

The Superiority of Surface-Water Rights for Domestic & Livestock Users in Texas



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Overview

The objective of this paper is to address the legal scope Texas law grants to domestic and livestock users with regards to surface-water rights. The first section of this paper will cover a brief history of surface-water rights for domestic and livestock users and explain relevant concepts of law. The second section will address recent and current issues involving domestic and livestock user rights and how the Texas Commission on Environmental Quality has reacted to the issues the Commission has faced.

The definitions for the uses of “domestic” and “livestock” as provided in the Texas Administrative Code¹ are as follows:

Domestic use is defined as: The use of water by an individual or a household to support domestic activity. Such use may include water for drinking, washing or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; for watering of domestic animals; and for water recreation including aquatic and wildlife enjoyment. If the water is diverted it must be diverted solely through the efforts of the user. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold.²

Livestock use is defined as: The use of water for open-range watering of livestock, exotic livestock, game animals or fur-bearing animals. For purposes of this definition, the terms livestock and exotic livestock are to be used as defined in §142.001 of the Agricultural Code, and the terms game animals and fur-bearing animals are to be used as defined in §63.001 and 71.001, respectively, of the Parks and Wildlife Code.³

I. The History of Surface-Water Rights in Texas

Texas, with regards to surface-water rights, is a dual-doctrine state that recognizes both riparian and prior-appropriation doctrines. Texas water law has evolved over time and is still evolving as cultural, political, population, agricultural, and economic changes take place. The recent record droughts in Texas, along with the population boom the State has and is still experiencing, have intensely increased the amount and importance of water law issues in a western state that historically has already had numerous issues regarding water rights. To

properly understand surface-water rights in Texas, a historical explanation of how water laws in the state were created and have evolved is essential.

Texas law generally categorizes surface water by two types: diffuse surface and water in a watercourse. Diffuse surface water is property of the owner of the land it is on until it enters a watercourse.⁴ When rainwater falls directly on wooded acreage or features such as a granite or concrete slab, it is diffused surface water. But when that water is concentrated and flows in a natural gully, that extends sixty feet or more up into a wooded area (there are many exceptions to this in light of different terrains), the water is under the control of a watercourse.⁵ Water in a watercourse is the property of the sovereign, and the right to use it is granted by the sovereign.⁶ Thus, water in a natural watercourse that is in a body of water within the State of Texas is the State's water. This paper will primarily relate to issues regarding rights to use surface water that has reached a watercourse.

Before Mexico (and Texas) gained independence from Spain, under Spanish law, the water in a natural watercourse belonged to the King of Spain and a landowner did not have the right to use surface water unless his land grant specifically provided the right or the King decided to open up the body of water for public use, which was usually done for rivers.⁷ Thus, under Spanish Law, ownership of land was treated entirely different from ownership of any right to use water.⁸ After Mexico gained independence from Spain, Mexican law was similar to Spain's but a land grant did have an implied right to use both public and private waters for domestic and livestock purposes.⁹ However, regarding irrigation rights, in 1923 the Texas Supreme Court found, in *Motl v. Boyd*, that land grants from the Mexican Government that adjoined a watercourse included the right to use the water for domestic, household, *and* irrigation purposes.¹⁰ In 1962, the Texas Supreme Court reversed the *Motl* ruling regarding irrigation

rights, holding that the Mexican land grants did not include a right to use water for irrigation purposes and that this right, under Mexican law, required an express grant.¹¹

A. Doctrine of Riparian Rights

After Texas gained independence, the Republic of Texas adopted the English common law doctrine of riparian rights and maintained the system from January 20, 1840 until July 1, 1895.¹² Riparian doctrine is based on English common law. The basis of the court-made rules is that private water rights are tied to the ownership of land bordering a natural river or stream. Riparian owners have a right to use the water under the reasonable use doctrine, which follows that use of the water is permitted as long as the use is reasonable in relation to the needs of other riparian owners of that body of water.¹³ In many areas of Texas, irrigation was necessary for successful agriculture. Strict application of riparian doctrine prevents the diminution and alteration of stream flow and the use of water on nonriparian lands.¹⁴ Therefore, the diversion of water for irrigation was prohibited under riparian doctrine. Texas judges struggled with this issue and encouraged the Texas Legislature to adopt legislation concerning the use of water in areas of Texas in which irrigation was needed to produce crops.¹⁵

