

Texas Register

Volume 17, Number 30, April 24, 1992

Pages 2899-3030

In This Issue...

Office of the Governor

Appointments Made April 13, 1992

Texas Cancer Council.....2909

Appointments Made April 15, 1992

Children's Trust Fund of Texas Council.....2909

Sam Houston Bicentennial Celebration Commission.....2909

Texas High Speed Rail Authority Board of Directors.....2909

Governor's Commission For Women.....2909

Texas State Board of Physical Therapy Examiners.....2909

Role of the Family in Reducing Recidivism Advisory Committee.....2909

Texas County and District Retirement System Board of Trustees.....2909

Teachers' Professional Practices Commission.....2909

Advisory Committee For the Elementary and Secondary Education Act.....2909

Appointments Made April 16, 1992

Texas Agricultural Finance Authority Board of Directors.....2909

Texas Ethics Commission

Texas Ethics Commission Opinions

AOR 23-26.....2911

Emergency Sections

Texas Water Commission

Edwards Underground River

31 TAC §§298.1-298.6.....2914

31 TAC §§298.11-298.13.....2916

31 TAC §§298.41-298.43.....2916

Proposed Sections

Texas National Research Laboratory Commission

Procurement

1 TAC §303.2.....2919

Animal Health Commission

Brucellosis

4 TAC §35.42.....2919

Texas Real Estate Commission

Provisions of The Real Estate License Act

22 TAC §535.19, §535.21.....2920

Texas Department of Health

Abortion Facilities

25 TAC §§139.4, 139.8, 139.9.....2921

CONTENTS CONTINUED INSIDE

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions costs: one year - printed, \$95 and electronic, \$90; six-month - printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

Material in the **Texas Register** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the **Texas Register** director, provided no such republication shall bear the legend **Texas Register** or "Official" without the written permission of the director. The **Texas Register** is published under Texas Civil Statutes, Article 6252-13a. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

Information Available: The ten sections of the **Texas Register** represent various facets of state government. Documents contained within them include:

- Governor** - Appointments, executive orders, and proclamations
- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency Sections** - sections adopted by state agencies on an emergency basis
- Proposed Sections** - sections proposed for adoption
- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the **Texas Register** six months after proposal publication date
- Adopted Sections** - sections adopted following a 30-day public comment period
- Open Meetings** - notices of open meetings
- In Addition** - miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the **Texas Register** is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows: 17 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 TexReg 3"

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the **Texas Register** office, Room 245, James Earl Rudder Building, Austin. Material can be found using **Texas Register** indexes, the **Texas Administration Code**, section numbers, or TRD number.

Texas Administrative Code

The **Texas Administrative Code** (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the **Texas Administrative Code**; TAC stands for the **Texas Administrative Code**; §27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the **Texas Register** to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the **Texas Register**. The blank pages are a result of the production process used to create the **Texas Register**. The artwork does not add additional pages and does not increase the cost of the **Texas Register**.

Texas Register Publications



a section of the
Office of the Secretary of State
P. O. Box 13824
Austin, Texas 78711-3824
(512) 463-5561
Fax (512) 463-5569

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Jill S. Dahnert
Roberta Knight

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

Documents Section Supervisor
Patty Moore

Documents Editors
Lisa Martin
Janiene Allen

Open Meetings Clerk
Brenda Bernal

Production Section Supervisor
Ann Franklin

Production Editors/Typographers
Janice Rhea
Carla Carter

Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 298. Edwards Underground River

The Texas Water Commission (TWC) adopts on an emergency basis new Chapter 298, §§298.1-298.6, 298.11-298.13, and 298.41-298.43, concerning the finding that the Edwards Aquifer (Edwards Underground River) is an underground river and, thus, state water, and providing for the commission determination and administration of rights to the use of state water in the Edwards Underground River and the protection of the water quality of the Edwards Underground River and related surface streams pursuant to the Texas Water Code, Chapters 11 and 26, and other applicable law.

