

Rights to Surface Water in Texas

Texas Natural Resource Conservation Commission

GI-228, PDF version (Revised 5/02)

Introduction

The law behind the rights to surface water in Texas — that is, the water in our state’s rivers, streams, reservoirs, estuaries, and bays — can seem murky and confusing to anyone who doesn’t make a living by studying it.

Add to this confusion the unpredictable nature of Texas weather — it seems that there is plenty of water when you don’t need it, and never enough when you do — and it’s easy to understand what was meant by the old expression, “Whiskey is for drinking; water is for fighting.”

In this guide, we attempt to explain basic water-rights law clearly. This guide will give you only a general overview of this body of law, answering the most significant questions

involving who has the right to use which water. But consider this guide to be a primer on water law, not the final word. For the final word, consult the related laws and rules and your water right.¹ For an interpretation of the law as it affects your particular case, consult your attorney.

We use a conversational style in this guide to help us write plainly. When a heading is a question, it is phrased as you would ask it — for example, “How can I get a water right?” When we say “you,” it means you, the reader, as someone who either uses or would like to use surface water in Texas. “We” means the Texas Natural Resource Conservation Commission (TNRCC), the state agency responsible for managing water rights in Texas.

If you have more questions about surface-water rights after you have read this guide, go to the Web page shown on page 8 or contact our Water Rights Permitting & Availability Program at the address and phone number given there.

Contents

What kinds of water rights exist?	2
How do appropriated water rights work?	3
Where am I in line?	3
Is this water “reserved” for someone else?	3
Is any of the water I see available to me?	4
Should I be seeing more water?	5
How are water rights protected?	5
Water Rights under the Honor System	5
Water Rights and Watermasters	6
How can I get a water right?	7

Examples

Example 1: Where am I in line?	3
Example 2: Inflows and releases.	4
Example 3: Release of stored water.	4
Example 4. Is this water available?	5
Example 5: Where’s my water?	5

Side Streams

What’s an acre-foot?	2
Don’t cities come before factories and fields?	4
Contacting Watermasters	6

Special Topic

Your Place in Line: An Appropriated Water Right ...	7
Perpetual Rights	7
Limited-Term Rights	8

Who owns this water?

Surface water in Texas is owned by the state and held in trust for the citizens of the state. The state grants the right to use this water to different people, such as farmers or ranchers, as well as to cities, industries, businesses, and other public and private interests.

Do I need permission to use this water?

Yes, anyone who wants to use surface water in Texas must first get permission from the state *unless* they are using the water for one of several “exempt uses” in the Texas Water Code. These exempt uses allow anyone to use surface water without getting permission:

- ◆ **Domestic and livestock use.** Also called D&L use, this refers to water used to water range livestock, meet household needs, or irrigate a yard or home garden.² If you live

¹ Texas Water Code (especially Chapter 11) and Title 30, Texas Administrative Code, Chapters 295 and 297. Special conditions written into a water right can modify these general rules for that particular right.

² Many Texans have found that they can meet most if not all of their domestic water needs by collecting rainfall from the roofs of their homes and outbuildings — and this is one source of water that does not require a permit! The Texas Water Development Board has good information about rainwater collection, including a list of contractors throughout Texas, on their Web site: www.twdb.state.tx.us.

on a river or stream and use the water in this way, then you do not need a permit. You may also impound water in stock tanks on your property, provided that the average volume of water stored in any 12 consecutive months is 200 acre-feet or less. D&L use is exclusive to the owner of property adjoining a stream. You may not sell the water or the water right separately from the land, and, if you sell the property, this exemption stays with the property.

- ◆ **Wildlife management.** In 2001, the Legislature added wildlife management as an exempt use. Under this use, you may build on your own property a dam or reservoir that normally holds no more than 200 acre-feet of water. This reservoir must also be on *qualified open-space land*, as defined by Section 23.51 of the Texas Tax Code. If you have questions about whether you qualify for this exemption, contact our Water Rights Permitting & Availability Program (see page 8).
- ◆ **Emergency use.** County fire departments, rural fire departments, and other similar public services may draw water from local reservoirs when needed to deal with an emergency.
- ◆ **Other specified uses.** The Water Code’s less-common exempt uses may under certain conditions include the use of water in fish or shrimp farming, in drilling for and extracting oil, or for sediment controls in surface coal mines. Retaining water with spreader dams or terraced contours is also considered an exempt use. Under these exempt uses, you may take water from a stream. However, if your operation adds sediment or other contaminants to the water before you discharge it, you should determine whether you may need to obtain a water quality permit from us.

