission shall specify the

conditions necessary to fully protect prior appropriations or vested rights on the stream.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.138. TEMPORARY PERMITS. (a) The commission may issue temporary permits for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on the stream from which water is to be diverted under such temporary permit. The commission may, by appropriate order, authorize any member of the commission to approve and issue temporary permits without notice and hearing if it appears to such issuing party that sufficient water is available at the proposed point of diversion to satisfy the requirements of the temporary permit as well as all existing rights. No temporary permit issued without notice and hearing shall authorize more than 10 acre-feet of water, nor may it be for a term in excess of one year.

(b) The commission may prescribe rules governing notice and procedure for the issuance of temporary permits.

(c) As between temporary permits, the one applied for first has priority.

(d) The commission may not issue a temporary permit for a period exceeding three calendar years.

(e) A temporary permit does not vest in its holder a permanent right to the use of water.

(f) A temporary permit expires and shall be cancelled by the commission in accordance with the terms of the permit.

(g) The commission may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed \$500.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 5, 42, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.012, eff. Sept. 1, 1985.

Sec. 11.1381. TERM PERMITS. (a) Until a water right is perfected to the full extent provided by Section [11.026](#) of this

code, the commission may issue permits for a term of years for use of state water to which a senior water right has not been perfected.

(b) The commission shall refuse to grant an application for a permit under this section if the commission finds that there is a substantial likelihood that the issuance of the permit will jeopardize financial commitments made for water projects that have been built or that are being built to optimally develop the water resources of the area.

(c) The commission shall refuse to grant an application for a term permit if the holder of the senior appropriative water right can demonstrate that the issuance of the term permit would prohibit the senior appropriative water right holder from beneficially using the senior rights during the term of the term permit. Such demonstration will be made using reasonable projections based on accepted methods.

(d) A permit issued under this section is subordinate to any senior appropriative water rights.

Added by Acts 1987, 70th Leg., ch. 405, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.139. EMERGENCY AUTHORIZATIONS. (a) Except as provided by Section [11.148](#) of this code, the commission may grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication after notice to the governor for an initial period of not more than 120 days if the commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. Such emergency action may be renewed once for not longer than 60 days.

(b) A person desiring to obtain an emergency authorization under this section shall submit to the commission a sworn application containing the following information:

(1) a description of the condition of emergency justifying the granting of the emergency authorization;

(2) a statement setting forth facts which support the findings required under this section;

(3) an estimate of the dates on which the proposed authorization should begin and end;

(4) a description of the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) any other statements or information required by the commission.

(c) If the commission finds the applicant's statement made under Subsection (b) of this section to be correct, the commission may grant emergency authorizations under this section without notice and hearing or with such notice and hearing as the commission considers practicable under the circumstances.

(d) If the commission grants an emergency authorization under this section without a hearing, the authorization shall fix a time and place for a hearing to be held before the commission. The hearing shall be held as soon after the emergency authorization is granted as is practicable but not later than 20 days after the emergency authorization is granted.

(e) At the hearing, the commission shall affirm, modify, or set aside the emergency authorization. Any hearing on an emergency authorization shall be conducted in accordance with Chapter 2001, Government Code, and rules of the commission.

(f) If an imminent threat to the public health and safety exists which requires emergency action before the commission can take action as provided by Subsections (a) through (c) of this section and there are no feasible alternatives, the executive director may grant an emergency authorization after notice to the governor. If the executive director issues an emergency authorization under this subsection, the commission shall hold a hearing as provided for in Subsections (d) and (e) of this section. The requirements of Subsection (b) of this section shall be satisfied by the applicant before action is taken by the executive director on the request for emergency authorization.

(g) The requirements of Section 11.132 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency authorization under this section, but such general notice of the hearing shall be given as the commission, under

Subsections (c) and (e) of this section, considers practicable under the circumstances.

(h) The commission may grant an emergency authorization under this section for the temporary transfer and use of all or part of a permit, certified filing, or certificate of adjudication for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes. In addition to the requirements contained in Subsection (b) of this section, the commission may direct that the applicant will timely pay the amounts for which the applicant may be potentially liable under Subsection (j) of this section and to the extent authorized by law will fully indemnify and hold harmless the state, the executive director, and the commission from any and all liability for the authorization sought. The commission may order bond or other surety in a form acceptable to the commission as a condition for such emergency authorization. The commission may not grant an emergency authorization under this section which would cause a violation of a federal regulation.

(i) In transferring the amount of water requested by the applicant, the executive director or the commission shall allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for other than domestic or municipal use.

(j) The person granted an emergency authorization under Subsection (h) of this section is liable to the owner and the owner's agent or lessee from whom the use is transferred for the fair market value of the water transferred as well as for any damages caused by the transfer of use. If, within 60 days of the termination of the authorization, the parties do not agree on the amount due, or if full payment is not made, either party may file a complaint with the commission to determine the amount due. The commission may use dispute resolution procedures for a complaint filed under this subsection. After exhausting all administrative remedies under this subsection, an owner from whom the use is transferred may file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. The prevailing party in a suit filed under this

subsection is entitled to recover court costs and reasonable attorney's fees.

(k) The commission may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

(l) An emergency authorization does not vest in the grantee any right to the diversion, impoundment, or use of water and shall expire and be cancelled in accordance with its terms.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.013, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1010, Sec. 3.03, eff. June 19, 1997.

Sec. 11.140. PERMITS FOR STORAGE FOR PROJECT DEVELOPMENT. The commission may issue permits for storage solely for the purpose of optimum development of projects. The commission may convert these permits to permits for beneficial use if application to have them converted is made to the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.1405. DESALINATION OF SEAWATER FOR USE FOR INDUSTRIAL PURPOSES. (a) The commission may issue a permit under this section to authorize a diversion of state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes if:

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

(b) A person may divert state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use for industrial purposes without obtaining a permit if Subsection (a) does not apply.

(c) A person who diverts and uses state water that consists of marine seawater under a permit issued under Subsection (a) or as authorized by Subsection (b) must determine the total dissolved

solids concentration of the seawater at the water source by monthly sampling and analysis and provide the data collected to the commission. A person may not begin construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit until the person has provided data to the commission based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. A person who has begun construction of a facility for the diversion of marine seawater for the purposes provided by this section without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

(d) A permit application under this section must be submitted as required by commission rule.

(e) The commission is not required to make a finding of water availability for an application under this section.

(f) The commission shall evaluate whether any proposed diversion under this section is consistent with any applicable environmental flow standards established under Section [11.1471](#).

(g) The commission may include any provision in a permit issued under this section that the commission considers necessary to comply with the environmental flow standards established under Section [11.1471](#).

(h) The commission shall adopt rules providing an expedited procedure for acting on an application for a permit under Subsection (a). The rules must provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. [4097](#)), Sec. 4, eff. June 17, 2015.

Sec. 11.141. DATE OF PRIORITY. When the commission issues a permit, the priority of the appropriation of water and the claimant's right to use the water date from the date of filing of

the application.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.142. PERMIT EXEMPTIONS. (a) Without obtaining a permit, a person may construct on the person's own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes. A person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period. This exemption does not apply to a commercial operation.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 966,
Sec. 2.09

(b) Without obtaining a permit, a person may construct on the person's property a dam or reservoir with normal storage of not more than 200 acre-feet of water for fish and wildlife purposes if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by Section 23.51, Tax Code. This exemption does not apply to a commercial operation.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 1427,
Sec. 1

(b) Without obtaining a permit, a person may construct on the person's property in an unincorporated area a dam or reservoir with normal storage of not more than 200 acre-feet of water for commercial or noncommercial wildlife management, including fishing, but not including fish farming.

(c) Without obtaining a permit, a person who is drilling and producing petroleum and conducting operations associated with drilling and producing petroleum may take for those purposes state water from the Gulf of Mexico and adjacent bays and arms of the Gulf

of Mexico in an amount not to exceed one acre-foot during each 24-hour period.

(d) Without obtaining a permit, a person may construct or maintain a reservoir as part of a surface coal mining operation under Chapter 134, Natural Resources Code, if the water in the reservoir is used solely for:

(1) sediment control; or

(2) compliance with applicable laws, rules, or regulations relating to fire or dust suppression.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 718, Sec. 1, eff. June 14, 1985; Acts 1995, 74th Leg., ch. 335, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 2.11, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1427, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 63 (S.B. 1711), Sec. 1, eff. May 19, 2009.

Sec. 11.1421. PERMIT EXEMPTION FOR MARICULTURE ACTIVITIES.

(a) In this section, "mariculture" means the propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water.

(b) Without obtaining a permit and subject to the requirements and limitations provided by Subsections (c) through (e) of this section, a person who is engaged in mariculture operations on land may take for that purpose state water from the Gulf of Mexico and adjacent bays and arms of the Gulf of Mexico in an amount appropriate to those mariculture activities.

(c) Before a person first takes water under Subsection (b) of this section, the person must give notice to the commission of the proposed appropriation.

(d) Each appropriation of water made under Subsection (b) of this section shall be reported to the commission in the manner provided by the commission's rules.

(e) After notice and hearing, if the commission determines

that as a result of low freshwater inflows appropriation of water under Subsection (b) of this section would interfere with natural productivity of bays and estuaries, the commission shall issue an order requiring interruption or reduction of the appropriation.

Added by Acts 1987, 70th Leg., ch. 544, Sec. 2, eff. Aug. 31, 1987.

Sec. 11.1422. PERMIT EXEMPTION FOR HISTORIC CEMETERIES.

(a) Without obtaining a permit, a tax-exempt nonprofit corporation that owns a cemetery may divert from a river not more than 200 acre-feet of water each year to irrigate the grounds of the cemetery if the cemetery:

- (1) borders the river; and
- (2) is more than 100 years old.