The physical characteristics and hydrogeology of the Balcones Fault Zone of the Edwards Aquifer making it an underground stream are unique in the State of Texas. No other aquifer in the state is known to have these characteristics. These rules apply only to the Edwards Aquifer located in Kinney, Uvalde, Medina, Atascosa, Bexar, and Comal Counties, and in Hays County south of the hydrogeologic division near Kyle.

The purpose of this emergency adoption is to provide interim authorization to current users of the state water diverted from the Edwards Underground River until permanent rules can be developed and adopted providing for commission determination and administration of rights to the use of this underground stream. These rules also provide that the commission may, by order, limit such interim authorization as necessary to protect water quality, the public health, safety, and welfare, aquatic and wildlife habitat, instream uses, bays and estuaries, and other public purposes. Finally, the rules provide for a moratorium on new diversions and use. The moratorium or restrictions on existing use, however, do not apply to exempt domestic and livestock uses.

Subchapter A: General Provisions, §§298.1-298.6, contains rules relating to: the finding of the Edwards Aquifer as an underground stream and, thus, state water; defining the boundaries of the underground river; and the definitions of terms used in the chapter.

Subchapter B: Interim Authorizations, §§298.11-298.13, contains rules providing

that those currently diverting water from the underground river are provided interim authorization by rule to continue beneficially using such water without waste and subject to certain limitations until the commission develops and adopts permanent rules for the determination and administration of the rights to divert and use state water from the Edwards Underground River. Such limitations include those necessary to protect the water quality, public health, safety, and welfare, aquatic and wildlife habitat, instream uses, bays and estuaries, and other public purposes.

Subchapter E: Regulation of Diversions-General, §§298.41-298.43, contains rules prohibiting the waste of water and providing that interim authorizations to divert and use water from the Edwards Underground River are subject to limitation, curtailment, and amendment for the protection of water quality, the public health, safety, and welfare, aquatic and wildlife habitat, instream uses, bays and estuaries, and other public purposes.

After a careful and thorough review and analysis of applicable law and available studies, reports, data, and other information, the commission finds that the Edwards Aquifer is an underground stream and, thus, state water subject to commission regulation pursuant to the Texas Water Code, Chapter 11.

Texas courts have followed the English common law doctrine of "absolute ownership" of percolating groundwater by the surface owner. This doctrine provides that the surface owner may withdraw such groundwater for use without limitation as long as it is for a beneficial purpose and is nonwasteful. Generally, a person withdrawing percolating groundwater bears no responsibility to neighboring owners for any harmful effects resulting from the withdrawal, i.e., no correlative rights exist among the groundwater users.

Under Texas law, all water below the surface of the land is presumed to be percolating groundwater, which is owned by the landowner, unless and until it is established that such water in an underground stream or is the underflow of a surface stream. Water flowing in definite underground streams, however, is governed by surface water law and is subject to prior appropriation.

Texas caselaw provides that an underground stream is state water if it has the same characteristics of a surface watercourse. Those characteristics include a stream which has a source of supply, defined boundaries, a directional flow or current, a destination, and is of sufficient volume to be serviceable to persons through and along whose land the stream flows (i.e., utility).

A large body of knowledge has been developed and accumulated over many years with regard to the hydrology, physical characteristics, and use of the Edwards Aquifer and its direct hydrologic connection to flow in surface streams in the Nueces, San Antonio, and Guadalupe River Basins. After lengthy study and examination of all available such studies, reports, and information, the commission finds that the Edwards Aquifer has all those characteristics of a watercourse.

The hydrogeologic characteristics of the Edwards Aquifer makes this water resource unique in the State of Texas. Through its "recharge zone," the Edwards Aquifer captures and diverts flows of major surface streams in the upper portions of the Nueces and San Antonio River Basins (the tributary watershed). Surface streams in the tributary watershed of the Edwards Aquifer provide approximately 80% of the "recharge" to the underground river. Thus, the Edwards Aquifer has a definite source of water.

