



# **EDWARDS AQUIFER AUTHORITY RULES**

(Effective Date: September 22, 2023)

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## EDWARDS AQUIFER AUTHORITY RULES

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## **CHAPTER 701. GENERAL PROVISIONS**

### **Section**

701.1	Purpose of Rules
701.3	Construction of Rules
701.5	Business Office and Mailing Address of the Authority

### **§ 701.1 Purpose of Rules**

The purpose of the rules of the Authority is to implement the Act and other applicable laws and to set forth the administrative procedures to be followed in Authority proceedings.

### **§ 701.3 Construction of Rules**

Unless otherwise expressly provided for in these rules, the past, present, and future tense shall each include the other; the masculine, feminine, and neutral gender shall each include the other; and the singular and plural number shall each include the other.

### **§ 701.5 Business Office and Mailing Address of the Authority**

The business offices and mailing address of the Authority are located at 1615 North St. Mary's, San Antonio, Texas 78215.

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## **CHAPTER 702. DEFINITIONS**

### **Section**

#### **702.1 Definitions**

### **§ 702.1 Definitions**

The following words, when used in any rule of the Authority, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Abandoned well - A well that is not in use. A well that is not a deteriorated well; contains the casing, pump, and pump column in good condition; is properly registered with or permitted by the Authority; and is physically and legally capable of withdrawing water for a beneficial use is not an abandoned well. In addition, a well that is not a deteriorated well; has been properly capped; and is registered with or permitted by the Authority is not an abandoned well.

(2) Above - Situated on or over. When this term is used in reference to tanks above the recharge zone, it refers to those tanks located over the recharge zone, but does not refer to tanks located outside of the recharge zone.

(3) Aboveground storage tank (AST) - Any one, or a combination of connected containers, including any associated piping, made of nonearthen materials; located on or above the surface of the ground or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed and constructed to contain an accumulation of regulated substances.

(4) Aboveground Storage Tank Facility Plan – an Edwards Aquifer Protection Plan required to be submitted and approved by the Commission in accordance with Chapter 213 of 30 TEX. ADMIN. CODE.

(5) Act - The Edwards Aquifer Authority Act, Act of May 30, 1993, 73<sup>rd</sup> Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended.

(6) Additional regular permit - A groundwater withdrawal permit issued under 1.18(a) of the Act.

(7) Agricultural use - The use or activity involving any of the following:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;



(D) wildlife management;

(E) raising or keeping equine animals; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(8) Annual operating revenue requirement - The total revenues reflected in an annual budget adopted by the Board that are reasonably required to adequately meet all of the projected costs of Aquifer management during the fiscal year.

(9) Annular space - The space between the casing and borehole wall.

(10) Applicant - A person who files an application, registration, petition, notice, or other request with the Authority seeking some form of approval.

(11) Application - A form required by the Authority to initiate the process of obtaining a permit, registration, exemption, license, variance, plan approval, or any other approval. In the case of plans, the application shall consist of the plan itself.

(12) Aquifer - The Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestone in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(13) Aquifer management fees - Fees authorized to be assessed by the Authority based on:

(A) Aquifer use under the Act, § 1.29(b) and (e); or

(B) taxes in lieu of user fees to be paid by groundwater users in a groundwater conservation district governed by Chapter 36, TEX. WATER CODE, pursuant to a contract between the Authority and the water district under § 1.29(b) of the Act.

(14) Aquifer use - The withdrawal of groundwater from the Aquifer whether authorized under a groundwater withdrawal permit, or unauthorized and without legal authority.

(15) Aquifer well - Any water well, injection well, dewatering well, or monitoring well that:

(A) is constructed for the purpose of exploring for, injecting, or producing groundwater from the Aquifer;

(B) passes through the Aquifer and is constructed for the purpose of exploring for, injecting, or producing groundwater from an aquifer other than the Aquifer;

(C) that performs any of the functions in § 702.1(96)(A)-(H); or

(D) monitors the water quality or water level of the Aquifer.

(16) Artesian well - A well where the groundwater level or potentiometric surface is above the top of the geologic unit containing the Aquifer.

(17) Artificial recharge - The augmentation, through artificial methods, including alterations to a natural recharge feature, of the natural recharge of groundwater stored in the Aquifer. Artificial recharge is the difference in total recharge that would have occurred with the construction of an Aquifer recharge, storage and recovery project less the amount of natural recharge that would have occurred without the construction of the project.

(18) AST - An aboveground storage tank.

(19) Athletic field - A playing field of natural turf grass, used primarily for organized sports.

(20) Atmospheric barrier - A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(21) Augmentation - An act or process to increase the amount of water available for use or springflow.

(22) Authority - The Edwards Aquifer Authority.

(23) Authority offices - The Authority's principal offices identified in § 701.5.

(24) Authority's Groundwater Conservation Plan - Document prepared by the Authority under § 1.23(c) of the Act.

(25) Base irrigation groundwater - The portion of the groundwater withdrawal amount of an initial regular permit for irrigation purposes which must, under § 1.34(d) of the Act, be used in accordance with the original initial regular permit and must pass with transfer of the ownership of the historically irrigated lands identified in the place of use of the permit.

(26) Beneficial use - The use of the amount of water that is economically necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(27) Bentonite - A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form that is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table,

and to provide a seal in the annular space between the well casing and borehole wall.

(28) Best Management Practice (BMP) - A water conservation practice that is intended to improve water use efficiency and is:

(A) contained in Appendices B, C, and D of the Authority's Groundwater Conservation Plan for municipal, industrial, and irrigation users, respectively; or

(B) otherwise approved as a BMP by the Board under an application for variance from the comprehensive water management plan.

(29) Board - The Board of Directors of the Authority.

(30) Capped well - A well that is closed with a covering capable of preventing surface pollutants from entering the well. The cap must be able to sustain weight of at least 400 pounds and constructed in such a way that it cannot be easily removed by hand.

(31) Casing - A watertight pipe installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, and in conjunction with grouting, to confine the groundwaters to their respective zones of origin, and to prevent surface contaminant infiltration.

(32) cfs - Cubic feet per second.

(33) Chairman - The chairman of the Board.

(34) Chemigation - A process whereby pesticides, fertilizers or other chemicals, or effluent from animal wastes are added to irrigation water applied to land or crops, or both, through an irrigation distribution system.

(35) Closed system geothermal well - A well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(36) Coal tar - A byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons (PAHs).

(37) Coal tar-based pavement sealant product - A pavement sealcoat product that contains coal tar.

(38) Comal Springs - Groundwater emerging from the Aquifer in Landa Park in the City of New Braunfels, Texas, as a group of many spring openings that generally emerge along an approximately 4,400-foot long section of the Comal Springs Fault and form the headwaters of the Comal River.

(39) Comal Springs gauging station - United States Geological Survey Gauging Station No. 08169000 located at Latitude 29°42'21" and Longitude 98°07'20", Comal County, Texas. The gauging station is located, approximately 200 feet upstream from San Antonio Street viaduct in the City of New Braunfels and 1.1 miles upstream from the confluence of the Comal River and

Guadalupe River (USGS: Water Resources Data Texas Water Year 1999, p. 56). The gauge is a water-stage recorder with a man-made concrete control structure.

(40) Commencement of construction - An actual visible step beyond planning or land acquisition, which forms the beginning of the on-going (continuous) construction of a project in the manner specified in the approved plans and specifications, where required, for that project. The action must be performed in good faith with the bona fide intent to proceed with the construction. For the purposes of an aboveground or underground storage tank, the commencement of construction is the initial activities necessary for the installation or modification of the tank, tanks, or associated piping, including activities necessary for the tank or piping removal or removal from service.

(41) Commission - The Texas Commission on Environmental Quality.

(42) Completed monitoring well - A monitoring well that allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing or grouting procedures. The single water-producing zone shall not include more than one continuous water-producing unit unless a licensed geoscientist has determined that all the units screened or sampled by the well are interconnected naturally.

(43) Completed to produce undesirable water - A completed well designed to extract water from a zone that contains undesirable water.

(44) Completed water well - A water well that has sealed off access of undesirable water to the well bore by proper casing or grouting procedures.

(45) Conservation - Any measure that would sustain or enhance water supply.

(46) Constituents - Elements, ions, compounds, or substances that may cause the degradation of the soil or groundwater.

(47) Contested case hearing - A proceeding governed by Subchapter F of Chapter 707, and any applicable rules of SOAH, in which the legal rights, duties or privileges of a party are to be determined by the Board after an opportunity for an adjudicative hearing.

(48) Continuous injection method - A grout placement method whereby grout is placed by float shoe continuous injection method after water or other drilling fluid has been circulated in the annular space sufficient to clear obstructions. The bottom of the casing shall be fitted with a suitable drillable float shoe equipped with a backpressure valve. Tubing or pipe shall be run to the float shoe to which it shall be connected by a bayonet fitting, left hand thread coupling, or similar release mechanism. Water or other drilling fluid shall be circulated through the tubing and up through the annular space surrounding the casing. When the annular space surrounding the casing is clean and open, grout shall be pumped down the pipe or tubing and forced by continual pumping out into the annular space surrounding the casing. Pumping shall continue until the entire annular space surrounding the casing is filled. The grouting pipe shall then be detached from the float shoe and raised to the surface for flushing. After the grout has set, the float shoe, backpressure valve, and any plug remaining in the bottom of the casing shall be drilled out.

(49) Contract user - A person who:

(A) withdrew or purchased groundwater from the Aquifer during the historical period pursuant to a contract or other legal right obtained from a prior user or an existing user, from an existing well owned by the prior user or an existing user, and placed the groundwater to beneficial use; or

(B) uses groundwater from the Aquifer pursuant to a contract with a permit holder for his own use or resale to a third party irrespective of whether the person:

(i) is delivered the water on a metered or unmetered basis; or

(ii) directly withdraws the water at an authorized point of withdrawal owned or operated by the contract user based on a transfer.

(50) Contributing zone - the area or watershed where runoff from precipitation flows downgradient to the recharge zone. Absent a site-specific determination, the contributing zone includes the area identified on the official maps located at the Authority.

(51) Costs of Aquifer management - The reasonably necessary administrative and program expenses incurred, or estimated to be incurred, by the Authority to manage the Aquifer under the Act, and other applicable law.

(52) Critical period - Any day of a calendar year when a critical period stage is in effect.

(53) Declaration of historical use (declaration) - The form document required to be filed under § 1.16(a) of the Act. A declaration is an application for an initial regular permit.

(54) Department - The Texas Department of Licensing & Regulation.

(55) Deteriorated well - A well that, because of its condition, will cause, or may cause, pollution of any water in the state, including any groundwater, or cause a public nuisance.

(56) Dewatering well - An artificial excavation constructed to produce groundwater to cause a lowering of the water table or potentiometric surface. The term shall not include any dewatering well used for the production of, or to facilitate the production of, any mineral under a state regulatory program.

(57) Dewatering well driller - A person who drills, bores, cores, alters, or constructs a dewatering well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of a dewatering well driller and is not primarily responsible for the drilling operation.

(58) Discharge or spill - An act or omission by which oil, petroleum products, used oil, hazardous substances, industrial solid waste or other regulated substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into the ground or water or by which those

substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water. Pollutants discharged in violation of a permit issued by the Commission under TEX. WATER CODE § 26.027 may also be considered to be a discharge or spill under Authority rules.

(59) Diversion - The removal of state water from a watercourse or impoundment.

(60) Divide or division - To cut into parts, disunite, or separate a tract of land regardless of whether it is made by using:

- (A) metes and bounds description in a deed of conveyance;
- (B) metes and bounds description in a contract for a deed;
- (C) contract of sale to convey;
- (D) any other executory contract to convey; or
- (E) any other method.

(61) Docket clerk - The docket clerk of the Authority as designated by the general manager.

(62) Domestic or livestock use - Use of water for:

- (A) drinking, washing, or culinary purposes;
- (B) irrigation of a family garden or orchard, the produce of which is for household consumption only; or
- (C) watering of animals.

(63) Dry litter poultry facility - Fully enclosed poultry operation where wood shavings or similar materials are used as litter.

(64) Edwards Aquifer Protection Plan – any water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or a modification or exception granted by the Commission in accordance with Chapter 213 of 30 TEX. ADMIN. CODE.

(65) Emergency permit - A groundwater withdrawal permit issued under § 1.20(a) of the Act.

(66) Enclosure - A structure used to store regulated substances in a manner that prevents exposure to sun, precipitation, and other elements of the weather and, where appropriate, allows for sufficient ventilation and temperature control.

(67) Environment - Water, land surface or subsurface strata, for purposes of Subchapter

E only.

(68) Environmental soil borings - An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well used in conjunction with the production of oil, gas, or any other minerals.

(69) Exempt well - A well that produces 25,000 gallons of water a day or less for domestic or livestock use that is not within or serving a subdivision requiring platting, or a well classified as exempt in § 711.20(4).

(70) Existing user - A person, or the successor in interest of such a person, who, on June 1, 1993, owned an existing well from which groundwater from the Aquifer had been withdrawn and placed to beneficial use during the historical period.

(71) Existing well - A well drilled before June 1, 1993.

(72) Facility

(A) For the purposes of Chapter 713, Subchapters E - Any location, including land, any equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, or any site or area where a discharge or spill of a regulated substance has occurred.

(B) For the purposes of Chapter 713, Subchapter F - Any location, including any structure or building, or any site or area where regulated substances are stored.

(C) For the purposes of Chapter 713, Subchapter G - The site, tract, or other defined area where one or more aboveground or underground storage tanks are located, including all contiguous land and associated improvements owned or leased by the same property owner.

(73) Fiscal year - January 1 through December 31.

(74) Flapper - The clapper, closing, or checking device within the body of a check valve.

(75) Foreign substance - Constituents that may include chemicals, debris, recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(76) Freshwater - Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(77) General manager - The person hired by the Board to be the chief administrator of the Authority.

(78) Golf course - a playing area made up of greens, tees, fairways, roughs, and related areas used for the playing of golf.

(79) Granular sodium bentonite - Sized, coarse ground, untreated, sodium based

bentonite (montmorillonite) that has the specific characteristic of swelling in freshwater.

(80) Groundwater - Has the meaning of “underground water” as defined in this chapter.

(81) Groundwater conservation plan (GCP) - The document required to be submitted under Subchapter C of Chapter 715, by permit holders or their contract users who directly withdraw groundwater from the Aquifer.

(82) Groundwater trust - An account of groundwater withdrawal permits held in trust and administered by the Authority under Subchapter N of Chapter 711.

(83) Groundwater withdrawal amount - The amount of groundwater from the Aquifer authorized to be withdrawn in acre-feet per annum under a groundwater withdrawal permit.

(84) Groundwater withdrawal permit - A permit issued under § 1.15(b) of the Act authorizing the withdrawal of groundwater from the Aquifer.

(85) Grout - A fluid mixture of the following types of materials of a consistency that can be forced through a pipe and placed in the annular space between the borehole and the casing to form an impermeable seal:

(A) cement grout - A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement that contains cement along with bentonite, gypsum or other additives;

(B) cement-bentonite grout - A mixture of one (1) 94-pound sack of dry cement to 7 ½ gallons of clean water and 2% to 6% bentonite (by weight 2 to 6 pounds) to increase fluidity and to control shrinkage; or

(C) bentonite grout - A fluid mixture of sodium bentonite and potable water mixed at manufacturer’s specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the annular space in order to prevent the vertical subsurface migration or communication of fluids in the annular space.

(86) Hazardous substance - Any substance designated as such by the administrator of the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and listed in 40 C.F.R. § 302.4, or any substance regulated pursuant to the Federal Water Pollution Control Act, Chapter 311, 33 U.S.C. § 1321 et seq., and listed in 40 C.F.R. Part 116.

(87) Historic recharge - The annual recharge of the Aquifer that is estimated to occur based on natural geologic features, and artificial structures, facilities, or works, including alterations to a natural recharge feature, constructed prior to June 15, 2007.

(88) Historical average minimum - The amount determined for an applicant who operated a well in three or more years during the historical period, equal to the average amount of groundwater withdrawn annually during the historical period and put to beneficial use, calculated as follows:



total aggregate withdrawals from the well (in AF/annum) during the historical period which were put to beneficial use	÷	the total number of years during the historical period inclusive of and after the date of initial installation of the well, irrespective of whether withdrawals may have been made in any year
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(89) Historical period - The period from June 1, 1972, through May 31, 1993, inclusive.

(90) Historical use - The lawful withdrawing and placing to beneficial use of groundwater from the Aquifer during the historical period.

(91) Hydraulically-connected surface water or stream - A surface water body or stream which loses a portion of its flow to the Aquifer or which receives a portion of its flow from the Aquifer.

(92) Industrial solid waste - Solid waste, as defined in 30 TEX. ADMIN. CODE § 335.1, resulting from or incidental to any process of industry or manufacturing, or mining, or agricultural operations, which may include hazardous waste as defined in 30 TEX. ADMIN. CODE § 335.1.

(93) Industrial use - The use of water for, or in connection with, commercial or industrial activities, including manufacturing; bottling; brewing; food processing; scientific research and technology; recycling; production of concrete, asphalt, and cement; commercial uses of water for tourism, entertainment, and hotel or motel lodging; generation of power other than hydroelectric; and other business activities.

(94) Initial regular permit - A groundwater withdrawal permit issued under § 1.16(d) of the Act.

(95) Injection well - Includes:

(A) an air conditioning return flow well used to return to the Aquifer water used for heating or cooling in a heat pump;

(B) a cooling water return flow well used to inject water withdrawn from the Aquifer previously used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish the water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings,

or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil producing or non-gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(96) Injection well driller - A person who drills, bores, cores, alters, or constructs an injection well. The term includes the owner, operator, contractor, or drilling supervisor of the well. The term does not include a person who acts under the direct supervision of an injection well driller and is not primarily responsible for the drilling operation.

(97) Installer - A person who installs, alters, or repairs well pumps and equipment. The term does not include a person who:

(A) installs, alters, or repairs well pumps and equipment on the person's own property for the person's own use; or

(B) assists in pump installation under the direct supervision of an installer and is not primarily responsible for the installation.

(98) Interruption - The temporary cessation, curtailment, or other reduction of the right to make withdrawals under a groundwater withdrawal permit.

(99) Irrigation distribution system - A device or combination of devices having a hose, pipe, or other conduit that connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(100) Irrigation ditch/canal - Any ditch or canal that supplies water to an irrigated crop.

(101) Irrigation use - The use of water for the irrigation of pastures and commercial crops, including orchards.

(102) Irrigator minimum - The amount determined for an applicant for irrigation use, equal to two acre-feet times each acre of land the applicant, or his contract user, prior user, or former existing user actually irrigated in any one calendar year during the historical period if:

(A) the applicant, or his contract user, prior user or former existing user owned, leased, or otherwise had a legal right to irrigate the land during the historical period; and

(B) the applicant, or his prior user or former existing user owned the well from which the land was irrigated.

(103) Judge - A SOAH administrative law judge.

(104) Landscape watering - the application of groundwater from the aquifer to any plant, including any trees, shrubbery, flowers, vines, succulent, vegetables, fruit, groundcovers, turf or grasses which are situated in locations such as residential lots, recreational areas, cemeteries, public, private, and commercial establishments, public medians, and right of ways. The watering of athletic fields and golf courses is not considered landscape watering. The watering of nurseries to the extent the water is used for production of plants for the purpose of resale rather than decorative purposes is not considered landscape watering.

(105) Licensed driller - Any person who holds a license issued under Chapters 51 or 1901, Texas Occupations Code.

(106) Licensed pump installer - A person who holds a license issued under Chapters 51 or 1902, Texas Occupations Code.

(107) Limited production well – An Edwards Aquifer well drilled on or before June 1, 2013, for any beneficial use, that is either not capable of producing more than 1,250 gallons of water a day or is metered and does not produce more than 1.4 acre-feet of water in a calendar year. A limited production well is exempt from the requirement to obtain a groundwater withdrawal permit.

(108) Livestock - Animals, beasts or poultry collected or raised for pleasure, recreational use, or commercial use.

(109) Maximum historical use (MHU) - the amount of groundwater from the Aquifer determined for an applicant for an initial regular permit that, unless proportionally adjusted, is authorized to be withdrawn, and is equal to the greater of the following, as may be applicable:

(A) an applicant's irrigator minimum;

(B) for an applicant who has beneficial use without waste during the historical period for a full calendar year, the applicant's actual maximum beneficial use of groundwater from the Aquifer without waste during any one full calendar year of the historical period; or

(C) for an applicant who has beneficial use without waste during the historical period, but, due to the applicant's activities not having been commenced and in operation for a full calendar year, the applicant does not have beneficial use for a full calendar year, the applicant's extrapolated maximum beneficial use calculated as follows: the amount of groundwater that would normally have been placed to beneficial use without waste by the applicant for a full calendar year during the historical period for the applied-for purpose had the applicant's activities been commenced and in operation for a full calendar year during the historical period.

(110) mg/l - milligrams per liter.

(111) Monitoring well - An artificial excavation constructed to measure or monitor the quality, quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells. The term shall not include any well used in conjunction

with the production of oil, gas, coal, lignite, or any other minerals.

(112) Monitoring well driller - A person who drills, bores, cores, alters, or constructs a monitoring well. The term includes the owner, operator, contractor, or drilling supervisor of the well.

(113) msl - The elevation above mean sea level, measured in feet, of the surface of the water in a well.

(114) Mud - A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(115) Municipal use - The use of water, within or outside of a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity, including the use of treated effluent for certain purposes specified as follows. The term includes:

(A) the use of water for domestic use, the watering of lawns and family gardens, fighting fires, sprinkling streets, flushing sewers and drains, water parks and parkways, and recreation, including public and private swimming pools;

(B) the use of water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands; and

(C) the application of treated effluent on land under a permit issued under Chapter 26, TEX. WATER CODE, if:

(i) the primary purpose of the application is the treatment or necessary disposal of the effluent;

(ii) the application site is a park, parkway, golf course, or other landscaped area within the Authority's boundaries; or

(iii) the effluent applied to the site is generated within an area for which the Commission has adopted a rule that prohibits the discharge of the effluent.

(116) Natural recharge - The natural entry of source water into the Aquifer without the aid of an Aquifer recharge, storage and recovery project.

(117) Natural recharge feature - An unaltered permeable geologic feature where a potential for hydraulic interconnectedness between the surface and the Aquifer exists and rapid infiltration to the subsurface may occur. These features include but are not limited to closed depressions, sinkholes, caves, faults, fractures, bedding plane surfaces, vugs and reef deposits. Alterations include man-made changes to the geologic feature to increase or divert additional recharge into the Aquifer.

(118) New well - A well drilled on or after June 1, 1993.

(119) Non-agricultural use - The beneficial use of groundwater withdrawn from the Aquifer for any use other than agricultural use.

(120) Nursery grower - A person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, “grow” means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item before sale or lease and typically includes activities associated with the production or multiplying of stock, such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(121) Oil - Oil of any kind or in any form including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include used oil, petroleum product, or oil designated as a hazardous substance in 40 C.F.R. § 302.4.

(122) Operate a well - The withdrawal of groundwater from a well for a beneficial use.

(123) Operator - Relative to tanks, any person in day-to-day control of and having responsibility for the daily operation of underground or aboveground storage tanks.

(124) Order - Any written directive of the Board carrying out the powers and duties of the Authority under the Act.

(125) Other substances - Substances that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water.

(126) Owner - Relative to ASTs or USTs, a person who currently holds legal possession or ownership of a total or partial interest in an AST or a UST. Where the actual ownership of an AST or a UST is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the AST or the UST is located shall be considered the AST or UST owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally acceptable means that the AST or UST is owned by others. Except as otherwise provided by the TEX. WATER CODE §§ 26.3514-26.3516, “owner” does not include a person who holds an interest in an AST or UST solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the AST or UST.

(127) Packer - A short expandable-retractable device deliberately set in a well bore to prevent upward or downward fluid movement. The device may be either permanent or removable.

(128) Party - Each person admitted as a party in a contested case hearing.

(129) Per capita water usage - The sum total of water diverted into the water supply system of a water utility for residential, commercial, and public and institutional uses divided by actual population served.

(130) Permanently abandoned in place - A method whereby an AST or UST is permanently removed from service but the tank is not physically removed from the facility. Such action shall be completed in accordance with § 713.611.

(131) Permanently removed from service - The termination of the use and operational life of an AST or UST by either permanently abandoning the tank in place or by permanently removing the tank from the recharge zone in accordance with § 713.611.

(132) Permit - A written document issued by the Authority authorizing an activity for which an applicant has filed an application.

(133) Permit holder - A person to whom the Authority has issued a permit.

(134) Permitted well - Any well, the groundwater withdrawals from which, are required to be authorized by a groundwater withdrawal permit.

(135) Person - An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

(136) Petroleum - petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(137) Petroleum product - a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

(138) Petroleum storage tank ("PST") exempted facilities - electric service facilities including generation, transmission, distribution equipment and transformers; petrochemical plants; petroleum refineries; bulk loading facilities; and pipelines that are otherwise exempted under Chapter 327, 30 TEX. ADMIN. CODE.

(139) Pipeline - A pipeline is:

(A) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §§ 1671, et seq.); or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §§ 2001, et seq.); or

(B) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(i) Chapter 111, TEX. NAT. RES. CODE;

(ii) Chapter 117, TEX. NAT. RES. CODE; or

(iii) TEXAS CIVIL STATUTES, Article 6053-1 and Article 6053-2.

(140) Piping - All pipes associated with an AST or UST, including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system through which regulated substances flow or in which regulated substances are contained or stored, including the portion of the pipes extending from the tank to the outlet side of the shear impact valve at the dispensing device or if there is no shear impact valve, to the point of use. Piping does not include the dispensing device itself or any tubing associated with such a device. A vent pipe is considered to be piping unless a form of overflow protection is in place.