In all other cases, before you can use surface water, you first need permission from the state in the form of a document called a *water right*. To clearly distinguish

What’s an acre-foot?

An acre-foot of water is enough to cover one acre of land with one foot of water. This concept is useful for dealing with reservoirs that cover acres and are tens to hundreds of feet deep. Here are a few other ways to think of an acre-foot:

- ◆ almost 326,000 gallons (325,851, to be precise)
- ◆ enough to flood a football field — end line to end line and sideline to sideline — 9 inches deep
- ◆ not quite half the water needed to fill an Olympic swimming pool
- ◆ enough water to last a family of four for up to two years

If that family has a generously sized 4,000-square-foot two-story home, they would need a water tower about as big as their house — *including* the attic and a two- to three-car garage — to store an acre-foot of water.

between your right to water for an exempt use and a documented water right, we will refer to the documented rights as *appropriated water rights* in the rest of this guide.

What kinds of water rights exist?

In Texas, there are a number of forms of appropriated water rights:

- ◆ perpetual rights, including:
 - ◇ certificates of adjudication
 - ◇ permits
- ◆ and limited-term rights, including:
 - ◇ term permits
 - ◇ temporary permits

We provide a more complete explanation of each of these appropriated water rights in a special section at the end of this guide (“Your Place in Line: An Appropriated Water Right” on page 7). For now, it is enough for you to understand that all perpetual appropriated water rights have these features in common:

- ◆ They have an assigned *priority date*. This date determines your place in line for available water.
- ◆ Regardless of the priority date, whenever there is less water than is needed to satisfy all water rights in a basin, each appropriated right is behind the D&L users in line for the available water.
- ◆ They specify the volume of water that you may take or use each year.
- ◆ They allow you to impound this water (for example, to store it in a reservoir above a dam), to divert it (for example, to pump it from the stream), or both:
 - ◇ A right to impound water is called an *impoundment right*. An impoundment right will specify the location of your dam, the capacity of your reservoir, and any special conditions placed on your right to impound water — for example, “may impound only the portion of the streamflow that exceeds 100 cubic feet per second.”
 - ◇ A right to divert water is called a *diversion right* and is often referred to as a *run-of-the-river right*. A diversion right will specify where you may divert water (that is, your *diversion point*), the rate at which you may divert water, and any special conditions placed on your right to divert water — for example, “may divert only between October 1 and November 30 of each year.”
- ◆ They do not guarantee that this water will always be available to you. (Only adequate rainfall and springflows can ensure that.)

In addition, perpetual rights are regarded as property interests, so they may be bought, sold, or leased. Term permits and temporary permits do not have priority dates and are not property rights.

How do appropriated water rights work?

First of all, state law prohibits the wasteful use of water. With that in mind, as long as all D&L users can obtain their lawful amount of water, each appropriated water right is like a ticket for a place in line for available water.

If you hold an appropriated water right, then to know whether surface water is available to you at any given time, you would have to be able to answer these four key questions:

1. Where am I in line?
2. Is this water “reserved” for someone else?
3. Is any of the water I see available to me?
4. Should I be seeing more water?

To better explain how perpetual appropriated rights work — especially during a shortage — we will work through the answers to these four questions, using examples to illustrate the more common situations that arise. To a lesser extent, these answers also apply to limited-term rights.

Although most water-right holders are unlikely to have complete knowledge of streamflows, other rights held in their basin, and other relevant information, these examples show how water-rights law would work if a complaint were to be filed in court. However, if there is a watermaster program in your river basin, then the watermaster will stay aware of this information and deal with complaints for you. See “Water Rights and Watermasters” on page 6 for more information about our watermaster programs.

Where am I in line?

To answer this question, you must first identify all D&L users and senior diversion rights in your river basin. A senior diversion right has a priority date earlier than the priority date of your diversion right, and whoever holds that right is ahead of you in line.

Be particularly aware of the D&L users and senior diversion rights *downstream* of your diversion point. If they cannot get their appropriated volume of water in a shortage, then they may insist that you reduce your water use so that a sufficient amount of water flows downstream for their use.

To finish answering this question, identify all of the junior diversion rights in your river basin — those whose priority date

is more recent than the priority date of your diversion right. These water users are behind you in line.