The Edwards Aquifer also has a directional flow or current, defined boundaries, and a definite destination. Water "recharging" the underground river continues to flow downgradient, generally moving west to east to northeast, through the confined and known boundaries of the aquifer, eventually erupting at several springs, including the Leona Springs, the San Pedro Springs, the San Antonio Springs, the Comal Springs, and the San Marcos Springs. Water from these springs continues to flow in the Nueces, San Antonio, and Guadalupe River Basins (the catchment area), and contribute to freshwater inflows for bays and estuaries along the Gulf of Mexico.

The Edwards Aquifer also has great utility. It is of great economic importance both to the region that relies upon it and to the State of Texas. The Edwards Aquifer is the sole source of water supply for approximately 1.5 million citizens in the San Antonio region and supports a diverse regional economy that provides employment for approximately 700,000 to 800,000 Texans. Additionally, the Edwards Aquifer is important to the economies of the communities at and downstream of several springs fed by this underground river. These springs include the state's two largest natural springs at New Braunfels and San Marcos. These two springs sustain a significant tourist and recreational economy for these cities.

It is estimated that spring flow from Comal and San Marcos Springs alone provides 21 to 32% of the total annual flow of the Guadalupe River at Victoria. Between 70,000 and 80,000 jobs exist in those counties that are supplied

with water from the Guadalupe River below these springs. The economies of Hays and Comal Counties and the counties downstream of the springs are clearly dependent on the Edwards Aquifer. This underground river is truly the lifeline of 15 Texas counties.

Like a surface stream, the Edwards Aquifer also supports fish and other aquatic life, both within the aquifer in the subsurface and through year-round discharge to the major natural springs. Some of these aquatic species are federally listed as threatened or endangered species.

The use of the waters in the Edwards Underground River and related surface streams also has a direct impact on the water quality of these surface streams. The direct hydrologic connection between the Edwards Underground River and surface streams providing "recharge" to the underground stream requires the careful management of diversions from, and wastewater discharges to, these surface streams in order to protect the water quality of the underground stream. Additionally, reduction in springflows caused by diversions from the Edwards Underground River and/or insufficient "recharge" adversely affects the water quality, aquatic and wildlife habitat, and other instream uses of streams downstream of the underground stream as well as bays and estuaries. A decrease in the quantity of the water in a stream lessens its assimilative capacity for effluent discharges and other sources of pollution. If springflows fall below certain minimum levels, then the stream segments below the springs would be dominated by return flows from municipal and industrial discharges, along with an undetermined amount of contaminated runoff from adjacent urban and agricultural areas. The result would be pollutant overloading of these streams. The nonpoint source pollution, elevated nutrient concentrations, and increased ambient temperature would devastate the ecological character of the streams immediately below the springs as well as further downstream in the Guadalupe River Basin. Finally, overdrafting of the aquifer itself may allow the intrusion of highly mineralized water from underground water adjacent to the underground river otherwise held in check because of the hydrostatic pressure of the aquifer.

Despite the great economic and environmental significance of this underground river to the region and to the state, there exists no comprehensive management plan for the underground river. This inaction in the face of growing and unchecked demand on the Edwards Underground River has led to an emergency situation creating an imminent peril to the public health, safety, and welfare. The uncertainty over a person's right to use state water from the Edwards Underground River makes it difficult to provide for the immediate and long-term water supply needs of the region; discourages business investment and economic growth; and clouds title to property. Additionally, it is necessary that emergency action be taken to prevent speculative and unregulated drilling of wells, resulting in the harmful overdraft of the Edwards Aquifer which would cause adverse impacts to water quality, the public health, safety, and welfare, aquatic and wildlife habitat, other instream

uses, and bays and estuaries prior to the notice and adoption of permanent rules. Because the Edwards Underground River is state water, it is imperative to provide immediate authorization to current beneficial use to lawfully provide for the public's water supply needs until a final determination can be made with respect to the use of this underground stream.