(141) Plat - A map of specific tracts of land showing the location and boundaries of individual tracts of lands subdivided into other smaller tracts with streets, alleys, squares, parks, or other parts of a tract of land, and easements drawn to scale.

(142) Pleadings - Any document filed by parties in a contested case hearing.

(143) Plugging - An absolute sealing of the well bore such that no migration of liquid or gas will occur between the Aquifer and other geologic units.

(144) Pollutant - Pollutant shall have the same meaning as in TEX. WATER CODE, § 26.001(13).

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

(146) Polycyclic aromatic hydrocarbons (PAHs) - A group of organic chemicals that are present in coal tar.

(147) Portable spill containment device - temporary containment devices such as a drip pan used to capture incidental spills where transfers of oil or other regulated substances take place.

(148) Positive displacement exterior method - A grout placement method whereby grout is placed by a positive displacement method such as pumping or forced injection after water or other drilling fluid has been circulated in the annular space sufficient to clear obstructions. A grout placement pipe shall be lowered to the bottom of the annular space or zone being grouted and raised slowly as the grout is introduced. The pipe shall be kept full continuously from start to finish of the grouting procedure, with the discharge end of the pipe being continuously submerged in the grout until the annular space is completely filled. In the event of interruption in the grouting operations, the bottom of the pipe shall be raised above the grout level and shall not be re-submerged until all air or water has been displaced from the pipe and the pipe flushed clean with clear water.

(149) Positive displacement interior method - A grout placement method whereby a measured quantity of grout, sufficient to fill the annular space shall be pumped into the casing, after water or other drilling fluid has been circulated in the annular space sufficient to clear obstructions. A drillable plug constructed of plastic or other suitable material shall be inserted on top of the grout. The plug will be forced down the casing using either water or drilling rods and therefore forcing the plug to the bottom of the casing. Pressure shall be maintained for a minimum of 24 hours or until such time as the sample of the grout indicates a satisfactory set.

(150) Prior user - A person who owned an existing well during the historical period and withdrew groundwater from the Aquifer from the well and placed it to beneficial use during the historical period, and during the historical period conveyed the ownership interest in the well to another person.

(151) Producing well - A well from which groundwater from the Aquifer is capable of being withdrawn for a beneficial use.

(152) Public water system - A system supplying water to a number of connections or individuals, as defined by rules of the Commission in Chapter 290, 30 TEX. ADMIN. CODE.

(153) Pump installation - The procedures employed in the placement, alteration, and preparation for operation, of equipment and materials used to obtain water from a well, including construction involved in establishing seals and safeguards as necessary to protect the water from contamination. The term includes repairs to an existing pump.

(154) Qualified groundwater professional - A Texas licensed professional engineer or Texas licensed geoscientist who, through professional experience and education, demonstrates full competence in application of scientific and engineering principles and methods in the execution of work involving the understanding of the occurrence, movement, and composition of groundwater, or the development, management, or regulation of groundwater in the person's specific field of expertise.

(155) Recharge - Increasing the volume of water entering the Aquifer by naturally occurring channels or artificial means.

(156) Recharge facility - Dam, reservoir, or other method of recharge project and associated facilities, structures, or works, but does not include a facility to recirculate water at Comal or San Marcos Springs.

(157) Recharge zone - that area where the stratigraphic units constituting the Aquifer crop out, including the outcrops of other geologic formations in proximity to the Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Aquifer, absent a site-specific determination, the recharge zone includes the area identified on the official maps of the Authority.

(158) Recognized capacity - Relative to USTs located on the Recharge Zone, the combined volume capacity of all regulated USTs at a facility that are in compliance with Authority rules. Recognized capacity does not include the volume capacity of associated piping or the volume capacity of any exempt tank.



(159) Recovery well - A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(160) Registration - The document required to be filed under § 1.33(b) of the Act, or as otherwise required by the Authority's rules.

(161) Regular permit - A new permit, issued after August 12, 2008, resulting from a sale or amendment of an initial regular permit, or the consolidation of two or more initial regular permits.

(162) Regulated substance – Any liquid that is

(A) a hazardous substance; or

(B) a petroleum or petroleum product.

This term does not include stock piles of aggregate or raw (unaltered chemically) earthen material, substances that are gas at standard temperature pressure, or aqueous solutions of sodium hypochlorite.

(163) Release - Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from an aboveground or underground storage tank.

(164) RQ - Reportable Quantity.

(165) Responsible person - Under Chapter 713, Subchapter E, a person who is:

(A) the owner, operator, or demise charterer of a vessel from which a discharge or spill emanates; or,

(B) the owner or operator of a facility from which a discharge or spill emanates; or,

(C) any other person who causes, suffers, allows, or permits a discharge or spill.

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

(167) San Antonio Pool - That part of the Aquifer underlying the boundaries of the Authority, other than Uvalde County.

(168) Sanitary well seal - A watertight device to maintain a junction between the casing and the piping used for the delivery of water.

(169) San Marcos Springs - Groundwater emerging from the Aquifer at Spring Lake in the City of San Marcos, Texas, as a group of several spring openings that generally emerge along

an approximately 1,000-foot long section of the San Marcos Springs Fault and form the headwaters of the San Marcos River.

(170) San Marcos Springs gauging station - USGS Gauging Station No. 08170000 located at Latitude 29°53'20" and Longitude 97°56'02", Hays County, Texas. The gauge is on the downstream side of the Aquarena Springs Drive (Loop 82) Bridge, 500 feet downstream from Spring Lake and 4.2 miles upstream from the confluence of the San Marcos River and Blanco River (USGS: Water Resources Data Texas Water Year 1999, p. 54). The gauge is a water-stage recorder with natural control structures.

(171) Shear impact valve - A valve installed on a fuel dispensing device which connects piping from the fuel storage tank to the dispenser. The valve is designed and located such that it will act as an emergency shutoff valve stopping all fuel flowing from the attached piping if the fuel dispenser is impacted or in case of fire.

(172) SOAH - The State Office of Administrative Hearings.

(173) Soil - An unconsolidated mineral or organic material serving as a natural growth medium for the growth of plants that may be amended by additives to enhance plant growth or limit undesirables. The term includes, but is not limited to, product-soil such as potting soil, potting mix, garden soil, and topsoil. Product-soil generally differs from the material from which it is derived in physical, chemical, biological and morphological properties and characteristics.

(174) Springflow - Groundwater emanating from a natural formation, the rate of which is commonly expressed in cfs.

(175) State Well Report - A well log recorded on forms prescribed by the Department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, and well grouting/sealing information, together with any other data or information required by the Department.

(176) Steel or PVC Sleeve - A protective covering, generally a pipe, that is placed over the casing of a well.

(177) Step-up amount (SUA) - The difference between an applicant's irrigator or historical average minimum, if any, and the applicant's PA-1 amount as determined under §711.125(f)(5). Where an irrigator applicant qualifies for both an irrigator minimum and an historical average minimum, the SUA shall be equal to the difference between whichever of the applicant's minimums is greater and the applicant's PA-1 amount.

(178) Storage - The keeping, holding, accumulating, or aggregating of regulated substances.

(179) Stormwater collection system - piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation to and from retention areas or any areas where treatment is designated to occur.

(180) Subdivision of land - When an owner of a tract of land within the boundaries of the

Authority divides the tract into two or more parts to lay out:

- (A) a subdivision of the tract, including an addition;
- (B) lots; or
- (C) streets, alleys, squares, parks, or other parts of the tract intended to be dedicated:
  - (i) to public use; or
  - (ii) for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks or other parts.

(181) Surface Water - Has the meaning of “state water” as defined by TEX. WATER CODE § 11.021.

(182) Tank - An aboveground or underground storage tank.

(183) Temporarily removed from service - The procedure by which an AST or UST may be temporarily taken out of operation without being permanently removed from service. Such action shall be completed in accordance with § 713.611.

(184) Term permit - A groundwater withdrawal permit issued under § 1.19(a) of the Act.

(185) Tract of land - A lot, piece, or parcel of land irrespective of size.

(186) Transferee - A person receiving a transfer of all or part of a groundwater withdrawal permit.

(187) Transferor - A person making a transfer of all or part of a groundwater withdrawal permit.

(188) Tremie method - A grout placement method whereby a tremie pipe is lowered to the bottom of the annular space or zone being grouted and raised slowly as the grout is introduced. The tremie pipe shall be kept full continuously from start to finish of the grouting procedure, with the discharge end of the tremie pipe being continuously submerged in the grout until the annular space is completely filled. This method is also known as the “positive displacement exterior method.”

(189) Tremie pipe - A string of pipe that is lowered into the annular space to place a filter pack or grouting material.

(190) Trust term - The period of time all or part of a groundwater withdrawal permit is held in the groundwater trust.

(191) TWDB - The Texas Water Development Board.

(192) Underground storage tank (UST) – Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(193) Underground Storage Tank Facility Plan – an Edwards Aquifer Protection Plan required to be submitted to and approved by the Commission in accordance with Chapter 213 of 30 TEX. ADMIN. CODE.

(194) Underground water - Water percolating beneath the earth.

(195) Undesirable water - Water that is injurious to human health and the environment or water that can cause pollution to land or the waters in the state.

(196) Unit cost basis - The amount of a fee expressed in dollars per acre-foot per annum.

(197) Unrestricted irrigation groundwater - The groundwater withdrawal amount for an initial regular permit for irrigation purposes which is not base irrigation groundwater.

(198) Used oil - Oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

(199) UST - An underground storage tank.

(200) Uvalde Pool - That part of the Aquifer underlying the boundaries of Uvalde County.

(201) Vessel - Every description of watercraft, used or capable of being used as a means of transportation on the water.

(202) Waste -

(A) withdrawal of groundwater from the Aquifer at a rate and amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic or stock-raising purposes;

(B) the flowing or producing of wells from the Aquifer if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from the Aquifer to any other reservoir that does not contain groundwater; pollution or harmful alteration of groundwater in the Aquifer by salt water or other deleterious matter admitted from another stratum or from the surface of the ground;

(D) willfully or negligently causing, suffering or permitting groundwater from the Aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well, unless such discharge is authorized by any permit, rule, or order that may be required by law and is issued by the Commission under Chapter 26, TEX. WATER CODE, or any other federal or local government having jurisdiction over the discharge;

(E) groundwater pumped from the Aquifer for irrigation that escapes as irrigation tailwater onto land, other than that of the well owner, unless permission has been granted by the occupant of the land receiving the discharge;

(F) for water produced from an artesian well, “waste” has the meaning assigned by the TEX. WATER CODE § 11.205;

(G) constructing, installing, drilling, equipping, completing, altering, operating, maintaining, or making withdrawals from a well without a required permit;

(H) withdrawal of water that is substantially in excess of the volume or rate reasonably required for a beneficial use; or

(I) irrigation use of groundwater from the Aquifer in a volume per irrigated acre that is so insufficient that a crop could not have been reasonably cultivated and produced.

(203) Wastewater collection system - Piping, pumps, conduits, and any other equipment necessary to collect and transport domestic, commercial, municipal, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

(204) Water - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface waters.

(205) Water conservation equipment - Any BMP which results in less groundwater from the Aquifer being required for irrigation purposes at the place of use identified in an initial regular permit.

(206) Water table well - A well where the groundwater level or potentiometric surface is below the top of the geologic unit containing the Aquifer.

(207) Water utility - A person, corporation, public utility, water supply service corporation, municipality, political subdivision, or other agency owning, controlling, operating, or maintaining in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water from the Aquifer for compensation to a third party, or for resale of the potable water to a third party, for any use.

(208) Water well - Any artificial excavation constructed for the purpose of exploring for or producing groundwater. The term, however, shall not include injection wells, any test or blast holes in quarries or mines, or any well or excavation constructed for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are also used to produce groundwater. The term shall not include any injection water source well regulated by the Railroad Commission of Texas.

(209) Water well driller - A person who drills, bores, cores, alters, or constructs a water well.

(210) 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 shaft or opening is greater than its largest surface dimension, but does not include a surface pit, surface excavation, or natural depression.

(211) Well construction permit - A permit issued under § 1.15(b) of the Act for the construction or modification of wells, other works designed for the withdrawal of water from the Aquifer, monitoring wells, and injection wells.

(212) Well driller - A water well driller, injection well driller, dewatering well driller, or monitoring well driller, or any driller who holds a license under Chapters 1901 or 1902 of the Texas Occupations Code. The term includes the owner, operator, contractor, or drilling supervisor of the well. The term does not include a person who:

(A) drills, bores, cores, alters, or constructs a water well on the person's own property for the person's own use; or

(B) assists in constructing a water well under the direct supervision of a driller and is not primarily responsible for the drilling operation.

(213) Well J-17 - State well number AY-68-37-203 located in Bexar County.

(214) Well J-27 - State well number YP-69-50-302 located in Uvalde County.

(215) Well pit - An excavation near the well head used for the installation of buried pump discharge or suction lines from the well below grade construction.

(216) Well pumps and equipment - Pumps, equipment and associated materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

(217) Withdrawal - An act or a failure to act that results in taking water from the Aquifer by or through man-made facilities, including pumping, withdrawing or diverting groundwater.

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## **CHAPTER 703. RULEMAKING PROCEDURES**

### **Section**

703.1	Applicability
703.3	Public Hearings on Proposed Rules
703.5	Notice of Proposed Rules
703.7	Notice of Public Hearings on Proposed Rules
703.9	Written Comments and Responses
703.11	Posting of Rulemaking Information on the Internet
703.13	Effective Date of Rules
703.15	Emergency Rulemaking

### **§ 703.1 Applicability**

- (a) This chapter applies to rulemaking by the Authority.
- (b) This chapter does not apply to the adoption of the following documents:
  - (1) bylaws; or
  - (2) internal procedures of the Authority.

### **§ 703.3 Public Hearings on Proposed Rules**

- (a) Authority staff shall conduct at least one public hearing on proposed rules.
- (b) Authority staff will set a time and place for all public hearings on proposed rules.
- (c) Public hearings will be conducted in the manner Authority staff deems most suitable to conveniently, inexpensively and expeditiously provide a reasonable opportunity for interested persons to submit relevant data, views, or arguments, in writing or orally, on proposed rules.
- (d) The general manager may designate a person to be the presiding officer of a public hearing.
- (e) Public hearings on proposed rules may be recorded in any manner deemed appropriate by Authority staff.

### **§ 703.5 Notice of Proposed Rules**

- (a) Authority staff will provide written notice of a proposed rule to all applicants and permit holders.



- (b) The notice will include:
  - (1) a statement that the Authority is proposing new or amendments to existing rules; and
  - (2) a copy of the notice of public hearings on proposed rules.

#### **§ 703.7 Notice of Public Hearings on Proposed Rules**

(a) Authority staff will publish notice of public hearings on proposed rules in a newspaper of general circulation within the boundaries of the Authority at least 14 days before the date of the public hearing.

- (b) The notice will include:
  - (1) a statement of the general subject matter of the proposed rules;
  - (2) the date, time, and place, of the public hearing;
  - (3) the procedures for obtaining copies of the proposed rules;
  - (4) the procedures for submitting written comments and the date and time by which written comments must be filed with the Authority; and
  - (5) a statement regarding the opportunity to appear and make comments at the Board meeting at which proposed rules may be adopted as final rules.

#### **§ 703.9 Written Comments and Responses**

(a) Written comments must be filed at the official address of the Authority or hand delivered to Authority staff at any public hearing on the proposed rules. The Board may grant additional time for filing written comments as it finds appropriate.

(b) Written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are general and directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific rules, the number of the proposed rule must be specifically identified and followed by the comments.

(c) The Authority shall allow 45 days for comment on proposed rules before the Board adopts the rules. However, in no event shall the Authority allow less than 5 days after the date of the last public hearing for the submission of written public comments.

(d) The Board shall consider all written comments and shall, in its order adopting the rules, state the reasons and justification for the rules and the Authority's responses to written comments.

(e) The meeting of the Board at which proposed rules are adopted as final rules must be an open meeting. The public must be allowed to make comments on the proposed rules and the Authority responses.

**§ 703.11 Posting of Rulemaking Information on the Internet**

The Authority shall make available on its internet site the text of the following:

- (1) final rules adopted by the Board;
- (2) proposed rules approved by the Board; and
- (3) notices of public hearings for any proposed rules.

**§ 703.13 Effective Date of Rules**

Rules become final and effective on the 10<sup>th</sup> day after the date the rules are adopted by the Board as final rules.

**§ 703.15 Emergency Rulemaking**

(a) This section applies to emergency rulemaking by the Authority. No other section in this chapter applies to emergency rulemaking.

(b) The Board may adopt emergency rules in the following circumstances:

- (1) in anticipation of imminent harm to human health, safety, or welfare; or
- (2) compliance with the regular rulemaking procedures provided in this chapter would prevent an effective response to emergency Aquifer conditions or springflow conditions at Comal or San Marcos Springs.

(c) Authority staff will publish a notice of intent to adopt emergency rules in a newspaper of general circulation within the boundaries of the Authority at least 5 days before the date of the Board meeting at which the emergency rules will be considered for final adoption. The notice will include:

- (1) a statement of the need for emergency action;
- (2) a statement of the general subject matter of the proposed emergency rule;
- (3) the date, time, and place, of the Board meeting;
- (4) the procedures for obtaining copies of the emergency rules; and

(5) a statement regarding the opportunity to submit written comments, or appear and make oral comments at the Board meeting at which emergency rules may be adopted.

(d) Emergency rules are effective for a period of 120 days and may be renewed once for not more than 60 days.

(e) Emergency rules are effective immediately upon adoption by the Board.

## **CHAPTER 705. JURISDICTION OF THE EDWARDS AQUIFER AUTHORITY**

### **Section**

705.1	Groundwater
705.3	Surface Water

### **§ 705.1 Groundwater**

The power of the Authority regarding groundwater applies only to:

- (1) groundwater within the Aquifer; or
- (2) groundwater withdrawn from the Aquifer.

### **§ 705.3 Surface Water**

The power of the Authority does not extend to the regulation of the diversion and beneficial use of surface water. As may be authorized by law, the Authority may regulate activities affecting the quality of surface water in order to preserve and protect the Aquifer, prevent the waste or pollution of the Aquifer, and enforce water quality standards.

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## **CHAPTER 707. PROCEDURE BEFORE THE AUTHORITY**

### **Subchapter A. [Reserved]**

### **Subchapter B. General Provisions**

#### **Section**

707.101	Purpose
707.102	Computation of Time
707.103	Document Filing
707.105	Change of Address or Telephone Number

### **Subchapter C. [Reserved]**

### **Subchapter D. Requirements for Applications**

#### **Section**

707.405	Applications for Initial Regular Permits/Declarations of Historical Use
707.430	Applications to Register a Facility Storing Regulated Substances

### **Subchapter E. Actions on Applications**

#### **Section**

707.501	Applicability
707.503	General Processing Tracks
707.505	Proper Applicants for Groundwater Withdrawal Permits
707.507	Application Forms; Initiation of Proceedings
707.509	Requirements for All Applications
707.511	Fees
707.513	Conference with Authority Staff
707.515	Receipt of Applications
707.517	Administrative Completeness
707.519	Technical Review
707.521	Delegation to the General Manager for Approval and Denial of Applications
707.523	Proposed Action on Applications Requiring Board Action
707.525	Notice of Proposed Action for Applications Subject to Contested Case Hearings
707.527	Board Action on Applications not Subject to a Contested Case Hearing
707.529	Board Action on Applications Subject to a Contested Case Hearing
707.531	Non-Substantive Changes to Applications
707.533	Amendment of Applications
707.535	Withdrawal of Applications
707.537	Special Procedures for Emergency Permits
707.539	Special Procedures for Recharge and Contributing Zones Determinations
707.541	Special Procedures for Notices of Claims

## **Subchapter F.            Procedures for Contested Case Hearings**

### **Section**

707.601	Applicability
707.6011	Ex Parte Communications
707.6012	Procedural Options Available to Applicants
707.602	Persons Entitled to a Contested Case Hearing
707.603	Requests for Contested Case Hearing
707.605	Processing of Hearing Requests
707.606	Action by Board
707.607	Service of Documents
707.608	Delegation to SOAH
707.609	Referrals to Contested Case Hearing
707.6091	Notice to Parties of Contested Case
707.6092	Continuances
707.610	Designation of Parties
707.6101	Discovery
707.61011	Depositions
707.6102	Expenses of Witness or Deponent
707.6103	Evidentiary Matters
707.611	Burden of Proof
707.612	Commissions Requiring Deposition and Subpoenas
707.613	Remand to Board
707.6131	Informal Dispositions
707.614	Certified Questions
707.618	Scheduling of a Meeting of the Board
707.619	Oral Presentation Before the Board
707.6191	Transcription of Board Proceedings
707.620	Reopening the Record
707.621	Decision
707.6211	Notification of Decisions
707.622	Motion for Rehearing
707.6221	Agreement to Modify Time Limits
707.623	Decision Final and Appealable
707.624	Appeal of Final Decision
707.625	Costs of Record on Appeal

**Subchapter A.**        **[Reserved]**



## **Subchapter B. General Provisions**

### **Section**

707.101	Purpose
707.102	Computation of Time
707.103	Document Filing
707.105	Change of Address or Telephone Number

### **§ 707.101 Purpose**

The purpose of this chapter is to provide the procedures to be followed in Authority proceedings. Included in this chapter are procedures for the filing and processing of applications. These procedures are intended to allow the Authority to efficiently implement its powers and duties under the Act by simplifying procedures, avoiding delays, and saving expense.

### **§ 707.102 Computation of Time**

In computing any period of time under the Authority's rules or orders, the period shall begin on the day after the act, event, or default in question, and shall conclude on the last day of that designated period. If the last day is a Saturday, Sunday, or legal holiday on which the Authority office is closed, then the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday on which the Authority office is closed.

### **§ 707.103 Document Filing**

(a) Except for the documents required to be filed with a judge under Subchapter F, all documents required to be filed with the Authority shall be submitted to the appropriate member of the Authority staff.

(b) If appropriate, Authority staff will assign an application number to a matter. The application number should appear on the first page of any document filed in that matter.

(c) Documents shall be filed by mail, hand delivery or electronic transmittal. Documents containing 20 or fewer pages may also be filed by facsimile. If a person files a document by facsimile, the Authority may require the document also be filed in the appropriate number of copies by mail, hand delivery or electronic transmittal within three days after the facsimile transmission.

(d) Unless specified otherwise in this chapter, the original of all documents shall be filed.

(e) The time of receipt by the Authority will be evidenced by the date stamp affixed to the document or the date the document is received electronically, which will be indicated on the submitted document.

(f) Unless specified otherwise in the Authority's rules, the Authority will accept all documents submitted. The Authority's acceptance is not a determination that a document meets filing deadlines or any other requirement.

(g) If the requirements of this chapter are not followed, the Authority may choose not to consider the documents.

(h) For documents filed with the Authority that are intended for consideration at a Board meeting, the Authority may choose not to consider the documents if they are filed within ten days of a Board meeting.

(i) The Authority may waive any requirement of this chapter, or impose additional filing requirements.

(j) Once a case has been referred to SOAH for a contested case hearing, and prior to the time that the judge submits a proposal for decision to the Authority, the filing of any documents in that proceeding shall, if appropriate, be governed by the applicable SOAH rules (1 TEX. ADMIN. CODE Ch. 155).

#### **§ 707.105 Change of Address or Telephone Number**

Applicants, permit holders, and other persons with a matter or proceeding before the Authority will give written notice to the Authority of any change of mailing address or telephone number within 30 days of such change.

**Subchapter C.      [Reserved]**

## **Subchapter D. Requirements for Application**

### **Section**

707.405	Applications for Initial Regular Permits/Declarations of Historical Use
707.430	Applications to Register a Facility Storing Regulated Substances

### **§ 707.405 Applications for Initial Regular Permits/Declarations of Historical Use**

In addition to the information specified in § 707.509, an application for an initial regular permit shall contain the following:

- (1) Name and Address of Owner. The full name, physical and mailing addresses, telephone number, fax number, and e-mail address of the well owner.
- (2) Source of Supply. A statement as to whether the Aquifer is the source of groundwater from the well.
- (3) Rate of Withdrawal. The maximum rate of withdrawal in gallons per minute or cubic feet per second each well is capable of producing.
- (4) Method of Withdrawal. A description of the method used to withdraw groundwater.
- (5) Declaration of Historical Use. A declaration of historical use containing:
  - (A) the total amount of water from the Aquifer that the applicant or his contract user, prior user, or former existing user withdrew and beneficially used without waste during each calendar year of the historical period;
  - (B) the maximum number of acres irrigated during any one calendar year of the historical period;
  - (C) the purpose(s) for which the groundwater was used during each year of the historical period;
  - (D) the amount of groundwater the applicant claims as the maximum beneficial use of water without waste during any one calendar year of the historical period;
  - (E) the number and location of each well owned by the applicant and for which the applicant claims groundwater from the Aquifer was withdrawn and placed to beneficial use during the historical period;
  - (F) the place of use of groundwater withdrawn from each well;

(G) if the groundwater was withdrawn from the well or placed to a beneficial use by a contract user, prior user, or former existing user, then the name, address and telephone number of each contract user, prior user or former existing user, the year of withdrawals, purpose of use, place of use and amount of withdrawals, including copies of the legal documents establishing the legal right of the contract user to withdraw and/or place groundwater from the Aquifer to beneficial use;

(H) any facts upon which the applicant requests equitable adjustment on the grounds that the applicant's historic use was affected by a requirement of or participation in a federal program;

(I) if the groundwater is to be sold on a wholesale or bulk basis, whether metered or un-metered, transported or transferred, a description of how the groundwater will be sold, transported or transferred, the name, address and telephone number of every person to whom the water will be delivered, the location to which the groundwater will be delivered, and the purpose for which the groundwater will be used, including copies of the legal documents establishing the right for the groundwater to be sold, transported or transferred;

(J) a separate Well Information Sheet prescribed by Authority staff or a registration form from a groundwater district or other entity with the same data as the Well Information Sheet for each well accompanied by a photograph of the well taken approximately 100 feet from the well head; and

(K) any other information that Authority staff may require.