Especially note the junior diversion rights (and limited-term rights) *upstream* of your diversion point. If you cannot get your appropriated volume of water in a shortage, then you may insist that they reduce their water use enough for you to receive your appropriated amount of water.

Any holders of limited-term rights in your basin are at the very end of the line, behind all of the exempt users and perpetual rights.



Example 1: Where am I in line? In Figure 1, imagine you are PD1928 — in other words, you hold an appropriated water right with a priority date of 1928, and your diversion point is as marked in the figure.

All four D&L users (D&L1–D&L4) and two other appropriated-right holders (PD1810 and PD1883) are ahead of you in line. The senior downstream rights are D&L3, D&L4, and PD1810.

The rights junior to you are all of those with later priority dates — PD1952 and PD1980. Of these, only PD1952 is upstream of your diversion point. (PD1952 is both an impoundment right and a diversion right.)

In times of drought, users D&L3, D&L4, and PD1810 can restrict your use if necessary to ensure that they receive enough water — and you may restrict the use of PD1952 if necessary to ensure that you receive the full amount of your water right.

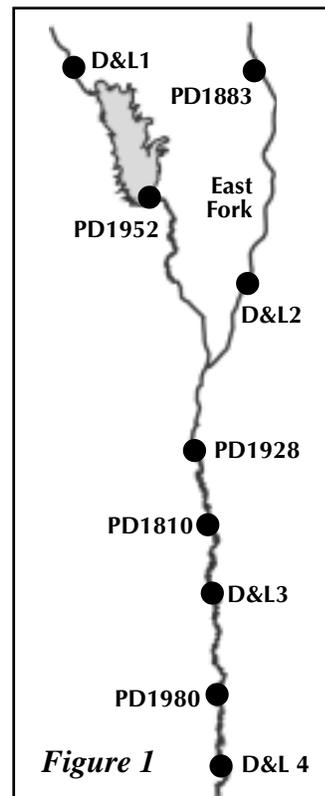


Figure 1

Is this water “reserved” for someone else?

In a water shortage, a large reservoir upstream can seem like a good neighbor to have. After all, reservoirs release water every now and then, and you might think that you could put that water to good use. But there are two things you need to know about reservoirs:

- ❖ First, the water that they have already legally stored is theirs to keep.

- ◆ Second, when they release stored water, they often do so under a *bed and banks authorization*³ from us. This water is intended for a specific buyer or group of buyers downstream. If they have a bed and banks authorization, then you must not prevent this water from reaching the buyers.

Don't cities come before factories and fields?

Many people mistakenly believe that **how** water is to be used determines when a user can be shut off in a shortage. For example, it is often heard that municipal use carries a higher priority than irrigation or industrial use. In most of Texas, that is not the case.

Only in the Middle and Lower Rio Grande basin does purpose of use determine priority — and then for **only** the water stored in Falcon and Amistad reservoirs. In these reservoirs, municipal and industrial rights have priority over irrigation rights when water shortages require that supplies be allocated.

If an impoundment is upstream of you, the law requires its owners to pass water that is flowing into the reservoir (the current *inflow*) through to you if all of these statements are true:

- ◆ You are not receiving your appropriated flow.
- ◆ Their impoundment right is junior to your water right.
- ◆ The flow into their reservoir is greater than the flow that they are passing through their dam.
- ◆ If allowed to pass, the additional water could reach you under the current stream conditions.
- ◆ After considering all of the factors mentioned in “Where am I in line?” on page 3, you would be entitled to that water. (If not, of course, you would need to let the water continue flowing to senior-right holders downstream.)

Otherwise, no matter how much water their reservoir holds and how senior your diversion right is, the water in their reservoir is not available to you. Senior-right holders downstream of a reservoir have a right to the current inflow into the reservoir, but they do not have any right to water that the junior-right holder has already legally impounded.



Example 2: Inflows and releases. To fill their reservoir, PD1952 has stopped passing water down the West Fork, even though the combined flow into their reservoir is 25 cfs (cubic feet per second). When you need to use the water, you (PD1928) find too little water in the river.

In this case, the operators of the reservoir (PD1952) are a junior right and are preventing a senior right (you) from

³ A *bed and banks authorization* is a permit that a water-right holder may obtain from us to use a river, creek, or other watercourse to transport water without losing the right to use that water.

getting water. Unless other conditions written into your water right would restrict you from obtaining water at this time, then PD1952 should let the current inflow — in this case, 25 cfs — pass through their reservoir.