Almost four decades of negotiations among the affected parties have failed to yield a resolution of the dispute regarding the proper management of the Edwards Aquifer. Proposed legislation seeking to address this issue has been repeatedly defeated. For the past three years, exhaustive and earnest efforts were made by the commission to bring about a local resolution of the dispute. The commission presented to the parties a fair and equitable settlement agreement based upon extensive discussions with the parties for their approval by April 14, 1992. The agreement was rejected.

The dispute is the subject of costly and protracted litigation in both the state and federal courts and the latter may result in the federal takeover of one of the state's most vital natural resources. The oppressive heat and decrease in rainfall which occurs during the summer months is almost here and the heavy irrigation season has begun. Levels in the underground stream dropped from record highs in 1987 to critically low levels in less than two years. If the region experiences another hot, dry summer like the summer of 1990, flows in the underground stream could drop to a level where springflows cease, thereby adversely affecting surface water quality and endangered species. Trial is set to begin in federal court on May 4, 1992, to determine whether the unregulated usage of the Edwards Underground River which will cause springflows to fall below minimum levels is a violation of the federal Endangered Species Act. Unless significant protection is provided for the maintenance of minimum springflows, it is likely that the federal government will implement its own regulatory scheme.

Soon after the adoption of these emergency sections, the commission will submit to the *Texas Register* for notice and public comment permanent rules finding the Edwards Aquifer to be state water and providing for commission determination and administration of water rights to this underground stream. These rules would also provide for the establishment of an advisory council and the development and implementation of a comprehensive, long-term, regional water management plan. A hearing will be held by the commission to receive public comment relating to the proposed sections, including the determination that the Edwards Aquifer is an underground stream and state water.

Subchapter A. General Provisions

• 31 TAC §§298.1-298.6

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt

rules necessary for the performance of its duties and responsibilities in accordance with the Texas Water Code and other state law. These rules are adopted on an emergency basis pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-12b, §5(d).

§298.1. Purpose. The purpose of this chapter is to provide interim authorization to current users of state water diverted from the Edwards Underground River until permanent rules can be developed and adopted providing for commission determination and administration of rights to divert and use water from the Edwards Underground River. Additionally, the purpose of these rules is to provide that the commission may limit such interim authorization as necessary to protect water quality, public health, safety, and welfare, aquatic and wildlife habitat, instream uses, bays and estuaries, and other public purposes. During the consideration of the adoption of permanent rules, the commission will hold a public hearing and receive public comment with regard to the proposed rules, including the commission's determination based upon available studies and information that the Edwards Aquifer is an underground stream and, thus, state water.

§298.2. Edwards Aquifer is State Water.

(a) The Edwards Aquifer is an underground stream and water contained therein is state water subject to commission regulation in accordance with the Texas Water Code, Chapter 11 and all other applicable law and rules of the commission relating to the commission's authority over water rights, including the issuance of water rights, water rights adjudication, cancellation of water rights, and the enforcement of water rights.

(b) No known claims of riparian water rights, claims under the Texas Water Code, §11.143, claims of water rights under the Irrigation Acts of 1889 and 1895, or any other claims of water rights to the diversion and use of the Edwards Underground River were filed pursuant to the Water Rights Adjudication Act, the Texas Water Code, §§11.301 *et seq.* Consequently, no right to use state water from the Edwards Underground River has been adjudicated and, thus, water in the underground river is subject to appropriation by permit issued by the commission, except for exempt domestic and livestock purposes, in accordance with the Texas Water Code, §§11.121 *et seq.*

(c) Any authorization to divert and use state water is a right of use, and actual ownership of the water remains with the state, held in trust for the public's benefit. The commission may reserve from appropriation all or a portion of the water rights vested in the state and superior to any right

of use to satisfy the state's obligation to protect water quality, the public health, safety, and welfare, aquatic and wildlife habitat, instream uses, bays and estuaries, and any other public purpose. Any dedication of springflows by such reservation for public purposes is not subject to diversion or appropriation by any holder of a water right granted by the state.