#### **§ 707.430 Applications to Register a Facility Storing Regulated Substances**

In addition to the information specified in § 707.509, an application to register a facility storing regulated substances shall contain the following:

(1) Name and Address of Owner. The full name, physical and mailing addresses, telephone number, fax number, and e-mail address of the owner of the facility.

(2) Name and Address of Operator. The full name, physical and mailing addresses, telephone number, fax number, and e-mail address of the operator of the facility.

(3) Location of Facility. The physical address of the facility and the latitude and longitude of the part or parts of the facility used for the storage of regulated substances subject to Chapter 713, Subchapter F.

(4) Nature of Business. Information about the nature of business regularly conducted at the facility.

(5) Hours of Operation. Information about the regular hours of operation of the facility.

(6) Regulated Substances. Information about the type and quantity of regulated substances subject to Chapter 713, Subchapter F regularly stored at the facility.

(7) Any other information as may be required by the general manager.

## **Subchapter E.            Actions on Applications**

### **Section**

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### **§ 707.501      Applicability**

This subchapter applies to applications filed with the Authority.

### **§ 707.503      General Processing Tracks**

Under this subchapter, final action on an application may occur under one of the following:

- (1) a Board order acting on applications over which the Board has retained jurisdiction under §§ 707.527 and 707.529;
- (2) a general manager's letter acting on application delegated to the general manager by the Board under § 707.521;
- (3) the return of an application for failure to provide sufficient information for administrative completeness or technical review under §§ 707.517 and 707.519; or
- (4) withdrawal of an application by the applicant under § 707.535.

### **§ 707.505      Proper Applicants for Groundwater Withdrawal Permits**

For applications for groundwater withdrawal permits, if the well or proposed well has one owner, that owner shall file the application. If there is more than one owner, a joint application shall be filed by those owners. In such an instance, the owners shall select one among them to act for and represent the others before the Authority. Written documentation of such a selection satisfactory to the Authority shall be filed with the application. For the purposes of this section, unless ownership of the well by a lessee, assignee, or easement holder is clearly established in documents defining the relationship between the parties, a lessee or assignee of the surface estate, or an easement holder, is not considered to be the owner of a well.

### **§ 707.507      Application Forms; Initiation of Proceedings**

(a)      Persons who wish to obtain a permit, or other approval from the Authority, shall submit a written application to the Authority on a form prescribed by the Authority.

(b)      Authority staff will furnish, without charge, forms and instructions for the preparation of any application, or other document, required to be filed with the Authority. The use of such forms is mandatory. Supplements may be attached if there is insufficient space on the form. If supplements are used, the data and information entered thereon shall be separated into sections that are numbered to correspond with the numbers on the printed form.

(c)      Application forms may be combined in a manner that will reduce the need for persons to submit duplicative information in multiple forms.

### **§ 707.509      Requirements for All Applications**

(a)      All applications shall be typewritten or printed legibly in ink and shall include:

(1)      The full name, physical and mailing addresses, and telephone number of the applicant. If the applicant is a partnership, the name of the partnership shall be followed by the words “a partnership.” If the applicant is acting as trustee for another, the trustee’s name shall be followed by the word “trustee.” If one other than the named applicant executes the application, the person executing the application shall provide their name, position, mailing address and telephone number.

(2)      The application shall be signed as follows:

(A)      If the applicant is an individual, the application shall be signed by the applicant or a duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant. If the applicant is an individual doing business under an assumed name, the applicant shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(B)      A joint application shall be signed by each applicant, or each



applicant's duly authorized agent, with written evidence of such agency submitted with the application. If a well or proposed well is owned by both husband and wife, each person shall sign the application. Joint applicants shall select one among them to act for and represent the others in pursuing the application with written evidence of such representation to be submitted with the application.

(C) If the application is by a partnership, the application shall be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, the applicant shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(D) If the applicant is an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate and a current copy of the letters testamentary issued by the court shall be attached to the application.

(E) If the applicant is a corporation, public district, county, municipality or other corporate entity, the application shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, or resolutions specifying the authority of the official to take such action shall be submitted along with the application. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(F) If the applicant is acting as trustee for another, the applicant shall sign as trustee and in the application shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

(b) Except as provided in Subsection (c), each applicant shall subscribe and swear or affirm under oath that the facts set out in the application are accurate before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the application.

(c) Well registrations, and applications for well construction, plugging, or capping shall be certified by the applicant that all information provided is true and correct.

#### **§ 707.511 Fees**

(a) As allowed by Subchapter C of Chapter 709, a non-refundable application fee of \$25 may be required to accompany all permit applications in order for it to be filed and processed by the Authority. Persons filing combined forms may be required to submit separate application fees pertaining to each portion of the combined form.

(b) As allowed by Subchapter B of Chapter 709, a non-refundable registration fee of \$10 may be required to accompany all registrations in order for it to be filed and processed by the Authority.

(c) Authority staff is prohibited from filing and processing any document unless the proper fee is tendered at the time of filing.

### **§ 707.513 Conference with Authority Staff**

Prior to filing an application, applicants are encouraged to confer with Authority staff on any questions concerning the preparation of an application.

### **§ 707.515 Receipt of Applications**

All applications received by the Authority shall be stamped or marked “Received” with the date of receipt clearly indicated. Applications received by the Authority may be returned to the applicant without further action only as provided by Authority rules.

### **§ 707.517 Administrative Completeness**

(a) Authority staff will conduct an initial review of each application for administrative completeness within 45 business days of the receipt of the application and payment of applicable fees.

(b) In reviewing an application for administrative completeness, Authority staff will assess whether the application form has been completely filled out and includes all required supporting documents in legible form.

(c) After determining that an application is administratively complete, Authority staff will notify the applicant by mail.

(d) If Authority staff determines that an application is not administratively complete, Authority staff will notify the applicant by mail of any such deficiencies. Illegible applications will be returned to the applicant. Within 15 days of receipt of the letter, the applicant shall submit any additional necessary information. If the additional information is not timely received, Authority staff will return the incomplete application by mail.

### **§ 707.519 Technical Review**

(a) After an application is determined to be administratively complete, Authority staff will commence a technical review of the application.

(b) If Authority staff determines that additional material is necessary to complete technical review, Authority staff will notify the applicant by mail of any such deficiencies. Within 30 days of receipt of the letter, the applicant shall submit the additional information. If timely received, the Authority staff will complete the technical review. If the additional information is not timely received and the information is considered essential, Authority staff shall return the application by mail. For purposes of this section, information is considered essential if, without the information, Authority staff is unable to form a recommendation on the application. If the additional information is not timely received, Authority staff may either return the application by mail, or recommend denial based on incomplete or inadequate information.

(c) By filing an application with the Authority, the applicant authorizes the Authority

to enter the applicant's property at any reasonable time and upon reasonable notice for the purpose of inspecting, investigating or verifying conditions or information submitted in connection with an application in order to perform technical review.

**§ 707.521 Delegation to the General Manager for Approval and Denial of Applications**

(a) The purpose of this section is to delegate to the general manager authority to take action on behalf of the Board for the actions listed in this subsection. Wherever in these rules the Board is required to take certain action, and the authority to take action has been delegated to the general manager in this section, then the reference to the Board shall include the general manager.

(b) After technical review, the general manager may take action to approve any application except for the following:

- (1) matters subject to a potential contested case hearing under § 707.601;
- (2) applications for delegations of regulatory authority to groundwater conservation districts under § 711.17;
- (3) variance applications under Subchapter B of Chapter 715;
- (4) applications to convert base irrigation groundwater under § 711.340;
- (5) applications for conservation grants under Subchapter D of Chapter 715;
- (6) notices of claim under § 711.353; and
- (7) applications for approval of an alternative measuring method under § 711.418.

(c) After technical review, and subject to review by the Board under Subsection (g), the general manager may take action to deny any of the following applications:

- (1) well registrations seeking exempt well status under § 711.21;
- (2) applications for well construction permits under § 713.203;
- (3) applications to consolidate permits under § 711.346;
- (4) requests to determine the location of the recharge zone under § 707.539;
- (5) applications for a major modification under § 713.629; and
- (6) well registrations seeking limited production status under § 711.61.

(d) In taking action on an application under this section, the general manager may impose any condition that in his or her judgment is appropriate to effectuate the Act or the Authority's rules.

(e) Authority staff shall inform the applicant of the general manager's action by sending a copy of the action by mail.

(f) The general manager may subdelegate this authority to another member of the Authority staff.

(g) By filing a written notice for review within 15 days of the date the general manager's action is mailed, the applicant may obtain review of the general manager's determination before the Board. The notice must state the reasons why the general manager's determination is inaccurate. The notice will be set for presentation to the Board under § 707.527.

### **§ 707.523 Proposed Action on Applications Requiring Board Action**

(a) Following completion of technical review of any application for which the authority to take action has not been delegated to the general manager under § 707.521, Authority staff will determine whether to recommend granting or denying the application.

(b) If the recommendation is to grant the application, a proposed permit, or other document, as appropriate, will be prepared. As information is developed throughout the course of processing an application, the proposed action is subject to change. The proposed action shall be available for public review and inspection. By mail, Authority staff will provide the applicant a copy of the proposed action, permit, or other document as appropriate.

(c) If the recommendation is to deny the application, the general manager will prepare a proposed denial stating the reasons for that recommendation. Authority staff will provide the applicant a copy of the proposed denial by mail.

(d) In conjunction with the proposed action, Authority staff will prepare a technical summary containing information deemed appropriate to support the general manager's proposed action.

(e) If the application is subject to a contested case hearing under § 707.601, Authority staff will advise the applicant, or any applicant for or holder of another groundwater withdrawal permit that they may file a request for a contested case hearing on the application by the deadline provided in 707.603(a).

(f) When the general manager has prepared the proposed action, it will be forwarded to the docket clerk. The docket clerk will coordinate with other Authority staff to schedule the matter before the Board, publish or give any required notices, and take any other action as may be appropriate.

**§ 707.525 Notice of proposed Action for Applications Subject to Contested Case Hearings**

(a) This section applies only to applications subject to contested case hearings under § 707.601.

(b) As provided in Subsection (e), Authority staff, or the applicant, will arrange for publication of a notice of the proposed action as follows:

(1) in a newspaper of general circulation throughout the Authority's jurisdiction; and

(2) in at least four other newspapers within the jurisdiction of the Authority.

(c) The notice will be published no later than 30 days following the date of the general manager's proposed action.

(d) The notice will contain:

(1) a description of the proposed action, including any conditions;

(2) results of the technical summary;

(3) a statement that a copy of the proposed action, technical summary, and application are available for inspection by the public at the offices of the Authority;

(4) a statement that the proposed action will be presented to the Board for action within 60 days unless a request for contested case hearing is submitted by the deadline provided in § 707.603(a); and

(5) a statement that the applicant, or another applicant for or holder of a groundwater withdrawal permit, may request a contested case hearing by filing with the docket clerk, a request by the deadline provided in § 707.603(a).

(e) If the general manager proposes to partially grant, or deny, the application, then the Authority shall publish the notice at its cost. If the general manager proposes to grant the application, Authority staff will prepare a draft notice and forward it to the applicant for publication at the applicant's cost. Within seven days of publishing, the applicant shall file with the Authority the publisher's affidavit. If the applicant fails to publish the notice within 30 days of receipt, the Authority may return the application to the applicant by mail.

**§ 707.527 Board Action on Applications not Subject to a Contested Case Hearing**

(a) This section applies to applications and actions on any other matter not subject to a contested case hearing under § 707.601 and for which the Board has not delegated to the general manager the authority to take action.

(b) Following issuance of the general manager's proposed action, Authority staff will schedule the presentation of the matter before the Board. The Board may reschedule proposed action in its discretion.

(c) Authority staff will provide at least 30 days notice to the applicant of the date of the Board meeting by mail. If rescheduled by the Board, Authority staff will send notice of the rescheduled meeting date to the parties no later than 30 days before the rescheduled meeting. In addition, the Authority will provide public notice that the application and the proposed action will be considered by the Board by including an item on the Board's agenda under the Texas Open Meetings Act. Copies of the application and the proposed action will be made available to the public for inspection and copying at the offices of the Authority during regular business hours.

(d) The Board may consolidate or sever matters if no party will be injured, time and expense will be saved, or the public interest and welfare will otherwise be benefited.

(e) The applicant and Authority staff may make oral presentations at the Board meeting at which the application and the proposed action are presented. Oral presentations will be limited to no more than 10 minutes each, excluding time for answering questions, unless the chairman establishes other limitations.

(f) Public comment on the application and the proposed action will be accepted by the Board.

(g) Upon consideration of the application and the proposed action, the Board may grant or deny the application in whole or in part, dismiss proceedings, modify a proposed action, or take any other action that it deems appropriate.

#### **§ 707.529 Board Action on Applications Subject to a Contested Case Hearing**

(a) Applications that are subject to a contested case hearing under § 707.601, but for which no timely hearing request was filed, or all timely hearing requests have been withdrawn, or which the judge has remanded back to the Authority because of settlement, shall be brought to the Board for final action in accordance with the procedures in § 707.527.

(b) Applications subject to a contested case hearing under § 707.601, and for which a contested case hearing was conducted, shall be brought to the Board for final action in accordance with the procedures in Subchapter F.

#### **§ 707.531 Non-Substantive Changes to Applications**

Upon express written or verbal approval of the applicant, or the applicant's agent, Authority staff may make non-substantive changes to an application. For the purposes of this section, a non-substantive change is a change that is editorial in nature. A non-substantive change may be made at any time.

### **§ 707.533      Amendment of Applications**

Amendments to an application may be made only by the applicant, or the applicant's agent. Amendments must be in writing and signed or initialed by the applicant, or its authorized representative. For the purposes of this section, amendments are changes that alter any of the information included in any application.

### **§ 707.535      Withdrawal of Applications**

An applicant may withdraw its application by filing a written notice at any time before final action on the application.

### **§ 707.537      Special Procedures for Emergency Permits**

- (a) This section applies to applications for emergency permits and renewals.
- (b) Upon the completion of the technical review, if the general manager finds that an application for an emergency permit, or the renewal, should be granted, the general manager will issue a permit for a term not to exceed 30 days. If the general manager finds that the application should be denied, the general manager will deny the application and not issue a permit. The applicant will be informed of the general manager's action and the reasons as soon as possible by letter.
- (c) The application and the general manager's action will be set for presentation to the Board at its next regular meeting.
- (d) Following the opportunity for public comment, the Board may ratify, modify, or rescind the general manager's action, or take any other action as may be appropriate.

### **§ 707.539      Special Procedures for Recharge and Contributing Zones Determinations**

- (a) This section applies to requests for a determination of the location of the recharge or contributing zone of the Aquifer.
- (b) Any person who is or may be proposing to engage in an activity at a site that is prohibited or regulated by Chapter 713 may in writing request that the general manager determine whether the site is located on the recharge or contributing zone of the Aquifer. The request must contain a detailed description of the proposed activity, site location, and if requested by the general manager, site specific geologic data. Upon the completion of technical review, the general manager must find and determine whether the proposed site is on or outside of the recharge or contributing zone. Authority staff will inform the requestor by mail of the determination and the reasons in support.
- (c) Review of the general manager's action may be obtained before the Board by filing a notice of review under § 707.521(g).

**§ 707.541      Special Procedures for Notices of Claim**

(a)      This section applies to notices of claims filed under § 711.353 relative to ownership of an initial regular permit.

(b)      After the determination of administrative completeness of a notice of claim, the Authority shall provide written notice by certified mail, return receipt requested, to the person shown by the Authority's records to be the owner of an initial regular permit against which the claim was filed. The person may respond by filing any information supporting or rebutting the substance of the notice of claim. Authority staff shall conduct a fact-finding investigation by reviewing the information provided by the claimant, any information provided by the respondent, and any other information the Authority may need in order to make a recommendation.

(c)      Upon the completion of technical review, Authority staff will make a recommendation in accordance with § 707.523 relative to the ownership of an initial regular permit.

(d)      The notice will be set for presentation to the Board under § 707.527. Notices of claims may be approved only by order of the Board. Authority staff will inform the claimant and the respondent by mail of the final determination resulting from the notice of claim.



## **Subchapter F.        Procedures for Contested Case Hearings**

### **Section**

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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 proceedings:

- (1) Applications for an initial regular permit;
- (2) Applications for a term permit;
- (3) Requests for a hearing under § 1.37(h) of the Act and § 717.118(e) relative to a

preliminary report issued by the general manager under § 1.37(c) of the Act and § 717.118(a); and

(4) Applications to convert base irrigation groundwater to unrestricted irrigation groundwater under § 711.342(C).

#### **§ 707.6011 Ex Parte Communications**

(a) For applications for which there is a right to a contested case hearing under § 707.601, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the Authority or other designated party to the application, except on notice and opportunity for all parties to participate.

(b) Subsection (a) does not apply if:

(1) the Board member abstains from voting on a matter in which he or she engaged in ex parte communications;

(2) the communications are by and between members of the Board consistent with the Texas Open Meetings Act; or

(3) the communications are with Authority staff who have not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the staff in evaluating the evidence.

#### **§ 707.6012 Procedural Options Available to Applicants**

(a) Applicants filing applications subject to a contested case hearing under § 707.601, may respond to the proposed action of the general manager in the following manner:

(1) not file a notice of request for contested case hearing and:

(A) if the applicant agrees with the proposed action, and no other interested person requests a contested case hearing, the applicant may so advise the general manager and the matter will be taken directly to the Board for final action as an uncontested matter under §§ 707.527 and 707.529(a).

(B) if the applicant disagrees with the proposed action, and no other interested person requests a contested case hearing, the applicant may offer to settle the matter. If the matter is settled, the application may be taken directly to the Board for final action under the terms of the settlement as an uncontested matter under §§ 707.527 and 707.529(a).

(C) if the applicant disagrees with the proposed action, and no other interested person requests a contested case hearing, the applicant may offer to settle the matter. If the matter is unable to be settled, the application may be taken directly to the Board under

§§ 707.527 and 707.529(a) for final action as a contested matter, although one not referred to SOAH. The applicant, general manager, and other interested persons may present their respective positions to the Board and allow the Board to take final action at the Board meeting without resort to a contested case hearing.

(2) file a notice of request for contested case hearing and:

(A) if the applicant disagrees with the proposed action, and no other interested person requests a contested case hearing, the applicant may offer to settle the matter before the Board takes action on the request. If the matter is settled, the application may be taken directly to the Board for final action under the terms of the settlement as an uncontested matter under §§ 707.527 and 707.529(a).

(B) if the applicant disagrees with the proposed action of the general manager, and no other interested person requests a contested case hearing, the applicant may offer to settle the matter before the Board takes action on the request. If the matter is unable to be settled, the applicant may file a conditional withdrawal of the request and the application may be taken directly to the Board under §§ 707.527 and 707.529(a) for final action as a conditionally contested matter, although one not referred to SOAH. The applicant, general manager, and other interested persons may present their respective positions to the Board and allow the Board to take final action on the application at the Board meeting without resort to a contested case hearing. The Board is free to take any final action that it deems appropriate and the parties are bound by the decision and the matter may no longer be referred to SOAH.

(C) if the applicant disagrees with the proposed action of the general manager, and no other interested person requests a contested case hearing, the applicant may offer to settle the matter before the Board takes action on the request. If the matter is unable to be settled, the request will be scheduled for Board review and certification. If certified, the Board will issue an interim order and refer the matter to SOAH to conduct a contested case hearing. The matter is then presented to a SOAH judge and processed under SOAH procedural rules and this subchapter. The matter will be remanded to the Board for final action either based on a proposal for decision, a withdrawal of the application, or a settlement having been reached by the parties.

(b) The Board is not bound by a settlement by the parties.

(c) If an applicant chooses not to file a request for a contested case hearing, another interested person may file a request. The Board will process the third-party request in accordance with this subchapter. In the event a third-party request is filed and approved, any settlement under one of the alternatives in Subsection (a) requires the consent of the third-party.

(d) Applicants choosing not to file a request for a contested case hearing and instead pursue one of the alternatives in Subsection (a), waive any right to a contested case hearing upon the expiration of the filing deadline under § 707.603(a).

## **§ 707.602      Persons Entitled to a Contested Case Hearing**

(a) For matters under § 707.601(1), (2), and (4), the following persons or entities have a personal justiciable interest in and are entitled to a contested case hearing:

- (1) an applicant for a permit; and
- (2) a holder of a groundwater withdrawal permit.

(b) For matters under § 707.601(3), a person to whom the General Manager has given written notice of the issuance of a preliminary report under § 1.37(d) of the Act and § 717.118(a) has a personal justiciable interest in and is entitled to a contested case hearing.

## **§ 707.603      Requests for Contested Case Hearing**

(a) A request for a contested case hearing must be in writing and be filed with the docket clerk on or before the 30th day following the date of publication of the notice of proposed action under § 707.525.

(b) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and fax number, of the person filing the request. If the request is made by a corporation, partnership, or other business entity, the request must identify the entity and one person by name, address, daytime telephone number, and fax number, who shall be responsible for receiving all official communications and documents for the entity;

(2) state the basis upon which the person believes that a contested case hearing is appropriate;

(3) state whether the person requesting the contested case hearing is an applicant for a permit or a holder of another groundwater withdrawal permit, or, in the case of an enforcement action under 1.37 of the Act, the recipient of a preliminary report issued by the general manager.

(4) request a contested case hearing;

(5) provide any other information requested in the notice of proposed action and technical summary; and

(6) be verified by an affidavit.

(c) Where a request for a contested case hearing is filed by a person other than an applicant, a copy of that request must be served on an applicant, if any, at or before the time that the request is filed. The request shall include a certificate indicating the date and manner of service and the name and address of all persons served.

(d) If a person is requesting a contested case hearing on more than one application, a

separate request must be filed in connection with each application.

#### **§ 707.605      Processing of Hearing Requests**

(a) Hearing requests not filed within the time period in § 707.603(a) shall not be processed and shall be returned by the docket clerk to the person filing the request.

(b) After a hearing request is timely filed, Authority staff will schedule the hearing request for a Board meeting.

(c) At least 30 days prior to a meeting at which the Board will consider the request, Authority staff will provide notice to the applicant, general manager and any persons making a timely hearing request.

(d) Interested persons may submit a written response to the hearing request no later than 30 days before a Board meeting at which the Board will evaluate that request. Responses shall be filed with the docket clerk and served on the same day on the general manager, the applicant and any persons filing a hearing request in connection with that matter.

(e) The person requesting a hearing may submit a written reply to a response no later than 15 days before the scheduled Board meeting at which the Board will evaluate the hearing request. All replies shall be filed with the docket clerk and served on the same day on the general manager, the applicant, and any other person filing hearing requests.

#### **§ 707.606      Action by Board**

(a) The determination of whether a hearing request should be granted is not a contested case hearing.

(b) The Board will evaluate the hearing request at the scheduled Board meeting and may determine that the person requesting the hearing:

(1) does not have a personal justiciable interest related to the application and deny the hearing request; or

(2) has a personal justiciable interest relating to the application and direct the docket clerk to refer the application to a contested case hearing.

#### **§ 707.607      Service of Documents**

(a) For any document filed with the Authority or the judge in a contested case hearing, the person filing that document must serve a copy on all parties at or before the time that the request is filed.

(b) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The docket clerk may authorize a document to be filed without a certificate of service but will require the certificate be served within three days thereafter.

#### **§ 707.608      Delegation to SOAH**

(a) By order, the Board may delegate to SOAH the authority to conduct contested case hearings designated by the Board.

(b) If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (1 TEX. ADMIN. CODE Ch. 155) govern any contested case hearing of the Authority, as supplemented by this subchapter.

(c) If the Board refers a contested case hearing to SOAH, the judge who conducts the contested case hearing shall consider applicable Authority rules and policies in conducting the hearing. However, the Authority may not supervise the judge.

(d) If the Board refers a contested case hearing to SOAH, the Authority may not attempt to influence the findings of facts or the judge's application of the law in a contested case hearing except by proper evidence and legal argument.

#### **§ 707.609      Referrals to Contested Case Hearing**

(a) When an application is referred to contested case hearing by the Board, the docket clerk will file all applicable documents to have the matter referred to SOAH.

(b) In referring the case to contested case hearing, the Authority will:

(1) notify the judge of the applicable burden of proof for the applicant to establish all of the prima facie elements;

(2) identify for the judge any additional issues that have been raised in the request(s) for contested case hearing; and

(3) provide the judge with a written statement of applicable rules and policies of the Authority.

#### **§ 707.6091      Notice to Parties of Contested Case**

After a hearing date or a date for a prehearing conference is set by the judge, the judge shall provide notice to parties of the hearing or prehearing conference in accordance with §§ 2001.051 and 2001.052, TEX. GOV'T CODE.

#### **§ 707.6092      Continuances**

(a) The Board may continue a hearing related to a contested case under the jurisdiction of the Board from time to time and from place to place.

(b) The notice of the hearing must indicate the times and places at which the hearing may be continued.

(c) If a hearing is not concluded on the day it begins, the Board shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.

#### **§ 707.610 Designation of Parties**

(a) For matters under § 707.601(1), (2), and (4), the following are parties in a contested case hearing thereto:

- (1) the general manager;
- (2) an applicant; and
- (3) a person who requested the contested case hearing that was granted.

(b) For matters under § 707.601(3), the following are parties in a contested case hearing thereto:

- (1) the general manager; and
- (2) a person to whom the general manager has given written notice of the issuance of a preliminary report under § 1.37(d) of the Act and § 717.118(a).

#### **§ 707.6101 Discovery**

Discovery in a contested case hearing will be governed by Chapter 2001, Subchapter D, TEX. GOV'T CODE and Title 1, Section 155.31, TEX. ADMIN. CODE, as supplemented by this subchapter.