(b) The executive director or a watermaster who has jurisdiction over the river from which a cemetery diverts water under this section by order may restrict a diversion authorized by this section if the executive director or watermaster determines the diversion will harm a person downstream of the cemetery who acquired a water right before the date this section took effect. The executive director or watermaster shall limit the restriction to the extent of the harm and to the period of the harm.

Added by Acts 1995, 74th Leg., ch. 183, Sec. 2, eff. May 23, 1995.

Sec. 11.143. USE OF WATER FROM EXEMPT DAM OR RESERVOIR FOR NONEXEMPT PURPOSES. (a) The owner of a dam or reservoir exempted under Section [11.142](#)(a) or (b) who desires to use water from the dam or reservoir for a purpose not described by that subsection shall obtain a permit to do so. The owner may obtain a regular permit, a seasonal permit, or a permit for a term of years. The owner may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

(b) If the applicant elects to proceed under this section, he shall submit to the commission a sworn application, on a form furnished by the commission, containing the following information:

- (1) the name and post-office address of the applicant;
- (2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the commission;

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(c) If the permit is sought for irrigation, the application must also specify:

(1) the total number of irrigable acres in the area;

(2) the number of acres to be irrigated within the area in any one year; and

(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

(d) Except as otherwise specifically provided by this subsection, before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section. The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to each person

whose claim or appropriation has been filed with the commission and whose diversion point is downstream from that described in the application; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing is not requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) In the notice, the commission shall:

(1) state the name and post-office address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply, including any proposed alternative source of water, other than state water, identified by the applicant, and the place where the water is stored; and

(5) specify the time and place of the hearing.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the commission and whose diversion point is downstream from that described in the application. If the notice identifies groundwater from a well located in a groundwater conservation district as a proposed alternative source of water, the notice shall be:

(1) sent to the groundwater conservation district in which the well is located; and

(2) published, at least 20 days before the date stated in the notice for the hearing, in a newspaper having general circulation in each county in which the groundwater district is located.

(g) If on the date specified in the notice prescribed by Subsection (d) of this section, the commission determines that a

public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

(h) The applicant shall pay the filing fee prescribed by Section 5.701(c) at the time he files the application.

(i) The commission shall approve the application and issue the permit as applied for in whole or part if it determines that:

(1) there is unappropriated water in the source of supply;

(2) the applicant has met the requirements of this section;

(3) the water is to be used for a beneficial purpose;

(4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and

(5) the proposed use will not impair existing water rights.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.014, 3.003, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 5, eff. June 19, 1987; Acts 2001, 77th Leg., ch. 1427, Sec. 2, 3, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.002, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1157 (S.B. 864), Sec. 3, eff. September 1, 2017.

Sec. 11.144. APPROVAL FOR ALTERATIONS. All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with the commission and approved by the executive director before the alterations or changes are made. This section does not apply to the ordinary maintenance or

emergency repair of the facility.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.015, eff. Sept. 1, 1985.

Sec. 11.145. WHEN CONSTRUCTION MUST BEGIN. (a) If a permit is for appropriation by direct diversion, construction of the proposed facilities shall begin within the time fixed by the commission, which shall not exceed two years after the date the permit is issued. The appropriator shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction. The commission may establish fees, not to exceed \$1,000, for extending the time to begin construction of the proposed facilities.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The commission may fix fees, not to exceed \$1,000, for extending the time to begin construction of reservoirs.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3155, ch. 828, Sec. 3, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.015, eff. Sept. 1, 1985.

Sec. 11.146. FORFEITURES AND CANCELLATION OF PERMIT FOR INACTION. (a) If a permittee fails to begin construction within the time specified in Section [11.145](#) of this code, he forfeits all rights to the permit, subject to notice and hearing as prescribed by this section.

(b) After beginning construction if the appropriator fails to work diligently and continuously to the completion of the work, the appropriation is subject to cancellation in whole or part, subject to notice and hearing as prescribed by this section.

(c) If the commission believes that an appropriation or permit should be declared forfeited under this section or any other sections of this code, it should give the appropriator or permittee 30 days notice and provide him with an opportunity to be heard.

(d) After the hearing, the commission by entering an order of record may cancel the appropriation in whole or part. The commission shall immediately transmit a certified copy of the cancellation order by certified mail to the county clerk of the county in which the permit is recorded. The county clerk shall record the cancellation order.

(e) Except as provided by Section 11.1381 of this code, if a permit has been issued for the use of water, the water is not subject to a new appropriation until the permit has been cancelled in whole or part as provided by this section.

(f) Except as provided by Subchapter E of this chapter, none of the provisions of this code may be construed as intended to impair, cause, or authorize or may impair, cause, or authorize the forfeiture of any rights acquired by any declaration of appropriation or by any permit if the appropriator has begun or begins the work and development contemplated by his declaration of appropriation or permit within the time provided by the law under which the declaration of appropriation was made or the permit was granted and has prosecuted or continues to prosecute it with all reasonable diligence toward completion.

(g) This section does not apply to a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 405, Sec. 2, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 966, Sec. 2.10, eff. Sept. 1, 2001.

Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND INSTREAM USES. (a) In this section, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically

characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit any conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491.

(c) For the purposes of making a determination under Subsection (b) of this section, the commission shall consider among other factors:

(1) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in Section 11.1491 of this code and other studies considered by the commission to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(2) the ecology and productivity of the affected bay and estuary system;

(3) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary system;

(4) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(5) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(6) for purposes of this section, the declarations as to preferences for competing uses of water as found in Sections 11.024 and 11.033, Water Code, as well as the public policy statement in Section 1.003, Water Code.

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies. In determining what conditions to include in the permit under this subsection, the commission shall consider among other factors:

- (1) the studies mandated by Section [16.059](#); and
- (2) any water quality assessment performed under Section [11.150](#).

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain fish and wildlife habitats. In determining what conditions to include in the permit under this subsection, the commission shall consider any assessment performed under Section [11.152](#).

(e-1) Any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted must include a provision allowing the commission to adjust the conditions included in the permit or amended water right to provide for protection of instream flows or freshwater inflows. With respect to an amended water right, the provision may not allow the commission to adjust a condition of the amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. This subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before September 1, 2007. The commission shall adjust the conditions if the commission determines, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section [11.1471](#). The adjustment:

- (1) in combination with any previous adjustments made under this subsection may not increase the amount of the pass-through or release requirement for the protection of instream

flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right;

(2) must be based on appropriate consideration of the priority dates and diversion locations of any other water rights granted in the same river basin that are subject to adjustment under this subsection; and

(3) must be based on appropriate consideration of any voluntary contributions to the Texas Water Trust, and of any voluntary amendments to existing water rights to change the use of a specified quantity of water to or add a use of a specified quantity of water for instream flows dedicated to environmental needs or bay and estuary inflows as authorized by Section [11.0237\(a\)](#), that actually contribute toward meeting the applicable environmental flow standards.

(e-2) Any water right holder who makes a contribution or amends a water right as described by Subsection (e-1)(3) is entitled to appropriate credit for the benefits of the contribution or amendment against the adjustment of the holder's water right under Subsection (e-1).

(e-3) Notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, the commission shall apply any applicable environmental flow standard, including any environmental flow set-aside, adopted under Section [11.1471](#) instead of considering the factors specified by those subsections.

(f) On receipt of an application for a permit to store, take, or divert water, the commission shall send a copy of the permit application and any subsequent amendments to the Parks and Wildlife Department. At its option, the Parks and Wildlife Department may be a party in hearings on applications for permits to store, take, or divert water. In making a final decision on any

application for a permit, the commission, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, and testimony presented by the Parks and Wildlife Department and the board.

(g) The failure of the Parks and Wildlife Department to appear as a party does not relieve the commission of the requirements of this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 133, Sec. 4.01; Acts 1987, 70th Leg., ch. 419, Sec. 3, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 977, Sec. 5, eff. June 19, 1987; Acts 2001, 77th Leg., ch. 966, Sec. 2.11, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1242, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.13, eff. September 1, 2007.

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

(a) The commission by rule shall:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Sections 11.147(e-1) and (e-2).

(b) In adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), the commission shall consider:

(1) the definition of the geographical extent of the

river basin and bay system adopted by the advisory group under Section 11.02362(a) and the definition and designation of the river basin by the board under Section 16.051(c);

(2) the schedule established by the advisory group under Section 11.02362(d) or (e) for the adoption of environmental flow standards for the river basin and bay system, if applicable;

(3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);

(4) the recommendations developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o) regarding environmental flow standards and strategies to meet the flow standards;

(5) any comments submitted by the advisory group to the commission under Section 11.02362(q);

(6) the specific characteristics of the river basin and bay system;

(7) economic factors;

(8) the human and other competing water needs in the river basin and bay system;

(9) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(10) any other appropriate information.

(c) Environmental flow standards adopted under Subsection (a)(1) must consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) As provided by Section 11.023, the commission may not issue a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). A permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside

must contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) An environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande must be assigned a priority date corresponding to the date the commission receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the commission in a rulemaking process undertaken in accordance with a schedule established by the commission. The commission shall consider the review of environmental flow standards by the advisory group under Section 11.02363(a) when altering an environmental flow standard or environmental flow set-aside. In establishing a schedule, the commission shall consider the work plan developed by the advisory group under Section 11.02363(b) and the applicable work plan approved by the advisory group under Section 11.02362(p). The commission's schedule may not provide for the rulemaking process to occur more frequently than once every 10 years unless the work plans provide for a periodic review under Sections 11.02363(a) and 11.02362(p) to occur more frequently than once every 10 years. In that event, the commission may provide for the rulemaking process to be undertaken in conjunction with the periodic review if the commission determines that schedule to be appropriate. A rulemaking process undertaken under this subsection must provide for the participation of stakeholders having interests in the particular river basin and bay system for which the process is undertaken.