(d) The designation of the Edwards Aquifer as an underground stream is for the purposes provided in this section and shall not affect rules of the commission providing for the protection of the water quality of an aquifer designated as a sole or principal source aquifer as provided by 40 Code of Federal Regulations (CFR) Part 149, pursuant to the Safe Drinking Water Act, §1424(e), 42 United States Code 300h-3(e).

§298.3. Applicability to Southern Portion of the Edwards Aquifer. The rules contained in this chapter specifically apply to that portion of the Edwards Aquifer described by §298.5 of this title (relating to Effect of Invalidity of Rule) and located in Kinney County east of the hydrologic division near Brackettville which separates flow in the Nueces River Basin from flow to the Rio Grande Basin, and in Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal Counties and in Hays County south of the hydrologic division near Kyle which separates flow toward the San Marcos River from flow to the Colorado River Basin. These rules are not intended to be applied to any other aquifer in the State of Texas.

§298.4. Boundaries of the Edwards Underground River.

(a) The lateral boundaries of the Edwards Underground River, as used in this chapter, are: on the north and northwest, the updip limit of the outcrop of the Edwards and Associated Limestones; on the south, the line known as the bad-water line which separates water containing less than 1,000 milligrams per liter of total dissolved solids from water containing more than this concentration of total dissolved solids; on the west, the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal and San Marcos Springs from underground flow to the Rio Grande Basin; on the east, the hydrologic division northeast of Kyle in Hays County that separates underground flow toward the Comal and San Marcos Springs from underground flow to the Colorado River Basin.

(b) The lateral boundaries of the Edwards Underground River are those boundaries of "Subdivision No. One of the Underground Water Reservoir in the Edwards Limestone Balcones Escarpment Area" defined by the Board of Water Engi-

neers of the State of Texas, a predecessor of the Texas Water Commission, by Order dated January 10, 1957, as modified by the Texas Water Commission by Order dated April 18, 1988, and incorporated in this rule by reference. These orders are available for inspection at the office of the chief clerk of the commission in Austin, during the commission's regular business hours.

§298.5. Effect of Invalidity of Rule. If any provision of any rule or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

§298.6. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Except as otherwise provided in this section, the definitions provided by §297.1 of this title (relating to Definitions) apply to this chapter.

Authorized well—A well which diverts water from the Edwards Underground River for which interim authorization was granted pursuant to this chapter, or that is exempt for domestic and livestock purposes.

Beneficial use—The use of only that amount of water which is reasonable and necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose. Water which is wasted, lost, or inefficiently used because of, but not limited to, inefficient diversion works or distribution systems, excessive applications or per capita use, excessive or unnecessary evaporation, transpiration or seepage, the discharge or escape of water from a well into a surface stream or reservoir for no authorized beneficial purpose, or by pollution is not beneficially used.

Commission—The Texas Water Commission and any successor agency.

Conservation—

(A) The development of other water resources that reduce the demand for water from the Edwards Aquifer;

(B) Those best management practices, techniques, and technologies that will reduce the consumption of water, eliminate the loss or waste of water, maximize the efficiency in the use of water, prevent the pollution of water, and maximize the recycling and reuse of water so that the demand for water from the Edwards Aquifer is reduced;

(C) Those measures that seek to make a water supply available for future or alternative uses to the greatest extent practicable for the benefit of the environment and the public health, safety, and welfare; and

(D) any other measure that would sustain or enhance the water supply to provide for future long-term needs.