#### **§ 707.61011 Depositions**

Depositions in a contested case hearing shall be governed by TEX. GOV'T CODE §§ 2001.096- 2001.102.

#### **§ 707.6102 Expenses of Witness or Deponent**

(a) A witness or deponent in a contested case hearing who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or a proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary or proper for the purposes of the contested case hearing, is entitled to receive:

- (1) 10 cents for each mile for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence and the person uses the person's personally owned or leased motor vehicle for the travel;
- (2) reimbursement of the transportation expenses of the witness or deponent for going to and returning from the place where the hearing is held or the deposition is taken, if the place is more than 25 miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel;

(3) reimbursement of the meal and lodging expenses of the witness or deponent while going to and returning from the place where the hearing is held or deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(4) \$10 for each day or part of a day that the person is necessarily present.

(b) Amounts required to be reimbursed or paid shall be reimbursed or paid by the party at whose request the witness appears or the deposition is taken.

(c) The Authority may directly pay a commercial transportation company for the transportation expenses or a commercial lodging establishment for the lodging expenses of a witness or deponent if this section otherwise requires the Authority to reimburse the witness or deponent for those expenses.

(d) The Authority may not pay a commercial transportation company or commercial lodging establishment or reimburse a witness or deponent for transportation, meal, or lodging expenses at a rate that exceeds the maximum rates provided by law for state employees. The Authority may not adopt rules that provide for payment or reimbursement rates that exceed those maximum rates.

(e) In this section:

(1) "Commercial lodging establishment" means a motel, hotel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.

(2) "Commercial transportation company" means an entity that offers transportation of people or goods to the public in exchange for compensation.

#### **§ 707.6103 Evidentiary Matters**

(a) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.

(b) The rules of privilege recognized by law shall be given effect.

(c) An objection to an evidentiary offer may be made and shall be noted in the record.

(d) Evidence may be received in writing if:

(1) the hearing will be expedited; and

(2) the interests of the parties will not be substantially prejudiced.

(e) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.

(f) A party may conduct cross-examination required for a full and true disclosure of the facts.



- (g) Witnesses may be sworn and their testimony taken under oath.
- (h) Official notice may be taken of:
  - (1) all facts that are judicially cognizable; and
  - (2) generally recognized facts within the area of the Authority's specialized knowledge.

Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of Authority staff may be used in evaluating the evidence.

#### **§ 707.611 Burden of Proof**

- (a) For applications for an initial regular permit or a variance, the burden of proof is on the applicant to establish by convincing evidence that he is entitled to have the application granted.
- (b) For all other applications, the burden of proof is by the preponderance of the evidence.
- (c) For enforcement actions under § 1.37 of the Act, the burden of proof is on the general manager by the preponderance of the evidence.

#### **§ 707.612 Commissions Requiring Deposition and Subpoenas**

- (a) On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the amount estimated to accrue under § 707.6102, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested case hearing pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case hearing will be in writing and directed to the Board.
- (b) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the docket clerk. Authority staff will arrange for the request to be presented to the Board at its next meeting.
- (c) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the Authority, or an attorney for a party or the Authority. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

(d) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the Authority will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.

#### **§ 707.613 Remand to Board**

(a) A judge may remand an application to the Board as follows:

- (1) all timely hearing requests have been withdrawn;
- (2) all parties to a contested case hearing reach a settlement so that no facts or issues remain controverted; or
- (3) the party or parties requesting the hearing defaults.

(b) After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the general manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration under §§ 707.527 and 707.529(a). Authority staff will set the application for consideration at a Board meeting.

#### **§ 707.6131 Informal Dispositions**

An informal disposition of a contested case hearing may be made by:

- (1) stipulation;
- (2) agreed settlement;
- (3) consent order; or
- (4) default.

#### **§ 707.614 Certified Questions**

(a) At any time during a contested case hearing, on a motion by a party or on the judge's own motion, the judge may certify a question to the Authority.

(b) Issues regarding Authority policy, jurisdiction, or the imposition of any sanction by the judge that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:

- (1) the Authority's interpretation of its rules and applicable statutes;
- (2) the portion of the Act, the Authority rules, or other statutes that are applicable to a proceeding; and

(3) whether Authority policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the judge shall submit the certified issue to the docket clerk. Authority staff will place the certified issue on the agenda of a meeting of the Board. The docket clerk will give the judge and parties 30 day notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed with the docket clerk, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the docket clerk with copies served on the judge. The docket clerk will provide copies of the certified questions and any briefs and responses to the Board. The judge may abate the hearing until the Authority answers the certified question, or continue with the hearing if the judge determines that no party will be substantially harmed.

(d) The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the judge. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the Authority's final decision in the proceeding.

#### **§ 707.618 Scheduling of a Meeting of the Board**

After receiving the proposal for decision or other disposition from the judge, Authority staff shall schedule the presentation of the proposal to the Board. The docket clerk shall provide 30 day notice to the parties of the date of the Board meeting at which the proposal will be presented and considered. The Board may reschedule the presentation of the proposal. The docket clerk will send notice of the rescheduled meeting date to the parties no later than 30 days before the rescheduled meeting.

#### **§ 707.619 Oral Presentation Before the Board**

Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposal for decision in that case is presented to the Board.

#### **§ 707.6191 Transcription of Board Proceedings**

(a) On the written request of a party to a contested case hearing, the oral proceedings before the Board at which the proposal for decision is presented and oral presentations are made, may be transcribed by a court reporter.

(b) If the Authority desires a transcript it will bear the costs. If another party desires a transcript it will bear the cost of a transcript.

#### **§ 707.620 Reopening the Record**

The Board, on the motion of any party to a contested case hearing or on its own motion, may order the judge to reopen the record for further proceedings on specific issues in dispute. The order shall

include instructions as to the subject matter of further proceedings and the judge's duties in preparing supplemental materials or revised proposals based upon those proceedings for the Board's adoption.

#### **§ 707.621      Decision**

- (a)      The decision, if adverse to any party, must be in writing or stated in the record.
- (b)      An applicant in a contested hearing on an application under this subchapter or a party to a contested hearing may administratively appeal a decision of the Board on an application by requesting written findings of fact and conclusions of law not later than the 20<sup>th</sup> day after the date of the board's decision.
- (c)      On receipt of a timely written request, the Board shall make written findings of fact and conclusions of law regarding a decision of the Board on an application under this Act. Findings of fact may be based only on the evidence and on matters that are officially noticed. If set forth in statutory language, findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (d)      The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 20<sup>th</sup> day after the date the Board receives the request.
- (e)      If a party submits proposed findings of fact, the decision will include a ruling on each proposed finding.
- (f)      If a contested case hearing is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60<sup>th</sup> day after the date on which the hearing is finally closed. If the Board refers a contested case hearing to SOAH, then the Board's decision will be rendered no more than 120 days after the date that the proposal for decision is presented, unless the Board determines that there is good cause for extending the deadline.
- (g)      The Board may change a finding of fact or conclusion of law made by a SOAH judge, or may vacate or modify an order issued by the judge, only if the Board determines:
  - (1)      that the judge did not properly apply or interpret applicable law, Authority rules, written policies, or prior administrative decisions;
  - (2)      that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  - (3)      that a technical error in a finding of fact should be changed.

The Board shall state in writing the specific reason and legal basis for any changes.

#### **§ 707.6211      Notification of Decisions**

- (a)      Authority staff will notify all parties in a contested case hearing of any decision or

order.

(b) Authority staff will send a copy of the decision in a contested case hearing to attorneys of record, or the parties.

(c) A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed.

#### **§ 707.622 Requests for Rehearing**

(a) A party to the contested case proceeding may file a motion for rehearing before the Board. The motion shall be filed with the docket clerk in the Authority's office by no later than the 20th day after the date of the Board's decision. On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the Authority. The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by the judge;
- (3) the date of the decision or order; and
- (4) the grounds for the motion, including a concise statement of each allegation of error.

(b) Only a party to the contested case hearing may reply to a motion for rehearing. A reply must be filed with the docket clerk within 20 days after the date the motion for rehearing is filed.

(c) The motion for rehearing will be scheduled for consideration during a Board meeting. A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion for rehearing, Authority staff shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the motion is granted. Thereafter, the Board shall render a decision or order.

(d) The failure of the Board to grant or deny a motion for rehearing before the 91<sup>st</sup> day after the date the motion is submitted constitutes a denial of the motion by operation of law.

#### **§ 707.6221 Agreement to Modify Time Limits**

The parties to a contested case hearing, with the approval of the Board, may agree to modify the times prescribed by this subchapter.

#### **§ 707.623 Decision Final and Appealable**

- (a) A decision by the Board on an application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

A. the Board denies the motion for rehearing

B. the Board renders a written decision after rehearing

(b) A timely filed request for rehearing is a prerequisite to a suite against the Authority under § 1.46(a) of the Act challenging a decision in a contested case hearing.

#### **§ 707.624 Appeal of Final Decision**

(a) A suit under § 1.46(a) of the Act must be filed Not later than the 60<sup>th</sup> day after the date on which the decision becomes final.

(b) The record in a contested case hearing shall include the following:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings on them;
- (5) summaries of the results of any conferences held before or during the hearing;
- (6) proposed findings, exceptions and briefs;
- (7) any decision, opinion or report issued by the judge;
- (8) pre-filed testimony;
- (9) all memoranda or data submitted to or considered by the judge; and
- (10) the final order and all interlocutory orders.

#### **§ 707.625 Costs of Record on Appeal**

A party who appeals a final decision in a contested case hearing shall pay all costs of preparation of the record of the proceeding that is required to be transmitted to the reviewing court. A charge imposed is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

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## **CHAPTER 709. FEES**

### **Subchapter A. [Reserved]**

### **Subchapter B. Registration Fees**

#### **Section**

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### **Subchapter C. Permit Application Fees**

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- 709.41 Purpose
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**Subchapter A.        [Reserved]**

## **Subchapter B.           Registration Fees**

### **Section**

709.3	Purpose
709.5	Registration Fees

### **§ 709.3           Purpose**

The purpose of this subchapter is to establish registration fees consistent with § 1.29(g) of the Act.

### **§ 709.5           Registration Fees**

Authority staff may impose a \$10 fee to file any registration. If imposed, the fee shall be paid at the time the registration is filed.

## **Subchapter C.        Permit Application Fees**

### **Section**

709.9	Purpose
709.11	Permit Application Fees

### **§ 709.9        Purpose**

The purpose of this subchapter is to establish permit application fees consistent with § 1.29(f) of the Act.

### **§ 709.11        Permit Application Fees**

Authority staff may impose a \$25 fee to file any application. If imposed, the fee shall be paid at the time the application is filed.

## **Subchapter D.           Aquifer Management Fees**

### **Section**

709.15	Purpose
709.17	Applicability
709.18	Types of Aquifer Management Fees
709.19	Adoption and Assessment
709.21	Billing and Collection
709.23	Limitations on Fees
709.25	Conservation Fee Structures
709.27	Effective Period
709.37	Unauthorized Withdrawals

### **§ 709.15           Purpose**

The purpose of this subchapter is to establish the procedures for the assessment of aquifer management fees consistent with § 1.29(b) and (e) of the Act.

### **§ 709.17           Applicability**

Except for exempt wells and limited production wells, aquifer management fees shall be assessed for all authorized and unauthorized withdrawals of groundwater from the Aquifer.

### **§ 709.18           Types of Aquifer Management Fees**

(a)     Aquifer management fees shall consist of:

(1)     an aquifer management fee for the Authority's annual operating revenue requirements not associated with implementation of the habitat conservation plan; and

(2)     a program aquifer management fee for implementation of the habitat conservation plan in accordance with the Funding and Management Agreement.

(b)     For the purposes of this subchapter:

(1)     habitat conservation plan means the conservation plan approved by the Board and developed under Section 1.26A of the Act and required by Section 10(a)(2)(A) of the Endangered Species Act to be submitted to and approved by the United States Fish and Wildlife Service as part of an application for an incidental take permit; and

(2)     Funding and Management Agreement means the agreement effective January 1, 2012, as may be amended, to which the Authority, the City of New Braunfels, the City of San Marcos, the San Antonio Water System, and Texas State University are parties, which provides for the funding and management of the habitat conservation plan.

**§ 709.19      Adoption and Assessment**

(a)      Aquifer management fees shall be based on Aquifer use.

(b)      The aquifer management fees shall be based on two user blocks, and be uniform such that the average unit cost of groundwater, regardless of the quantity withdrawn, remains constant and is applicable to all the Aquifer users within the same user block. The blocks shall be as follows:

Block 1:      non-agricultural users; and  
Block 2:      agricultural users.

(c)      The aquifer management fees shall be calculated and assessed as follows:

(1)      By resolution and order, the Board shall adopt Block 1 aquifer management fee rates and an overall budget reflecting:

(A)      an aquifer management fee for its annual operating revenue requirements not included in Subsection (c)(1)(B) for the succeeding fiscal year, which shall be determined by subtracting from the annual operating revenue requirement any funding from other sources expected to be available for expenditure during the fiscal year, including but not limited to, aquifer management fees for agriculture use; and

(B)      unless reduced or terminated in accordance with the Funding and Management Agreement, a program aquifer management fee necessary to implement the habitat conservation plan in accordance with articles IV and V of the Funding and Management Agreement.

(2)      For Block 1 non-agricultural users:

(A)      Authority staff shall determine the total volume of Aquifer use authorized for withdrawal for the succeeding year by Block 1 non-agricultural users.

(B)      The fee shall be assessed on:

(i)      for a permit holder, except as provided in § 709.25, the total volume of groundwater authorized to be withdrawn in a groundwater withdrawal permit, irrespective of whether the groundwater was actually withdrawn; or

(ii)      for an unauthorized user of the Aquifer, the total volume of groundwater withdrawn in a calendar year from the Aquifer.

(C)      By December 31st, Authority staff shall calculate the aquifer management fees that may be assessed against Block 1 non-agricultural use on a unit cost basis.

(3) For Block 2 agricultural users, Authority staff shall assess an aquifer management fee of \$2.00 per acre-foot of groundwater withdrawn in a calendar year from the Aquifer.

(d) For Aquifer users who, through a transfer approved by the Authority, obtain a groundwater withdrawal permit, Authority staff shall assess an aquifer management fee as follows:

(1) If the transferee's use will be for agricultural use, then the aquifer management fee shall be assessed on the total volume of groundwater withdrawn during the calendar year by the transferee pursuant to the transferred rights after the effective date of the transfer.

(2) If the transferee's use will be for non-agricultural use, unless the non-agricultural aquifer management fee has already been paid for the year by the transferor, the transferee shall pay the aquifer management fee for the full fiscal year during which the transfer is approved by the Authority as calculated in Subsection (c)(2) or on the amount as may be provided for under § 709.25, regardless of the date during the calendar year when the transfer is finally approved.

(e) The unit cost for the aquifer management fees shall be expressed in dollars per acre-foot per annum.

#### **§ 709.21 Billing and Collection**

(a) All persons withdrawing groundwater from the Aquifer, whether authorized or not, are required to pay to the Authority an aquifer management fee as assessed.

(b) Authority staff shall bill to and collect from all Aquifer users an aquifer management fee for the fiscal year as calculated in § 709.19.

(c) Not later than December 31<sup>st</sup>, Authority staff shall mail an aquifer management fee invoice for the following year to all non-agricultural users. Not later than December 31<sup>st</sup>, Authority staff shall mail a groundwater use report form to all agricultural users to report Aquifer use for the current calendar year.

(d) An aquifer management fee invoice for a non-agricultural user becomes due and payable immediately upon mailing. The user against whom the fee is assessed may elect to pay the fee in a lump sum or in equal monthly payments. Any invoice paid in a lump sum becomes delinquent if payment in full is not received by March 1<sup>st</sup> of the year for which the aquifer management fee is in effect. If the non-agricultural user elects to pay on a monthly payment schedule, then the pro rata portion of the invoice becomes due monthly on the last working day of each month. Each monthly payment of an invoice becomes delinquent if payment in full is not received by the Authority on or before the last working day of each month for which the monthly payment becomes due and payable.

(e) For agricultural users, the groundwater use report shall constitute an aquifer management fee invoice. An agricultural user shall file a completed groundwater use report form with the Authority no later than January 31<sup>st</sup> of each year for Aquifer use for the preceding calendar year. Payment of the aquifer management fee shall accompany the completed groundwater use report. The aquifer management fee for agricultural use becomes due and payable immediately upon mailing of the groundwater use report form by Authority staff. An invoice becomes delinquent if payment in full is not received by the Authority on or before January 31<sup>st</sup> of each year.

(f) For any aquifer management fee that is delinquent, if payment in full is not received on or before 10 days after the date the amount became delinquent, then Authority staff may assess, for every month thereafter that the invoice remains delinquent, a penalty equivalent to the maximum amount allowed by law.

(g) Authority staff shall bill and collect an aquifer management fee, as assessed under § 709.19, from all Aquifer users who, through a transfer approved by the Authority, obtain a groundwater withdrawal permit, as follows:

(1) If the transferee's use will be for agricultural use, the transferee shall submit a completed groundwater use report form and pay the assessed aquifer management fee.

(2) If the transferee's use will be for non-agricultural use, unless the non-agricultural aquifer management fee has already been paid for the year by the transferor, the transferee shall pay the aquifer management fee for the full fiscal year during which the transfer is approved by the Authority, regardless of the date during the calendar year when the transfer is finally approved.

(A) Authority staff will mail to the transferee an aquifer management fee invoice within 30 days of the date the transfer is finally approved.

(B) The transferee shall pay the aquifer management fee invoice by March 1<sup>st</sup> of the year for which the aquifer management fee is in effect, or 45 days after the aquifer management fee invoice is mailed by the Authority, whichever is later. Payment may only be made in a lump sum.

### **§ 709.23 Limitations on Fees**

(a) The Authority may not assess a total amount of aquifer management fees that is more than is reasonably necessary for the annual operating revenue requirements for the administration of the Authority and for the implementation of the habitat conservation plan (program aquifer management fee) in accordance with articles IV and V of the Funding and Management Agreement. The Authority may not increase aquifer management fees by more than eight percent, per year. Aquifer management fees shall be reflected in the Authority's adopted annual fiscal year budget.

(b) Aquifer management fees may not be used to fund the cost of reducing withdrawals, retiring permits, or for judgments or claims related to withdrawals or permit requirements.

retirements.

#### **§ 709.25      Conservation Fee Structures**

(a)      Notwithstanding any other provisions in this subchapter, the general manager may assess aquifer management fees to encourage water conservation as provided in this section.

(b)      The general manager may enter into contracts with non-agricultural users to withdraw less groundwater from the Aquifer than the amount authorized in the user's groundwater withdrawal permit. The contract must provide for the following conditions:

(1)      for calendar year 2013 and later, the contract is entered into not later than September 1<sup>st</sup> of the preceding calendar year for which the contract will be effective;

(2)      aquifer management fees are assessed only for the reduced amount of contracted use;

(3)      the contract is effective on a calendar year basis and does not have a term of greater than one year;

(4)      the amount of groundwater withdrawn by the user during the contract term is independently confirmed and validated by Authority staff from information provided by the user in compliance with Subchapter M of Chapter 711;

(5)      during the contract term, the user is in full compliance with the Act and the Authority's rules;

(6)      if the user violates any terms of the contract, the user is not entitled to any reduction of aquifer management fees and the fee is calculated under § 709.19(c)(2); and

(7)      any other terms that in the general manager's judgment are necessary in order to implement the purposes of this section.

(c)      For non-agricultural users obtaining a groundwater withdrawal permit through a transfer approved by the Authority, and who desire to enter into a contract with the Authority under Subsection (b), the general manager may contract with such user under the terms and conditions in Subsection (b) if:

(1)      the contract is entered into within 30 days of the date the transfer is approved;

(2)      the contract terminates at the end of the year in which the transfer was approved and the contract was executed; and

(3)      the transfer is approved later than September 30<sup>th</sup>, the contract term is for the subsequent calendar year.



(d) The general manager may rebate any aquifer management fees already paid by a non-agricultural user if the user meets the following conditions:

(1) the user actually withdraws less groundwater from the Aquifer than the amount authorized as of January 1<sup>st</sup> in the user's groundwater withdrawal permit for the rebate year;

(2) the amount of groundwater withdrawn by the user during the rebate year is independently confirmed and validated by Authority staff from information provided by the user in compliance with Subchapter M of Chapter 711; and

(3) during the rebate year, the user is in full compliance with the Act and the Authority's rules, unless waived by the Board for good cause.

(e) The Authority shall calculate the amount of any rebate authorized by Subsection (d) as follows: (rebatable aquifer management fee in effect for the rebate year, as determined by the Board) x (total authorized groundwater withdrawal amount as of January 1<sup>st</sup> for the initial regular permit - amount of groundwater actually withdrawn under the permit for the rebate year).

#### **§ 709.27 Effective Period**

Aquifer management fees shall be effective on a calendar year basis beginning January 1st through December 31<sup>st</sup>.

#### **§ 709.37 Unauthorized Withdrawals**

(a) Any person who withdraws groundwater from the Aquifer without legal authority shall pay to the Authority the aquifer management fee in force for the period of time during which the unauthorized withdrawals were made. The Authority shall assess aquifer management fees based on the amount of groundwater the Authority reasonably estimates was actually withdrawn.

(b) If a person makes unmetered withdrawals of groundwater from the Aquifer for irrigation use, the Board may assess aquifer management fees under § 709.21(g)(2).

## **Subchapter E. Administrative Fees**

### **Section**

709.41	Purpose
709.43	Applicability
709.45	Administrative Fees

### **§ 709.41 Purpose**

The purpose of this subchapter is to establish administrative fees for certain administrative acts of the Authority.

### **§ 709.43 Applicability**

This subchapter applies to administrative fees established by the Authority.

### **§ 709.45 Administrative Fees**

The Authority may impose fees to recover administrative costs associated with actions other than the filing and processing of applications and registrations. The fees may not unreasonably exceed the administrative costs incurred by the Authority for performing the administrative functions for which the fee is charged. The general manager shall prepare and maintain a schedule of actions for which administrative fees are imposed and the fees associated with each action. This schedule shall be readily available for public review and inspection at the offices of the Authority upon request, and on its internet site.

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## **CHAPTER 711. GROUNDWATER WITHDRAWALS**

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### **§ 711.10           Purpose**

The purpose of this chapter is to:

- (1)     sustain the diverse economic and social interests dependent on the Aquifer;
- (2)     effectively control the Aquifer to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries and the economic development of the state and region;
- (3)     maximize the beneficial use of water available for withdrawal from the Aquifer;
- (4)     provide for Aquifer management through the application of management mechanisms consistent with law and appropriate to the Aquifer system;
- (5)     manage, conserve, preserve and protect the Aquifer;
- (6)     increase Aquifer recharge;
- (7)     prevent waste of groundwater in the Aquifer; and
- (8)     prevent water pollution in the Aquifer.

### **§ 711.12           Groundwater Withdrawal Permits**

Except as provided in § 711.14, a person desiring to withdraw groundwater from the Aquifer is required to obtain a groundwater withdrawal permit from the Authority before commencing the withdrawals.

### **§ 711.14           Withdrawals Not Requiring a Groundwater Withdrawal Permit**

Withdrawals of groundwater from the Aquifer from the following wells do not require a groundwater withdrawal permit:

- (1) exempt wells;
- (2) limited production wells under Subchapter D (Limited Production Wells) of Chapter 711 (Groundwater Withdrawals); or
- (3) monitoring wells.

#### **§ 711.16 Wells Requiring Registration**

(a) A person who owns a well designed for the withdrawal of groundwater from the Aquifer, which was constructed on or before November 19, 2004, must register the well with the Authority on a form prescribed by the Authority containing relevant information related to the requirements in this Subsection (g) and § 707.509. Well registrations required by this subsection must be filed no later than December 31, 2005.

(b) A person who owns a well designed for the withdrawal of groundwater from the Aquifer, which is constructed after November 19, 2004, and for which the Authority has not issued a well construction permit, must register the well with the Authority on a form prescribed by the Authority containing relevant information related to the requirements in this Subsection (g) and § 707.509 by December 31, 2005, or within 60 days after the well is constructed, whichever is later.

(c) Owners of wells that were registered with the Authority prior to June 28, 1996, may register their wells by resubmitting a copy of any forms previously submitted to the Authority, including any updated information.

(d) Owners of wells that are identified as the point of withdrawal in an initial regular permit are not required to file a well registration for those wells.

(e) Owners of wells constructed as authorized by a well construction permit from the Authority are not required to file a well registration for those wells.

(f) Well registrations may be amended by filing a new well registration reflecting the amendments.

(g) In addition to the information specified in § 707.509, a well registration shall contain the following:

- (1) full name, physical and mailing addresses, and telephone number of the well owner;
- (2) physical address of the property upon which the well is located;
- (3) legal description of the well location suitable to the Authority to properly identify the well location;

- (4) county road map showing the well location;
- (5) map or plat of the property on which the well is located;
- (6) if water is being used from the well, state the purpose of use;
- (7) if water is being withdrawn, state the estimated total amount of groundwater withdrawn from the well on an annual basis, and the maximum rate of withdrawal;
- (8) depth of the well and depth of the well casing;
- (9) size and type of pump;
- (10) approximate date of well construction; and
- (11) any other information as may be required by Authority staff.

**§ 711.17 Delegation of Regulatory Authority to Groundwater Conservation Districts**

By order, the Board may delegate all or part of its powers or duties to manage and control the Aquifer to a groundwater conservation district.

**§ 711.18 Application to Delegate Regulatory Authority**

Any district desiring to receive a delegation of powers or duties from the Board must file with the Authority an application for delegation of regulatory authority on a form prescribed by the Authority containing relevant information related to the requirements in §§ 707.509 and 711.17-711.19.