B. The Doctrine of Appropriation & The Dual System

The 1889 and 1895 Irrigation Acts added the doctrine of appropriation (also known as the prior appropriation doctrine) to the Spanish and riparian water law that had been in effect.¹⁶ Prior appropriation may be summarized by the statement often used to define it: “First in time is first in right.”¹⁷ Originally developed by miners in California and popular in the western states, the prior appropriation doctrine provides that the first person to divert a specific quantity of water from a source of supply and put it to beneficial use at a definite place has the right to use that water when it is available as against all others.¹⁸ Water users who are the first to obtain

appropriative rights hold senior rights to the use of the water of a particular watercourse. If senior appropriators cannot use all the water they are entitled to, the unused water flows to the next in line according to priority. A way to view this doctrine during Texas droughts is that when senior appropriators (water right holders) are not able to get the water they are permitted, they may have the junior appropriators' water rights suspended. This means that when there is not enough water for all water rights holders, the right to divert is suspended starting with the newest, most junior water right and ending with the oldest, most senior water right.

Water rights under prior appropriation law are limited by the doctrine of beneficial use, where no one has an enforceable property interest in the unreasonable use of water. This doctrine is very similar to the riparian rights doctrine of reasonable use, which it is commonly called.¹⁹ Commonly considered beneficial uses of water include just about any uses of water that involve domestic, agricultural, or industrial activity that is not adverse to the public good. This includes sewage treatment, crop production, stock watering, hydroelectric power generation, and mining.²⁰ Adding this doctrine solved many of the problems associated with irrigation and water rights, both for farmers and judges.²¹ Permitting diversion of large quantities of water began if used for beneficial purposes, such as farming or industrial uses.

The 1889 and 1895 Irrigation Acts authorized the appropriation of water in arid regions of Texas for beneficial purposes and provided procedures to acquire those rights, respecting prior riparian rights.²² Therefore, from the start of the dual system (the addition of the appropriation system) in Texas, riparian rights for domestic and livestock uses were protected.²³ The legislation reserves to the State the ordinary flow and underflow of natural rivers and streams, however, certain sections state how the historical riparian rights attached to lands will be respected.²⁴ Section 3 of the 1895 Act states that appropriation of the ordinary flow and

underflow of a river will not be diverted “to the prejudice of the rights of the riparian owner without his consent.”²⁵ Additionally, Section Ten provides that the landowner whose property is adjacent to a running stream “may use such water therefrom as may be necessary for drinking purposes for himself, family and employe[e]s, and for drinking purposes for his and their livestock.”²⁶

The Irrigation Acts of 1913 and 1917 replaced the prior legislative acts, increasing the geographic scope to include the entire state and broadening classifications of state water, entitling all watercourses for which the State had not passed title as property of the State.²⁷ Continuing the dual system, the 1913 Act honored prior riparian rights, codifying that: 1) the ordinary flow of watercourses could not be diverted to the prejudice of any riparian owner without his consent; 2) riparian rights should be considered as a prerequisite for an application to appropriate water; 3) nothing in the Act should be construed to alter a prior vested right at the time when the Act went into effect; and 4) nothing in the act should impair a riparian’s right as recognized under the laws of the state as decided by the Texas Supreme Court.²⁸

Subsequently, the 1917 Act, like its predecessors, safeguarded the existence of riparian domestic and livestock rights, stating that “[n]othing in this Act . . . shall be construed to alter, affect impair, increase, destroy . . . any existing or vested right of property existing at the date when this Act shall go into effect.”²⁹ The 1917 Act also added a provision that the Texas Board of Water Engineers (now encompassed by the Texas Commission on Environmental Quality) could make final determinations through administrative hearings for both appropriation and riparian water rights, however, these provisions were ruled unconstitutional for violation of the separation of powers because an executive agency was making final judicial decisions.³⁰ The

power to adjudicate private property rights is a judicial function, whereas the Texas Board of Water Engineers was an executive agency.³¹