(g) The commission shall submit a biennial report to the advisory group on the implementation and effectiveness of environmental flow standards. The report must include:

- (1) a description of progress made over the previous

biennium in implementing environmental flow standards, including the status of any efforts to set aside unappropriated water for environmental flow protection;

(2) input provided by the board and the Parks and Wildlife Department on their:

(A) activities related to environmental flow standards; and

(B) recommendations for the work plan developed under Section [11.02363](#)(b); and

(3) recommendations for the work plan developed under Section [11.02363](#)(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. [3](#)), Sec. 1.14, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 1.14, eff. September 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. [1397](#)), Sec. 17, eff. September 1, 2023.

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS. (a) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the commission if the commission finds that an emergency exists and cannot practically be resolved in other ways.

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section [11.1471](#)(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) Before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1), it must give written notice to the Parks and Wildlife Department of the proposed action. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action within 72 hours from such time and

the commission shall consider those comments before issuing its order implementing the proposed action.

(c) The commission may suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than the Parks and Wildlife Department as provided by Subsection (b). However, all affected persons shall be notified immediately by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.02.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.16, eff. September 1, 2007.

Sec. 11.1491. EVALUATION OF BAYS AND ESTUARIES DATA. (a) The Parks and Wildlife Department and the commission shall have joint responsibility to review the studies prepared under Section 16.058, to determine inflow conditions necessary for the bays and estuaries, and to provide information necessary for water resources management. Each agency shall designate an employee to share equally in the oversight of the program. Other responsibilities shall be divided between the Parks and Wildlife Department and the commission to maximize present in-house capabilities of personnel and to minimize costs to the state. Each agency shall have reasonable access to all information produced by the other agency. Publication of reports completed under this section shall be submitted for comment to the commission, the Parks and Wildlife Department, the advisory group, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1351, Sec. 1.25, eff. September 1, 2007.

(c) The board may authorize the use of money from the research and planning fund established by Chapter 15 of this code to accomplish the purposes of this section. These funds shall be used by the commission in cooperation with the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities, and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 4.02. Renumbered from Sec. 11.149 and amended by Acts 1987, 70th Leg., ch. 419, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.25, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.25, eff. September 1, 2007.

Sec. 11.150. EFFECTS OF PERMITS ON WATER QUALITY. In consideration of an application for a permit under this subchapter, the commission shall assess the effects, if any, of the issuance of the permit on water quality in this state.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.001, eff. Sept. 1, 1985.

Sec. 11.1501. CONSIDERATION AND REVISION OF PLANS. In considering an application for a permit to store, take, or divert surface water, or for an amendment to a permit, certified filing, or certificate of adjudication, the commission shall consider the state water plan and any approved regional water plan for the area or areas in which the water is proposed to be stored, diverted, or used.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.02, eff. Sept. 1,

1997.

Sec. 11.151. EFFECTS OF PERMITS ON GROUNDWATER. In considering an application for a permit to store, take, or divert surface water, the commission shall consider the effects, if any, on groundwater or groundwater recharge.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.02, eff. Sept. 1, 1997.

Sec. 11.152. ASSESSMENT OF EFFECTS OF PERMITS ON FISH AND WILDLIFE HABITATS. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse impacts on such habitat. In determining whether to require an applicant to mitigate adverse impacts on a habitat, the commission may consider any net benefit to the habitat produced by the project. The commission shall offset against any mitigation required by the U.S. Fish and Wildlife Service pursuant to 33 C.F.R. Parts 320-330 any mitigation authorized by this section.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.001, eff. Sept. 1, 1985. Renumbered from Sec. 11.149 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(56), eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 24.002, eff. September 1, 2009.

Sec. 11.153. PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) In this section, "aquifer storage and recovery project" has the meaning assigned by Section [27.151](#).

(b) A water right holder or a person who has contracted for the use of water under a contract that does not prohibit the use of the water in an aquifer storage and recovery project may undertake an aquifer storage and recovery project without obtaining any additional authorization under this chapter for the project. A person described by this subsection undertaking an aquifer storage

and recovery project must:

(1) obtain any required authorizations under Subchapter G, Chapter 27, and Subchapter N, Chapter 36; and

(2) comply with the terms of the applicable water right.

(c) This section does not preclude the commission from considering an aquifer storage and recovery project to be a component of a project permitted under this chapter that is not required to be based on the continuous availability of historic, normal stream flow.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 505, Sec. 5(1), eff. June 16, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 505, Sec. 5(1), eff. June 16, 2015.

Added by Acts 1995, 74th Leg., ch. 309, Sec. 2, eff. June 5, 1995.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.03, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. 655), Sec. 5(1), eff. June 16, 2015.

Sec. 11.155. AQUIFER STORAGE AND RECOVERY AND AQUIFER RECHARGE REPORTS. (a) In this section:

(1) "Aquifer recharge project" means a project involving the intentional recharge of an aquifer by means of an injection well authorized under Chapter 27 or other means of infiltration, including actions designed to:

(A) reduce declines in the water level of the aquifer;

(B) supplement the quantity of groundwater available;

(C) improve water quality in an aquifer;

(D) improve spring flows and other interactions between groundwater and surface water; or

(E) mitigate subsidence.

(2) "Aquifer storage and recovery project" has the meaning assigned by Section [27.151](#).

(b) The board shall make studies, investigations, and surveys of the aquifers in the state to determine the occurrence, quantity, quality, and availability of aquifers in which aquifer storage and recovery projects or aquifer recharge projects are feasible.

(c) The board, working with appropriate interested persons, including river authorities and major water providers and water utilities, regional water planning groups, groundwater conservation districts, and potential public sponsors of aquifer storage and recovery projects or aquifer recharge projects, shall:

(1) conduct studies of aquifer storage and recovery projects and aquifer recharge projects identified in the state water plan or by interested persons; and

(2) report the results of each study conducted under Subdivision (1) to regional water planning groups and interested persons.

Added by Acts 1995, 74th Leg., ch. 309, Sec. 2, eff. June 5, 1995.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.05, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1057, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 505 (H.B. [655](#)), Sec. 2, eff. June 16, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1043 (H.B. [721](#)), Sec. 1, eff. June 14, 2019.

Sec. 11.157. WATER FOR USE AS AQUIFER RECHARGE OR IN AN AQUIFER STORAGE AND RECOVERY PROJECT. (a) Unappropriated water, including storm water and floodwater, may be appropriated for recharge into an aquifer underlying this state, including an aquifer recharge project as defined by Section [27.201](#). Water appropriated for diversion and a beneficial use may be stored in an aquifer storage and recovery project, as defined by Section [27.151](#), before the water is recovered for that beneficial use.

(b) The commission may authorize the appropriation of water under Subsection (a) if the commission determines that:

(1) the water is not needed under Section 11.147 or 11.1471(a)(2), as applicable, to meet downstream instream flow needs or freshwater inflow needs;

(2) the appropriation will accomplish a purpose established by Section 11.023; and

(3) the application for the water right or amendment to the water right complies with Subsection (c).

(c) A water right or an amendment to a water right authorizing a new appropriation of water for use under Subsection (a):

(1) must comply with the requirements of Section 11.134;

(2) must include any special conditions the commission considers necessary to implement this section; and

(3) may be for water that is not continuously available.

(d) Before approving an application for a water right or an amendment to a water right for a new appropriation of water in the Rio Grande basin under this section, the commission shall consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande basin and the effect of the project on the allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The commission may not authorize a new appropriation of water that would result in a violation of a treaty or court decision.

(e) An application for a water right or an amendment to a water right under this section is subject to the motion and hearing requirements of this subchapter.

(f) Not later than the 180th day after the date the commission determines that a water right or an amendment to a water right under this section is administratively complete, the commission shall complete a technical review of the application.

(g) The commission shall adopt rules providing for the considerations for determining the frequency that the water must be available before it may be appropriated.

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. 720), Sec. 2, eff. June 10, 2019.

Sec. 11.158. AMENDMENT TO CONVERT USE FROM RESERVOIR STORAGE TO AQUIFER STORAGE AND RECOVERY. (a) In this section, "aquifer storage and recovery project" has the meaning assigned by Section 27.151.

(b) A holder of a water right that authorizes the storage of water for a beneficial use in a reservoir that has not been constructed may file an application to amend the water right to remove the authorization for storage in a reservoir provided that the water diverted under the right will be stored in an aquifer storage and recovery project authorized under Section 27.153 for later retrieval and use as authorized by the original water right.

(c) An application for an amendment to a water right described by Subsection (b) may request an increase in the amount of water that may be diverted or the rate of diversion on the basis of an evaporation credit that takes into account the amount of water that would have evaporated if the storage reservoir had been constructed.

(d) A holder of a water right authorizing an appropriation of water for storage in a storage reservoir that has lost storage because of sedimentation, as determined by a survey performed by the board, may file an application for an amendment to the water right to change the use or purpose for which the appropriation is to be made from storage by diversion to storage as part of an aquifer storage and recovery project for later retrieval and use as authorized by the original water right in an amount equal to all or part of the amount of water yield lost to sedimentation.

(e) An application for an amendment to a water right described by Subsection (b) is exempt from any notice and hearing requirements of a statute, commission rule, or permit condition and may not be referred to the State Office of Administrative Hearings for a contested case hearing if the requested change will not cause a negative effect on other water rights holders or the environment that is greater than the effect that the original permit would have had were the permit rights exercised to the full extent of the original permit.

(f) An application for an amendment to a water right

described by Subsection (c) or (d) is subject to the notice and hearing requirements of this chapter.