PD1952 may let *less* than the current inflow pass through if doing so will satisfy your need. Also, if their right had been senior to yours, they would not have to let **any** water pass through their reservoir to meet your needs.



If the owners of a reservoir upstream of you have a bed and banks authorization from us and are releasing water that they have sold to a buyer downstream of you, then that water is not available to you. Even the D&L users and senior rights downstream of you do not have a right to this released water.



Example 3: Release of stored water. In Figure 2, PD1952’s reservoir is releasing stored water at a flow rate of 125 cfs.

This water has been sold to a buyer who is downstream of every user except for two — D&L4 and PD1980. You (PD1928) and every other user between the reservoir and the buyer should leave this water in the river.

However, unless this is the only water in the river, you might have a right to divert at least some of the rest of the water (see “Is any of the water I see available to me?” below). And, if the buyer diverts less than the amount released, then D&L4 and PD1980 may divert water from the remaining flow.

Real-world releases of stored water include the Brazos River Authority’s release of water from its reservoirs for sale to industrial customers in Freeport

and the Lower Colorado River Authority’s releases from the Highland Lakes for sale to rice farmers along the Gulf Coast.

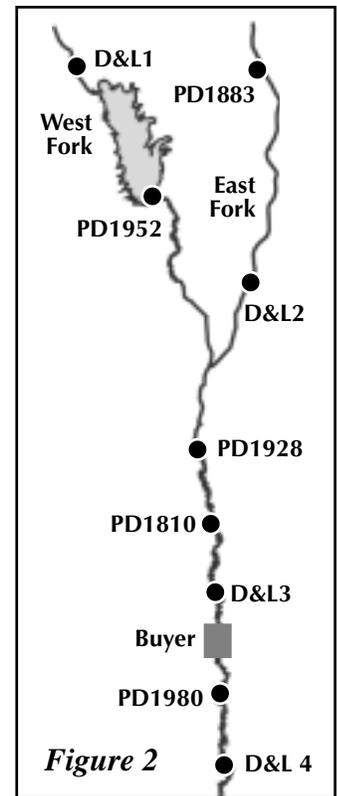


Figure 2

Is any of the water I see available to me?

To answer this question, first look **upstream** to make sure that the water is not a reservoir release of sold water. To complete the answer, look **downstream**. Your goal is to determine how much water is needed, in terms of flow rate, to make water available to all downstream users who are ahead of you in line for the available water.

(It is highly unlikely that you will have easy access to all of the information you need to calculate this flow rate.)

You do not have the right to divert water from the stream if doing so will cause the streamflow to fall below this flow rate. This does not necessarily mean that you cannot divert the water — however, if the users ahead of you in line intend to use their appropriated volumes, then you must not prevent that water from reaching them.

If your proposed diversion will not cause the streamflow to fall below this flow rate, then there is water available for your use.



Example 4. Is this water available? At your diversion point (PD1928; as in Figure 2 on page 4), the river is flowing at 200 cfs. Under your water right, you are appropriated water at a diversion rate of 5 cfs. But, if you divert any water, PD1810 will not receive their full appropriated volume — and they *need* that water.

Unfortunately, no matter how full the river looks at a flow of 200 cfs, there is no water available to you.



Should I be seeing more water?

To answer this question, look *upstream*. If there is not enough streamflow at your diversion point for you to divert as specified in your water right, then one or more of these causes could be to blame:

- ◆ An *unauthorized diversion* is occurring upstream of you. In other words, someone who has no appropriated water right is diverting water for any use other than D&L use.
- ◆ A *diversion above authorized levels* is occurring upstream of you. That is, a water-right holder is diverting water outside the restrictions of their permit — for example, diverting more than is allowed or diverting at a time other than when their permit allows. Even if their right is senior to yours, they must obey its conditions.
- ◆ Junior-right holders are diverting water that they should allow to flow downstream to you. (There is one exception: If the flow these junior-right holders are diverting would evaporate or be absorbed into the ground before the water would reach you, then they may continue to divert that water.)