In 1967, the Texas Legislature adopted the Water Rights Adjudication Act, currently codified as sections 11.301-11.341 of the Texas Water Code.³² The legislative intent of the Act was not to make substantive changes in law, but to make the dual-water rights system more efficient and into a more unified system.³³ Irrigation riparian rights holders now needed a certificate of adjudication,³⁴ however, domestic and livestock users were exempt from this process.³⁵ Since the Adjudication Act, both statutes and case law have recognized riparian rights for domestic and livestock use, with these rights continuing to hold superior status over other water rights holders.³⁶

The Texas Water Code does not specifically identify or describe riparian rights.³⁷ Although not by the use of the word “riparian,” the Texas Water Code still recognizes that riparian rights still exist and must be protected.³⁸ Unlike irrigation users, the Adjudication Act provides that domestic and livestock users do not have to file a claim to adjudicate their water rights.³⁹ This statute implies that a landowner may take water from a watercourse for domestic and livestock use without a water right because, if these rights do not necessitate adjudication, no paper water right is required.⁴⁰ Additionally, under section 11.142(a) of the Code, a person may construct a dam or reservoir on his own property to impound an average of two hundred acre-feet of water for domestic and livestock purposes.⁴¹

II. TCEQ & Current Issues

The Texas Commission on Environmental Quality (TCEQ) is the environmental agency for the State of Texas and was formed in 2002.⁴² Many state commissions have been consolidated to form what is now the TCEQ.⁴³ With regards to water rights, the TCEQ’s

predecessors are the Texas Board of Water Engineers (1913), Texas Water Development Board (1957), Texas Water Commission (1962), Texas Water Rights Commission (1965), Texas Department of Water Resources (1977), Texas Water Commission (1985), Texas Water Development Board (1985), and Texas Natural Resource Conservation Commission (1993).⁴⁴ For simplicity, I will refer to all of TCEQ's predecessors in the Commission's current name.

Many issues facing Texas domestic and livestock users revolve around the Texas Commission on Environmental Quality and what the Commission may or must enforce. Public records reflect that many issues at the TCEQ have been related to whether domestic and livestock water users must obtain a permit or are exempt as domestic and livestock users,⁴⁵ usually involving the impoundment or diversion of water. Many issues involve disputes between domestic and livestock users and water rights holders who irrigate for farming.

A. TCEQ & Riparian Rights

In section 297.21(a) of the Texas Commission on Environmental Quality rules discuss the nature of a domestic and livestock right and states: "In accordance with Texas Water Code (TWC), §11.303(1), a person may directly divert and use water from a stream or watercourse for domestic and livestock purposes on land owned by the person and that is adjacent to the stream without obtaining a permit. Manner of diversion may be by pumping or by gravity flow. Such riparian domestic and livestock use is a vested right that predates the prior appropriation system in Texas and is superior to appropriative rights. A vested riparian right is only to the normal flow in the stream, not to the storm water, floodwater, or authorized releases from storage for downstream use."⁴⁶

The Texas Water Code contains provisions for agency and court appointed watermasters.⁴⁷ Watermasters are Texas's only dedicated enforcers of surface-water rights.⁴⁸ In

2000, the TCEQ amended section 304.21(d), which are watermaster rules for all watermaster areas other than the Rio Grande Basin, to recognize the rights of domestic and livestock users.⁴⁹ These rules state what a watermaster may do when available flow is not sufficient to meet the demands of existing declarations of intent for downstream senior rights, and “demands for domestic and livestock purposes that are not included under any water right.”⁵⁰ A watermaster may order persons with reservoirs (or dams) under a water right, or other domestic livestock users’ reservoirs to allow inflows to pass through such reservoirs as “necessary to honor . . . demands for domestic and livestock purposes.”⁵¹ A watermaster may also order any diverters to limit or cease diversion in order to honor “demands for domestic and livestock purposes,” and take any other action necessary to ensure that “demands for domestic and livestock purposes...are administered in accordance with the laws of Texas.”⁵² These rules do not specifically state that a domestic and livestock user with a reservoir should be protected as a senior or superior right. However, because these rules require permitted water right holders to pass flows for domestic and livestock users, it implies that the Commission’s rules consider domestic and livestock rights to be riparian, or at least superior to appropriative rights.⁵³