(g) If the commission grants an application for an amendment to a water right described by Subsection (c) or (d), the commission shall include in the amendment any special conditions the commission considers necessary to:

- (1) protect existing water rights; and
- (2) comply with any applicable requirements established under Section [11.147](#) or [11.1471](#).

(h) The commission may adopt rules providing an expedited procedure for acting on an application for an amendment to a water right described by Subsection (b) and the procedures to file and act on an application for an amendment to a water right described by Subsection (c) or (d).

Added by Acts 2019, 86th Leg., R.S., Ch. 742 (H.B. [720](#)), Sec. 2, eff. June 10, 2019.

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND CERTIFICATES OF ADJUDICATION FOR NONUSE

Sec. 11.171. DEFINITIONS. As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section [11.323](#) of this code.

(4) "Permit" means an authorization by the commission granting a person the right to use water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 1, eff. Sept. 1, 1991.

Sec. 11.172. GENERAL PRINCIPLE. A permit, certified filing, or certificate of adjudication is subject to cancellation in whole or part for 10 years nonuse as provided by this subchapter. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.173. CANCELLATION IN WHOLE OR IN PART. (a) Except as provided by Subsection (b) of this section, if all or part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to cancellation in whole or in part, as provided by this subchapter, to the extent of the 10 years nonuse.

(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a):

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or a similar governmental program;

(2) if a significant portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a specific recommendation for meeting a water need included in the regional water plan approved pursuant to Section [16.053](#);

(3) if the permit, certified filing, or certificate of adjudication:

(A) was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder; and

(B) is consistent with projections of future water needs contained in the state water plan;

(4) if the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a

reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning; or

(5) to the extent the nonuse resulted from:

(A) the implementation of water conservation measures under a water conservation plan submitted by the holder of the permit, certified filing, or certificate of adjudication as evidenced by implementation reports submitted by the holder;

(B) a suspension, adjustment, or other restriction on the use of the water authorized to be appropriated under the permit, certified filing, or certificate of adjudication imposed under an order issued by the executive director; or

(C) an inability to appropriate the water authorized to be appropriated under the permit, certified filing, or certificate of adjudication due to drought conditions.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1986, 69th Leg., 3rd C.S., ch. 33, Sec. 1, eff. Oct. 15, 1986; Acts 1991, 72nd Leg., ch. 309, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 4.06, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.12, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1044 (H.B. [1225](#)), Sec. 1, eff. June 18, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1020 (H.B. [2615](#)), Sec. 2, eff. September 1, 2013.

Sec. 11.174. COMMISSION MAY INITIATE PROCEEDINGS. When the commission finds that its records do not show that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in whole or in part.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.016, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 309, Sec. 3, eff. Sept. 1, 1991.

Sec. 11.175. NOTICE. (a) At least 45 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation in whole or in part. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of unadjudicated water rights filed pursuant to Section 11.303 of this code in the same watershed.

(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 4, eff. Sept. 1, 1991.

Sec. 11.176. HEARING. (a) Except as provided by Subsection (b) of this section, the commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

(b) A hearing on the cancellation of a permit, certified filing, or certificate of adjudication as provided by this chapter is unnecessary if the right to such hearing is expressly waived by the affected holder of a permit, certified filing, or certificate of adjudication.

(c) A permit, certified filing, or certificate of adjudication for a term does not vest in the holder of a permit, certified filing, or certificate of adjudication any right to the

diversion, impoundment, or use of water for longer than the term of the permit, certified filing, or certificate of adjudication and shall expire and be cancelled in accordance with its terms without further need for notice or hearing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 2.12, eff. Sept. 1, 1997.

Sec. 11.177. COMMISSION FINDING; ACTION. (a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication in whole or in part to the extent that it finds that:

(1) the water or any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period; and

(2) the holder has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use or is otherwise unjustified in the nonuse.

(b) In determining what constitutes reasonable diligence or a justified nonuse as used in Subsection (a)(2), the commission shall give consideration to:

(1) whether sufficient water is available in the source of supply to meet all or part of the appropriation during the 10-year period of nonuse;

(2) whether the nonuse is justified by the holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by Section [11.173\(b\)\(1\)](#);

(3) whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Section [16.053](#);

(4) whether the permit, certified filing, or certificate of adjudication has been deposited into the Texas Water Bank as provided by Sections [15.7031](#) and [15.704](#) or whether it can be shown that the water right or water available under the right is

currently being made available for purchase through private marketing efforts; or

(5) whether the permit, certified filing, or certificate of adjudication has been reserved to provide for instream flows or bay and estuary inflows.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 309, Sec. 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 2.12, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 11.183. RESERVOIR. If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.184. MUNICIPAL CERTIFIED FILING. Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.185. EFFECT OF INACTION. Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.186. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT.

Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, further cancellation proceedings shall not be initiated against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. ARTESIAN WELLS

Sec. 11.201. ARTESIAN WELL DEFINED. An artesian well is an artificial water well in which the water, when properly cased, will rise by natural pressure above the first impervious stratum below the surface of the ground.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.202. RIGHT TO DRILL ARTESIAN WELL. (a) Except as provided by this section, a person is entitled to drill an artesian well for domestic purposes or for stock raising without complying with the general provisions of this code regulating the use of water.

(b) The artesian well must be on that person's own land and must be properly and securely cased.

(c) When water is reached containing mineral or other substances injurious to vegetation or agriculture, the artesian well must be securely capped or its flow controlled so as not to injure another person's land or properly plugged so as to prevent the water from rising above the first impervious stratum below the surface of the ground.

(d) Except as provided by Subsection (e) of this section, after September 1, 1991, and before January 1, 1994, a person may not drill and operate a free-flowing artesian well in a sole or principal source aquifer as designated by 40 C.F.R., Part 149, pursuant to Section 1424(e), Safe Drinking Water Act (42 U.S.C. 300h-3(e)) that will result in a flow of more than 5,000 gallons per

minute or that is within 1,000 feet of another well if the combined flows would exceed 5,000 gallons per minute.

(e) The commission may grant for a well an exemption from the prohibition provided by Subsection (d) of this section for any beneficial use that does not waste water. The commission by rule may delegate the authority to grant exemptions under this subsection to a local water district.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., 2nd C.S., ch. 4, Sec. 1, eff. Aug. 29, 1991.

Sec. 11.203. ARTESIAN WELL: DRILLING RECORD. A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the commission by registered mail.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.017, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 13, eff. Sept. 1, 1997.

Sec. 11.204. REPORT OF NEW ARTESIAN WELL. Within one year after an artesian well is drilled, the owner or operator shall transmit to the commission a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.018, eff. Sept. 1, 1985.

Sec. 11.205. WASTING WATER FROM ARTESIAN WELL. Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste and unlawful to wilfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff.

Sept. 1, 1977; Acts 1991, 72nd Leg., 2nd C.S., ch. 4, Sec. 2, eff. Aug. 29, 1991; Acts 1997, 75th Leg., ch. 1072, Sec. 14, eff. Sept. 1, 1997.

Sec. 11.206. IMPROPERLY CASED WELL: NUISANCE. An artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readily and effectively prevent water from flowing out of the well and running over the surface of the ground above the well or wasting through the strata through which it passes is a public nuisance and subject to abatement by the executive director.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981.

Sec. 11.207. ANNUAL REPORT. (a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the commission on a form supplied by the commission.

(b) The report shall state:

(1) the quantity of water which was obtained from the well;

(2) the nature of the uses to which the water was applied;

(3) the change in the level of the well's water table; and

(4) other information required by the commission.

(c) If water from the well was used for irrigation, the report shall also state the acreage and yield of each crop irrigated.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.019, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 6, eff. June 19, 1987.

SUBCHAPTER G. WATER RIGHTS ADJUDICATION ACT

Sec. 11.301. SHORT TITLE. This subchapter may be cited as the Water Rights Adjudication Act.
Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.302. DECLARATION OF POLICY. The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.020, eff. Sept. 1, 1985.

Sec. 11.303. RECORDATION AND LIMITATION OF CERTAIN WATER RIGHTS CLAIMS. (a) This section applies to:

- (1) claims of riparian water rights;
- (2) claims under Section 11.143 of this code to impound, divert, or use state water for other than domestic or livestock purposes, for which no permit has been issued;
- (3) claims of water rights under the Irrigation Acts of 1889 and 1895 which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913, as amended; and
- (4) other claims of water rights except claims under permits or certified filings.

(b) Any claim to which this section applies shall be

recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where a claimant of a riparian right has prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the commission a statement setting forth:

- (1) the name and address of the claimant;
- (2) the location and the nature of the right claimed;
- (3) the stream or watercourse and the river basin in which the right is claimed;
- (4) the date of commencement of works;
- (5) the dates and volumes of use of water; and
- (6) other information the commission may require to show the nature and extent of the claim.

(d) A person who files a statement as provided in this section shall certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief.

(e) A claimant who desires recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) of this section shall file an additional sworn statement on or before July 1, 1971.

(f) The commission shall prescribe forms for the sworn statements required by this section, but use of the commission forms is not mandatory.

(g) On or before January 1, 1968, and June 1, 1969, the commission shall cause notice of the requirements of this section to be published once each week for two consecutive weeks in newspapers having general circulation in each county of the state and by first-class mail to each user of surface water who has filed

a report of water use with the commission.

(h) On sworn petition, notice, and hearing as prescribed for applications for permits and upon finding of extenuating circumstances and good cause shown for failure to timely file, the commission may authorize the filing of the sworn statement or statements required by this section until entry of a preliminary determination of claims of water rights in accordance with Section 11.309 of this code which includes the area described in the petition or, if a preliminary determination has not been entered, until September 1, 1974.

(i) Since the filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state, failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.

