

By: Schaefer

H.B. No. 3172

A BILL TO BE ENTITLED

AN ACT

relating to emergency orders concerning water rights issued by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.053, Water Code, is amended to read as follows:

Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)

For the purposes of this section:

(1) "Drought" means a period classified as a "severe drought" or "D2" by the National Drought Mitigation Center in accordance with the center's Drought Severity Classification scheme.

(2) "Emergency shortage of water" means a condition under which a senior water right holder is unable to obtain surface water when there is:

(A) an emergency period that poses a hazard to public health or safety; or

(B) a condition affecting hydraulic systems that impairs or interferes with conveyance or delivery of water for authorized users.

(b) During a period of drought or when there is an ~~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 (1) temporarily suspend the right of any person who
2 holds a water right to use the water; and

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

5 (c) During a period of drought, the executive director may
6 not issue an order under this section unless the commission has
7 determined that each county in the basin of the river that would be
8 subject to the order has been in a drought for at least 30
9 consecutive days before the date the order is issued. If the period
10 of suspension or adjustment in the order is longer than six months,
11 the commission shall review the determination made for the order at
12 least once every six months to determine whether the drought in the
13 river basin is still severe.

14 (d) When there is an emergency shortage of water, the
15 executive director may not issue an order under this section unless
16 each senior water right holder that would benefit from the order
17 demonstrates to the executive director that the holder:

18 (1) has used reasonable intelligence and reasonable
19 diligence to conserve water;

20 (2) requires surface water for a beneficial use; and

21 (3) is unable to obtain sufficient surface water for
22 the beneficial use using the right.

23 (e) [~~b~~] The executive director in ordering a suspension or
24 adjustment under this section shall ensure that an action taken:

25 (1) maximizes the beneficial use of water;

26 (2) minimizes the impact on water rights holders;

27 (3) prevents the waste of water;

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

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

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

10 (f) Except as provided by Subsection (i), the executive
11 director shall notify the water rights holders who may be affected
12 by an order proposed to be issued under this section of the proposed
13 order not later than the 30th day before the date the proposed order
14 takes effect.

15 (g) Not later than the 14th day after the date a person
16 receives the notice, the person may request that the commission
17 hold a hearing to affirm, modify, or set aside the proposed order.

18 (h) If the commission receives a request under Subsection
19 (g), the commission shall hold a hearing on the proposed order
20 before the date the proposed order takes effect. At or following the
21 hearing, but not later than the date the proposed order takes
22 effect, the commission shall affirm, modify, or set aside the
23 proposed order.

24 (i) The executive director may issue an order under this
25 section without first providing notice or a hearing if the order is
26 issued to respond to a sudden and unexpected emergency. The order
27 shall set a time and place for a hearing before the commission to

1 affirm, modify, or set aside the order. The date of the hearing must
2 be as soon as practicable after the date the order is issued, but
3 not later than the 45th day after the date the order is issued. The
4 executive director shall provide notice of the hearing to holders
5 of water rights suspended by the order not later than the 10th day
6 before the date of the hearing.

7 (j)~~(e)~~ The commission shall adopt rules to implement this
8 section, including rules~~+~~

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

11 ~~(2)~~ specifying the:

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

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

17 (3)~~(C)~~ procedures for notice of and~~[7]~~ an
18 opportunity for a hearing on~~[7]~~ ~~and the appeal to the commission of~~
19 an order issued under this section.

20 (k) An order suspending a water right or adjusting a
21 diversion by a water right holder issued under this section does not
22 limit the commission's authority to:

23 (1) grant an emergency permit, order, or amendment to
24 an existing permit, certified filing, or certificate of
25 adjudication to a water right holder under Section 11.139; or

26 (2) suspend a permit condition or make water available
27 temporarily under Section 11.148.

1 SECTION 2. This Act takes effect September 1, 2015.