**§ 711.19 Basis for Approval of Delegation Application**

(a) The Board may approve a delegation application if the following elements are established:

- (1) the district has the statutory powers necessary for full enforcement of the powers or duties to be delegated;
- (2) the district has implemented all rules and policies necessary to fully implement the programs to be delegated;
- (3) the district has implemented a system designed to provide the Authority with adequate information with which to monitor the adequacy of the district's performance in enforcing Board rules and orders;
- (4) if applicable, a review of the district's past performance and experience in

enforcing powers and duties delegated to it by the Board demonstrates that the district has adequately enforced or implemented the powers or duties delegated to it under this section;

(5) the delegation of powers or duties will not create a conflict with or be duplicative of non-delegated management activities of the Authority over the Aquifer; and

(6) the district has adequate financial and staff resources to implement and enforce the powers or duties delegated to it.

(b) The Board may deny an application for delegation if a district has previously had a delegation terminated.

(c) Upon approval of an application for delegation, the Board shall enter an order authorizing the general manager to enter into an interlocal contract with the district providing for the terms and conditions of the delegation of powers or duties, including oversight by Authority staff. The interlocal contract must be consistent in all respects with the order approving the application for delegation. The order shall provide for a term for which the delegation of powers or duties shall be in effect not to exceed five years, subject to renewal by order of the Board.

(d) If the Board determines that a district has failed to adequately enforce or implement any powers or duties delegated to it, the Board shall immediately provide to the district notice that sets forth the reasons for its determination and the actions that the district must take to retain the delegated authority. Not later than the tenth day after the date the notice is given, the district must demonstrate its commitment and ability to take the actions set forth in the notice. If, at the end of the ten day period, the Board does not find that the district enforces its rules and orders, the Board shall immediately resume full responsibility for implementation and enforcement for the powers or duties that had been delegated. The Board shall provide to the district notice that the powers or duties delegated to it have been terminated. After the termination notice has been given, the authority of the district to manage or control water in the Aquifer is limited to the authority granted by § 1.42(b) of the Act.

(e) No delegation to a district shall affect the Authority's ability to enforce any part of the Act, Authority rules, Board orders, any permit, or other authorization issued by the Board or the general manager.

(f) The Board may not delegate under this section its duty to develop and implement a comprehensive water management plan under § 1.25 of the Act.

## **Subchapter C. Exempt Wells**

### **Section**

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### **§ 711.20 Eligibility for Exempt Well Status**

- (a) A well qualifies for exempt well status if it is:
- (1) capable of producing no more than 25,000 gallons of water a day;
  - (2) used solely for domestic or livestock use; and
  - (3) not serving a subdivision requiring platting; or
  - (4) located on and operated by, or for the benefit of, a federal facility, and prior to September 1, 2003, the Authority has not approved the transfer of ownership of an application for an initial regular permit related to the well from the federal facility to another person.
- (b) The withdrawal and beneficial use of groundwater for purposes related or incidental to domestic activities does not void a well's exempt status if the primary purpose of use for withdrawals from the well continues to meet the definition of domestic use and the well continues to meet the remaining criteria to qualify for exempt well status.
- (c) An exempt well may not be constructed to meet a purpose of use already being met through a connection with a retail public utility as defined by 30 TEX. ADMIN. CODE 291.3.

### **§ 711.21 Registration of Exempt Wells**

In order for the Authority to determine if a well qualifies for exempt status, all owners of wells for which exempt status is sought shall file a well registration under § 711.16 and additionally containing the information in § 711.211.

### **§ 711.211 Basis for Approval of Exempt Well Registrations**

The general manager shall approve an exempt well registration if the following elements are established:

- (1) the applicant paid the application fee;
- (2) the well head is located within the boundaries of the Authority;
- (3) the place of use is located within the boundaries of the Authority;
- (4) the applicant owns the well;
- (5) the well is incapable of producing more than 25,000 gpd;
- (6) the well is used solely for domestic or livestock use;
- (7) the well does not serve a subdivision requiring platting;
- (8) the registration complies with the Act and the Authority's rules; and
- (9) the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board.

### **§ 711.22 Effect of Exempt Well Status**

(a) Except as provided in Subsection (b), all provisions of the Act and the Authority's rules apply to owners of exempt wells.

(b) The owner of an exempt well is not required to comply with:

- (1) § 711.12, and Subchapter E relating to the duty to obtain a groundwater withdrawal permit;
- (2) Subchapter G relating to proportional adjustment;
- (3) Subchapter M relating to meters and reporting;
- (4) Subchapter D of Chapter 709 relating to aquifer management fees; and
- (5) Chapter 715 relating to comprehensive water management.

(c) Unless the well status is converted under § 711.48, the owner of an exempt well may not obtain a groundwater withdrawal permit for the well.

**§ 711.24      Inapplicability of Exempt Withdrawals to the Permitted Withdrawal Limitations**

Withdrawals from exempt wells are not subject to § 1.14(c) of the Act.

**§ 711.30      Place of Use**

Withdrawals of groundwater from the Aquifer from exempt wells may be beneficially used on a tract or tracts of land adjacent to the tract of land on which the exempt well is located if the well continues to meet the eligibility requirements for exempt well status under § 711.20.

**§ 711.34      Platting of Subdivisions**

All subdivisions of land are classified as requiring platting unless the subdivision of land meets an exception to plat requirements contained in Chapter 212 or 232 of the Texas Local Government Code.

**§ 711.38      Wells Serving a Subdivision Requiring Platting**

A well serves a subdivision requiring platting if the well:

- (1) is located within the Authority's boundaries; and
- (2) provides, or is constructed and equipped to be capable of providing, piped water for any use to more than three service connections located within a subdivision requiring platting under § 711.34.

**§ 711.42      Vacation or Cancellation of Subdivisions**

A well that did not previously qualify for exempt well status by virtue of the fact that it was serving a subdivision requiring platting may qualify for exempt well status if the subdivision requiring platting is lawfully vacated or canceled.

**§ 711.44      Loss of Exempt Well Status; Notice of Changed Circumstances**

- (a) A previously exempt well loses its exempt well status if:
  - (1) any withdrawals from the well are used for a purpose of use other than domestic use or livestock use, or for a federal facility as provided in § 711.20(4);
  - (2) the well is modified or altered to make the well capable of producing groundwater from the Aquifer at a rate in excess of 25,000 gallons per day;
  - (3) the well begins to serve a subdivision requiring platting; or

(4) after final action is taken on the well owner's well registration seeking a determination of exempt well status, a property owner physically connects to a retail public utility as defined by 30 TEX. ADMIN. CODE 291.3, and the connection meets the same purpose of use as the one met by the exempt well.

(b) The owner of any exempt well shall, within 30 days of the occurrence of any of the facts set forth in Subsection (a), give written notice to the Authority of the changed circumstances causing the well to lose its exempt well status.

#### **§ 711.46 Dual Status Wells**

(a) Unless separately metered in accordance with § 711.403, exempt withdrawals may not be made from a permitted well.

(b) Permitted withdrawals may not be made from an exempt well.

#### **§ 711.48 Conversion of Well Status**

(a) The owner of a permitted well may apply to convert the well to an exempt well if the well otherwise meets the requirements to qualify for an exempt well and the person files a well registration under § 711.16. No person may withdraw groundwater for irrigation, municipal, or industrial purposes from a well converted to exempt status, unless:

- (1) the well is converted back to permitted status; or
- (2) the Authority approves a transfer of a permitted use to the well; and
- (3) an amended initial regular permit is issued to reflect the transferred point of withdrawal.

(b) The owner of an exempt well may apply to convert the well to a permitted well if the owner files an application to amend. Except as provided in § 711.46, no person may withdraw groundwater for exempt domestic or livestock use from a well converted to a permitted status from exempt status.

#### **§ 711.50 Transfer of Ownership**

Persons transferring ownership of exempt wells are required to file a new registration with the Authority.



## **Subchapter D. Limited Production Wells**

### **Section**

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711.66	Place of Use
711.67	Administrative Fees for Limited Production Wells
711.68	Metering of Limited Production Wells
711.69	Reporting for Limited Production Wells
711.70	Enforcement; Loss of Limited Production Well Status
711.71	Conversion of Well Status
711.72	Transfer of Ownership

### **§ 711.60 Purpose**

The purpose of this subchapter is to implement Section 1.33(d) of the Act.

### **§ 711.61 Eligibility for Limited Production Well Status**

(a) A well qualifies as a limited production well only if:

- (1) the well was drilled on or before June 1, 2013;
- (2) withdrawals from the well are placed to a beneficial use; and
- (3) the well is limited in production because the well:

(A) is not capable of producing more than 1,250 gallons of water per day; or

(B) is metered and does not produce more than 1.4 acre-feet of water in any calendar year.

(b) A replacement well for a well that already has limited production well status may qualify for limited production well status if it is used for the same purpose of use as the original limited production well, the original production well has been plugged, and the replacement well is constructed on the same tract of land as the original limited production well. In order to qualify for limited production well status, the replacement well must also meet the eligibility requirements contained in § 711.61 (a)(2) and (3).

## **§ 711.62      Registration of Limited Production Wells**

In order for the Authority to determine if a well qualifies for limited production well status, the owner of the well shall file a well registration under § 711.16 containing the information described in § 711.63. The Authority shall issue an approval of the registration if all applicable requirements contained in this subchapter are met.

## **§ 711.63      Basis for Approval of Limited Production Well Registrations**

(a) The general manager shall approve a registration for a limited production well if the following elements are established:

- fee;
  - (1) the applicant paid the registration fee and any applicable administrative fee;
  - (2) the well head is located within the boundaries of the Authority;
  - (3) the place of use is located within the boundaries of the Authority;
  - (4) the purposed of use for the well is a beneficial use that is achievable with a limited amount of production of groundwater as described in § 711.61;
  - (5) the applicants owns the well;
  - (6) the well was drilled on or before June 1, 2013, or is a replacement well in accordance with § 711.61(b);
  - (7) the well meets the limited production requirements by demonstrating that the well:
    - (A) is incapable of producing more than 1,250 gallons per day; or
    - (B) has a meter registered with the Authority under § 711.404
  - (8) the well does not qualify as an exempt well or a permitted well;
  - (9) the registration complies with the Act and the Authority's rules; and
  - (10) the applicant is in compliance with the Act the Authority's rules, other permits, and orders of the Board.

(b) If the applicant meters his withdrawals, the registration shall also contain a declaration that the will will not withdraw more than 1.4 acre-feet of groundwater in any calendar year.

## **§ 711.64      Effect of Limited Production Well Status**

(a) Except as provided in Subsection (b), all provisions of the Act and the Authority's rules apply to owners of limited production wells.

- (b) The owner of a limited production well is not required to comply with:
  - (1) Chapter 709, Subchapter D, relating to aquifer management fees;
  - (2) Chapter 711, Subchapter E, relating to groundwater withdrawal permits; or
  - (3) Chapter 715, relating to comprehensive water management.

(c) The owner of a limited production well may not make permitted or exempt withdrawals from the well.

(d) Unless the well status is converted under § 711.71, a limited production well may not be a point of withdrawal for a groundwater withdrawal permit.

#### **§ 711.65 Inapplicability of Limited Production Withdrawals to the Permitted Withdrawal Limitations**

Withdrawals from a limited production well are not subject to § 1.14(c) of the Act.

#### **§ 711.66 Place of Use**

The place of use for a limited production well is limited to the place of use identified in the well registration.

#### **§ 711.67 Administrative Fees for Limited Production Wells**

(a) A yearly administrative fee of \$25 is required to be paid to the Authority by the owner of a limited production well. In accordance with § 709.45, the administrative fee is intended to cover administrative costs incurred by the Authority (inspections and data management) associated with limited production wells.

(b) For the first year of use, the administrative fee is due at the time of registration of the limited production well. For subsequent years, Authority staff shall mail an administrative fee invoice to all owners of limited production wells no later than January 15<sup>th</sup>. Such an invoice becomes due and payable immediately upon mailing and becomes delinquent if payment is not received within 60 days of mailing.

#### **§ 711.68 Metering of Limited Production Wells**

(a) If an owner of a limited production well uses a meter to meet the limited production requirements of the well, the meter shall meet the specifications and requirements contained in, and the owner shall install, register, maintain, and if necessary, modify the meter in accordance with Chapter 711, Subchapter M, of the Authority rules.

(b) In accordance with § 711.412, a form of tamper detection may be installed on the meter by Authority staff.

## **§ 711.69      Reporting for Limited Production Wells**

The owner of a limited production well shall accurately read the well's meter on December 31<sup>st</sup> of each year. The results shall be filed with the Authority on an annual groundwater use report in a form prescribed by the Authority. The results shall be filed no later than January 31<sup>st</sup> of each year.

## **§ 711.70      Enforcement; Loss of Limited Production Well Status**

(a) The owner of a limited production well is subject to enforcement in accordance with Chapter 717 if:

(1) the well is modified or altered to make the well capable of producing more than 1,250 gallons per day;

(2) the well is metered and produces more than 1.4 acre-feet of groundwater during a calendar year; or

(3) the well is used in combination with an additional well or wells in a manner to satisfy a single water use or purpose, that when combined, would not be within the requirements of § 711.61.

(b) The Board may rescind limited production well status for one or more violations of the provisions of this subchapter. If the Board rescinds limited production well status, the owner of the well must obtain a groundwater withdrawal permit before making additional withdrawals from the well.

(c) The owner of a limited production well shall, within 30 days of the occurrence of any of the facts set forth in Subsection (a), give written notice to the Authority of the changed circumstances causing the well to lose its limited production well status.

## **§ 711.71      Conversion of Well Status**

(a) The owner of a limited production well may apply to convert the well to an exempt well if the well otherwise meets the requirements to qualify for an exempt well and the person files a new well registration under § 711.16.

(b) The owner of a limited production well may apply to convert the well to a permitted well if the owner files a new well registration under § 711.16 documenting the conversion to permitted status, and:

(1) the Authority approves a transfer of a permitted use to the well; and

(2) an amended initial regular permit or regular permit is issued to reflect the transferred point of withdrawal.

(c) The owner of a permitted well may apply to convert the well to a limited production well if the well otherwise meets the requirements to qualify for a limited production well and the person files both an application to amend and a new well registration under § 711.16.

(d) The owner of an exempt well may apply to convert the well to a limited production well if the owner files a new well registration under § 711.16.

#### **§ 711.72      Transfer of Ownership**

Persons transferring ownership of limited production wells are required to file a new registration with the Authority.

## **Subchapter E. Groundwater Withdrawal Permits**

### **Section**

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711.104	Emergency Permits
711.112	Contents of Groundwater Withdrawal Permits

### **§ 711.90 Groundwater Withdrawal Permit Categories**

The Authority may issue the following permits:

- (1) initial regular permits;
- (2) term permits; and
- (3) emergency permits.

### **§ 711.91 Applications for a Groundwater Withdrawal Permit**

Any person seeking to withdraw groundwater from the Aquifer, unless exempted from the permit requirement under § 711.14, must file with the Authority an application for a groundwater withdrawal permit on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and § 707.509.

### **§ 711.92 Authorized Uses**

(a) As specifically designated in a groundwater withdrawal permit, a person may beneficially use groundwater withdrawn from the Aquifer for the following purposes of use:

- (1) irrigation use;
- (2) municipal use; or
- (3) industrial use.

- (b) Groundwater withdrawal permits may not be issued for multiple purposes of use.

#### **§ 711.94 Beneficial Use**

- (a) Groundwater withdrawn from the Aquifer must be placed to beneficial use without waste.
- (b) Unless otherwise provided by contract, the beneficial use of groundwater by a contract user inures to the benefit of a prior user, or an existing user, from whose well the contract user made withdrawals.
- (c) Unless otherwise provided by contract, the beneficial use of groundwater by a contract user may only be claimed by a prior user or existing user in support of a declaration.
- (d) Irrigation use of groundwater from the Aquifer in the volume of two acre-feet per irrigated acre is rebuttably presumed to constitute beneficial use without waste.
- (e) The irrigation of multiple or successive crops is a beneficial use to the extent it does not constitute waste.
- (f) For a prior user, or an existing user, whose historic use has been affected by a requirement of, or participation in, a federal program, a beneficial use credit shall be given for the amount that would have been withdrawn and beneficially used during the historical period by such prior user or existing user but for the operation of the federal program. If the use was for irrigation purposes, the credit is based on irrigation use on comparable acres on a similarly situated farm that is not in the federal program. If the use was for non-irrigation purposes, the credit is based upon the use of a comparable and similarly situated user whose uses were not affected by participation in a federal program.
- (g) Unless otherwise provided by contract, if, during the historical period, multiple existing users each owning different wells applied groundwater from such wells to beneficial use for irrigation purposes on the same place of use, then all such beneficial use shall inure solely to the benefit of and may only be claimed by the existing user who last irrigated the land during the historical period.

#### **§ 711.95 Stacking of Irrigation Rights**

- (a) **In General.** Base irrigation groundwater and unrestricted irrigation groundwater of an initial regular permit are appurtenant to the historically irrigated land. Unrestricted irrigation groundwater may be made appurtenant to lands other than the historically irrigated land if the Authority approves the transfer or amendment of an initial regular permit which changes the place of use to a location other than the historically irrigated land. In the event the Authority has, consistent with applicable law, approved a transfer or amendment of unrestricted irrigation groundwater rights prior to the effective date of this rule, this rule is not to be construed to affect the appurtenancy of such rights at a place of use that is not the historically irrigated land.
- (b) **Unrestricted Irrigation Groundwater.** Unless otherwise transferred or amended prior to the effective date of this rule to a place of use other than the historically irrigated land,

unrestricted irrigation groundwater is allocated to the historically irrigated land on a pro rata basis in an amount not to exceed 1.0 acre-feet/acre/annum. However, unrestricted irrigation groundwater may be allocated to the historically irrigated lands on a non-pro rata basis, or in amounts greater than 1.0 acre-feet/acre/annum, if:

(1) after December 30, 1996, the permit holder files an application to amend and changes the allocation of the unrestricted irrigation groundwater on the historically irrigated land; or

(2) on or after June 1, 1993, the permit holder transferred ownership of part of the historically irrigated land and reserved the unrestricted irrigation groundwater appurtenant to those lands for allocation to other historically irrigated land owned by the transferor.

(c) **Base Irrigation Groundwater.** Base irrigation groundwater is allocated to the historically irrigated land on a pro rata basis in an amount not to exceed 1.0 acre- feet/acre/annum. However, the Authority shall allocate base irrigation groundwater in amounts greater than 1.0 acre-feet/acre/annum if:

(1) the permit holder:

(A) irrigated lands leased from a third-party during the historical period;

(B) the irrigation was from a well owned by the permit holder; and

(C) the owner of the leased land did not install a well and irrigate the leased land during the historical period subsequent to the irrigation of the land by the permit holder; or

(2) the permit holder:

(A) on or before May 31, 1993, transferred ownership of part of the lands irrigated during the historical period that do not have well;

(B) the lands were irrigated from a well owned by the permit holder;

(C) the lands were owned by a permit holder during the historic period;

(D) retained ownership of other historically irrigated land on which the permit holder's well is located; and

(E) subsequent to the transfer of ownership, the transferee did not install a well and irrigate the transferred lands during the historical period; or

(3) the permit holder:

(A) on or after June 1, 1993, and on or before December 30, 1996, transferred ownership of part of the lands irrigated during the historical period that do not have a



well;

(B) the lands were irrigated from a well owned by the permit holder;

(C) the lands were owned by the permit holder during the historical period;

(D) retained ownership of other historically irrigated land on which the permit holder's well is located; and

(E) the transfer of ownership was effective prior to the date the permit holder filed the application for initial regular permit for the subsequently-issued initial regular permit; or

(4) for the permit holders:

(A) the well was owned by tenants in common;

(B) parts of the historically irrigated land were owned individually by the cotenants of the well; and

(C) on or before the application for an initial regular permit was filed, the permit holders agreed to a non-pro-rata allocation for lands qualifying for stacking under § 711.95(c)(1); or

(5) the Authority determines that the groundwater withdrawal amount for an initial regular permit, when divided by the number of acres of historically irrigated land, is less than 2.0 acre-feet/acre/annum.

#### **§ 711.96 Non-Aquifer Groundwater**

(a) The Authority may not issue a groundwater withdrawal permit to withdraw groundwater from an aquifer other than the Aquifer.

(b) An application for a groundwater withdrawal permit for a well that withdraws groundwater from multiple aquifers, including the Aquifer, may be granted by the Board in an amount that does not exceed:

(1) for irrigation use, the number of acres beneficially irrigated with the water withdrawn from the well multiplied by the percentage of Aquifer water produced from the well, multiplied by two acre-feet; or

(2) for non-irrigation use, the actual amount of groundwater withdrawn from the Aquifer and placed to beneficial use.

## **§ 711.98 Initial Regular Permits**

(a) A declaration of historical use (application for an initial regular permit) must have been filed with the Authority under § 1.16(a) of the Act and the decision of the Texas Supreme Court in *Barshop v. Medina County Underground Water Conservation District*, 925 S.W.2d 618, 628-630 (Tex. 1996) by December 30, 1996, for each well from which groundwater from the Aquifer has been withdrawn and placed to beneficial use during the historical period. An owner of a well that is exempt from the requirement to obtain a groundwater withdrawal permit under §§ 1.16(c) and 1.33 of the Act and § 711.20 is not under a requirement to file a declaration of historical use.

(b) Applications for initial regular permits/declarations of historical use received by the Authority before the effective date of this subchapter need not be resubmitted.

(c) An existing user may apply for an initial regular permit.

(d) Initial regular permits are administered as provided in Subchapter L.

(e) The term of an initial regular permit is perpetual.

(f) Initial regular permits may be proportionally adjusted in accordance with Subchapter G.

(g) Initial regular permits may be suspended in accordance with the groundwater trust rules under Subchapter N.

(h) Initial regular permits may be interrupted in accordance with the critical period management rules under Subchapter E of Chapter 715.

(i) Initial regular permits may be abandoned under Subchapter L.

(j) Subject to the duty of the Board to determine the amount of groundwater that may be withdrawn under an initial regular permit, the Board shall grant an application for an initial regular permit if the following elements are established by convincing evidence:

- (1) the applicant filed a declaration on or before December 30, 1996;
- (2) the applicant paid the application fee on or before December 30, 1996;
- (3) the application identifies an existing well(s);
- (4) on June 1, 1993, the applicant, or a prior user who is the applicant's predecessor in interest, owned the well;
- (5) the well head is located within the boundaries of the Authority;
- (6) the well is a withdrawal point for groundwater;

(7) the groundwater withdrawn from the well immediately prior to its intake into the well casing was located within and discharged directly from the Aquifer;

(8) at the time of the withdrawals, the well was operated by:

(A) the applicant;

(B) a prior user who is the applicant's predecessor in interest to the ownership of the well; or

(C) a contract user;

(9) the withdrawals were made during the historical period;

(10) the place of use at which the withdrawals were beneficially used is located within the boundaries of the Authority;

(11) the withdrawals were placed to a beneficial use for irrigation, municipal, or industrial use;

(12) the well(s) does not qualify for exempt well status;

(13) the application complies with the Act; and

(14) the application complies with the rules of the Authority.

(k) The Board shall issue withdrawal amounts to an applicant for an initial regular permit under § 711.176.

#### **§ 711.102 Term Permits**

(a) Any person may apply for a term permit by filing with the Authority an application for term permit on a form prescribed by the Authority containing relevant information related to the requirements in Subsection (f) and §§ 707.509 and 711.112.

(b) Unless the Board has issued an order authorizing applications for term permits to be filed with the Authority, Authority staff may not process any application received and must return the application to the applicant along with any application fee submitted. When Authority staff is authorized to accept for filing applications for term permits, they shall be processed in the order in which they are received according to the official date and time stamp of the Authority on the application.

(c) Term permits are administered as provided in Subchapter L.

(d) Term permits shall be interrupted as follows:

(1) for wells completed in the San Antonio Pool;

(A) the level of the Aquifer is equal to or less than 675 feet above mean

sea level as measured at well J-17;

(2) the flow at Comal Springs as determined by § 1.26(c) of the Act is greater than 350 cubic feet per second; and

(3) the flow at San Marcos Springs as determined by § 1.26(c) of the Act is greater than 200 cubic feet per second.

(4) for wells completed in the Uvalde Pool, the level of the Aquifer is equal to or less than 865 feet above mean sea level as measured at well J-27.

(e) A term permit may be issued for any period the Authority considers feasible not to exceed ten years. Upon expiration of the term, the permit automatically expires and is canceled.

(f) Subject to the duty of the Board to determine the amount of groundwater that may be withdrawn under a term permit, the Board shall grant an application for a term permit if the following elements are established:

(1) the applicant paid the application fee;

(2) the application identifies an existing or proposed well(s);

(3) the well head is located within the boundaries of the Authority;

(4) the well is a withdrawal point for groundwater;

(5) the groundwater proposed to be withdrawn from the well immediately prior to its intake into the well casing will be located within and discharged directly from the Aquifer;

(6) the annual withdrawal amount is quantified and the proposed purpose of use is a beneficial use;

(7) the maximum rate of withdrawal is appropriate for the well;

(8) withdrawals will be metered in accordance with Subchapter M;

(9) the place of use at which the withdrawals are proposed to be beneficially used is located within the boundaries of the Authority;

(10) groundwater is available for permitting from the San Antonio or Uvalde Pools, as appropriate;

(11) the well does not qualify for exempt well or limited production well status;

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

(13) the proposed withdrawal of groundwater under the term permit, if granted, would not unreasonably negatively affect other permit holders;

(14) the proposed withdrawal of groundwater is consistent with the Authority's critical period rules in Subchapter E of Chapter 715;

(15) the proposed use of groundwater is economically feasible in relation to the proposed length of the term;

(16) if applicable, the applicant has or will have an approved existing on-site sewer system, or has been granted an application to construct such a system by the appropriate regulatory agency;

(17) the applicant will take all reasonable measures to ensure conservation of water withdrawn;

(18) the applicant has no other source of water from a municipal distribution system;

(19) the well is in compliance with § 711.222, if applicable;

(20) the applicant owns the property on which the well is proposed to be located;

(21) the applicant's place of use is connected to an organized wastewater utility, or has installed an on-site sewage collection system in compliance with applicable law; and

(22) the application complies with the Act and the Authority's rules.