(j) A sworn statement submitted under this section is binding on the person submitting it and his successors in interest, but is not binding on the commission or any other person in interest.

(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

(l) This section does not apply to use of water for domestic or livestock purposes.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 2, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.021, eff. Sept. 1, 1985.

Sec. 11.304. ADJUDICATION OF WATER RIGHTS. The water rights in any stream or segment of a stream may be adjudicated as provided in this subchapter:

(1) on the commission's own motion;

(2) on petition to the commission signed by 10 or more claimants of water rights from the source of supply; or

(3) on petition of the executive director.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff.

June 10, 1981.

Sec. 11.305. INVESTIGATION. (a) Promptly after a petition is filed under Section 11.304 of this Code, the commission shall consider whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission office.

(b) In connection with the investigation, the executive director shall have a map or plat made showing with substantial accuracy the course of the stream or segment and the location of reservoirs, diversion works, and places of use, including lands which are being irrigated or have facilities for irrigation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 3, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.022, eff. Sept. 1, 1985.

Sec. 11.306. NOTICE OF ADJUDICATION. (a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission. The date shall not be less than 90 days after the date the notice is issued.

(b) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 978, ch. 367, Sec. 4, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.023, eff. Sept. 1, 1985.

Sec. 11.307. FILING OF SWORN CLAIMS. (a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the commission within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

- (1) the name and post-office address of the claimant;
- (2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;
- (3) the purpose of the use;
- (4) a description of works and irrigated land; and
- (5) all other information necessary to show the nature and extent of the claim.

(b) The commission shall prescribe forms for claims, but use of the commission forms is not mandatory.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.024, eff. Sept. 1, 1985.

Sec. 11.308. HEARINGS ON CLAIMS; NOTICE. The commission shall set a time and a place for hearing all claims. Not less than 30 days before commencement of the hearings, the commission shall give notice of the hearings by certified mail to all persons who have filed claims in accordance with Section 11.307 of this code, or this notice may be included in the notice of adjudication provided in Section 11.306 of this code. The hearings shall be conducted as provided in Section 11.337 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.309. PRELIMINARY DETERMINATION OF CLAIMS. (a) On completion of the hearings, the commission shall make a preliminary determination of the claims to water rights under adjudication.

(b) One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Section 11.307 of this code. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin, as designated by the commission. Copies shall also be made available to other interested persons at a reasonable price, based on the cost of reproduction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.310. EVIDENCE OPEN TO INSPECTION. All evidence presented to or considered by the commission shall be open to public inspection for a period of not less than 60 days, as fixed by the commission, after the notice prescribed in Section 11.312 of this code is issued.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.311. DATE FOR FILING CONTESTS. The commission shall set a date for filing contests on the preliminary determination, which date shall not be less than 30 days after the period for public inspection of the evidence has closed.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.312. NOTICE OF PRELIMINARY DETERMINATION; COPIES. (a) Promptly after the preliminary determination is made as provided in Section 11.309 of this code, the commission shall publish notice of the determination once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the stream or segment that is the subject of the adjudication is located.

(b) The commission shall also send notice by first-class

mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission.

(c) Each notice shall state:

(1) the place and the period of time that the preliminary determination and evidence presented to or considered by the commission will be open for public inspection;

(2) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

(3) the method of ordering copies of the preliminary determination and the charge for copies;

(4) the date by which contests on the preliminary determination must be filed.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.025, eff. Sept. 1, 1985.

Sec. 11.313. FILING CONTESTS. (a) Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin but outside the stream or segment under adjudication, who disputes the preliminary determination may within the time for filing contests prescribed by the commission in the notice, including any extension of the time, file a written contest with the commission, stating with reasonable certainty the grounds of his contest.

(b) The statement filed to contest a preliminary determination must be verified by an affidavit of the contestant, his agent, or his attorney.

(c) If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be served on each of these claimants or his attorney by certified mail, and proof of service shall be filed with the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.314. HEARING ON CONTEST; NOTICE. After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission. The hearing shall be conducted as provided in Section 11.337 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.026, eff. Sept. 1, 1985.

Sec. 11.315. FINAL DETERMINATION. On completion of the hearings on all contests, the commission shall make a final determination of the claims to water rights under adjudication. The commission shall send a copy of the final determination and any modification of the final determination to each claimant whose rights are adjudicated and to each contesting party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.316. APPLICATION FOR REHEARING. Within 30 days from the date of the final determination, any affected party may apply to the commission for a rehearing. Applications for rehearing which in the opinion of the commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and to each contesting party.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.317. FILING FINAL DETERMINATION WITH DISTRICT COURT. (a) As soon as practicable after the disposition of all applications for rehearing, the commission shall file a certified copy of the final determination, together with all evidence

presented to or considered by the commission, in a district court of any county in which the stream or segment under adjudication is located. However, if the stream or segment under adjudication includes all or parts of three or more counties and if 10 or more affected persons who appeared in the proceedings petition the commission to do so, the commission shall file the action in a convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication.

(b) The commission shall obtain an order from the court fixing a time not less than 30 days from the date of the order for the filing of exceptions to the final determination and also fixing a time not less than 60 days from the date of the order for the commencement of hearings on exceptions.

(c) The commission shall immediately give written notice of the court order by certified mail to all parties who appeared in the proceedings before the commission. The commission shall file proof of the service with the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.318. EXCEPTIONS TO FINAL DETERMINATION. (a) Any affected person who appeared in the proceeding before the commission may file exceptions to the final determination. An exception must state with a reasonable degree of certainty the grounds for the exception and must specify the particular paragraphs and pages of the determination to which the exception is taken.

(b) Three copies of the exceptions shall be filed in court, and a copy shall be served on the commission. The commission shall make copies of all exceptions available at a reasonable price, based on the cost of reproduction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.319. HEARINGS ON EXCEPTIONS. (a) The court shall hear any exceptions that have been filed. The commission and all affected persons who appeared in the proceedings before the

commission are entitled to appear and be heard on the exceptions. The court may permit other parties in interest to appear and be heard for good cause shown.

(b) The court may conduct nonjury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside its judicial district shall be taxed as costs.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.320. SCOPE OF JUDICIAL REVIEW. (a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

(b) A party in interest may demand a jury trial of any issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter and that this subchapter would not have been passed without the inclusion of this section. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.321. EVIDENCE. Any exception heard by the court without a jury may be resolved on the record of evidence before the commission, or the court may take additional evidence or direct that additional evidence be heard by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff.

Sept. 1, 1977.

Sec. 11.322. FINAL DECREE. (a) After the final hearing, the court shall enter a decree affirming or modifying the order of the commission.

(b) The court may assess the costs as it deems just.

(c) An appeal may be taken from the decree of the court in the same manner and with the same effect as in other civil cases.

(d) The final decree in every water right adjudication is final and conclusive as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is binding on all claimants to water rights outside the adjudicated stream or segment of a stream.

(e) Except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.323. CERTIFICATE OF ADJUDICATION. (a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the presiding officer of the commission and bearing the seal of the commission.

(b) In the certificate, the commission shall include:

(1) a reference to the final decree;

(2) the name and post-office address of the holder of the adjudicated right;

(3) the priority, extent, and purpose of the adjudicated right and, if the right is for irrigation, a description of the irrigated land; and

(4) all other information in the decree relating to the adjudicated right.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff.

Sept. 1, 1977; Acts 2001, 77th Leg., ch. 965, Sec. 16.02, eff. Sept. 1, 2001.

Sec. 11.324. RECORDATION OF CERTIFICATE. (a) The commission shall transmit the certificate of adjudication or a true copy to the county clerk of each county in which the appropriation is made.

(b) On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate in a well-bound book provided and kept for that purpose only. The clerk shall index the certificate alphabetically under the name of the holder of the certificate of adjudication and under the name of the stream or source of water supply.

(c) When a certificate of adjudication is filed and recorded as provided in this section, the county clerk shall deliver the certificate on demand to the holder.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.325. WATER DIVISIONS. The commission shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.027, eff. Sept. 1, 1985.

Sec. 11.326. APPOINTMENT OF WATERMASTER. (a) The executive director may appoint one watermaster for each water division.

(b) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

(c) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in

the discharge of his duties.

(d) In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

(e) The executive director shall supervise and generally direct the watermaster in the performance of his duties as defined in Section 11.327. A watermaster is responsible to the executive director for the proper performance of his duties.

(f) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

(g) For a water basin in which a watermaster is not appointed, the executive director shall:

(1) evaluate the water basin at least once every five years to determine whether a watermaster should be appointed; and

(2) report the findings and make recommendations to the commission.

(h) The commission shall:

(1) determine the criteria or risk factors to be considered in an evaluation under Subsection (g); and

(2) include the findings and recommendations under Subsection (g) in the commission's biennial report to the legislature.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 696, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 5.05, eff. September 1, 2011.

Sec. 11.3261. WATERMASTER ADVISORY COMMITTEE. (a) The executive director shall establish a watermaster advisory committee consisting of a minimum of nine members, but no more than 15 members, who are holders of water rights or representatives of holders of water rights in the water division of a watermaster. In appointing members of the advisory committee the executive director shall consider geographic representation, amount of water rights held, different types of holders of water rights and users such as water districts, municipal suppliers, irrigators, and industrial

users, and experience and knowledge in water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses incurred or to compensation.

(c) An advisory committee member shall serve a term of two years from the date of initial appointment by the executive director and hold office until a successor is appointed.

(d) The advisory committee shall meet within 30 days following initial appointment by the executive director and elect a presiding officer who shall serve on an annual basis. Following the first meeting, the committee shall meet regularly as necessary.