Diversion of water—Any act or failure to act that results in the taking of water from the Edwards Aquifer by or through manmade facilities including the pumping of wells or allowing waters to flow from artesian or other type wells.

Domestic use—Use of water by an individual or a household for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard when the produce is not sold; for watering of domestic animals; and for water recreation for which no consideration is given or received. If the water is diverted, it must be diverted solely through the efforts of the user.

Edwards Aquifer or aquifer—That portion of an arcuate belt of porous, waterbearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Atascosa, Bexar, and Comal Counties, and in Hays County south of the hydrologic division near Kyle which separates flow toward the San Marcos River from flow to the Colorado River Basin; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, and Edwards Formation, the Georgetown Formation, and the Walnut Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation and underlie the less-permeable Del Rio Clay regionally.

Edwards underground river or underground river—The Edwards Aquifer as defined by this section and the boundaries of which are provided by §298.5 of this title (relating to Effect of Invalidity of Rule).

Existing user—A person that has diverted and beneficially used water from the Edwards Underground River on or before April 15, 1992.

Instream uses—The use of water for the protection of water quality, the maintenance of aquatic and wildlife habitat, navigation, recreation, and bays and estuaries.

Livestock use—The use of water for the open-range watering of livestock connected with farming, ranching, or dairy enterprises.

New well—A well, the drilling of which, was commenced on or after April 15, 1992.

Overdrafting—The average long-term depletion of the aquifer in excess of the average long-term recharge of the aquifer necessary to sustain appropriative rights and environmental needs. Overdrafting also occurs when overall aquifer withdrawal is in balance with recharge but locally excessive withdrawals are causing adverse impacts, including, but not limited to, degradation of water quality.

Pollution—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

Producing well—A well capable of producing water from the Edwards Aquifer without modification or the placement of additional equipment and which has produced water for a beneficial purpose prior to April 15, 1992.

Replacement well—A well that is drilled to replace an existing well and where the existing well that is being replaced is permanently closed.

Reuse—The use for one or more purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

Waste—The diversion of water from the Edwards Aquifer if the water diverted is not used for a beneficial purpose; the unreasonable loss of water through faulty design or negligent operation of a well or a water delivery or application system; the use of quantities of water in an amount in excess of the amount reasonably necessary to beneficially use the water for an authorized purpose; or the diversion of water from the aquifer at a rate, in an amount, or in any manner that causes or threatens to cause pollution of the aquifer by the intrusion of water or contaminants detrimental to any beneficial purpose, or adversely impacts surface water quality.

Well—A bored, drilled, or driven shaft, or an artificial opening in the ground made by digging, jetting, or some other method, where the depth of the well is greater than its largest surface dimension, but not including any surface pit, surface excavation, or natural depression.

Issued in Austin, Texas, on April 15, 1992.

TRD-9205308

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: April 15, 1992

Expiration date: August 13, 1992

For further information, please call: (512) 463-8069

Subchapter B. Interim Authorization

• 31 TAC §§298.11-298.13

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt rules necessary for the performance of its duties and responsibilities in accordance with the Texas Water Code and other state law. These rules are adopted on an emergency basis pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-12b, §5(d).

§298.11. Exemption for Domestic and Livestock Use.

(a) Without limitation or prohibition as provided by §§298.12, 298.13, 298.42, and 298.43 of this title (relating to Interim Authorizations Pending Disposition of Permit Applications; Moratorium on New Authorizations; Limitation of Diversions to Protect Water Quality, the Public Health, Safety, and Welfare, Aquatic and Wildlife Habitat, Instream Uses, Bays and Estuaries, and Other Public Purposes; and Emergencies), a person may construct on that person's own property a well for the diversion of water from the Edwards Underground River and beneficially use such water without waste for domestic and livestock purposes only.

(b) A person may use water for domestic and livestock purposes pursuant to this section only on property owned by that person and may not transport the water off that person's property.

(c) The exemption provided by this section does not apply where the flows of one well are combined with flows from any other well prior to the use of the water.

