Conservation Efforts: Meeting Regulators' and Customers' Needs While Extending Supplies*

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Effective water conservation is among the most important water development practices for water suppliers and their customers. While its value for water suppliers includes environmental stewardship and being respectful of a limited natural resource, it is also a critical planning tool that can be used to extend the useful life of existing supplies. In fact, the Texas Commission on Environmental Quality's ("TCEQ") definition of "conservation" focuses on the use and effective management of water supplies for the purpose of future or alternative uses. Further, for water rights holders and for permitting purposes, TCEQ requires the adoption and implementation of conservation plans. To date, the water supply planning series has mostly focused on regulatory tools and water right application strategies that can be useful in managing and stretching water supplies. Conservation, however, should be a part of every water supply strategy discussion, regardless of the particular effort(s) being pursued, and in light of both regulatory expectations and conservation's far-reaching impacts on water supply management.

TCEQ requires Water Conservation Plans to be submitted every five years for most surface water right holders and for retail public water suppliers with at least 3,300 or more connections. Specific requirements are found in Chapter 288 of the Texas Administrative Code (Title 30), but they include a set of minimum expectations for record/data management, specific targets for water savings (including reductions in gallons per capita per day ("GPCD")), public education programs, enforcement practices, and rate structures that encourage reasonable water use, among others. As part of their Chapter 288 obligations, utilities must provide TCEQ with implementation reports demonstrating conservation measures implemented, along with supporting data. For some entities, plans must include leak detection/water loss accounting, as well as contracting mandates that require wholesale customers to adopt and implement their own water conservation plan in their wholesale water purchase agreements.

TCEQ's conservation plan requirements are also relevant in the context of water rights applications, where an applicant must include its water conservation plan (along with drought contingency plans, which are developed for a completely different purpose—addressing water management during times of water shortages), in order to meet requirements of Chapters 295 and 297 of the Texas Administrative Code (Title 30). Such requirements include compliance with the base Chapter 288 mandates, and where applicable, plans that describe technologies and techniques to "reduce the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water." In order to appropriate new or additional state water, an applicant must demonstrate that it has evaluated "any other feasible alternative to new water development." Further, it is the applicant's burden to show that there is no feasible alternative to the proposed appropriation.

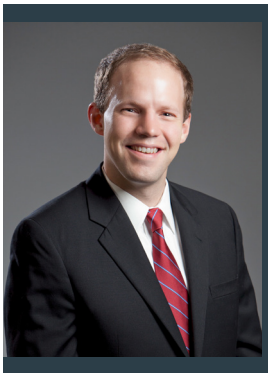
As TCEQ examines water rights applications, it reviews water conservation plans to determine if the requested appropriation is necessary in light of practicable alternatives, whether the requested quantities are reasonable and necessary, and if reasonable diligence will be employed to avoid water waste. Further, on certain federal water permitting efforts (including Clean Water Act Section 404 permitting for water supply projects), the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency conduct similar analyses of conservation practices before they can approve applications.

Water suppliers face a number of challenges in their implementation of water conservation

plans, whether technical, legal, or on the public relations front. As recommended throughout the series, the right team can help identify best practices that have been employed across Texas and those that have secured regulatory approval. Given the climate diversity in Texas, a one-size fits all approach is neither wise nor mandated by law when it comes to determining appropriate conservation tools, their implementation, and the resulting impact on a community's water use and GPCD. Indeed, water conservation initiatives and GPCD expectations in rural Texas have differed significantly from those in urban areas and such variations will continue. The courts have recognized and endorsed such differences. In the specific context of interbasin transfer applications, the Texas First Court of Appeals has determined that the statutory requirement that an applicant's water conservation plan result in the "highest practicable levels of water conservation and efficiency" does not mean satisfying a fixed standard, but whether an applicant is "capable of putting into practice and carrying out [such water conservation measures] in its jurisdiction." *Upper Trinity Reg'l Water Dist. v. Nat'l Wildlife Fed'n*, 514 S.W.3d 855, 863 (Tex. App.—Houston [1st Dist.] 2017), reh'g denied (Mar. 30, 2017). As such, meeting the needs of a particular region/customer base, and doing so in a manner that accounts for the area's or the customer's unique circumstances, is important in developing and implementing sound and effective water conservation plans.

Effective implementation also requires more than just meeting regulators' needs, particularly as water usage and rates are impacted. Public perception challenges are driven by many factors, including often, the public's lack of appreciation of the true value of water, the realities of weather pattern change, and the rate hikes that are sometimes necessary to cover a utility's financial obligations when conservation may have resulted in water usage declines (resulting in reduced revenues from sales of water), among others. Accordingly, well-executed public relations and education efforts are also critical in order to explain the importance of water conservation and the water supplier's own costs for infrastructure used to serve its customers.

*This article is the seventh in an ongoing series of water supply planning and implementation articles to be published in Confluence that address simple, smart ideas for consideration and use by water suppliers in their comprehensive water supply planning efforts.



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