#### **§ 711.104 Emergency Permits**

(a) Any person may apply for an emergency permit, or its renewal by filing with the Authority an application for emergency permit on a form prescribed by the Authority containing relevant information related to the requirements in Subsection (e) and §§ 707.509 and 711.112.

(b) Emergency permits are administered as provided in Subchapter L.

(c) Emergency permits are not interruptible.

(d) An emergency permit may be issued for a term not to exceed 30 days. Upon expiration of the term, the permit automatically expires and is canceled.

(e) Subject to the duty of the Board to determine the amount of groundwater that may be withdrawn under an emergency permit, the Board shall grant an application for an emergency permit, or its renewal, if the following elements are established:

(1) the applicant paid the application fee;

(2) the application identifies an existing or proposed well(s);

(3) the well head is located within the boundaries of the Authority;

- (4) the well is a withdrawal point for groundwater;
  - (5) the groundwater proposed to be withdrawn from the well immediately prior to its intake into the well casing will be located within and discharged directly from the Aquifer;
  - (6) the annual withdrawal amount is quantified and the proposed purpose of use is a beneficial use;
  - (7) the maximum rate of withdrawal is appropriate for the well;
  - (8) withdrawals will be metered in accordance with Subchapter M;
  - (9) the place of use at which the withdrawals are proposed to be beneficially used is located within the boundaries of the Authority;
  - (10) the well does not qualify for exempt well status;
  - (11) the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board;
  - (12) the applicant will take all reasonable measures to ensure conservation of water withdrawn;
  - (13) the applicant has no other source of water from a municipal distribution system;
  - (14) issuance of the permit is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety;
  - (15) the withdrawal amounts authorized in all other groundwater withdrawal permits issued to the applicant by the Authority have been exhausted;
  - (16) the well is in compliance with § 711.222, if applicable; and
  - (17) the application complies with the Act and the Authority's rules.
- (f) The Board shall issue groundwater withdrawal amounts to an applicant for an emergency permit in the amount that is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety as demonstrated in the application.
- (g) An emergency permit is renewable under the rules of the Authority and the conditions of the permit.

#### **§ 711.112 Contents of Groundwater Withdrawal Permits**

Groundwater withdrawal permits issued by the Authority may contain the following:

- (1) name, address and telephone number of the owner of the permit;
- (2) permit category;
- (3) permit term;
- (4) purpose of use;
- (5) maximum rate of withdrawal in gallons per minute;
- (6) total maximum volume of withdrawals by purpose in acre-feet on an annual basis allocated between base irrigation groundwater and unrestricted irrigation groundwater, if applicable;
- (7) location of the point(s) of withdrawal;
- (8) place of use;
- (9) source of groundwater;
- (10) metering method;
- (11) conditions for suspension of withdrawals;
- (12) conditions for interruption of withdrawals;
- (13) conditions for renewal, if applicable;
- (14) reporting requirements;
- (15) notice that the permit is subject to the limitations provided in the Act and these rules;
- (16) the standard groundwater withdrawal conditions in Subchapter F; and
- (17) any other appropriate conditions as determined by the Authority to implement the Act or the Authority's rules.

## **Subchapter F. Standard Groundwater Withdrawal Conditions**

### **Section**

711.130	Purpose
711.132	Applicability
711.134	Standard Conditions

### **§ 711.130 Purpose**

The purpose of this subchapter is to establish the standard conditions for groundwater withdrawal permits to:

- (1) protect the water quality of the groundwater in the Aquifer;
- (2) protect the water quality of the surface streams to which the Aquifer provides springflow;
- (3) achieve water conservation, and the maximization of the beneficial use of groundwater available for withdrawal from the Aquifer;
- (4) protect aquatic and wildlife habitat, and the protection of species that have been listed as threatened or endangered under applicable federal or state law; and
- (5) provide for instream uses, bays, and estuaries.

### **§ 711.132 Applicability**

This subchapter applies to all groundwater withdrawal permits.

### **§ 711.134 Standard Conditions**

Groundwater withdrawal permits are subject to, and the permit holder shall comply with, the following conditions:

- (1) the construction, operation, maintenance, and closure of wells under Chapter 713;
- (2) the taking of no action that pollutes or contributes to the pollution of the Aquifer;
- (3) the beneficial use and conservation of groundwater withdrawn from the Aquifer under Chapter 715;
- (4) the taking of no action that wastes groundwater within or withdrawn from the Aquifer;
- (5) the interruption of the right to withdraw groundwater from the Aquifer under Chapter 715



- (6) the installation, operation and maintenance of meters under Subchapter M;
- (7) the keeping and filing of any report required by the Authority's rules;
- (8) the proportional adjustment of initial regular permit under Subchapter G;
- (9) the providing of notice of changes in the name or mailing address of the permit holder as required by the Authority's rules;
- (10) the payment of all applicable fees under Chapter 709;
- (11) the abandonment and cancellation of initial regular permit under § 1.16(g) of the Act as may be implemented by the Authority's rules;
- (12) the administration of the permit under Subchapter L;
- (13) the prohibition on the use of groundwater withdrawn from the Aquifer at a place of use outside of the boundaries of the Authority;
- (14) the compliance with the terms and conditions of the permit;
- (15) the compliance with the Act;
- (16) the compliance with the rules of the Authority;
- (17) the compliance with the orders of the Board; and
- (18) any other condition as may, in the discretion of the Board, be reasonable and appropriate.

## **Subchapter G. Groundwater Available for Permitting; Proportional Adjustment**

### **Section**

711.160	Purpose
711.162	Applicability
711.164	Groundwater Available for Initial Regular Permits
711.166	Groundwater Available for Term Permits
711.168	Groundwater Available for Emergency Permits
711.172	Proportional Adjustment of Initial Regular Permits
711.176	Groundwater Withdrawal Amounts for Initial Regular Permits

### **§ 711.160 Purpose**

The purpose of this subchapter is to:

(1) establish the amount of groundwater available for permitting for each category of groundwater withdrawal permit; and

(2) establish the procedures for implementing proportional adjustments under § 1.16(e) of the Act.

### **§ 711.162 Applicability**

This subchapter applies to the groundwater withdrawal permits.

### **§ 711.164 Groundwater Available for Initial Regular Permits**

The amount of groundwater from the Aquifer that the Board may permit to be withdrawn pursuant to initial regular permits beginning January 1, 2008, shall not exceed, nor be less than, 572,000 acre-feet for each calendar year.

### **§ 711.166 Groundwater Available for Term Permits**

The amount of groundwater authorized to be withdrawn under term permits is not subject to the total permitted withdrawals provided for in § 711.164.

### **§ 711.168 Groundwater Available for Emergency Permits**

The amount of groundwater authorized to be withdrawn under emergency permits is not subject to the total permitted withdrawals provided for in § 711.164.

**§ 711.172 Proportional Adjustment of Initial Regular Permits**

- (a) This section applies only to initial regular permits.
- (b) The purpose of proportional adjustment is to adjust the aggregate of the maximum historical use of all permits to attain the amount of groundwater available for permitting as of January 1, 2005.
- (c) An adjustment is proportional when the adjustment of the maximum historical use of a permit maintains a constant ratio in relation to the adjustment of the maximum historical use for all other permits.
- (d) If the total aggregate maximum historical use of all permits exceeds the amount of groundwater available for permitting as of January 1, 2005, the Board shall proportionally adjust the maximum historical use of each permit.
- (e) The Board shall implement and effectuate proportional adjustment by order of the Board. Proportional adjustment orders may be provisional for a fixed period of time, or may be final.
- (f) Proportional adjustment of permits shall be performed as follows:
- (1) For each applicant who is to be issued a permit, the Board shall determine and assign a maximum historical use confirmed as of January 1, 2005.
- (2) For each applicant for irrigation use who is to be issued a permit, the Board shall determine and assign an irrigator minimum, if any, confirmed as of January 1, 2005.
- (3) For each applicant who operated a well for three or more years during the historical period and who is to be issued a permit, the Board shall determine and assign an historical average minimum, if any, confirmed as of January 1, 2005.
- (4) If the total of all maximum historical uses of all applicants to whom the Board will issue a permit exceeds the amount of groundwater available for permitting as of January 1, 2005, then the Board shall calculate a proportional adjustment factor (PA-1 Factor) as follows:

PA-1 Factor	=	$\frac{\text{total of all estimated MHUs as of November 19, 2000} - 450,000}{\text{total of all estimated MHUs as of November 19, 2000}}$
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- (5) The Board shall then calculate a proportionally adjusted amount (PA-1

amount) for each applicant to be issued a permit as follows:

PA-1 amount	=	MHU	–	(PA-1 Factor	x	MHU confirmed as of January 1, 2005)
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(6) For each applicant assigned a historical average or irrigator minimum and whose PA-1 amount is less than the applicant's irrigator or historical average minimum (or where an irrigator applicant qualifies for both minimums, the greater of the two), the Board shall determine and assign a step-up amount. An applicant whose PA-1 amount is equal to or greater than its irrigator or historical average minimum (or where an irrigator applicant qualifies for both minimums, the greater of the two) shall not receive a step-up amount.

(7) The Board shall issue a permit to each eligible applicant establishing a groundwater withdrawal amount authorized to be withdrawn as provided in § 711.176(b).

#### **§ 711.176 Groundwater Withdrawal Amounts for Initial Regular Permits**

(a) If the aggregate maximum historical use confirmed as of January 1, 2005, of all applicants to be issued permits does not exceed the amount of groundwater available for permitting for each calendar year as of January 1, 2005, then an applicant shall receive a permit authorizing the withdrawal of groundwater from the Aquifer in the amount of the maximum historical use.

(b) If the aggregate maximum historical use confirmed as of January 1, 2005, of all applicants to be issued permits exceeds the amount of groundwater available for permitting for each calendar year as of January 1, 2005, then an applicant shall receive a permit authorizing the withdrawal of groundwater from the Aquifer in the following amount:

(1) if the applicant does not qualify for an irrigator or historical average minimum, then in an amount equal to the applicant's PA-1 amount as calculated in § 711.172 (f)(4) and (5);

(2) if the applicant qualifies for an irrigator or historical average minimum, and the applicant's irrigator or historical average minimum (or where an irrigator applicant qualifies for both minimums, the greater of the two) is less than the applicant's PA-1 amount as calculated in § 711.172(f)(4) and (5), then in an amount equal to the applicant's PA-1 amount; or

(3) if the applicant qualifies for an irrigator or historical average minimum, and the applicant's irrigator or historical average minimum (or where an irrigator applicant qualifies for both minimums, the greater of the two) is greater than the applicant's PA-1 amount as calculated in § 711.172(f)(4) and (5), then in an amount equal to the applicant's irrigator or historical average minimum (or where an irrigator applicant qualifies for both minimums, the greater of the two).

**Subchapter H.      [Reserved]**

## **Subchapter I.**

## **General Prohibitions**

### **Section**

711.220	Exportation Prohibited
711.222	Withdrawals from New Wells
711.224	Unauthorized Activities
711.226	Unregistered Wells
711.228	Compliance with Law
711.230	Waste Prevention
711.232	Pollution Prevention
711.234	Illegal Drilling and Operation of a Well

### **§ 711.220      Exportation Prohibited**

(a) Groundwater withdrawn from the Aquifer must be used within the Authority boundaries.

(b) The place of use for groundwater withdrawn from the Aquifer that is processed into or used to produce a commodity is the plant site where the commodity is produced.

### **§ 711.222      Withdrawals from New Wells**

(a) Except as provided in Subsection (b), a person may not make a withdrawal of groundwater from the Aquifer through new wells.

(b) A person may withdraw groundwater from the Aquifer from the following new wells:

(1) exempt wells;

(2) replacement wells;

(3) test wells; and

(4) wells recognized by the Authority as a transfer of the point of withdrawal for an initial regular permit.

### **§ 711.224      Unauthorized Activities**

(a) Except as provided in § 711.14, a person may not withdraw groundwater from the Aquifer unless authorized by a groundwater withdrawal permit issued by the Authority.

(b) A person may not construct, install, drill, complete, alter, operate, or maintain a new well unless authorized by a well construction permit issued by the Authority.

(c) A person may not withdraw groundwater in violation of an Authority rule or groundwater withdrawal permit.

**§ 711.226 Unregistered Wells**

A person may not make withdrawals from a well unless an approved registration form is on file with the Authority and the well has been determined to be either a permitted well, a limited production well, or an exempt well.

**§ 711.228 Compliance with Law**

A person may not violate the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit.

**§ 711.230 Waste Prevention**

A person may not waste groundwater within or water withdrawn from the Aquifer.

**§ 711.232 Pollution Prevention**

A person may not pollute or contribute to the pollution of the Aquifer.

**§ 711.234 Illegal Drilling and Operation of a Well**

The drilling or operation of a well without a required permit or withdrawal of groundwater in violation of an Authority rule related to the amount of groundwater that is authorized to be withdrawn is declared to be illegal, wasteful per se, and a nuisance.

## **Subchapter J.        Aquifer Recharge, Storage and Recovery Projects**

### **Section**

711.240	Applicability
711.241	Aquifer Recharge Program
711.245	Pre-June 17, 2007 Projects

### **§ 711.240        Applicability**

This subchapter applies to Aquifer recharge, storage and recovery projects located within the Authority's boundaries.

### **§ 711.241        Aquifer Recharge Program**

The Authority may promote the augmentation and management of waters recharged into the Aquifer through cooperative contracts as described in Section 1.44 of the Act or as may be otherwise authorized by law.

### **§ 711.245        Pre-June 17, 2007 Projects**

The Authority may not enter into any contract for an Aquifer recharge project for any structure, facility, or works constructed prior to June 15, 2007, that may recharge into the Aquifer unless the structure, facility, or works is proposed to be modified to provide additional artificial recharge in excess of the amount of recharge that the structure, facility, or works may have provided prior to the modification.



**Subchapter K.      [Reserved]**

## **Subchapter L.            Administration of Permits**

### **Section**

711.320	Purpose
711.322	Applicability
711.324	Transfers
711.326	Applications to Transfer
711.328	Basis for Granting Transfer Applications
711.329	Cibolo Creek Transfers
711.330	Leases
711.332	Amendments
711.334	Applications to Amend
711.336	Basis for Granting Amendment Applications
711.338	Conversions
711.340	Applications to Convert
711.342	Basis for Granting Conversion Applications
711.344	Consolidations
711.346	Applications to Consolidate
711.348	Basis for Granting Consolidation Applications
711.350	Corrections
711.352	Abandonment
711.353	Notice of Claims
711.354	Recordation
711.356	Presumption of Validity

### **§ 711.320        Purpose**

The purpose of this subchapter is to provide for the administration of permits in order to:

- (1) identify the processes by which permits may be changed in light of transactions or other activity related thereto;
- (2) ensure the updating and accuracy of Authority permitting records; and
- (3) ensure compliance with the Act and the Authority's rules.

### **§ 711.322        Applicability**

- (a) This subchapter applies to:
  - (1) initial regular permits;
  - (2) regular permits;
  - (3) term permits; and

(4) emergency permits.

(b) As used in this subchapter, the term “permit” shall refer to any of the permits identified in Subsection (a).

(c) This subchapter does not apply to the wholesale or retail sale of groundwater on a commodity basis to a person under a utility service contract, water supply contract, or similar document.

#### **§ 711.324 Transfers**

(a) Between parties, permits may be transferred as follows:

(1) conveyance of permit ownership, or the lease of rights to withdraw groundwater under a permit;

(2) point of withdrawal;

(3) purpose of use;

(4) place of use;

(5) maximum rate of withdrawal; or

(6) groundwater withdrawal amount.

(b) Except as provided in Subsection (d) and § 711.332(b), ownership of permits may be transferred separately from ownership of the place of use.

(c) Except as provided in Subsections (d) and (f), unless there is an express reservation of rights in the transferor, the transfer of ownership of the place of use for a permit is presumed to transfer ownership of the permit appurtenant thereto.

(d) Except as provided in § 711.338(b), ownership of all or part of a permit issued with base irrigation groundwater shall pass with the transfer of ownership of all or part of the historically irrigated land to which the permit is appurtenant. No reservation in the transferor of base irrigation groundwater separate from the transferred historically irrigated lands shall be effective.

(e) Unless there is an express reservation of rights in the transferor, ownership of all or part of a permit issued with unrestricted irrigation groundwater shall be presumed to pass with the transfer of ownership of all or part of the historically irrigated land to which the permit is appurtenant. A reservation in the transferor of unrestricted irrigation groundwater separate from the transferred historically irrigated land shall be effective.

(f) For water utilities whose place of use is identified in a permit as the area encompassed by a certificate of convenience and necessity, the transfer of land owned by the water utility located inside the certificated area is not presumed to transfer ownership of any part of the permit owned by the water utility.

(g) Except for permits issued for irrigation purposes with base irrigation groundwater, permits may be transferred that provide for no place of use or point of withdrawal. However, withdrawals may not be made under such permits until the Authority has granted an application to transfer that provides for a place of use and point of withdrawal.

#### **§ 711.326 Applications to Transfer**

(a) Persons desiring to transfer a permit to another person must file with the Authority an application to transfer on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.324-330.

(b) Transfer applications must be filed no later than 30 days after the effective date of the transfer agreement between the parties.

(c) Transfer applications may be filed in advance of the transfer of ownership having taken effect between the parties. A permit may be transferred for a period beginning no later than two years after a transfer application is filed. A transfer may not begin prior to the date an administratively complete application to transfer is filed with the Authority. A permit may not be transferred for a term exceeding the date provided in the document approving the transfer application.

(d) If approved, transfer applications are effective on the date the application is filed, or on another date determined by the Board or the general manager for good cause.

(e) If a transfer application is approved, the Authority shall issue an initial regular permit or regular permit as may be appropriate.

(f) The general manager may not process a transfer application filed after the deadline for filing annual groundwater use reports under § 711.414(b).

#### **§ 711.328 Basis for Granting Transfer Applications**

The general manager 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 and any applicable costs for recordation in the deed records of the appropriate county or counties;

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

(3) it has been confirmed that, after the transfer, the transferee owns all or part of the 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 a permit for irrigation use:

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

(i) the historically irrigated lands

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

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

(iv) the boundaries of the place of use in the permit and the actual historically irrigated land 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;

(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 in an amount necessary 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 3 acre-feet per year.

(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 or the well has been reclassified to exempt or limited production well status.

### **§ 711.330 Leases**

(a) If all or a part of a permit is temporarily transferred by lease, the lessee shall file a transfer application and:

(1) for a lease that is for a term of one year or less, an executed lease agreement or a memorandum of lease; or

(2) for a lease that is for a term that is greater than one year, the lessee shall record the executed lease agreement or memorandum of lease in the deed records of the appropriate county or counties and provide a copy of the recorded lease agreement or memorandum of lease to the Authority.

(b) All leases, regardless of when commenced, shall terminate on December 31<sup>st</sup> of the year in which the lease terminates.

(c) If a transferor of a permit sells all or part of the permit, and the permit is subject to a lease, within 30 days of the effective date of the transfer, the transferor shall give written notice to all lessees and provide a copy of the transfer approval to the Authority.

(d) Permit holders may temporarily transfer the place of use for all or part of a permit issued for irrigation purposes with base irrigation groundwater to another place of use not owned by the permit holder. The lease term may not exceed ten years. If the permit holder subsequently transfers ownership of the historically irrigated land to which the permit is appurtenant to another person, ownership of the permit with the base irrigation groundwater shall pass with the transfer

of the historically irrigated land as provided in § 711.342(d). However, the party to whom the permit holder has transferred ownership shall take title of the historically irrigated land subject to the lease.

### **§ 711.332 Amendments**

(a) All permits may be amended by the permit holder as follows:

- (1) point of withdrawal;
- (2) purpose of use;
- (3) place of use;
- (4) maximum rate of withdrawal; or
- (5) groundwater withdrawal amount.

(b) Except as provided in Subsections (c) and § 711.338(b), holders of permits issued for irrigation use with base irrigation groundwater may not amend the place or purpose of use. The permit may be amended in all other respects.

(c) Permit holders may temporarily amend the place of use for all or part of a permit issued for irrigation purposes with base irrigation groundwater to another place of use owned by the permit holder. If the permit holder subsequently transfers ownership of the historically irrigated land to which the permit is appurtenant to another person, the temporary amendment becomes void and ownership of the permit with the base irrigation groundwater shall pass with the transfer of ownership of the historically irrigated land as provided in § 711.324(d).

(d) Holders of permits issued for irrigation use with unrestricted irrigation groundwater may amend the place or purpose of use.

(e) Except for permits issued for irrigation purposes with base irrigation groundwater, permits held by water marketers may be amended to provide for no place of use or point of withdrawal. However, withdrawals may not be made under such amended permits until the Authority has granted an application to amend that provides for a place of use and point of withdrawal.

(f) Permit holders of permits for irrigation purposes may designate the location of the original historically irrigated land to clarify and identify the specific location of these lands. The designation must be on a form prescribed or approved by the Authority. At a minimum, the designation document must be irrevocable, signed and acknowledged by the permit holder, clearly and accurately identify the location of the historically irrigated land out of the entirety of the property that is set out in the permit as the place of use. From and after the date of the irrevocable designation, all base or unrestricted irrigation groundwater recognized in the permit is appurtenant to the designated historically irrigated land. In the event the Authority has approved, consistent with applicable law, a transfer or amendment of unrestricted irrigation groundwater rights prior to the effective date of this rule, this rule is not to be construed to affect the appurtenancy of such rights at a place of use not the original historically irrigated land.



#### **§ 711.334 Applications to Amend**

(a) Permit holders desiring to amend the terms of a permit must file with the Authority an application to amend on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.332- 711.336.

(b) If approved, permit amendments are effective on the date the amendment application is filed, or on another date determined by the Board or the general manager for good cause.

(c) If an amendment application is approved, the Authority shall issue an initial regular permit or regular permit as may be appropriate.

(d) Amendment applications must be filed by the date in § 711.326(g) to be effective for the year in which the amendments are sought to be effective.

(e) Authority staff may not process and must return an amendment application requested to be effective for the calendar year in which the application is filed unless it was timely filed in accordance with Subsection (d).

#### **§ 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 and any applicable costs for recordation in the deed records of the appropriate county or counties;

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

(3) it has been confirmed that, after the amendment, the applicant owns all or part of the 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 a permit for irrigation use, a survey is provided that complies with § 711.328(6) or the designation made under § 711.332(f);

(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 not transferred from a point located west of Cibolo Creek to east of Cibolo Creek.

### **§ 711.338 Conversions**

(a) The portion of a permit issued for irrigation purposes with base irrigation groundwater may be converted to unrestricted irrigation groundwater if:

(1) as provided in § 1.34(c) of the Act, the permit holder installs water conservation equipment on the historically irrigated land; or

(2) as provided in § 1.34(e) of the Act, the historically irrigated land becomes:

(A) developed land; or

(B) land that is no longer practicable to farm.

(b) If an application to convert is approved by Board order under § 711.342, the effect of the order is to convert the base irrigation groundwater rights that are the subject of the application to unrestricted irrigation groundwater rights. After the effective date of the Board order, the owner of the historically irrigated land to which the unrestricted irrigation groundwater rights (formerly base irrigation groundwater rights) are appurtenant may:

(1) sever all or a portion of such rights from all or a portion of such land; and

(2) change the purpose or place of use of all or a portion of such rights.

### **§ 711.340 Applications to Convert**

(a) Persons desiring to convert base irrigation groundwater must file with the Authority an application to convert on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.338- 711.342.

(b) Conversions applications may only be filed by the owner of the land to which the base irrigation groundwater is appurtenant.

(c) If approved, the conversion is effective on the date of the Board order approving

the conversion application, or on another date determined by the Board for good cause.

(d) If a conversion application is approved, the Authority shall issue an initial regular permit or a regular permit as may be appropriate.

(e) Except as provided in Subsection (f), if an application to convert is approved, the Authority will re-distribute, on a pro rata basis, all of the remaining base irrigation groundwater over the entirety of the historically irrigated land.

(f) An applicant who does not desire for the Authority to re-distribute, on a pro rata basis, all of the remaining base irrigation groundwater over the entirety of the historically irrigated land shall, at the time the application to convert is filed:

(1) provide a full survey, certified by a registered professional surveyor to be true and correct, of the applicant's historically irrigated land;

(2) provide a second survey, certified by a registered professional surveyor to be true and correct, that specifies the particular portion of the historically irrigated land that is the subject of the application to convert; and

(3) express in writing that:

(A) the application to convert only applies to the base irrigation groundwater appurtenant to the portion of the historically irrigated land that is the subject of the application; and

(B) the amount of base irrigation groundwater that is not converted to unrestricted irrigation groundwater shall remain appurtenant to the portion of the historically irrigated land that is the subject of the application and shall not be re-distributed over the entirety of the historically irrigated land.

#### **§ 711.342 Basis for Granting Conversion Applications**

(a) In Chapter 711, the following terms shall have the following meanings:

(1) "Developed land" means historically irrigated land that has been physically altered by the installation of utilities or construction of roads, parking lots, driveways, foundations, structures, buildings, stormwater collection systems, public parks, or athletic fields or by similar improvements.

(2) "Historically irrigated land" means land irrigated during the historical period, as described by § 1.16 of the Act, that provided the basis for the issuance of an initial regular permit for irrigation use and is identified as the place of use in the initial regular permit.

(3) "Land no longer practicable to farm" means historically irrigated land:

(A) that has not been irrigated for more than five years; and

(B) for which the owner of the land has submitted to the Authority

documentation demonstrating that because of development on land in close proximity to the historically irrigated land, agricultural activities performed on the land, including crop dusting or other applications of pesticides, have the potential to compromise the health and safety of a farm operator or of persons occupying or residing on property in close proximity to the land.