Likewise, for many years the Commission and its predecessors have placed a provision at the end of its permits and Certificates of Adjudication stating that the permit or certificate is “subject to all superior and senior water rights.”⁵⁴ The use of the word “superior” was likely added to include riparian rights.⁵⁵

In 1999, under Texas Water Code Section 11.451, several holders of permits and Certificates of Adjudication, along with domestic and livestock users, filed a petition for a watermaster on the Concho River.⁵⁶ Section 11.451 provides that twenty-five or more “holders of water rights” in a river basin (or segment of a river basin), may petition the TCEQ to order the

Executive Director to appoint a watermaster for that river basin or river segment.⁵⁷ “Persons who hold water rights” in the river basin or segment may testify at the mandatory hearing.⁵⁸ TCEQ shall appoint a watermaster if it finds a “threat exists to the rights of senior water rights holders” in the river basin.⁵⁹ The Commission had to consider whether domestic and livestock users were water rights holders under these statutes.⁶⁰

The petitioners, along with allied petitioners on the San Saba River watermaster petition, and the adverse parties, the City of San Angelo and the Lower Colorado River Authority (LCRA), filed extensive briefing on the question.⁶¹ The City of San Angelo and the LCRA argued that riparian rights no longer exist in Texas and that domestic and livestock use was a privilege, not a right.⁶² LCRA argued that Section 11.142 is an exemption from the permitting requirements and does not contain any of the requirements of a riparian right such as passing through normal flows, reasonable use, or superiority to appropriative rights.⁶³ The Executive Director took the position that domestic and livestock users had riparian rights.⁶⁴ Among an abundance of points made, the Executive Director referred to *Lower Colorado River Authority v. Texas Department of Water Resources*, where the Texas Supreme Court held that “[t]he common law doctrine of riparian rights doctrine has been severely circumscribed by statute.”⁶⁵

Another issue the Concho Watermaster Petition brought up was whether the right to store water for domestic and livestock purposes in Texas Water Code section 11.142 is a riparian right.⁶⁶ The City of San Angelo argued that it was only a statutory right while the Executive Director argued that it was both a riparian right and a statutory right.⁶⁷ Additionally, the Executive Director argued that the laws of Texas recognize that domestic and livestock users have vested riparian rights in their water, whether they divert the water directly from the river or impound it under section 11.142 of the Texas Water Code.⁶⁸ The right of the user who impounds

water under section 11.142 to divert and use state water for domestic and livestock purposes does not depend on the permitting exemption.⁶⁹ Thus, these are riparian rights and should be treated as such.⁷⁰ Impoundments of water for domestic and livestock uses were recognized in the common law and this is recognized in Section 11.142, however, there is a statutory limit on this right.⁷¹ It provides that “a person may construct on the person's own property a dam or reservoir with normal storage of not more than two hundred acre-feet of water for domestic and livestock purposes.”⁷² Section 11.303(l) exempts domestic and livestock users from having to file a claim to adjudicate their water rights.⁷³ The Executive Director's conclusion was that neither of these statutes independently creates a water right but that the statutes both recognize a type of domestic and livestock right.⁷⁴ This right is a riparian right under common law that does not require permitting or adjudication and applies to landowners who impound water taken from a stream on their property or divert and use water directly from a stream on or next to their property.⁷⁵ Section 11.142 also clarifies that riparian landowners do not need permits to store this water.⁷⁶ Despite the Executive Director's argument, the right to impound with regard to the reasonable use doctrine and the statute permitting a two-hundred acre damn will likely continue to be an argumentative issue. The recent droughts and the population boom in Texas have made water more scarce. “Reasonable use” will likely be contested often and the two-hundred acre rule only has statutory basis with regards to size. Attempts to change the rule, the acreage of the rule, or the enforcement of the rule would be an easier target for change over most other domestic and livestock rights issues.