Example 5: Where's my water? In a situation similar to Example 4, assume that you (PD1928) have a water right that allows you to divert 5 cfs, but you know that the river is too low for you to do so without drawing complaints from senior-right holders downstream of you. Looking upstream, you discover the following:

- ◆ PD1952 is impounding all of the current inflow, which is 5 cfs, and a flow of 3 cfs would reach you if they stop.

- ◆ PD1883 is diverting 10 cfs more than their appropriated rate, and another 2 cfs would reach you if they stop.

Under these conditions, you may insist that PD1883 reduce their diversion to their appropriated rate. You may also insist that PD1952 stop impounding water. Between these two reductions, there should be enough water left in the stream for you to get your appropriated flow.



By having answered these questions, you would know whether you have the right to obtain water at any given time. Next we'll discuss how you can exercise that right under two different systems, one of which is used in your river basin.

How are water rights protected?

Protecting water rights is a critical issue when water shortages occur. In Texas, two different practices are used to protect water rights:

- ◆ relying on an *honor system*, as users do in most river basins;
- ◆ appointing a *watermaster*, as has been done in several river basins.

Water Rights under the Honor System

Under the honor system, the idea is that water users will obey the conditions of their water rights without supervision and cooperate with one another as they divert water from the river. Users have to know what their right allows them to take — and then take no more than that amount.

Advantages of this system. One advantage of the honor system is that there is no continuing cost for enforcing the law. Whenever abuses of the system become serious or streamflows fall to very low levels, temporary streamflow monitoring programs can be used to determine which users are pumping more than their allocated volumes.

Finally, when water is plentiful, the honor system may be all that is needed. Even if a few users pump more than their appropriated volumes, there still will be plenty of water to go around.

Disadvantages of this system. In a number of basins, a key disadvantage of the honor system is that water is seldom plentiful. Also, water users have no reliable way to know how much of the water flowing by is theirs to divert or impound and how much they must allow to pass to senior-right holders downstream.

Without a watermaster or someone hired to perform a detailed investigation, it is hard to tell who is following the law. Often in these basins, our enforcement efforts can stop only unauthorized diversions and diversions above authorized levels. During droughts, we typically receive two different complaints in these basins:

- ◆ Upstream junior-right holders are diverting or impounding water that they should be releasing to downstream senior-right holders.
- ◆ Purchased water that should be flowing from the seller's reservoir down to the buyer's diversion point is instead being intercepted by other users in between. These complaints have been particularly pronounced in the Brazos, Lower Colorado, and Concho river basins.

The only effective way for us to stop these illegal diversions is to set up a temporary streamflow monitoring program — essentially a temporary watermaster. But this solution will not be implemented until there is already a water shortage affecting water-right holders — and it cannot restore water that should have been available to you but has already been used by someone else.

Without a watermaster, no one is permanently in place to monitor river conditions, pumping volumes, and the volume of available water. No one is charged with anticipating water shortages and warning water users in advance.

Because perpetual appropriated water rights are property rights, those who hold them can enforce them through private actions in civil courts. Of course, successful legal action requires proof — proof that is often difficult to obtain.

Water Rights and Watermasters

A watermaster is an officer appointed by the TNRCC who oversees river conditions and pumping volumes day to day for water users in one or more river basins. The watermaster has the authority to lock up pumps for violations of water law and can allocate flows among priority users during water shortages.

In Texas, watermasters work through the local regional office of the TNRCC. Here is how the watermaster system works:

- ◆ The watermaster continuously monitors streamflows, reservoir levels, and water use in the river basin.
- ◆ If they wish, holders of impoundment rights may notify the watermaster when they plan to release sold water. The watermaster can then monitor usage downstream to ensure that the released water reaches the buyer.

- ◆ Before starting their pump, opening their sluice gate, or starting to divert water in any other way, each water user must notify the watermaster and state how much water they plan to divert.
- ◆ The watermaster determines whether a diversion will remove water that rightfully belongs to another user. If so, the watermaster notifies the user with lower priority to reduce pumping — or, if necessary, to stop pumping altogether.
- ◆ When streamflows diminish, the watermaster allocates available water among the users according to each user's priority date.

Water users in two areas of South Texas have benefitted from TNRCC watermasters. The Rio Grande watermaster coordinates releases from the Amistad and Falcon reservoir system for irrigation, municipal, and industrial uses. The South Texas watermaster serves the Nueces, San Antonio, Guadalupe, and Lavaca river basins, as well as the adjacent coastal basins.