(e) The advisory committee's duties include:

(1) providing recommendations to the executive director regarding activities of benefit to the holders of water rights in the administration and distribution of water to holders of water rights;

(2) review and comment to the executive director on the annual budget of the watermaster operations; and

(3) other duties as may be requested by the executive director with regard to the watermaster operations or as requested by holders of water rights in a water division which the committee deems of benefit to the administration of water rights in water divisions.

Added by Acts 1997, 75th Leg., ch. 696, Sec. 2, eff. Sept. 1, 1997.

Sec. 11.327. DUTIES OF WATERMASTER. (a) A watermaster shall divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights.

(b) A watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(c) A watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

(d) A watermaster's duties shall not include activities which relate to other programs of the commission, except in situations of imminent threat to public health and safety or the environment.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 696, Sec. 3, eff. Sept. 1, 1997.

Sec. 11.3271. POWERS AND DUTIES OF RIO GRANDE WATERMASTER; DELIVERY OF WATER DOWN BANKS AND BED OF RIO GRANDE. (a) This section applies only to the watermaster with jurisdiction over the Rio Grande and the water division for which that watermaster is appointed.

(b) The watermaster shall divide the water of the streams or other sources of supply of the division in accordance with the adjudicated water rights.

(c) The watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of the division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(d) The watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

(e) The watermaster's duties do not include activities that relate to other programs of the commission, except as provided by this section. The watermaster's duties shall include activities that relate to situations of imminent threat to public health and safety or the environment. The commission shall adopt rules:

(1) defining situations of imminent threat under this section; and

(2) addressing the watermaster's duties in response to terrorism.

(f) The watermaster may store in a reservoir for release at a later time water in transit that is being conveyed down the banks

and bed of the Rio Grande under a permit issued by the commission and in accordance with rules prescribed by the commission. In this section, "water in transit" means privately owned water, not including state water, that a person has pumped from an underground reservoir and that is in transit between the point of discharge into the river and the place of use or the point of diversion by a person who has contracted with the owner of the water to purchase the water. The contract must specify that the contract is for the purchase and delivery of a specified amount of water less the carriage losses incurred in transit, as described and measured according to commission rules.

(g) The watermaster may store water under Subsection (f) only if the storage does not hinder the ability of any other holders of Rio Grande surface water rights to store the maximum authorized capacity in a reservoir as specified by commission rules and relevant permits, certified filings, or certificates of adjudication.

(h) Before granting a permit to convey water down the banks and bed of the Rio Grande, the commission shall adopt rules that provide for the methods and procedures by which the watermaster shall account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the banks and bed of the Rio Grande. A permit to convey water down the banks and bed of the Rio Grande may not allow the permit holder to share in any beneficial state water inflows into the Rio Grande. The permit holder is entitled to convey only the amount of water specified in the permit, less the carriage losses incurred in transit, as described and measured according to commission rules. A rule adopted by the commission under this subsection must be consistent with the Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, concluded by the United States and the United Mexican States on February 3, 1944, and with any minute order adopted by the International Boundary and Water Commission.

(i) In considering an application for a permit to convey water down the banks and bed of the Rio Grande, the commission shall

consider the quality of the water to be conveyed. The commission may not issue a permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande.

Text of subsec. (j) as added by Acts 2003, 78th Leg., ch. 385, Sec.

6.01

(j) Notwithstanding any other law, the watermaster is the official recorder for all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens, that the commission authorizes or requires to be filed in connection with water rights relating to water in the lower, middle, or upper basin of the Rio Grande that are subject to a permit, certified filing, or certificate of adjudication. An instrument shall be filed with the watermaster under this subsection in the same manner as required by other law for the same type of instrument. The filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument. An instrument filed under this subsection shall be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law. The watermaster may charge and collect a fee for the recordation of instruments under this subsection in the same amount as the fee collected by the county clerk of Cameron County for the recordation of similar instruments. The commission by rule shall prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate.

Text of subsec. (j) as added by Acts 2003, 78th Leg., ch. 281, Sec. 1

(j) The watermaster shall maintain a central repository which shall be made available to the public that includes certified copies of all instruments, including deeds, deeds of trust, and liens, that the commission requires to be filed in connection with water rights relating to water in the lower, middle, or upper basin

of the Rio Grande and that are subject to a permit, certified filing, or certificate of adjudication. On or after September 1, 2003, a lien against a water right shall not be effective against third parties unless a certified copy of the instrument is filed with the watermaster and all requirements under other law are met. The validity of any liens or filings made prior to September 1, 2003, is not affected by this section. This section does not affect the validity of a lien as between the holder of the water right and the holder of the lien or the requirements or validity of any other law governing the perfection and recordation of these instruments. The executive director may charge a fee for the filing of certified copies of instruments. A fee collected under this section shall be deposited to the credit of the watermaster fund.

(k) This section does not apply to the Rio Grande above the Fort Quitman Dam.

Added by Acts 2003, 78th Leg., ch. 281, Sec. 1, eff. Sept. 1, 2003 and Acts 2003, 78th Leg., ch. 385, Sec. 6.01, eff. Sept. 1, 2003.

Sec. 11.328. WATERMASTER'S NOTICE POSTED. If, in the performance of his duties, a watermaster regulates diversion works or the controlling works of reservoirs, he shall attach to the works a written notice, properly dated and signed, stating that the works have been properly regulated and are wholly under his control. The notice is legal notice to all parties interested in the diversion and distribution of the water served by the diversion works or reservoir.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.329. COMPENSATION AND EXPENSES OF WATERMASTER. (a) The commission shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the commission for the compensation and expenses. Necessary expenses shall be limited to costs associated with streamflow measurement and monitoring, water accounting,

assessment billing and collection associated with a watermaster's operation, and other duties a watermaster may be required to perform under this subchapter.

(b) After the adjudication decree becomes final, and each fiscal year thereafter, the executive director shall provide notice to each holder of water rights under the decree, at least 30 days prior to the commission's holding a public hearing as provided in Subsection (c), of the proposed budget for their watermaster operations showing the amount of compensation and expenses that will be required annually for the administration of the water rights so determined. This budget shall be furnished to the watermaster advisory committee for comment at least 30 days prior to notification to each holder of water rights.

(c) The commission shall hold a public hearing on the proposed fiscal year budget for each watermaster operation. The commission shall determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing, the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the commission. At the request of the watermaster advisory committee the commission may modify a fiscal year budget for any water division.

Text of subsec. (d) as amended by Acts 1997, 75th Leg., ch. 333,
Sec. 3

(d) The executive director shall deposit all collections under this section to the credit of the watermaster administration account.

Text of subsec. (d) as amended by Acts 1997, 75th Leg., ch. 696,
Sec. 4

(d) The executive director shall collect the assessments

and shall account for assessments separately for each water division and shall deposit assessments collected to a special fund known as the watermaster fund established and governed by Section [11.3291](#).

(e) No water shall be diverted, taken, or stored by, or delivered to, any person while he is delinquent in the payment of his assessed costs.

(f) An order of the commission assessing costs remains in effect until the commission issues a further order. The commission may modify, revoke, or supersede an order assessing costs with a subsequent order. The commission may issue supplementary orders from time to time to apply to new diversions.

(g) The commission may not assess costs under this section against a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts or against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.028, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 118, Sec. 1, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 333, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 696, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 20.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 234, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. [3](#)), Sec. 1.18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 1.18, eff. September 1, 2007.

Sec. 11.3291. WATERMASTER FUND. (a) The watermaster fund is created as a special fund in the state treasury and shall be administered by the commission under this subchapter and rules adopted by the commission.

(b) The legislature hereby appropriates without further legislative action any funds deposited in the watermaster's fund as

provided in this subchapter. The watermaster fund shall be used: (1) to pay the compensation and expenses of the watermaster in each water division; (2) to pay expenditures for equipment, facilities, and capital expenditures necessary to the watermaster operation when recommended by the watermaster advisory committee and the executive director and approved by the commission when hearings are required as provided in Section 11.329; and (3) to pay into the general revenue fund for use without further appropriation for purposes of providing overhead and administrative expenses of the commission in an amount not greater than 10 percent times the approved annual budget under this subchapter in a water division. Any amounts not used in one fiscal year shall be carried over and used for the following fiscal year's operational expenses of the watermaster.

(c) The watermaster fund shall be accounted for separately according to the appropriate water division from which the watermaster's assessment is collected.

(d) The watermaster fund shall consist of:

- (1) fees collected in each water division;
- (2) money from gifts, grants, or donations to the fund for designated or general lawful use; and
- (3) money from any other source designated by the legislature or the commission.

(e) The commission may invest, reinvest, and direct the investment of any available money in the fund as provided by law for the investment of money under Section 404.024, Government Code.
Added by Acts 1997, 75th Leg., ch. 696, Sec. 5, eff. Sept. 1, 1997.

Sec. 11.330. OUTLET FOR FREE PASSAGE OF WATER. The owner of any works for the diversion or storage of water shall maintain a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound. The commission shall adopt rules, and the executive director shall enforce the rules, governing the type and location of the headgates or gates and the

outlets to allow the free passage of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.331. MEASURING DEVICES. The commission, by rule, may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.332. INSTALLATION OF FLUMES. The commission, by rule, may require flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.333. FAILURE TO COMPLY WITH COMMISSION RULES. If the owner of waterworks using state water refuses or neglects to comply with the rules adopted pursuant to Section [11.330](#), [11.331](#), or [11.332](#) of this code, the executive director, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may direct the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the rules.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff.

June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.334. SUIT AGAINST COMMISSION FOR INJURY. Any person who is injured by an act of the commission under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the commission has failed to carry into effect the decree adjudicating the water right.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.029, eff. Sept. 1, 1985.

