

**EDWARDS AQUIFER AUTHORITY
RULEMAKING**

Title: **EDWARDS AQUIFER AUTHORITY RULES**
Ch. 707 (Procedure Before The Authority)
Subchapter F (Procedures for Contested Case Hearings)
Ch. 711 (Groundwater Withdrawals)
Subchapter L (Administration of Permits)

Rule Type: **Proposed Rules (PRs)**

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Approved By: Velma R. Danielson, General Manager

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GM approves FRs: _____ __, 200_
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GM determines: Assessment needed: February 17, 2009
Board approves PRs: February 10, 2009 (sent to GM for assessment and public comment)
Aquifer Management Committee approves PRs: February 3, 2009
GM approves PRs: February 3, 2009

CHAPTER 707. PROCEDURE BEFORE THE AUTHORITY

Subchapter F. Procedures for Contested Case Hearings

Section

707.601 Applicability

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§ 707.601 Applicability

This subchapter applies to contested case hearings on applications. Contested case hearings may be requested in connection with the following applications:

(1) initial regular permits;

(2) term permits;

| (3) Aquifer recharge and storage permits; and

| (4) recharge recovery permits; ~~and~~

| ~~(5) amendment applications to change the location of the point of withdrawal from a point west of Cibolo Creek to a point east of Cibolo Creek.~~

CHAPTER 711. GROUNDWATER WITHDRAWALS

Subchapter L. Administration of Permits

Section

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711.328 Basis for Granting Transfer Applications

711.329 Cibolo Creek Transfers

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711.336 Basis for Granting Amendment Applications

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§ 711.328 Basis for Granting Transfer Applications

The general manager, ~~or for transfer applications subject to Subsection (12)(B) the Board,~~ shall approve a transfer application if the following elements are established:

(1) all applicable fees of the transferor or transferee have been paid, including current year fees for groundwater withdrawn by the transferor prior to the effective date of the transfer;

(2) it has been confirmed that, prior to the transfer, the transferor owned all or part of the initial regular permit sought to be transferred;

(3) it has been confirmed that, after the transfer, the transferee owns all or part of the initial regular permit sought to be transferred;

(4) the application complies with the Act and the Authority's rules; and

(5) the transferor and the transferee are in compliance with the Act, the Authority's rules, other permits, and orders of the Board;

(6) for transfers of part of the place of use of an initial regular permit for irrigation use:

(A) a survey has been prepared showing the following:

(i) the lands irrigated during the historical period which provided the basis for the issuance of the original initial regular permit and are identified as all or part of the place of use in the permit;

(ii) the portion of the historically irrigated lands conveyed to the transferee; and

(iii) the portion of the historically irrigated lands retained by the transferor; and

(iv) the boundaries of the place of use in the permit and the actual historically irrigated acres in relation to one another;

(B) the survey was certified by a registered professional surveyor, to be true and correct; and

(7) the total volume of groundwater withdrawal amount and rate of withdrawal for the permit is accurately quantified, and, if applicable, properly allocated between base irrigation and unrestricted irrigation groundwater;

(8) the application was timely filed relative to the year in which the transfer is sought to be effective;

(9) all applicable reports of the transferor and transferee have been filed;

(10) for transfers of the purpose of use, the proposed purpose is for a beneficial use;

(11) for transfers of the place of use, the new place of use is located inside the boundaries of the Authority;

(12) for transfers of the point of withdrawal, the point is:

(A) not transferred from a point located west of Cibolo Creek to east of Cibolo Creek; or

(B) transferred from a point located west of Cibolo Creek to east of Cibolo Creek, and the transfer complies with the provisions in § 711.329.

~~(i) aquatic and wildlife habitat will be protected;~~

~~(ii) species that are designated as threatened or endangered under applicable federal and state law will be protected; and~~

~~(iii) continuous minimum springflows of the Comal Springs and San Marcos Springs will be maintained to protect endangered and threatened species to the extent required by federal law; and~~

(13) for an application for an initial regular permit filed by a federal facility, the approval by the Authority of the transfer of ownership to another person occurred prior to September 1, 2003.

(14) a copy of the transfer agreement is filed, with all necessary supporting documentation demonstrating, among other things:

- (A) ownership;
 - (B) the date on which the transfer became effective; and
 - (C) the transfer term;
- (15) copies of all current leases encumbering the permit; and
- (16) a meter reading has been taken within one week of the date that the application was filed.