B. Domestic & Livestock Users in a Contested Proceeding

Despite all the Commission's answers to the Concho River Watermaster disputes, the Commission did not rule on the issue of whether a domestic and livestock user shall be treated as

a water-right holder with regard to the watermaster petitions.⁷⁷ The Concho River Watermaster Petition had been signed by twenty-five holders of permits or Certificates of Adjudication, so the TCEQ sent the application to an evidentiary hearing at the State Office of Administrative Hearings under section 11.452.⁷⁸ The San Saba Watermaster Petition had twenty-five signatures if domestic and livestock users were included, and did not have the required signatures if limited to holders of permits or Certificates of Adjudication.⁷⁹ TCEQ referred the San Saba Watermaster Petition to the State Office of Administrative Hearings “on its own motion,” however, the issue was not discussed further in the proceedings.⁸⁰ Whether a domestic and livestock user has the right under current Texas Law to petition the TCEQ for the appointment of a watermaster remains an unanswered question.

During the tragic drought of 2011, after the San Saba River had run dry, the TCEQ responded to priority calls from landowners (domestic and livestock users) on the River by suspending all permit holders that dated later than 1900.⁸¹ The San Saba River ran dry again in the summer of 2012 and in response domestic and livestock users again made priority calls.⁸² However, this time TCEQ did not act on the priority calls. This issue, closely related to the watermaster issue, has quickly garnered attention as the San Saba River was named the third most endangered river in the United States by *American Rivers*,⁸³ was mentioned in National Geographic and many other national publications,⁸⁴ was the topic of a bill filed by a state representative in the 2013 legislature for the appointment of watermaster on the River (that was never voted on), and landowners and other citizens have formed a nonprofit organization named Friends of the San Saba, Inc.⁸⁵ While TCEQ has not ignored the issue, The Commission has acted more as a mediator in its enforcement, perhaps due to the politically sensitive nature of the issue.⁸⁶

In 2000, the Commission also amended section 297.21(c) of its rules, removing language which provided that: (1) a person's domestic and livestock use cannot unreasonably interfere with another person's domestic and livestock use; and (2) any domestic and livestock dam exempt from permitting under § 297.21(b) must allow sufficient inflows to pass through for the benefit of domestic and livestock users downstream.⁸⁷ The Commission stated in the preamble to the section 297.21(b) changes: “[S]taff working in some of the regional offices have found administrative enforcement [of section 297.21] problematic, due to the subjective nature of the finds required . . . The commission has not received statutory guidance on these issues . . . When facilitation by the commission is unsuccessful, the appropriate venue for formal action is a private action in court between the disputing domestic and livestock users.”⁸⁸

Additionally, while the requirement that a domestic and livestock user must not unreasonably interfere with the use of other domestic and livestock users is established in common law, the [Texas Water Code] does not explicitly require or authorize the commission to enforce this requirement, unless a watermaster has been appointed for that particular watercourse.⁸⁹ These amendments take the language in § 297.21(c) that states a domestic and livestock reservoir shall pass sufficient inflows to downstream domestic and livestock users out of Section 297 which contains general substantive water rights requirements, and amends Section 304, Watermaster Operations, § 304.21(d)(3) to include this requirement.⁹⁰ Section 304 is an appropriate place in which to insert the requirement that domestic and livestock reservoir owners pass inflows when necessary to protect others.⁹¹ From the preamble language it seems that the Commission considered section 11.142 impoundments to be riparian rights, which are governed by the reasonable use standard.⁹²

Most contested proceedings that TCEQ or the Texas courts do not resolve result in agreed

orders or by other resolutions that are usually temporary fixes at most. Most of these issues will inevitably be brought up again in the near future or result in another issue.

C. Domestic & Livestock Users & Permits

The Texas Commission on Environmental Quality commonly receives complaints concerning when landowners must obtain a permit under section 11.121 of the Texas Water Code.⁹³ The question often revolves around whether proper domestic and livestock use is being exercised by the landowner. Typically, when landowners attempt to use impounded or diverted water for business use (other than livestock), a permit is required since the water is no longer being used for domestic and livestock purposes.