Sec. 11.335. ADMINISTRATION OF WATER RIGHTS NOT ADJUDICATED. (a) If any area in which water rights of record in the office of the commission have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(b) An agreement made under authority of this section shall provide:

(1) the basis and manner of distribution of the water to which the agreement relates;

(2) the services of a special watermaster, and assistants if necessary, to carry out the agreement; and

(3) the allocation, collection, and payment of the annual costs of administration.

(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the commission and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

(d) The administration of water rights by agreement is governed by the provisions of this subchapter except as regards allocation and payment of the expenses of the administration.

(e) No agreement authorized by this section impairs any vested right to the use of water or creates any additional rights to

the use of water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.030, eff. Sept. 1, 1985.

Sec. 11.336. ADMINISTRATION OF PERMITS ISSUED AFTER ADJUDICATION. Permits, other than temporary permits, that are issued by the commission to appropriate water from an adjudicated stream or segment are subject to administration in the same manner as is provided in this subchapter for adjudicated water rights.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.337. HEARINGS: NOTICE AND PROCEDURE. (a) The commission shall give notice of a hearing or other proceeding it orders under this subchapter in the manner prescribed in the procedural rules of the commission, unless this subchapter specifically provides otherwise.

(b) In any proceeding in any part of the state, the commission may:

(1) take evidence, including the testimony of witnesses;

(2) administer oaths;

(3) issue subpoenas and compel the attendance of witnesses in the same manner as subpoenas are issued out of the courts of the state;

(4) compel witnesses to testify and give evidence; and

(5) order the taking of depositions and issue commissions for the taking of depositions in the same manner as depositions are obtained in civil actions.

(c) Evidence may be taken by a duly appointed reporter before the commission or before an authorized representative who has the power to administer oaths.

(d) If a person neglects or refuses to comply with an order or subpoena issued by the commission or refuses to testify on any matter about which he may be lawfully interrogated, the commission

may apply to a district court of the county in which the proceeding is held to punish him in the manner provided by law for such disobedience in civil actions.

(e) The commission may adjourn its proceedings from time to time and from place to place.

(f) When a proceeding before the commission is concluded, the commission shall render a decision as to the matters concerning which the proceeding was held.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.338. CANCELLATION OF WATER RIGHTS. Nothing in this subchapter recognizes any abandoned or cancelled water right or impairs in any way the power of the commission under general law to forfeit, cancel, or find abandoned any water right, including adjudicated water rights.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.339. UNDERGROUND WATER NOT AFFECTED. This subchapter does not apply to underground water as defined in Chapter 52 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.340. ABATEMENT OF CERTAIN CIVIL SUITS. (a) Nothing in this subchapter prevents or precludes a person who claims the right to divert water from a stream from filing and prosecuting to a conclusion a suit against other claimants of the right to divert or use water from the same stream. However, if the commission has ordered a determination of water rights as provided in this subchapter or if the commission orders such a determination within 90 days after notice of the filing of a suit, the suit shall be abated on the motion of the commission or any party in interest as to any issues involved in the water rights determination.

(b) If a suit is abated as provided in Subsection (a) of this section, the court may grant or continue any temporary relief

necessary to preserve the status quo pending a final determination of the water rights involved.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.341. LIMITATION ON ACTIONS. This subchapter does not affect any action or proceeding instituted before August 28, 1967, or any right accrued before that date except those specifically provided for in this subchapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. COURT-APPOINTED WATERMASTER

Sec. 11.401. SCOPE OF SUBCHAPTER. The provisions of this subchapter apply to a suit if:

- (1) the state is a party;
- (2) the purpose of the suit is to determine the right of the parties to divert or use water of a surface stream; and
- (3) rights are asserted to use water in, or divert water to, not more than four counties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.402. APPOINTMENT AND AUTHORITY OF WATERMASTER. (a) A court having jurisdiction over a suit described in Section [11.401](#) of this code may appoint a watermaster with power to allocate and distribute, under the supervision of the court, the water taken into judicial custody.

(b) The court may not appoint a watermaster with authority to act both upstream and downstream from an existing reservoir on any surface stream of the state. However, once a watermaster is appointed, the construction of a new reservoir does not invalidate his appointment or restrict his authority over that portion of the stream contemplated by the original order of appointment.

(c) Under terms and conditions prescribed by the court, the watermaster may incur necessary expenses, appoint necessary

deputies and assistants, and perform duties and assume responsibilities delegated to him by the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.403. COMPENSATION OF WATERMASTER. The court shall fix the compensation of the watermaster and his staff.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.404. EXPENSES AND ASSESSMENT OF COSTS OF WATERMASTER. (a) Except as provided by Subsection (e), the trial court shall assess the costs and expenses of the watermaster and his staff against all persons receiving an allocation of the water in judicial custody. The court shall assess the costs and expenses monthly or at other time intervals ordered by the court.

(b) The court shall assess the costs and expenses on the basis of:

- (1) acreage;
- (2) acre-feet of allocated water;
- (3) per capita; or
- (4) any other formula the court, after notice and

hearing, determines to be the most equitable.

(c) During the pendency of an appeal, the trial court, in its discretion, may assess costs against some parties on one basis and against other parties on another basis.

(d) The costs and expenses are not to be taxed as ordinary court costs, but are to be considered costs necessary to protect the rights and privileges of the parties receiving allocations of water during the litigation and are to be paid by those parties.

(e) The court may not assess costs and expenses under this section against:

- (1) a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts; or

- (2) a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 234, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.19, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.19, eff. September 1, 2007.

Sec. 11.405. FAILURE TO PAY ASSESSED COSTS. If the costs and expenses assessed are not paid within the time prescribed by the court, the court after notice and hearing may withdraw or limit allocations of water to any party failing or refusing to pay his share until all costs and expenses assessed against him are paid in full.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.406. JUDICIAL CUSTODY OF WATER DURING APPEAL. If a party appeals the judgment of the trial court, that court may retain custody of the water which it has previously taken into judicial custody and over which it has appointed a watermaster. Until final judgment is entered in the case, the trial court has exclusive jurisdiction to administer, allocate, and distribute the water retained in its custody, as provided in Section 11.407 of this code. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.407. ALLOCATION AND DISTRIBUTION OF WATER DURING APPEAL. During the pendency of an appeal, the trial court shall limit the allocation and distribution of the water in its custody to the parties adjudicated to have a valid right to use the water. However, if any party prosecutes an appeal and files a supersedeas bond, the trial court shall make any necessary adjustments in the water allocations and allocate to that party the same amount of water that he received during the proceedings in the trial court. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff.

Sept. 1, 1977.

Sec. 11.408. RETENTION OF WATERMASTER DURING APPEAL. During the pendency of an appeal, the trial court may retain the watermaster in office with the same authority he had during the trial proceedings.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.409. VIOLATIONS OF COURT ORDERS. If a party violates any order of the trial court either during trial proceedings or during an appeal, the trial court may limit or withdraw his allocation of water until he corrects the violation to the satisfaction of the court.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. COMMISSION-APPOINTED WATERMASTER

Sec. 11.451. COMMISSION AUTHORITY. On petition of 25 or more holders of water rights in a river basin or segment of a river basin or on its own motion the commission may authorize the executive director to appoint a watermaster for a river basin or segment of a river basin if the commission finds that the rights of senior water rights holders in the basin or segment of the basin are threatened.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.452. PROCEDURE FOR DETERMINATION. (a) On receiving a petition for appointment of a watermaster or on its own motion, the commission shall call and hold a hearing to determine if a need exists for appointment of a watermaster for the river basin or segment of the river basin.

(b) At the hearing persons who hold water rights in the river basin or segment of the river basin may appear before the commission and submit testimony and evidence relating to the need for appointment of a watermaster.

(c) After the hearing, the commission shall make a written determination as to whether a threat exists to the rights of senior water rights holders in the river basin or segment of the river basin and shall issue an order either finding that a threat exists and directing appointment of a watermaster or denying appointment of a watermaster.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.453. APPOINTMENT OF WATERMASTER. (a) On issuance of an order under Section 11.452 of this chapter directing appointment of a watermaster, the executive director shall appoint a watermaster for the river basin or segment of the river basin covered by the commission order.

(b) A person appointed as a watermaster under this section may not be:

(1) the holder of a water right in the river basin or segment of the river basin to be under his jurisdiction as watermaster;

(2) a purchaser of water from the holder of a water right in the river basin or segment of the river basin under his jurisdiction as watermaster; or

(3) a landowner of any land adjacent to the river or segment of the river under his jurisdiction as watermaster.

(c) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

(d) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge of his duties.

(e) In a segment or basin in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

(f) The executive director shall supervise and generally direct the watermaster in the performance of his duties. A watermaster is responsible to the executive director for the proper performance of his duties.

(g) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, the executive director shall appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. A member of the advisory committee must be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. In appointing members to the advisory committee, the executive director shall consider:

- (1) geographic representation;
- (2) amount of water rights held;
- (3) different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users; and
- (4) experience and knowledge of water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) An advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) The advisory committee shall meet within 30 days after the date the initial appointments have been made and shall select a presiding officer to serve a one-year term. The committee shall meet regularly as necessary.

(e) The advisory committee shall:

- (1) make recommendations to the executive director regarding activities of benefit to the holders of water rights in the administration and distribution of water to holders of water rights in the river basin or segment of the river basin for which the watermaster is appointed;

- (2) review and comment to the executive director on the annual budget of the watermaster operation; and

- (3) perform other advisory duties as requested by the

executive director regarding the watermaster operation or as requested by holders of water rights and considered by the committee to benefit the administration of water rights in the river basin or segment of the river basin for which the watermaster is appointed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.20, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.20, eff. September 1, 2007.

Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER. Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.21, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.21, eff. September 1, 2007.

Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER. (a) Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) The executive director shall deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Money deposited under this section to the credit of the watermaster fund may be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.21, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.21, eff. September 1, 2007.