(b) The Board shall grant a conversion application under Subsection 1.34(c) of the Act based upon the installation of conservation equipment if the following elements are established:

(1) the applicant has paid all applicable fees, including any applicable costs for recordation in the deed records of the appropriate county or counties;

(2) it has been confirmed that the applicant is the owner of the historically irrigated land to which the base irrigation groundwater is appurtenant;

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

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

(5) groundwater from the Aquifer will be conserved as follows:

(A) the conservation equipment was manufactured and installed within fifteen years of the filing date of the application, or can otherwise be demonstrated by the applicant to be as efficient as newly manufactured and installed equipment as determined by the volume of groundwater conserved under Subsection (b)(5)(B);

(B) the volume of groundwater conserved on an annual basis has been determined based on the irrigation water savings assumptions set out in the Irrigation Water Savings Determination Form, unless rebutted by site specific information contained in the application to convert base irrigation groundwater based upon the installation of conservation equipment;

(C) for remaining corners, or other odd shapes, of land over which water conservation equipment has not been installed, the land is too small or irregular to practically and economically irrigate and the volume of groundwater conserved has been calculated in accordance with Subsection (b)(5)(B); and

(D) for other remaining tracts of land over which water conservation equipment has not been installed, the land is topographically unsuitable to irrigate, and the volume of groundwater conserved has been calculated in accordance with Subsection (b)(5)(B).

(c) The Board shall grant a conversion application based upon Subsection 1.34(e) of the Act if the following elements are established:

(1) the applicant has paid all applicable fees, including any applicable costs for recordation in the deed records of the appropriate county or counties;

(2) it has been confirmed that the applicant is the owner of the historically irrigated land to which the base irrigation groundwater is appurtenant;

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

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

(5) any well used to irrigate the historically irrigated land and located on the land that is the subject of the application has been plugged or capped in accordance with Subchapters C and D, Chapter 713, unless it can be demonstrated that the well is to be used for a future purpose other than irrigation use; and

(6) the historically irrigated land that is the subject of the application demonstrates that all or a portion of the land:

(A) has become developed land; or

(B) is no longer practicable to farm.

(d) Approvals of applications to convert base irrigation groundwater rights under subsection (c)(6)(A) shall be in the same proportion as the proportion of developed land to undeveloped land. Base irrigation groundwater rights appurtenant to historically irrigated land that cannot be developed because of its topography or its location in a floodplain may be included in the proportion of land considered to be developed land.

(e) Approvals of applications to convert base irrigation groundwater rights under subsection (c)(6)(B) shall be in the same proportion as the proportion of historically irrigated land that is no longer practicable to farm.

#### **§ 711.344 Consolidations**

Persons owning two or more permits for the same purpose of use and for wells within the same county may consolidate those permits.

#### **§ 711.346 Applications to Consolidate**

(a) Persons desiring to consolidate two or more permits must file with the Authority an application to consolidate on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.348.

(b) If approved, the consolidation is effective on the date determined by the general manager.

(c) If a consolidation application is approved, the Authority shall issue an initial regular permit or regular permit as may be appropriate.

#### **§ 711.348 Basis for Granting Consolidation Applications**

The general manager shall grant a consolidation application if the following elements are

established:

- (1) the applicant has paid all applicable fees, including any applicable costs for recordation in the deed records of the appropriate county or counties;
- (2) it has been confirmed that the applicant is the owner of the permits;
- (3) the application complies with the Act and the Authority's rules;
- (4) the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board;
- (5) the points of withdrawal are located within the same county; and
- (6) the points of withdrawal, relative to each other, are all located either east or west of Cibolo Creek.

#### **§ 711.350 Corrections**

The general manager may make non-substantive corrections to any permit resulting from a typographical or clerical error of the Authority by reissuing the permit with corrections without observing the procedures in Subchapter E of Chapter 707. Authority staff must notify the permit holder that the correction has been made.

#### **§ 711.352 Abandonment**

The Board may enter an agreed order for declaration of abandonment evidencing the present intent of a permit holder to permanently abandon all or part of a groundwater withdrawal permit.

#### **§ 711.353 Notice of Claims**

(a) Persons having a good faith belief that they are the owner of all or part of a permit, but the Authority's permit records do not reflect such ownership, may file with the Authority a notice of claim on a form prescribed by the Authority. The purpose of the notice is to provide a basis for the Authority to initiate a fact-finding investigation into the ownership of a permit. The notice shall state the reasons for the claim of ownership, include all appropriate documentary evidence supporting the claim, and provide any other relevant information as may be requested by the Authority. Notices of claim are to be processed according to the procedures set forth in § 707.541.

(b) If a notice of claim is approved, the Authority shall issue an amended or a new initial regular permit or regular permit as may be appropriate to be effective on the date indicated in the Board order approving the claim.

#### **§ 711.354      Recordation of Permits**

Within 30 days of issuance of a permit under this subchapter, the Authority, on behalf of the permit holder, will file the permit for recordation in the deed records of the county or counties in which the point of withdrawal and the place of use are identified in the permit.

#### **§ 711.356      Validation of Transfers**

(a) As provided in the Act of May 24, 2019, 86<sup>th</sup> Leg., R.S., ch. 904, § 3, 2019 Tex. Gen. Laws 2416, transfers that are effective before September 1, 2019, that have not been rescinded, and that are not subject to pending litigation are hereby conclusively validated in all respects. As used in this subsection, “transfer” means a transfer of permits and the Aquifer water rights evidenced thereby between parties under §§ 711.324-711.328, and the contracts or other transaction documents of any kind related thereto, including documents related to the extension of credit.

(b) As provided in the Act of May 24, 2019, 86<sup>th</sup> Leg., R.S., ch. 904, § 2, 2019 Tex. Gen. Laws 2416, rules adopted by the Authority before September 1, 2019, relating to the severance of water rights from historically irrigated land and actions taken by the Authority under those rules are validated and confirmed in all respects.

(c) Relative to transfers, and actions taken by the Authority under rules adopted by the Authority relating to the severance of water rights from historically irrigated land, under Subsections (a) and (b), respectively, that become effective on and after September 1, 2019, the acts or proceedings of the Authority are conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired;  
and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(d) Subsection (c) does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including §§ 1.06 or 109.57, Texas Alcoholic Beverage Code; or

(4) a matter that on May 28, 2001:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

## **Subchapter M.        Meters; Reporting**

### **Section**

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### **§ 711.400        Applicability**

(a)        Except as provided in Subsection (b), this subchapter applies to the owner of any well that withdraws groundwater from the Aquifer.

(b)        This subchapter does not apply to owner of the following wells:

- (1)        exempt wells; or
- (2)        monitoring wells.

### **§ 711.402        Duty to Install Meters; Deadlines**

(a)        Owners of permitted wells and metered limited production wells under § 711.68 shall install, and, if necessary, modify a meter that meets the specifications in § 711.408 to measure the flow rate and cumulative amount of groundwater withdrawn from the well.

(b)        A meter shall be installed by the owner of a well no later than July 17, 2001, or for wells constructed after that date, prior to commencement of withdrawals from the well. This deadline does not apply to meters installed by the Authority.

(c)        No person may install, or modify, a meter without first filing with the Authority a meter registration. Any owner of a meter shall provide notice to the Authority at least five business days prior to the initiation of any installation or modification.

(d)        If for public safety purposes a meter must be installed or modified during non-business hours, the owner of the meter must notify the Authority the following business day.



### **§ 711.403      Metering of Exempt Withdrawals from Permitted Wells**

Exempt withdrawals may be made from permitted wells if the well is constructed so that the permitted and exempt withdrawals are metered separately and not commingled. The meter for the exempt withdrawals may not be placed on the same piping as the meter measuring the permitted withdrawals.

### **§ 711.404      Meter Registrations; Deadlines**

(a)      Persons required to install, or modify, a meter under § 711.402, must file with the Authority a meter registration on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.405.

(b)      For the purpose of this chapter, the term “modify” means to make any physical change to a meter other than standard maintenance.

(c)      Meters installed on a well, constructed on or before January 17, 2001 must be registered with the Authority no later than July 17, 2001.

(d)      This section does not apply to irrigation meters owned by the Authority.

(e)      In addition to the information specified in § 707.509, a meter registration shall contain the following information:

- (1)      the physical address of the property upon which the well is located;
- (2)      the well identification number, well construction permit number, and initial regular permit number;
- (3)      the meter manufacturer’s name;
- (4)      the meter serial number;
- (5)      the date of installation; and
- (6)      whether the meter is existing, replacement, or new;
- (7)      initial meter reading, and if the meter is a replacement meter, the final meter reading on the date the meter was removed;
- (8)      serial numbers of any previous meters; and
- (9)      a certification of installation according to the manufacturer’s specifications is provided.

#### **§ 711.405      Review of Meter Registrations**

The general manager shall consider a meter registration complete if the following elements are established:

- (1) the registration fee has been paid;
- (2) the meter is installed on a well located within the boundaries of the Authority;
- (3) the registrant owns the well and the meter;
- (4) the meter specifications in § 711.408 are met;
- (5) the registration complies with the Act and the Authority's rules; and
- (6) the person filing the registration is in compliance with the Act, the Authority's rules, other permits, and orders of the Board.

#### **§ 711.406      Ownership; Maintenance; and Costs of Meters**

(a) Except as provided in Subsection (b), the owner of a well shall own, install, operate, maintain, and repair the meter installed on the well at the cost of the well owner.

(b) For any irrigation well in existence on September 1, 1993, that is not capped and from which withdrawals were made from the Aquifer during the historical period, or any replacement to such well, meters shall be designed, owned, installed, and maintained by the Authority at the cost of the Authority. Meters for such irrigation wells shall be operated by the well owner at the cost of the well owner.

#### **§ 711.408      Meter Specifications**

(a) Meters shall be installed, modified, and operated to meet the following specifications:

- (1) a certified error of not greater than  $\pm$  five percent;
- (2) applicable technical publications of the American Water Works Association;
- (3) a non-resettable totalizer or if the meter is electronic and has a resettable totalizer, then the meter shall be:
  - (A) mounted inside of a locked enclosure (meters in locked enclosures can be reprogrammed through the key pad with the assistance of a trained technician); or

(B) meters that are not located in a locked enclosure shall be provided with a cover designed to prevent easy access and cannot be reprogrammed without special training, a proprietary program, and/or password access;

(4) the totalizing register has the capacity to record the total quantity of groundwater withdrawn from the Aquifer for at least one full year;

(5) the manufacturer's standards, instructions, or recommendations; and

(6) if used for the distribution of potable water, be certified by the American National Standards Institute/National Sanitation Foundation (ANSI/NSF).

(b) In order to demonstrate a certified error of not greater than  $\pm$  five percent for each meter:

(1) all municipal and industrial users authorized to withdraw more than 28 acre-feet annually shall perform or have performed an accuracy verification test for each meter at least every four years after meter installation (if original meter installation occurred before January 1, 2010, then such a test must be performed before December 31, 2013, and at least every four years thereafter); and

(2) the Authority shall perform an accuracy verification test on the meters of irrigation users authorized to withdraw more than 28 acre-feet annually at least every four years.

(c) Any meter not achieving a certified error of not greater than  $\pm$  five percent cannot be used and must be repaired and recalibrated or be replaced.

(d) Only equipment having an accuracy of  $\pm$  2 percent of actual flow may be used to test meters for accuracy under Subsection (b).

(e) All testing equipment used for accuracy verification under Subsection (b) must be calibrated every 2 years by an independent testing laboratory or company capable of accuracy verification.

(f) A form of documentation of the accuracy verification under subsection (b) and (e) must be provided to the Authority upon request.

(g) The owner of the meter is solely responsible for the costs associated with meter testing, calibration, repair, or replacement.

#### **§ 711.410 Notice of Condition Affecting Accuracy of Meter; Corrective Action**

(a) If at any time the owner of a well has reason to believe that a condition may exist that affects the accuracy of a meter, then the owner of the well shall, within seven days, notify Authority staff that the accuracy of the meter may be in question.

(b) Authority staff may conduct an investigation and, if facts warrant, direct the owner of the meter, at the owner's cost, to evaluate and test the accuracy of the meter and take appropriate corrective action, including replacement, modification, or retrofit, to restore the accuracy and proper working condition of the meter in conformance with the requirements of this subchapter.

#### **§ 711.412 Removal and Disabling of Meters**

(a) A meter may not be removed or otherwise disabled, except for routine maintenance, unless the owner gives the Authority notice in writing of the intent to remove or disable the meter. The notice shall be filed with the Authority prior to installation or modification.

(b) A form of tamper detection may be installed on any groundwater withdrawal meter by Authority staff. Such tamper detection may not hinder the day-to-day maintenance or emergency repair of the pipe upon which the meter is installed and shall be consistent with state and federal regulations.

(c) A meter may be removed or otherwise disabled only by the owner of the meter or its authorized representative.

(d) During a period that a meter is removed or otherwise disabled, groundwater may not be withdrawn from the well, unless an alternative measuring method has been approved.

(e) For mechanical meters, no modifications may be made to water piping within two feet from the center of the meter shaft, on the side from which the meter propeller extends, for the purpose of installing a pressure monitor or chemical injector or for any other purpose that may affect the normal operation or accuracy of the meter.

#### **§ 711.414 Meter Reading; Groundwater Use Reporting**

(a) Every permit holder, or his contract user, shall accurately read the meter on a monthly and annual basis. The results shall be filed with the Authority on an annual groundwater use report in a form prescribed by the Authority. The report form shall provide spaces to report meter readings for the entire year, and on a month-by-month basis. This form shall be available for inspection upon request of the Authority during any portion of the year.

(b) Completed annual groundwater use reports must be returned to Authority staff by no later than January 31<sup>st</sup> of each year.

(c) In completing the report, a permit holder shall fill in the blanks to the best of his knowledge and ability in accordance with the instructions that accompany each form.

(d) Unless the well is a dual status well under § 711.403, no annual groundwater use report is required to be filed by persons owning an exempt well. If the well is a dual status well, then the annual groundwater use report shall also include the meter readings for exempt purposes for the entire year, and on a month-by-month basis.

#### **§ 711.416      Alternative Measuring Methods**

Persons may seek to employ an alternative measuring method instead of installing a meter.

#### **§ 711.418      Applications for Approval of an Alternative Measuring Method**

Any person seeking to employ an alternative measuring method may file with the Authority an application for approval of such method on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509.

#### **§ 711.420      Basis for Approval of Alternative Measuring Method Applications**

The Board shall grant an alternative measuring method application if it finds that the following elements are established:

- (1)      the applicant paid the application fee;
- (2)      the application identifies the meter specifications in § 711.408 for which the alternative method is sought to replace;
- (3)      the application describes in detail the preferred alternative method of measuring groundwater withdrawals from the Aquifer, including information on how the alternative will be implemented and documented, and a showing that the alternative method would nonetheless provide an accurate accounting of groundwater withdrawn;
- (4)      granting the application will accomplish the objectives sought to be advanced in this subchapter;
- (5)      the application complies with the Act and the Authority's rules; and
- (6)      the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board.

#### **§ 711.422      Conditions**

- (a)      The Board may approve an alternative measuring method application for a term and with any conditions the general manager deems appropriate.
- (b)      The Board may require the applicant to file reports containing any information determined to be relevant to monitoring the continued appropriateness of the alternative measuring method and compliance with the approval's terms and conditions.

## **Subchapter N. Groundwater Trust**

### **Section**

711.502	Purpose
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711.506	Eligible Groundwater Withdrawal Permits
711.508	Acquisition of Permits
711.510	Sales of Permits From the Trust
711.512	Other Transfers of Permits From the Trust
711.514	Demand Management Holdings
711.522	Trust Transfer Contracts
711.524	Rights and Obligations of Transferors
711.526	Rights and Obligations of the Authority
711.528	Abandonment or Cancellation of Permits
711.530	Offerings From the Trust
711.532	Applications to Transfer Permits From the Trust
711.534	Processing of Transfer Applications From the Trust
711.536	Basis for Granting Transfer Application From the Trust
711.540	Expedited Transfers

### **§ 711.502 Purpose**

The purpose of this subchapter is to establish procedures to implement § 1.22(a) of the Act. The groundwater trust will be administered by the Authority to provide a groundwater account for the Authority to acquire groundwater withdrawal permits to hold them in trust for:

- (1) sale or resale;
- (2) transfer, other than by sale or resale;
- (3) managing overall demand on the Aquifer;
- (4) hold or suspend permits for enforcement purposes; or
- (5) hold or suspend permit to resolve outstanding.

### **§ 711.504 Other Transfers Authorized**

Nothing in this subchapter shall prevent the transfer of groundwater withdrawal permits by or through persons or entities outside of the purview of the groundwater trust if made under Subchapter L.

### **§ 711.506 Eligible Groundwater Withdrawal Permits**

Groundwater withdrawal permits may be acquired for, held in, and administered by the Authority in the groundwater trust.

### **§ 711.508 Acquisition of Permits**

The Authority may acquire, through purchase, assignment, pledge, exchange, lease, gift, or any other means, permits for transfer into the trust.

### **§ 711.510 Sales of Permits From the Trust**

Unless specifically authorized in the transfer-in contract, the Authority may not sell, lease, transfer, or resell a permit held in the trust.

### **§ 711.512 Other Transfers of Permits From the Trust**

Consistent with the transfer-in contract and this subchapter, the Authority may make other transfers of permits held in the trust in any manner the Authority considers necessary or reasonable. All transfers of permits from the trust shall comply with Subchapter L.

### **§ 711.514 Demand Management Holdings**

(a) Consistent with the transfer contract and this subchapter, the Authority may hold permits in the trust as the Authority may consider necessary or reasonable for the purpose of managing overall demand on the Aquifer. The Authority may not sell, resell, or otherwise transfer any part of a permit held in the trust for this purpose.

(b) The amount of groundwater authorized to be withdrawn from the Aquifer under an initial regular permits that are transferred into the trust and managed under this section is not subject to the maximum total permitted withdrawals provided for in § 711.164.

### **§ 711.522 Trust Transfer Contracts**

(a) For each application to transfer a permit into the trust that is granted, the Authority and the transferor must enter into a written transfer-in contract acceptable to and binding on the parties which sets forth and governs the details of the transfer of the permit into the trust.

(b) For each application to transfer a permit from the trust that is granted, the Authority and the transferee must enter into a written transfer-out contract acceptable to and binding on the parties which sets forth and governs the details of the transfer of the permit from the trust.

### **§ 711.524 Rights and Obligations of Transferors**

Upon transfer of the permit into the trust, the transferor shall have the following rights, restrictions, duties, and obligations:

(1) So long as the transferor's permit is held in the trust, the transferor shall have no right to withdraw groundwater from the Aquifer under the permit;

(2) The transferred permit shall remain in the trust for the agreed to trust term, unless sooner removed by order of the Board;

(3) The transferor shall remain responsible for taking all action, and paying all expenses, required to maintain, defend, preserve, and protect the permit;

(4) The transferor shall not undertake any action which could lead to the invalidation of the transferred permit and the transferor shall immediately notify the Authority if the transferor learns of any facts or circumstances suggesting that the permit could be called into question;

(5) The transferor may not, voluntarily or involuntarily, anticipate, sell, pledge, encumber, license, lease, transfer, assign, convey, give, devise, bequeath, or otherwise dispose of, either directly or indirectly, any right to use the permit without the prior written approval of the Board. Further, the permit shall not be subject to any debt contracted by the transferor, either prior to or after the transfer, or any judicial process for the satisfaction of any claim against the transferor; and

(6) So long as the permit is held in the trust, the transferor shall not be assessed by the Authority any aquifer management fees for the permit, however, the transferor shall remain liable for any aquifer management fees already assessed against him at the time the permit is transferred into the trust.

#### **§ 711.526 Rights and Obligations of the Authority**

Upon transfer of the permit into the trust, the Authority shall have the following rights, restrictions, duties, and obligations:

(1) So long as the permit is held in the trust, the Authority shall have the right to sell, resell, transfer, or hold the permit as a means of managing overall demand on the Aquifer as may be provided in the transfer contract;

(2) The transferred permit shall remain in the trust for the trust term agreed to unless sooner removed by order of the Board;

(3) The Authority is not responsible for taking any action, or paying any expense, required to maintain, defend, preserve, and protect the permit;

(4) The permit shall not be subject to any debt contracted by the Authority; either prior to or after the transfer, or any judicial process for the satisfaction of any claim against the Authority; and

(5) So long as the permit is held in the trust, the Authority shall not assess the transferor any aquifer management fees for the permit, however, the transferor shall remain liable for any aquifer management fees already assessed against him at the time the permit is accepted into the trust.

#### **§ 711.528 Abandonment or Cancellation of Permits**

When considering whether a permit should be terminated on the grounds that it has been abandoned or cancelled, the Authority shall not consider the time period during which the permit in question was held by the trust.



### **§ 711.530 Offerings From the Trust**

(a) Permits held in the trust may be offered for transfer and made available to potential transferees on such terms and conditions established from time to time by order of the Board. If authorized by order of the Board, Authority staff shall publish a notice of offering that specifies the following:

- (1) the amount of permits being made available for transfer from the trust;
  - (2) the Authority's offering price (or the procedure for determining the Authority's offering price);
  - (3) the deadline for submitting applications to transfer a permit from the trust;
- and
- (4) the procedures for submitting applications.

(b) The notice required by this section shall be published once in:

- (1) a newspaper of general circulation throughout the Authority's jurisdiction;
- (2) and at least four other newspapers within the jurisdiction of the Authority.

(c) The last such day of publication shall be no less than 45 days before the date of the deadline for submitting applications to transfer for the relevant offering.

(d) The Authority's offering price, or the manner for determining the Authority's offering price, shall be determined from time to time by order of the Board.

### **§ 711.532 Applications to Transfer Permits From the Trust**

Any person may file an application to transfer a permit from the trust on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.536 during any period of time in which a notice of offering is in effect.

### **§ 711.534 Processing of Transfer Applications From the Trust**

All applications to transfer a permit from the trust shall be processed in the order in which they are received according to the official date and time stamp of the Authority on the application.

### **§ 711.536 Basis for Granting Transfer Applications From the Trust**

(a) The decision to grant or deny an application to transfer a permit from the trust is completely at the discretion of the Board. The decision to grant or deny the application is final and non-appealable.

(b) The general manager may grant an application to transfer permit from the trust if it finds that:

- (1) The requirements of § 711.328 are met;
- (2) The applicant has the legal authority to make the application;
- (3) The requirements of Subchapter L are met;
- (4) The proposed use of the permit is reasonably related to the stated purposes of the trust;
- (5) The permit account in the trust is adequate and sufficient for the proposed transfer by the applicant;
- (6) The applicant is in compliance with the Act, the Authority rules, other permits, and orders of the Board;
- (7) The applicant has a positive compliance history with the Act and the Authority's rules;
- (8) The trust term is consistent with the Authority's management and administration objectives for the trust;
- (9) The offering price is consistent with the Authority's management and administrative objectives for the trust;
- (10) The purpose of the transfer is consistent with the Authority's management and administrative objectives for the trust;
- (11) The applicant has sufficient funds available to pay for the transfer of the permit; and
- (12) The transfer-out contract attached to the order of the Board granting the application is acceptable to the Board in all respects.

#### **§ 711.540 Expedited Transfers**

The provisions of §§ 711.530 - 711.538 notwithstanding, a transfer of a permit from the trust may be made by the Authority under the special procedures in § 707.537(b)-(d).

## **CHAPTER 713. WATER QUALITY**

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**Subchapter A.        [Reserved]**

## **Subchapter B. General Provisions**

### **Section**

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713.103	Location of the Recharge and Contributing Zones
713.105	Variance Applications
713.107	Basis for Granting Variance Applications
713.109	Variance Conditions
713.111	Rescission of Variance

### **§ 713.101 Purpose**

The purpose of this chapter is to regulate certain activities having the potential to pollute the Aquifer and hydraulically-connected surface streams in order to protect existing and potential uses of groundwater.

### **§ 713.103 Location of the Recharge and Contributing Zones**

(a) The approximate location of the Recharge and Contributing zones is delineated on the maps identified below in Table 1 - Official Recharge and Contributing Zone Maps of the Edwards Aquifer Authority incorporated by reference into this section. These maps are hereby adopted by the Authority as its official Recharge and Contributing Zone maps and are located at the Authority's offices.

(b) Whether a specific site or activity is located on the Recharge and Contributing Zone will be determined by the general manager. In making this determination, the general manager must base his or her decision by reference to either the Authority's official maps, or site specific geological data, as the general manager may in his or her discretion determine is most appropriate. If site specific data is relied on, then this information will control over any information that may be contained on the Authority's official maps.

(c) Recharge and Contributing Zone location determinations are to be processed according to the procedures set forth in § 707.539.