The Rio Grande Watermaster Program was established through the courts as part of the adjudication of water rights for the Rio Grande basin from Fort Quitman (70 miles southeast of El Paso) to the Gulf of Mexico. Today this program is governed under the Water Code and TNRCC rules.

Under the Water Code, the TNRCC executive director may appoint a watermaster for any "water division" that we have created. The South Texas Watermaster Program was established in this way. The Water Code also calls for us to consider establishing a watermaster program in any area if we receive a petition from at least 25 water-right holders in that area.

Advantages of this system. TNRCC watermasters have provided several valuable services to the water users in the basins they oversee, in addition to their monitoring of river conditions:

- ◆ Watermasters can coordinate diversions in the basin, ensuring that all water users get the best overall value from the water available to them. For example, if a senior-right holder does not intend to use their appropriated volume in the first half of June, the watermaster could allow one or more junior-right holders to put that water to productive use.
- ◆ With the information available to them, watermasters can anticipate a shortage before it reaches the crisis point, thus enabling local users to work together to develop a strategy that will meet everyone's most basic needs.
- ◆ With their real-time monitoring of local streamflows, watermasters can quickly identify and stop illegal diversions.
- ◆ When disputes arise among water users, the watermaster is often able to help them settle the matter, thereby avoiding costly litigation.
- ◆ Watermasters provide valuable technical assistance, such as helping new water-right owners install streamflow markers.

Contacting Watermasters

Rio Grande Watermaster
1804 West Jefferson Avenue
Harlingen TX 78550-5247
phone: 956/430-6056 or 1-800-609-1219
fax: 956/430-6052

South Texas Watermaster
14250 Judson Road
San Antonio TX 78233-4480
phone: 210/490-3096 or 1-800-733-2733
fax: 210/402-0273

- ◆ Because of their knowledge of water rights and uses, watermasters can inform users and prospective users about water availability, water rights that might be for sale, and other locally valuable information.
- ◆ Finally, having a watermaster program in place provides a long-term solution for managing water rights in that river basin.

Program costs. By law, appropriated water-right holders in the area served by a watermaster pay the costs associated with the program. These costs are paid through an annual fee. In addition to the cost of the watermaster program itself, most users will be required to add a meter to their pumps.

Annual fees. For the two watermaster programs already operating, the annual fee works out to be rather reasonable, especially if you consider a watermaster program to be something like an insurance policy — in this case, insurance that water will be used according to the law whenever there is a shortage.

For example, in the South Texas Watermaster Program, water-right holders pay an annual fee that is calculated on the basis of the uses authorized in their water permits. For each authorized use, this annual fee is a base fee of \$50 plus a fee based on the amount of water appropriated to that use — just over 14 cents per acre-foot for irrigation water, and about 18 cents per acre-foot for water used by cities or industries.

So, for a water right that authorizes a town to divert 50 acre-feet a year for drinking water (municipal use), the total annual fee is about \$59 — that is, the base fee of \$50 plus about \$9 based on volume. And a farmer who has the right to divert 7 acre-feet a year for irrigation would pay about \$51 — the base fee plus about \$1 based on volume.

In fact, most water-right holders in the South Texas Watermaster Program pay an annual fee of only \$50 to \$70.

Metering costs. Watermaster programs also require most water-right holders to meter their pumps. Under normal flow conditions, if your water right authorizes the use of less than 50 acre-feet of water a year **or** if you divert water only a few a times a year, then a meter might not be required.

However, extended or recurring droughts could lead to a requirement for **all** active water users to install a meter, regardless of how little water they use, if their use is consumptive — that is, if they do not return the water to the stream after using it. Both the Rio Grande and the South Texas Watermaster Programs now require all active consumptive users to meter their pumps.

Depending on the specific technology, a meter may cost \$400 or more. On the other hand, metering the water flow sometimes leads to enough of a savings in pumping costs to offset the cost of the meter. In other words, the user might

find that they had been running the unmetered pumps longer than it took to get the volume of water they needed.

How can I get a water right?

Whether you can get a new water right depends on whether water is available in your river basin. Generally, very little water remains available in Texas for appropriation to new users. In some river basins, the water rights already in place amount to more water than the river typically carries, even in a wet year.

Our staff can give you a preliminary estimate of whether water is likely to be available to new rights in your basin. If so, you can apply for a permit to meet your needs. If not, then the only way to get a water right is to buy all or part of an existing right — preferably in your basin. (It is less complicated to buy a water right within your own basin.)