§ 711.329 Cibolo Creek Transfers

(a) A transfer of a point of withdrawal under a permit from west of Cibolo Creek to east of Cibolo Creek is prohibited unless:

(1) the transfer is a lease; and

(A) the right to withdraw groundwater is transferred to a well that existed before January 9, 2007; and

(B) the term of the lease does not extend beyond December 31, 2014; and

(C) the transferee places a portion of the lease amount into the groundwater trust for the term of the lease based on the following transfer ratios:

(i) for transfers from Uvalde County to Comal, Hays, Guadalupe, or Caldwell County, a 5:1 transfer ratio is applied to the amount of the lease (i.e. in order to pump one acre-foot in Comal, Hays, Guadalupe, or Caldwell County, the transferee must lease 5 acre-feet and place 4 acre-feet into the groundwater trust); or

(ii) for transfers from Medina, Atascosa, or Bexar County to Comal, Hays, Guadalupe, or Caldwell County, a 3:1 transfer ratio is applied to the amount of the lease (i.e. in order to pump one acre-foot in Comal, Hays, Guadalupe, or Caldwell County, the transferee must lease 3 acre-feet and place 2 acre-feet into the groundwater trust); and

(D) once initially transferred across Cibolo Creek, the point of withdrawal is not subsequently amended or transferred; and

(E) at the expiration of the lease, the right to withdraw groundwater under the permit reverts back to the transferor, including the place of use and the point of withdrawal; or

(2) the transfer is a lease; and

(A) the lease was approved by the Board before the effective date of this section; and

(B) once initially transferred across Cibolo Creek, the point of withdrawal is not subsequently changed; and

(C) at the expiration of the lease, the right to withdraw groundwater under the permit reverts back to the transferor, including the place of use and the point of withdrawal; or

(3) the transfer is a sale; and

(A) the sale was originally approved by the Board on or before July 11, 2006; or

(B) the sale is made to resolve a pending compliance matter relating to an unauthorized withdrawal at an unpermitted well that was installed or constructed on or before January 9, 2007, and is for no less than ¼ acre-foot per year and no more than 1 acre-foot per year; or

(C) the sale was conditionally approved by the Board between July 12, 2006, and the effective date of this section. The order approving the application shall expire on December 31, 2014, at which time, the point of withdrawal under the permit reverts back to a point west of Cibolo Creek. The expiration shall not affect the ownership of the initial regular permit.

(b) If a sale is made in accordance with § 711.329(a)(3)(B), the point of withdrawal under the permit may not be subsequently changed unless the owner's well has been plugged.

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§ 711.336 Basis for Granting Amendment Applications

The general manager shall approve an amendment application if the following elements are established:

(1) all applicable fees of the applicant have been paid, including current year fees for groundwater withdrawn by the transferor prior to the effective date of the amendment;

(2) it has been confirmed that, prior to the amendment, the applicant owned all or part of the initial regular permit sought to be amended, if applicable;

(3) it has been confirmed that, after the amendment, the applicant owns all or part of the initial regular permit sought to be amended, if applicable;

(4) the application complies with the Act and the Authority's rules;

(5) the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board;

(6) for amendments to part of the place of use of an initial regular permit for irrigation use, a survey is provided that complies with § 711.328(6) or the designation made under § 711.332(e);

(7) the total volume of groundwater withdrawal amount and rate of withdrawal for the permit is accurately quantified, and, if applicable, properly allocated between base irrigation and unrestricted irrigation groundwater;

(8) the application was timely filed relative to the year in which the amendment is sought to be effective;

(9) all applicable reports of the applicant have been filed;

(10) for amendments to the place of use, the new place of use is located inside the boundaries of the Authority;

(11) for amendments to the purpose of use, the proposed purpose is for a beneficial use; and

(12) the point of withdrawal is ~~either:~~not transferred from a point located west of Cibolo Creek to east of Cibolo Creek.

~~(A) not transferred from a point located west of Cibolo Creek to east of Cibolo Creek; or~~

~~(B) transferred from a point located west of Cibolo Creek to east of Cibolo Creek, and~~

~~(i) aquatic and wildlife habitat will be protected;~~

~~(ii) species that are designated as threatened or endangered under applicable federal and state law will be protected; and~~

~~(iii) continuous minimum springflows of the Comal Springs and San Marcos Springs will be maintained to protect endangered and threatened species to the extent required by federal law.~~

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