

Texas Administrative Code

TITLE 30

ENVIRONMENTAL QUALITY

PART 1

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

CHAPTER 297

WATER RIGHTS, SUBSTANTIVE

SUBCHAPTER C

USE EXEMPT FROM PERMITTING

RULE §297.21

Domestic and Livestock and Wildlife Permit Exemptions

(a) In accordance with Texas Water Code (TWC), §11.303(l), 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.

(b) In accordance with TWC, §11.142, a person may construct on the person's own property a dam or reservoir with a normal storage of not more than 200 acre-feet of state water for domestic and livestock purposes without obtaining a permit. The reservoir may be on-channel, adjacent to the stream, or on a contiguous piece of property through which flows the stream from which the water is diverted. For purposes of this subsection, normal storage means the conservation storage of the reservoir, i.e., the amount of water the reservoir may hold before water is released uncontrolled through a spillway or into a standpipe. A person who temporarily stores more than 200 acre-feet of water in a dam or reservoir having a normal storage of greater than 200 acre-feet is not required to obtain a permit for the dam or reservoir if the person can demonstrate through reservoir capacity data and monthly reservoir water level records maintained by the owner that the person has not stored in the dam or reservoir more than 200 acre-feet of state water on average in any 12-month cycle. Selection of the 12-month cycle shall be at the owner's discretion, but must be consistent from year to year. This exemption does not apply to a commercial operation. Use of land for livestock purposes is not a commercial operation. This domestic and livestock exemption is not available to owners or property sold by a municipality having a population of 250,000 or less and owning land within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage

capacity, if the property was sold without notice or the solicitation of bids to the person leasing the land, in accordance with Local Government Code, §272.001(h).

(c) A dam constructed in accordance with subsection (b) of this section may not be located on a navigable stream.

(d) The use of a reservoir by free-ranging wild game and fur-bearing animals that may be harvested by hunters and trappers who pay a fee or other compensation to hunt or trap on the property does not constitute a use for which a permit must be obtained for an otherwise exempt domestic and livestock reservoir. Additionally, the use of water that is used in making products from a family garden or orchard that are traded with a neighbor or used in a local bake sale or potluck dinner does not constitute a use for which a permit must be obtained for an otherwise exempt domestic and livestock reservoir.

(e) In accordance with TWC, §11.142(b), 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 wildlife management as defined in Texas Tax Code (TTC), §23.51(7), and for fish management purposes, excluding aquaculture or fish farming purposes, if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by TTC, §23.51. For purposes of this subsection, normal storage means the conservation storage of the reservoir, i.e., the amount of water the reservoir may hold before water is released uncontrolled through a spillway or into a standpipe. This exemption does not apply to a commercial operation. For the purposes of this subsection, commercial operation means the use of land for industrial facilities, industrial parks, aquaculture facilities, fish farming facilities, or housing developments. The incidental use of the reservoir in a manner that does not remove the land from the definition of qualified open-space land as defined by TTC, §23.51, including using a photograph in advertising, does not constitute a use for which a permit must be obtained for an otherwise exempt reservoir.

Source Note: The provisions of this §297.21 adopted to be effective February 24, 1999, 24 TexReg 1162; amended to be effective September 13, 2000, 25 TexReg 8969; amended to be effective August 15, 2002, 27 TexReg 7152

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