You can also obtain water without buying an actual water right if you can negotiate the purchase of impounded water from the owner. For example, when drought has slowed the Guadalupe River below Canyon Lake to a trickle, canoe rentals, rafting guides, and other recreational businesses downstream of the reservoir have sometimes purchased water from the Guadalupe-Blanco River Authority to make water recreation possible again.

Special Topic

Your Place in Line: An Appropriated Water Right

Perpetual Rights

Certificates of adjudication. At different times in Texas history, different laws governed the use of surface waters, often leading to conflicting claims over water rights. In 1967, the Texas Legislature directed the Texas Water Rights Commission, a predecessor agency to the TNRCC, to settle the confusion of claims.

The water rights commission looked to claims of prior use in setting up the foundation for the current water-rights system in Texas. Claimants had to prove two points:

- ◆ that they had used a certain amount of water at a specified rate and for certain purposes from a specific stretch of a river, stream, or reservoir; and
- ◆ the first date they had used that volume of water.

State district courts then reviewed all these claims and the commission's recommendations. *Certificates of adjudication*

were issued for approved claims. Each of these certificates was assigned a priority date based on when that water use first occurred. Some of these priority dates go back to the time of the first Spanish settlements.

Since 1967, the courts have adjudicated about 10,000 claims. The process is complete except in the Upper Rio Grande basin, near El Paso, where about 15 claims are being adjudicated now.

Permits. Today, the TNRCC issues new water rights in the form of a permit. Permits are unlike the certificates of adjudication in two important ways:

- ◆ No judicial review is required, although it is allowed.
- ◆ According to current law⁴, these permits may be issued only if water is available to satisfy other water rights and still meet the new demand.

It can be difficult to determine what it means to have water “available.” After all, river and reservoir levels rise and fall seasonally even in normal years.

To answer the question of availability, our staff uses computer modeling and historical records to consider a variety of stream-flow and rainfall conditions. If this analysis suggests that most of the water being requested will be available most of the time it will be needed, we grant the permit.

Our staff generally follows three criteria to determine whether a stream or reservoir has sufficient water to meet the demand of a new permit:

- ◆ For most users, if the record shows that at least 75 percent of the water can be expected to be available at least 75 percent of the time, we will usually issue the permit.
- ◆ For municipalities, we will issue a permit only if the record shows that 100 percent of the water can be expected to be available 100 percent of the time, unless a backup source is available.
- ◆ If the user has access to a backup supply, we may decide to issue a permit to use water that can be expected to be available less frequently.

The priority date of a water permit is the date we determine that your application is “administratively complete” — in other words, that it includes the necessary information and is ready for a review that will focus on whether water is available.

Limited-Term Rights

To maximize use of state waters, we also may issue permits for limited-term rights in basins where the water supply is fully appropriated but not yet being fully used. A city or town, for example, may have acquired a water right to ensure that enough water is available for future growth. In the meantime,

that water could be available for someone else to use. In a drought or other shortage, these limited-term rights are the first to lose lawful access to water.

Term permits. Term permits are issued mainly to industries, mines, and agricultural enterprises, usually for 10 years. When the term is up, the permit can be renewed if that water is still not being used by other water-right holders.

Temporary permits. Temporary permits are issued for up to three years. We issue about 200 temporary permits each year. Many of these permits are for road construction projects, where the water is used to suppress dust, to compact soils, and to start the growth of new vegetation. Temporary permits are also issued for mining and irrigation.

Temporary permits that allow the use of less than 10 acre-feet of water for no more than one year are issued by the local watermaster, if there is one. Our local regional offices issue these smaller temporary permits wherever there is no watermaster. We may stop granting these permits in basins that are affected by drought.

For more information about water rights in Texas:

- ◆ go to our Web site, www.tnrcc.state.tx.us, and look for “Water Rights” under “Water” in the index, or
- ◆ call our Water Rights Permits & Availability Program at 512/239-4691.

**Texas Natural Resource
Conservation Commission
Texas Commission
on Environmental
Quality**

Same Agency, New Name!
(on Sept. 1, 2002)

**[www.tnrcc.state.tx.us/
name_change.html](http://www.tnrcc.state.tx.us/name_change.html)**

The TNRCC is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation or veteran status.

⁴ Texas Water Code, Section 11.134(b)(2).