§298.12. Interim Authorization Pending Disposition of Permit Applications.

(a) A person owning a producing well which diverts water from the Edwards Underground River, other than a domestic and livestock well that is exempt under §298.11 of this title (relating to Exemption for Domestic and Livestock Use), may continue to divert water from the underground river by using that well in accordance with the terms of this section.

(b) All interim authorizations granted by this section, and all diversions made pursuant to these authorizations, are subject to limitation, curtailment, and amendment to prevent waste, achieve water conservation, and to maintain and protect adequate springflows from the Comal and San Marcos Springs for the protection of water quality, the public health, safety, and welfare, aquatic and wildlife habitat, instream uses, and bays and estuaries as set

forth in Subchapter E of this chapter (relating to Regulation of Diversions-General).

§298.13. Moratorium on New Authorizations.

(a) A person may not drill a new well or divert water from the Edwards Underground River by using a well not a producing well except as authorized by the commission.

(b) Subsection (a) of this section shall not apply to a replacement well if:

(1) the amount, rate, volume, purpose of use, and any other requirement applicable to the well replaced is met by the operation of the replacement well; and

(2) the executive director is notified by the owner of the wells at least 48 hours prior to the commencement of the drilling of the replacement well.

Issued in Austin, Texas, on April 15, 1992.

TRD-9205309

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: April 15, 1992

Expiration date: August 13, 1992

For further information, please call: (512) 463-8069

Subchapter E. Regulation of Diversions-General

• 31 TAC §§298.41-298.43

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt rules necessary for the performance of its duties and responsibilities in accordance with the Texas Water Code and other state law. These rules are adopted on an emergency basis pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-12b, §5(d).

§298.41. Waste Prohibited.

(a) The waste of water is prohibited.

(b) No person may divert, supply, use, or reuse any water from the Edwards Aquifer, or supply, use, or reuse any water from other sources that reduces the demand for water from the Edwards Underground River, in excess of the amount of water needed for beneficial use for the intended purpose or purposes of use.

§298.42. Limitation of Diversions to Protect Water Quality, the Public Health, Safety, and Welfare, Aquatic and Wildlife Habitat, Instream Uses, Bays and Estuaries, and Other Public Purposes.

(a) All authorized diversions of water from the Edwards Underground River are subject to limitation, curtailment, and amendment as may be ordered by the commission from time to time in order to protect the water quality of the Edwards Underground River, the health, safety, and welfare of the people who divert and/or use water from the Edwards Underground River, and to water quality, public health, safety, and welfare, aquatic and wildlife habitat, instream uses, bays and estuaries, and any other public purpose, and to maintain compliance with applicable law.

(b) Each person diverting water from the Edwards Undergeround River shall limit and curtail such diversions as may be ordered by the commission from time to time to effectuate the purposes of this chapter.

§298.43. Emergencies.

(a) The commission may declare an emergency when the level of the Edwards Aquifer drops to a level where adverse impacts are occurring or may soon occur to water quality, the public health, safety, and welfare, aquatic and wildlife habitat, instream uses, or bays and estuaries.

(b) Upon the declaration of an emergency, the commission may by order impose additional requirements and restrictions upon the diversion, supply, use, or reuse of water from the Edwards Underground River to the extent that it determines such requirements and restrictions are justified, taking into consideration all relevant issues including, without limitation, public health and safety and the economic well-being of the region and the state.

(c) In making any determination under subsections (a) and (b) of this section,

the commission shall, to the extent practicable, seek public comment from all affected persons.

(d) The executive director shall notify the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service immediately upon the declaration of an emergency pursuant to this section and shall inform these agencies of any commission actions in response to the emergency.

Issued in Austin, Texas, on April 15, 1992.

TRD-9205310

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: April 15, 1992

Expiration date: August 13, 1992

For further information, please call: (512) 463-8069