In 1998, a landowner had ponds from a creek on his land that had cattle but also a conference center.⁹⁴ TCEQ maintained that the landowner would not have to obtain a permit for the ponds if they were used solely for livestock and his own domestic purposes, but that he would have to obtain a permit if any use went to the conference center.⁹⁵

In 1997, landowners that had their business on the same property were building a dam and a lake on their property.⁹⁶ The Commission told the landowners that a permit would not be required as long as the lake would not be used for their business.⁹⁷ For purposes of personal recreation, the lake and dam would not require permits.⁹⁸

TCEQ received a complaint in 2000 where a landowner, owning land in common with other landowners that abutted the Llano River, was taking water and using it for domestic and livestock uses on other land owned that did not abut the River.⁹⁹ The Executive Director determined that the landowner would have to obtain a permit to use the water on the non-abutting land, however, no formal Commission decision was made.¹⁰⁰ In a similar case in 2003, the South Texas Watermaster enforced riparian principles when a Notice of Violation was sent to

a landowner, whose property was divided by a county road, and was diverting water on land abutting the Frio River and using it on the property not abutting the River.¹⁰¹

III. The Outlook on Domestic and Livestock Rights

Though the scarcity of water in Texas will continually bring up issues for domestic and livestock rights, the laws will likely remain consistent and in some cases may even become more favorable for domestic and livestock rights. Domestic and livestock use typically does not require large amounts of water and it supports natural water use for humans as well as for wildlife. In cases such as the San Saba River, domestic and livestock rights are not only favored by legal precedents, but also by environmental issues.¹⁰² As a major political topic in Texas and throughout most of the world, water issues will continue to arise for domestic and livestock users. In the near future, most domestic and livestock issues will likely be relative to the measurement or restriction of the impoundment or diversion of surface water. In conclusion, the right to take water from a watercourse for domestic and livestock use continues to be recognized today as the superior surface-water right in Texas under current statutes, case law, and commission rules.

¹ 30 Tex. Admin. Code § 297.1 (West 2005).

² *Id.*

³ *Id.*

⁴ *Turner v. Big Lake Oil Co.*, 128 Tex. 155, 96 S.W.2d 221, 228 (1936).

⁵ *Dietrich v. Goodman*, 123 S.W.3d 413, 419-20 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

⁶ Robin Melvin, *Latest Developments and Hot Topics in Water Rights* 1 (Civil Justice Conference, 2014).

⁷ *Id.* at 1.

⁸ *State v. Valmont Plantations*, 346 S.W.2d 853, 859 (Tex. Civ. App.-San Antonio 1961), *aff'd*, 355 S.W.2d 502 (Tex. 1962).

⁹ *Id.*

¹⁰ *Motl v. Boyd*, 116 Tex. 82, 105, 286 S.W. 458, 466 (1923).

¹¹ *Valmont Plantations* at 503.

¹² David Klein, Robin Smith, *Exploring the Scope of Landowner Water Rights for Domestic and Livestock Purposes*, 7 Tex. Tech Admin. L.J. 119, 120 (2006).

¹³ *In re Adjudication of Upper Guadalupe River Segment of Guadalupe River Basin*, 625 S.W.2d 353, 358 (Tex. Civ. App. 1981).

¹⁴ *Id.*

¹⁵ Melvin at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Colorado v. New Mexico*, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982).

²⁰ Sandra Zellmer, *The Anti-Speculation Doctrine and Its Implications for Collaborative Water Management*, 8 Nev. L.J. 994 (2008).

²¹ Melvin at 2.

²² *In re Adjudication of Upper Guadalupe River Segment of Guadalupe River Basin*, 642 S.W.2d 438, 440 (Tex.1982).

²³ *Id.*

²⁴ Hans W. Baade, *The Historical Background of Texas Water Law-A Tribute to Jack Pope*, 18 St. Mary's L.J. 1, 7 (1986).

²⁵ § 3, 1895 Tex. Gen. Laws at 22.

²⁶ § 10, 1895 Tex. Gen. Laws at 23.

²⁷ Burges-Glasscock Act, 33d Leg., R.S., ch. 171, § 1, 1913 Tex. Gen. Laws 358.

²⁸ § 3, 1913 Tex. Gen. Laws at 359.

²⁹ §§ 136-37, 1917 Tex. Gen. Laws at 241.

³⁰ *Bd. Of Water Eng'rs v. McKnight*, 111 Tex. 82, 97, 229 S.W. 301, 307 (1921).

