

Background

San Jacinto River Authority (SJRA) and City of Houston (City) own [Certificate of Adjudication No. 10-4963](#) which authorizes Lake Conroe and diversions from Lake Conroe. The Certificate authorizes diversion of 100,000 acre-feet of water which can be diverted from the lake or released from the lake for municipal, agricultural, industrial, and mining use at a maximum rate of 700 cfs.

In response to flooding events from Hurricane Harvey, SJRA initiated a seasonal strategy to temporarily lower Lake Conroe in 2018 to provide flood mitigation benefits downstream of the lake. At the same time, dredging activities were occurring downstream. While dredging activities were occurring, TCEQ exercised enforcement discretion in the event SJRA's lake lowering activities resulted in exceedance of the maximum annual amount or maximum diversion rate authorized in the water right.

The lake lowering activities continued for several years after dredging activities were completed. During that time, the City reported releases for seasonal lake lowering under the municipal use authorization in the Lake Conroe water right. The City owns downstream Lake Houston and has several water rights in Lake Houston; therefore, any water released from Lake Conroe and charged to municipal use could be beneficially used by the City downstream at Lake Houston.

TCEQ received several complaints about the lake lowering activities. TCEQ investigated the complaints and found that the lake lowering activities were not a violation of the terms of the Certificate and that the authorized annual amount of 100,000 acre-feet was not exceeded. However, in two instances, the maximum diversion rate was exceeded, and the violation was noted and resolved.

Permitting Options

Texas Water Code (TWC) [Section 11.121](#) requires a water right permit to store, take, or divert water unless the use is for an exempt purpose such as domestic and livestock use. [TWC Section 11.122](#) requires a water right holder to obtain an amendment if the water right holder wants to alter its water right. Two permitting options are discussed in detail below. First option, to request an increase the maximum diversion and release rate from Lake Conroe and add flood control as a purpose of use to the certificate without increasing the authorized diversion and release amount. Second option, to request additional water for flood control purposes.

First option

Request adding flood control as a purpose of use and increase the maximum diversion and release rate from Lake Conroe without increasing the authorized diversion and release amount.

Adding flood control as a purpose of use to the Lake Conroe water right would not require notice or technical review. ([TWC Section 11.122\(b-3\)](#)). However, increasing the diversion and release rate from a storage reservoir would require technical review. In addition, mailed notice may be required to the co-owner of the certificate if SJRA and the City are not co-applicants. Notice would also need to be provided to water right holders with authorized diversion points on the lake. (30 Texas Administrative Code (TAC) [Section 295.158\(c\)\(3\)\(E\)](#)).

Second option

Request additional water for flood control purposes.

SJRA and Houston could apply for a permanent water right for flood control purposes, which could include an increased release rate. This could either be an amendment to the certificate or a stand-alone water right.

- This type of permit would be a request for unappropriated water and flood control releases for seasonal lake lowering that could be charged to the amended certificate or to the new permit.
- A new appropriation for flood control purposes could be requested as either a priority right or a non-priority right.
- The new appropriation would require technical review. The amount requested must be available in one year of the period of record and cannot impact TCEQ's adopted environmental flow standards.
- The application would need to specifically describe how water would be accounted for and any existing accounting plans may need to be modified to account for the new use and operation.
- The application, whether for an amendment ([30 TAC Section 295.158\(b\)](#)) or a new water right ([30 TAC Sections 295.151 - 295.153](#)), would require full basin mailed and published notice.