Sec. 11.456. MAINTAINING CURRENT STATUS. (a) To protect water rights holders in a river basin or segment of a river basin during the proceedings under Section 11.452 of this code, the commission may issue an order or orders at the beginning of the proceedings under Section 11.452 of this code or may request the attorney general to seek injunctive relief to protect the water rights holders during the proceedings.

(b) On request of the commission, the attorney general shall seek injunctive relief to carry out the purpose of Subsection (a) of this section.

(c) The commission is not required to comply with the requirements of Chapter 2001, Government Code in issuing orders under Subsection (a) of this section and there is no right of appeal from those orders.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 11.457. ASSISTANCE TO WATERMASTER. The executive director shall provide the watermaster with such staff and facilities as are necessary to carry out this subchapter.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

Sec. 11.458. APPLICATION OF SUBCHAPTER. This subchapter shall not apply to any river basin or segment of a river basin in which a watermaster has been appointed pursuant to Subchapter G or H of this chapter.

Added by Acts 1987, 70th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER J. WETLANDS

Sec. 11.501. TITLE OF ACT. This Act shall be known and may

be cited as the "Wetlands Act."

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Sec. 11.502. DEFINITION. (1) The definition of the term "wetlands" within the State of Texas, for purposes of the Clean Water Act, 33 U.S.C. 1311, 1344; the Erodible Land and Wetland Conservation and Reserve Program, 16 U.S.C. 3801-3845; the Emergency Wetlands Resources Act of 1986, 16 U.S.C. 3901-3932; the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370a, all statutory foundation for the Federal Wildlife Service's National Wetlands Inventory mapping, including the Water Bank Program for Wetlands Preservation, 16 U.S.C. 1301-1311; the Water Resources development project (wetland areas), 42 U.S.C. 1962d-5e; and the Migratory Bird Conservation Act, 16 U.S.C. 715-715r; and all Texas laws, rules, and regulations adopted pursuant to Chapter 2001, Government Code and interpretation and implementation of any kind whatsoever of both federal and state laws by agencies of the state, including any amendment or revision thereto, relating to wetlands, means an area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation.

(2) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(3) The term "hydrophytic vegetation" means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(4) The term "wetlands" does not include:

- (A) irrigated acreage used as farmland;
- (B) man-made wetlands of less than one acre; or
- (C) man-made wetlands not constructed with wetland creation as a stated objective, including but not limited

to impoundments made for the purpose of soil and water conservation which have been approved or requested by soil and water conservation districts.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 11.503. APPLICABILITY TO MAN-MADE WETLANDS. Section 11.502(4)(C) applies only to man-made wetlands, the construction or creation of which commences on or after the effective date of this Act.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Sec. 11.504. APPLICABILITY TO CERTAIN MINING-RELATED ACTIVITIES. This Act shall not apply to surface mining and reclamation.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.003, eff. September 1, 2009.

Sec. 11.505. APPLICABILITY TO STATE REVOLVING LOAN FUND PROGRAM. This Act shall not apply to the state revolving loan fund program.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.004, eff. September 1, 2009.

Sec. 11.506. CONFLICT BETWEEN STATE AND FEDERAL LAW. If the state definition conflicts with the federal definition in any manner, the federal definition prevails.

Added by Acts 1989, 71st Leg., ch. 1202, Sec. 1, eff. Aug. 28, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 24.005, eff. September 1, 2009.

SUBCHAPTER K. CONCHO RIVER WATERMASTER PROGRAM

Sec. 11.551. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the Concho River Watermaster Advisory Committee appointed under Section [11.557](#).

(2) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(3) "Program" means the Concho River Watermaster Program, a division of the South Texas Watermaster established by the Texas Commission on Environmental Quality and operating pursuant to rules and regulations promulgated by the Texas Commission on Environmental Quality.

(4) "Water right holder" means a person who holds a certificated right in water under the jurisdiction of the watermaster acting under this subchapter.

(5) "Water user" means a person, including a water right holder, who uses water under the jurisdiction of the watermaster acting under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. [2815](#)), Sec. 1, eff. September 1, 2005.

Sec. 11.552. CONCHO RIVER WATERMASTER PROGRAM. The Concho River Watermaster Program is established to ensure compliance with water rights in the area described by Section [11.553](#).

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. [2815](#)), Sec. 1, eff. September 1, 2005.

Sec. 11.553. JURISDICTION OF WATERMASTER. The geographical and jurisdictional boundaries of a watermaster acting under this subchapter shall be the Concho River segment of the Colorado River Basin that includes the Concho River and all of its tributaries, downstream on the main stem of the Concho River to a point on the Concho River prior to reaching, and upstream of the O. H. Ivie Reservoir located at and including the diversion point of Certificate of Adjudication No. 14-1393 (River Order No. 4954450000) in Concho County.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. [2815](#)), Sec. 1, eff.

September 1, 2005.

Sec. 11.554. WATERMASTER; APPOINTMENT OF DEPUTY WATERMASTER. (a) The watermaster for the South Texas Watermaster Program shall serve as the watermaster for the program.

(b) The watermaster shall appoint a deputy watermaster, who must reside in the area described by Section [11.553](#).

(c) The watermaster or deputy watermaster may not be:

(1) a water right holder in the river basin or segment of the river basin under the program's jurisdiction;

(2) a purchaser of water from a water right holder in the river basin or segment of the river basin under the program's jurisdiction; or

(3) a landowner of any land adjacent to the river or segment of the river under the program's jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. [2815](#)), Sec. 1, eff. September 1, 2005.

Sec. 11.555. DUTIES AND AUTHORITY OF WATERMASTER. The watermaster has the same duties and authority under the Concho River Watermaster Program as the watermaster has under the South Texas Watermaster Program.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. [2815](#)), Sec. 1, eff. September 1, 2005.

Sec. 11.556. APPOINTMENT OF NONVOTING MEMBER OF SOUTH TEXAS WATERMASTER ADVISORY COMMITTEE. (a) The executive director shall appoint a person who resides in the area described by Section [11.553](#) to the South Texas Watermaster Advisory Committee.

(b) Except as otherwise provided by this section, Section [11.3261](#) applies to a member of the South Texas Watermaster Advisory Committee appointed under this section.

(c) A member of the South Texas Watermaster Advisory Committee appointed under this section may attend all meetings of that committee and enter into discussions at the meetings, but the person may not vote at the meetings.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. [2815](#)), Sec. 1, eff.

September 1, 2005.

Sec. 11.557. CONCHO RIVER WATERMASTER ADVISORY COMMITTEE.

(a) The Concho River Watermaster Advisory Committee consists of 13 members appointed by the executive director as follows:

(1) six members selected from nominations received, one representing the City of Paint Rock and one representing each of the following stream segments or tributaries of the Concho River: Spring Creek, Dove Creek, South Concho, Middle Concho, and main stem of the Concho below Certificate of Adjudication No. 14-1337 (River Order No. 5460010000);

(2) six members selected from a list of candidates submitted by the City of San Angelo; and

(3) one member selected at the executive director's discretion.

(b) If the executive director does not receive nominations or a list of candidates as specified under Subsection (a), after reasonable notice the executive director may appoint to the advisory committee the appropriate number of members selected at the executive director's discretion.

(c) If a vacancy occurs on the advisory committee, the executive director shall fill the vacancy for the unexpired term by appointing a person selected in the same manner as the person being replaced.

(d) An advisory committee member shall serve for a term of two years.

(e) An advisory committee member serves without compensation.

(f) The advisory committee shall:

(1) provide recommendations to the watermaster and deputy watermaster regarding activities of benefit to the water right holders in the administration and distribution of water;

(2) advise the watermaster and deputy watermaster on complaints and enforcement matters;

(3) review, hold a public hearing on, and make recommendations on the annual budget proposed by the watermaster so as to cover all costs of the Concho River Watermaster Program; and

(4) provide assistance as requested by the watermaster, deputy watermaster, or water right holders.

(g) Actions of the advisory committee in which a vote is taken must receive a two-thirds affirmative vote of the members present to be approved.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.558. FEES. Fees assessed under the Concho River Watermaster Program shall be of the same type and rate as those assessed under the South Texas Watermaster Program but may be adjusted as necessary to pay all expenses of the Concho River Watermaster Program. All costs of the Concho River Watermaster Program shall be assessed solely upon the water right holders subject to the Concho River Watermaster Program.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.559. REFERENDUM. (a) On or after September 1, 2009, a water right holder may petition the advisory committee to conduct a referendum on the continuation of the program.

(b) The advisory committee shall conduct a referendum if it receives a petition signed by at least 50 percent of the water right holders.

(c) A referendum under this section must be held on a uniform election date, as provided by Section 41.001, Election Code.

(d) Only current water right holders are eligible to vote in the referendum.

(e) If at least 60 percent of the votes in the referendum favor discontinuing the program, the program shall be discontinued.

(f) A referendum under this section cannot be held more than once every four years.

(g) For purposes of this section, a water right holder shall be considered as one water right holder regardless of the number or amount of water rights held under a permit or certificate of adjudication.

Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.560. COLORADO RIVER BASIN WATERMASTER PROGRAM. If a watermaster program is established for the entire Colorado River Basin, the Concho River Watermaster Program is discontinued, and the area described by Section 11.553 is under the jurisdiction of the watermaster for the Colorado River Basin Watermaster Program. Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.

Sec. 11.561. APPLICABILITY OF OTHER LAW AND COMMISSION RULES. A provision of this code or a rule adopted by the commission that relates to watermasters and does not conflict with the provisions of this subchapter applies to the program established under this subchapter. Added by Acts 2005, 79th Leg., Ch. 749 (H.B. 2815), Sec. 1, eff. September 1, 2005.