³¹ *Id.*

³² Tex. Water Code Ann. §§ 11.301-.341 (Vernon 2000).

³³ Frank F. Skillern, *Texas Water Law* 35 (Sterling Press 1988).

³⁴ Melvin at 3.

³⁵ Klein at 5.

³⁶ Klein at 5.

³⁷ Tex. Water Code Ann. (Vernon 2000).

³⁸ *Id.*

³⁹ Tex. Water Code Ann. at § 11. 303(1).

⁴⁰ *Id.*

⁴¹ *Id.* at § 11.142(a).

⁴² Tex. Comm'n on Env'tl. Quality, *History of the TCEQ and its Predecessor Agencies*, <http://www.tceq.state.tx.us/about/tceqhistory.html>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Klein at 7.

⁴⁶ 30 Tex. Admin. Code § 297.21(a)(West 2005)(Tex. Comm'n on Env'tl. Quality).

⁴⁷ Tex. Water Code Ann.

⁴⁸ Campbell, Augustus L., *Texas Watermasters: A Legal History and Analysis of Surface Water Rights Enforcement*, 7 Tex. Tech Admin. L.J. 143, 144 (2006).

⁴⁹ 25 Tex. Reg. 8972 (2000) (Tex. Comm'n on Env'tl. Quality).

⁵⁰ 30 Tex. Admin. Code at § 304.21(d).

⁵¹ *Id.* at § 304.21(d)(2).

⁵² *Id.* at § 304.21(d)(4-5).

⁵³ *Id.* at § 304.21.

⁵⁴ Klein at 7.

⁵⁵ *Id.*

⁵⁶ *City of San Angelo v. Texas Natural Resource Conservation Com'n*, 92 S.W.3d 624 (2002).

⁵⁷ Tex. Water Code Ann. at § 11.451.

⁵⁸ *Id.* at § 11.452(b).

⁵⁹ *Id.* at § 11.452(c).

⁶⁰ *City of San Angelo* at 627.

⁶¹ *City of San Angelo*.

⁶² Klein at 8.

⁶³ *Id.* at 8.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.* at 8.

⁶⁶ Tex. Water Code Ann. at § 11.142.

⁶⁷ Klein at 8.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Klein at 8.

⁷¹ Tex. Water Code Ann. at § 11.142.

⁷² *Id.*

⁷³ *Id.* at § 11.303(1)

⁷⁴ Klein 8.

⁷⁵ *Id.*

⁷⁶ Tex. Water Code Ann. at § 11.142.

⁷⁷ Tex. Comm'n on Env'tl. Quality, Petitions Requesting a Watermaster on the Concho River and the San Saba River, TNRCC Docket Nos. 2000-0344-WR, 2001-0991-WR (Dec. 10, 2001).

⁷⁸ Klein 9; see Tex. Water Code Ann. § 11.142(a)(Vernon 2000).

⁷⁹ Tex. Comm'n on Env'tl. Quality, Petitions Requesting a Watermaster on the Concho River and the San Saba River.

⁸⁰ Klein 9.

⁸¹ Friends of the San Saba, Community, [Facebook](https://www.facebook.com/FriendsOfTheSanSaba/timeline), <https://www.facebook.com/FriendsOfTheSanSaba/timeline>.

⁸² *Id.*

⁸³ American Rivers, *Most Endangered Rivers for 2013*,
<http://www.americanrivers.org/endangered-rivers/2013-report/>

⁸⁴ Friends of the San Saba, Community, Facebook,
<https://www.facebook.com/FriendsOfTheSanSaba/timeline>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 25 Tex. Reg. 8969 (2000) (codified as 30 Tex. Admin. Code § 304.21).

⁸⁸ *Id.*

⁸⁹ Klein at 7.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Tex. Water Code Ann. at § 11.121.

⁹⁴ Klein at 9.

⁹⁵ *Id.*

⁹⁶ Klein at 9.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Klein at 9-10.

¹⁰⁰ Klein at 10.

¹⁰¹ *Id.*

¹⁰² American Rivers, *Most Endangered Rivers for 2013*,
<http://www.americanrivers.org/endangered-rivers/2013-report/>