<b>TABLE 1 – OFFICIAL RECHARGE AND CONTRIBUTING ZONE MAPS OF THE EDWARDS AQUIFER AUTHORITY</b>		
<b>MAP NAME (UNITED STATES GEOLOGICAL SURVEY 7.5 MINUTE QUADRANGLE MAP NAME)</b>	<b>LAST REVISION DATE OF RECHARGE ZONE BOUNDARY</b>	<b>LAST REVISION DATE OF CONTRIBUTING ZONE BOUNDARY</b>
Bull Waterhole	June 1999	March 2008
Salmon Peak	June 1999	June 1999
Turkey Mountain	March 1974	N/A
Laguna	June 1999	June 1999

**TABLE 1 –  
OFFICIAL RECHARGE AND CONTRIBUTING ZONE MAPS  
OF THE EDWARDS AQUIFER AUTHORITY**

<b>MAP NAME (UNITED STATES GEOLOGICAL SURVEY 7.5 MINUTE QUADRANGLE MAP NAME)</b>	<b>LAST REVISION DATE OF RECHARGE ZONE BOUNDARY</b>	<b>LAST REVISION DATE OF CONTRIBUTING ZONE BOUNDARY</b>
Mustang Waterhole	March 1974	N/A
Chalk Bluff	March 1974	N/A
Sycamore Mountain	June 1999	June 1999
Lake Creek	June 1999	March 2008
Reagan Wells	June 1999	June 1999
Deep Creek	June 1999	N/A
Sevenmile Hill	March 1974	N/A
Knippa	March 1974	N/A
Concan	June 1999	June 1999
Magers Crossing	June 1999	June 1999
Utopia	March 1974	March 2008
Trio	March 1974	June 1999
Comanche Waterhole	March 1974	June 1999
Flatrock Crossing	March 1974	March 2008
Texas Mountain	March 1974	March 2008
Sabinal NE	March 1974	N/A
Mustang Valley	March 1974	N/A
Twin Hollow	March 1974	June 1999
Timber Creek	March 1974	June 1999
Quihi	March 1974	N/A
Riomedina	March 1974	N/A
Medina Lake	March 1974	June 1999
San Geronimo	March 1974	June 1999
Helotes	June 1999	June 1999
Van Raub	November 2012	November 2012
Camp Bullis	November 2012	November 23 2012
Castle Hills	June 1999	June 1999
Longhorn	March 1974	N/A
Bulverde	November 23 2012	November 23 2012
Bergheim	November 23 2012	November 23 2012



**TABLE 1 –  
OFFICIAL RECHARGE AND CONTRIBUTING ZONE MAPS  
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<b>MAP NAME (UNITED STATES GEOLOGICAL SURVEY 7.5 MINUTE QUADRANGLE MAP NAME)</b>	<b>LAST REVISION DATE OF RECHARGE ZONE BOUNDARY</b>	<b>LAST REVISION DATE OF CONTRIBUTING ZONE BOUNDARY</b>
Anhalt	November 23 2012	November 23 2012
Smithson Valley	September 2005	March 2008
Bat Cave	November 23 2012	November 23 2012
Schertz	March 1974	N/A
New Braunfels West	March 1974	N/A
Sattler	September 2005	March 2008
Devils Backbone	September 2005	March 2008
New Braunfels East	March 1974	N/A
Hunter	September 2005	September 2005
San Marcos South	September 2005	September 2005
Wimberley	September 2005	March 2008
San Marcos North	September 2005	September 2005
Driftwood	September 2005	March 2008
Mountain City	September 2005	March 2008
Buda	September 2005	March 2008
Signal Hill	N/A	March 2008
Crown Mountain	N/A	March 2008
Dripping Springs	N/A	March 2008
Jack Mountain	N/A	March 2008
Leakey	N/A	March 2008
Rio Frio	N/A	March 2008
Vanderpool	N/A	March 2008
Rough Mountain	N/A	March 2008
Fischer	N/A	March 2008
Montell	N/A	March 2008

N/A = not applicable; regulated zone not in the coverage area of this map.

### **§ 713.105 Variance Applications**

(a) Any person seeking a variance from a rule contained in Chapter 713, Subchapters E-H may file with the Authority an application for a variance on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and § 707.509.

(b) Notwithstanding Subsection (a), a variance may not be approved for the activities prohibited in §§ 713.605 and 713.607.

(c) The variance process may be utilized to request a determination by the Board that a defined, regulated substance should be excluded from regulation under Chapter 713 because the substance itself or the amount or manner in which it is being stored and used does not pose any significant threat to the water quality of the Aquifer. Demonstrations under such a request are the burden of the applicant.

### **§ 713.107 Basis for Granting Variance Applications**

By order, the Board shall grant a variance application under § 713.105 if:

- (a) the applicant paid the application fee;
- (b) the applicant has specifically identified the rules from which a variance is sought or has specifically identified a regulated substance for which exclusion from regulation is sought under § 713.105(c);
- (c) if the applicant is seeking a variance from a specifically identified rule or rules, the applicant has provided a proposed alternative to the regulations from which a variance is sought that will provide a substantially equivalent degree of protection for the Aquifer as the rule or rules;
- (d) if the application is seeking a determination that a regulated substance should be excluded from regulation, the applicant has sufficiently demonstrated that the regulated substance itself or the amount or manner in which it is being stored and used does not pose any significant threat to the water quality of the aquifer;
- (e) granting the variance will not cause significant harm to the environment, aquatic species, or any other person;
- (f) the application complies with the Act and the Authority's rules;
- (g) the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board; and
- (h) the applicant has provided any other information required by the general manager.

### **§ 713.109 Variance Conditions**

(a) The Board may grant a variance under § 713.105 for a term and with any conditions the Board deems appropriate.

(b) The Board may require a person granted a variance under § 713.105 to file reports containing such information as is relevant to monitoring the continuing appropriateness of the variance and compliance with its terms and conditions.

**§ 713.111 Rescission of Variance**

By order, the Board may rescind an order granting a variance under § 713.105 at any time due to a failure of the holder of the variance to abide by the terms and conditions of the variance, the Act, the Authority's rules, or any order of the Board.

## **Subchapter C. Well Construction, Operation and Maintenance**

### **Section**

713.200	Purpose
713.2001	Applicability
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713.239	Alternative Minimum Standards
713.241	Well Reports
713.243	Reporting Undesirable Water or Constituents
713.245	Field Inspections and Advance Notice
713.247	Injection Wells Prohibited; Certain Exceptions

### **§ 713.200 Purpose**

The purpose of this subchapter is to:

- (1) implement §§ 1.03(17) and (21), 1.08(a), 1.14(a), 1.15(a) and (b), 1.35(d), and 1.44(b) and (e) of the Act by regulating well construction, operation, and maintenance, and Aquifer recharge to:
- (2) prevent the waste of groundwater in the Aquifer;
- (3) the prevent the pollution of groundwater in the Aquifer;
- (4) protect the water quality of the Aquifer; and
- (5) protect the water quality of the surface streams to which the Aquifer provides springflows.

## **§ 713.2001    Applicability**

This subchapter applies to Aquifer wells located within the boundaries of the Authority.

## **§ 713.201    Well Construction Responsibilities**

(a) It is the responsibility of landowners, or their lessees or licensed drillers, to locate, drill, complete, operate, and maintain wells in accordance with:

- (1) Chapter 76 of 16 TEX. ADMIN. CODE;
- (2) this subchapter;
- (3) the rules of any other groundwater conservation district in which the well is located; and
- (4) the ordinances of any incorporated city in which the well is located.

(b) No person may perform a § 713.203 activity without first obtaining from the Authority a well construction permit. All land owners, or their lessee or licensed driller, are required to maintain a copy of the permit at the site of the well construction activity .

(c) No well driller shall perform a § 713.203 activity without first obtaining a copy of the well construction permit.

(d) A well must be completed within 180 days of the issuance of a well construction permit. The permit term may be extended by one additional 180-day extension period by Authority staff. In order to obtain an extension, the permit holder must submit a written request to Authority staff explaining the need for the extension. If the permit holder demonstrates a need for an extension and demonstrates that the permit holder's failure to complete the well within the original 180-day term is not due to the permit holder's own lack of diligence, then Authority staff may authorize the extension. Upon expiration of the term, including any extension granted, the permit automatically expires and is canceled.

(e) Where a landowner, or his lessee, denies a licensed driller access to the well to complete the well to established standards and thereby precludes the driller from performing his or her duties under the Texas Occupations Code, 16 TEX. ADMIN. CODE Ch. 76, or this subchapter, the driller shall, within five (5) days provide to the Authority a copy of the statement prescribed in 16 TEX. ADMIN. CODE § 76.702(a)(1), as may be amended. The landowner, or his lessee or other person authorizing the well work, shall complete the well to established standards within ten days of notification by Authority staff.

(f) Where a landowner, or his lessee, or other person authorizing the well work, denies a licensed driller access to the well that requires completion or otherwise precludes the driller from completing the well that has encountered undesirable water or constituents, the driller shall, within 48 hours, provide to the Authority a copy of the statement prescribed in 16 TEX. ADMIN. CODE § 76.702(e)(1), as may be amended.

### **§ 713.203 Applications for Well Construction Permits**

(a) Any person desiring to perform one of the following activities must file with the Authority an application for a well construction permit on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 713.2031 to:

(1) construct, install, drill, complete, or alter a well, or other works designed for the withdrawal of groundwater from the Aquifer;

(2) construct, install, drill, complete, alter, or operate a well, or other works designed for the monitoring of the water quality or level of the Aquifer;

(3) construct, install, drill, complete, or alter an injection well as defined in § 702.1(96); or

(4) construct, install, drill, complete or alter a well, or other works designed to withdraw groundwater from an aquifer other than the Aquifer, and which intersects the Aquifer.

(b) The requirement to obtain any permit under this section does not apply to the performance of routine operation and maintenance of a well after its construction and installation.

(c) Ownership of well construction permits are administered as provided in Subchapter L of Chapter 711.

### **§ 713.2031 Basis for Approval of Well Construction Applications**

(a) For all well construction applications, the general manager shall grant the application if the following elements are established:

(1) the applicant paid the application fee;

(2) the application identifies a proposed or an existing well;

(3) the well head is or will be located within the boundaries of the Authority;

(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) the proposed well construction and operation would not unreasonably negatively affect the Aquifer or other permit holders; and

(7) the well will be constructed, operated and maintained consistent with the relevant parts of this subchapter applicable to the well (i.e. Aquifer water well, monitoring well, injection well, or drill-through well).

(b) If the application is for a § 713.203(a)(1) activity (i.e. well designed for the withdrawal of groundwater from the Aquifer), the general manager shall grant the application if the following additional elements are established:

- (1) the well is a withdrawal point for groundwater;
- (2) the groundwater proposed to be withdrawn from the well immediately prior to its intake into the well casing will be located within and discharged directly from the Aquifer;
- (3) the applicant has a legal right to make withdrawals from the well; and
- (4) the quantity of groundwater the well would be capable of producing is consistent with the quantity of groundwater the applicant proposes to produce under exempt well status, or a permit.

(c) If the application is for a § 713.203(a)(2) activity (i.e. monitoring well), the general manager shall grant the application if the following additional elements are established:

- (1) the well is a monitoring well;
- (2) the groundwater to be monitored is from the Aquifer;
- (3) the applicant will take all reasonable measures to ensure protection of the Aquifer from contamination;
- (4) a detailed description and diagram of the monitoring methods and materials authorized are appropriate;
- (5) the application demonstrates that the volume of water to be withdrawn from the Aquifer for purging purposes will be no more than is reasonably necessary to ensure the integrity and accuracy of the water quality samples.

(d) If the application is for a § 713.203(a)(3) activity (i.e. injection well), the general manager shall grant the application if the following additional elements are established:

- (1) the well is an injection well;
- (2) the injection well terminates in the Aquifer; and
- (3) the well is constructed, installed, drilled, equipped, or completed in accordance with § 713.247(b).

(e) If the application is for a § 713.203(a)(4) activity (i.e. drill-throughs), the general manager shall grant the application if the following additional elements are established:

- (1) the well is designed to withdraw groundwater from an aquifer other than the Aquifer; and
- (2) the well intersects the Aquifer.

#### **§ 713.204 Contents of Well Construction Permits**

Well construction permits shall contain the following:

- (1) name, address and telephone number of the owner of the permit;
- (2) name, address and telephone number of an authorized representative, if any, of the owner;
- (3) permit category;
- (4) permit term;
- (5) purpose of use of the well;
- (6) maximum rate of withdrawal in gallons per minute, if applicable;
- (7) legal description suitable to the Authority of the property on which the well is located;
- (8) identification of the legal authority of the applicant to make withdrawals of groundwater from the Aquifer, if applicable;
- (9) the source of groundwater, as applicable;
- (10) size of the pump, pumping rate, pumping method, and other construction specifications for metering method;
- (11) borehole diameter, external and internal diameter of casing, total depth of casing, depth of grout, total well depth, and other well construction specifications as appropriate;
- (12) reporting requirements as appropriate;
- (13) notice that the permit is subject to the limitations provided in the Act and these rules; and
- (14) any other appropriate terms or conditions as determined by the general manager applicable to the category of well for which the well construction permit is sought (i.e. Aquifer water well, monitoring well, injection well, or drill-through well).



### **§ 713.205      Drilling by Unlicensed or Unregistered Well Driller Prohibited**

(a) Except as provided in Subsection (b), no person may engage in the drilling, boring, coring, construction, alteration or modification of an Aquifer well under the Authority's jurisdiction unless the person first holds a well driller's license issued under Chapters 51 or 1901, Texas Occupations Code.

(b) A person not licensed to perform drilling work may assist a licensed driller, provided that the unlicensed person is not primarily responsible for the drilling operations, and provided that a licensed driller provides direct supervision in accordance with 16 TEX. ADMIN. CODE §76.26, as may be amended.

### **§ 713.209      Location of New Wells**

(a) Aquifer wells shall be located a minimum horizontal distance of 50 feet from any watertight sewage and liquid-waste collection facility, except in the case of monitoring, dewatering, piezometer, and recovery wells, which may be located where necessity dictates.

(b) Except as noted in §§ 713.211 and 713.235, an Aquifer well shall be located a minimum horizontal distance of 150 feet from any concentrated sources of potential contamination such as, but not limited to, existing or proposed livestock or poultry yards, cemeteries, pesticide mixing/loading facilities, and privies, except in the case of monitoring, dewatering, piezometer, and recovery wells, which may be located where necessity dictates. An Aquifer well shall be located a minimum horizontal distance of 150 feet from an existing or proposed septic system absorption field, septic system spray area, or a dry litter poultry facility, and 50 feet from any property line provided the well is located at the minimum horizontal distance from the sources of potential contamination listed in this section.

(c) An Aquifer well shall be located at a site not generally subject to flooding; provided, however, that if an Aquifer well must be placed in a flood prone area, the top of the casing shall extend a minimum of 12 inches above ground level or 36 inches above known flood prone areas and unprotected openings into a well casing that is above ground shall be sealed water tight.

### **§ 713.211      Standards of Completion for Wells**

Aquifer wells shall be completed in accordance with the following specifications:

(a) In water table wells, the annular space shall extend from the land surface or well head to within three (3) feet of the top of the static water level or twenty (20) feet from the land surface or well head, whichever is deeper.

(b) In artesian wells, the annular space shall extend from the land surface or well head to at least ten (10) feet below the top of the Aquifer limestone and associated formations or twenty (20) feet from the land surface, whichever is deeper.

(c) In the case of monitoring, dewatering, piezometer, and recovery wells where the water to be monitored, recovered, or dewatered is located at a depth shallower than the annular space depths mandated in Subsections (a) and (b), then the annular space shall only extend down to the level immediately above the monitoring, recovery, or dewatering level, except as otherwise provided in Subsection (i).

(d) For permitted wells, including all wells drilled through the Aquifer to deeper aquifers, throughout the length of the entire annular space, there shall be a minimum of two (2) inches between the outside surface of the outermost well casing and the surface of the borehole such that the borehole diameter is a minimum of four inches larger than the outside diameter of the outermost well casing. For exempt wells and limited production wells, throughout the length of the entire annular space there shall be a minimum of one and one-half (1 1/2) inches between the outside surface of the outermost well casing and the surface of the borehole such that the borehole diameter is a minimum of three inches larger than the outside diameter of the outermost well casing to the depths specified in Subsection (a) or (b), as applicable.

(e) The entire annular space shall be sealed with a grout, using one of the following, applicable methods:

(1) For water table wells, the grout shall be placed by:

- (A) the tremie method;
- (B) the positive displacement exterior method;
- (C) the positive displacement interior method; or
- (D) the continuous injection method.

(2) For artesian wells, the grout shall be placed by:

- (A) the positive displacement interior method;
- (B) the continuous injection method; or
- (C) the tremie method to a maximum depth of 500 feet.

(3) perform a water level measurement and report the results to the Authority. This section does not apply to wells drilled through the Aquifer to deeper aquifers;

(4) provide to the Authority the location of the well in degrees, minutes, and seconds of latitude and longitude, to the nearest second in the North American Datum of 1983;

(5) for exempt wells that withdraw Aquifer water, provide the Authority with notice at least two business days prior to installing pumping equipment and the opportunity for the Authority to perform geophysical logging of the well;

(6) for permitted wells that withdraw Aquifer water, prepare and provide to the Authority geophysical logs of the well from bottom to top, which include natural gamma ray and caliper logs, and the log shall be certified as true and correct for the identified well on its header by the logging technician. The natural gamma ray well log shall be presented to the Authority using a horizontal scale that spans the log data over a 5-inch linear grid on log track 4 as defined by American Petroleum Institute Recommended Practice 31A dated August 1997;

(7) for wells drilled through the Aquifer to deeper aquifers, prepare and provide to the Authority geophysical logs of the well from bottom to top, which include natural gamma ray and caliper logs, and the log shall be certified as true and correct for the identified well on its header by the logging technician. The natural gamma ray well log shall be presented to the Authority using a horizontal scale that spans the log data over a 5-inch linear grid on log track 4 as defined by American Petroleum Institute Recommended Practice 31A dated August 1997. For wells drilled through the Aquifer to deeper aquifers, the geophysical log shall demonstrate that the Aquifer has been properly isolated from other aquifers.

(f) Logging technicians shall submit, on a form prescribed by the Authority, a statement certifying that the log for the well identified on the log header is true and correct.

(g) The licensed driller shall not use any material containing lead in constructing an Aquifer well.

(h) The top of the casing shall extend a minimum of 12 inches above the land surface except in the case of monitoring wells when it is impractical or unreasonable to extend the casing above the ground. Such monitoring wells shall be placed in a waterproof vault the rim of which extends at least two inches above the ground surface, and cement shall be placed at least 18 inches around and two feet below the base of the vault between the casing and the wall of the borehole which slopes away from the vault so as to prevent surface pollutants from entering the monitoring well. The well casing shall have a locking cap that will prevent pollutants from entering the well. The annular space of the monitoring well shall be sealed with an impervious grout from the top of the interval to be tested to the cement below the vault of the monitoring well. The monitoring well will be inspected every six (6) months if the well is vaulted. If the vault is leaking, then the vault must be repaired or the well plugged. The owner or operator of the well will be required to maintain inspection records, which must be produced to the Authority on demand.

(i) The well casing of a temporary monitoring well shall have a locking cap and the annular space shall be sealed from the surface down to at least 12 inches below ground level with an impervious grout or similar material; after 48 hours, the well shall be completed in accordance with this section, or plugged in accordance with Subchapter D.

(j) The annular space of a closed system geothermal well used to circulate water or other fluids shall be backfilled to the total depth with impervious bentonite grout or similar material.

(k) In wells where a steel or PVC sleeve is used:

- (1) the steel sleeve shall be a minimum of 3/16 inches in thickness and/or the plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 in 6-inch and 8-inch sun resistant;
- (2) the sleeve shall extend, at a minimum, as high as the casing above the land surface;
- (3) the sleeve shall be at least 24 inches in length;
- (4) the sleeve shall extend at least 12 inches below the ground surface, except when steel casing or a pitless adapter is used; and
- (5) the sleeve shall be at least two inches larger in diameter than the plastic casing being used.

(l) Pitless adapters may be used in Aquifer wells provided that the adapter meets the Water System Council WSC PAS-97 standards and recommended installation procedures for sanitary water well systems.

(m) All wells shall be completed so that aquifers or zones containing waters that differ in chemical quality are not allowed to commingle through the borehole-casing, annulus, or a gravel pack and cause quality degradation of any aquifer or zone.

(n) The well casing for all wells shall be capped or completed in a manner that will prevent pollutants from entering the well. Wells shall be cased in accordance with the specifications set forth in this subsection.

(1) Plastic casing - shall be National Sanitation Foundation (NSF-WC) or ASTM International (ASTM) F-480 minimum SDR 26 approved water well casing.

(2) Steel casing - shall be new ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(3) It shall be the responsibility of the licensed driller to select the proper hydraulic collapse pressure for casing to be installed.

(4) A person seeking to construct a monitoring well shall petition for a waiver from this subsection under § 713.239, and then, in accordance with the waiver, may use materials other than plastic or steel for casing, such as fluoropolymer, glass-fiber-reinforced epoxy, or various stainless steel alloys.

(o) Each licensed driller drilling, deepening, or otherwise altering a well shall keep any drilling fluids, tailings, cuttings, or spoils contained in such a manner so as to prevent spillage onto adjacent property not under the jurisdiction or control of the well owner without the adjacent property owner's written consent.

(p) Each licensed driller drilling, deepening, or otherwise altering a well shall prevent the spillage of any drilling fluids, tailings, cuttings, or spoils into any body of surface water.

(q) Unless waived by the Authority upon written request from the landowner, a new, repaired, or reconditioned well or pump installation shall be properly disinfected before use with chlorine or other appropriate disinfecting agent under the circumstances. A disinfecting solution with a minimum chlorine concentration of 50 mg/l, shall be placed in the well as required by the American Water Works Association (AWWA), under ANST/AWWA C654-87 and the United States Environmental Protection Agency (EPA).

(r) A half-inch diameter water level access port with threaded seal must be provided in the top of the cap or compression seal of the well. Wells with turbine pumps must be installed with an air line or tube for a steel tape or other port approved by the Authority for water level measurement.

#### **§ 713.213 Additional Standards of Completion for Aquifer Wells Encountering Undesirable Water or Constituents**

If a licensed driller encounters undesirable water or constituents and the Aquifer well is not plugged or made into a completed monitoring well, the well driller shall see that the well drilled, deepened, or otherwise altered is promptly completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the licensed driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

(3) The annular space between the casing and the wall of the borehole shall be pressure grouted with grout from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chloride water above 1,500 mg/l or if hydrocarbons are present.

(4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the well bore opposite the undesirable water or constituent zone shall be pressure grouted with grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chloride water above 1,500 mg/l or if hydrocarbons are present.

(5) For class V injection wells that encounter undesirable water or constituents, the licensed driller shall comply with applicable requirements of the commission under Chapter 331, 30 TEX. ADMIN. CODE.

**§ 713.215 Additional Standards for Aquifer Wells Producing Undesirable Water or Constituents**

(a) Aquifer wells completed to produce undesirable water or constituents shall be cased to prevent the mixing of water or constituent zones.

(b) Aquifer wells producing undesirable water or constituents shall be completed in such a manner that will not allow undesirable fluids to flow onto the land surface except when authorization is obtained from the Department and the Authority.

**§ 713.217 Construction Standards for Pre-Existing Aquifer Wells**

(a) Aquifer wells drilled prior to August 21, 2003, are not required to comply with this subchapter unless abandoned, and are grandfathered without further modification unless the well is:

- (1) altered, modified, repaired, or plugged;
- (2) found to be a threat to public health and safety or to water quality; or
- (3) not registered or permitted with the Authority.

(b) The following will be considered a threat to public health and safety or to water quality:

- (1) The annular space around the well casing is open at or near the land surface;
- (2) An unprotected opening into the well casing exists;
- (3) The top of the well casing is below known flood level and is not appropriately sealed; or
- (4) Deteriorated well casings allowing commingling of aquifers or zones of water of different quality, allowing infiltration of surface water, or causing a public nuisance.

(c) If the annular space around the well casing at the surface is not adequately sealed, it shall be the responsibility of each well driller or pump installer to inform the landowner that the well is considered to be a deteriorated well and must be recompleted when repairs are made to the pump or well in accordance with this chapter, and the following specifications:

- (1) The well casing shall be excavated to a minimum depth of four feet and the annular space shall be filled from ground level to a depth of not less than four feet below the land surface with grout. In areas of shallow, unconfined groundwater aquifers, the grout need not be

placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the grout need not be placed below the top of the water bearing strata.

(2) If deteriorated well casing is allowing commingling of aquifers or zones of water of different quality or surface water and causing degradation of the Aquifer, then the well shall be plugged according to Subchapter D or repaired. Procedures for repairs shall be submitted to Authority staff for approval prior to implementation.

(3) If a licensed driller or pump installer finds any of the procedures described by this section to be inapplicable, unworkable, or inadequate, a petition for a waiver may be filed to employ alternative procedures. The waiver must provide that the proposed alternative procedures will prevent injury and pollution. The waiver petition shall be submitted to the Authority for approval prior to implementation of the alternative procedures. The general manager will not approve a waiver petition for an alternative method that is less protective of the Aquifer than the methods stated elsewhere in this section.

(4) Well covers shall be capable of supporting a minimum of 400 pounds and constructed in such a way that they cannot be easily removed by hand.

(d) If an Aquifer well drilled prior to August 21, 2003, is modified, or repaired, the work shall include those changes necessary to make the well conform to this subchapter, including obtaining a well construction permit under § 713.203.

(e) Activities that will invoke Subsection (d) include installing additional casing, repairing existing casing, or any work that may affect the integrity of the annular space seal.

(f) Activities that will not invoke Subsection (d) include modifying or repairing pumping equipment or minor modifications to the well surface completion as long as these activities do not impact the integrity of the well casing or the annular space seal.

(g) Adjusting the depth of an aquifer well drilled prior to August 21, 2003, requires the issuance of a well construction permit under § 713.203, but will not invoke Subsection (d) as long as the activity does not impact the integrity of the well casing or annular space seal.

#### **§ 713.221 No Chemical Storage**

No pesticides, herbicides, organic chemical compounds, inorganic chemical compounds or other hazardous or toxic substances shall be stored within 25 feet of the bore of an Aquifer well, with the exception of water treatment chemicals required for municipal wells and fuels and lubricants required to operate irrigation pumping equipment.

#### **§ 713.223 No Standing Water**

No water shall be allowed to stand (pool) around the bore of a completed Aquifer well.

#### **§ 713.225 No Debris**

The ground, slab or well house floor shall remain clear of debris and shall be sloped away

from an Aquifer well.

#### **§ 713.229      Recompletions**

(a)      The landowner shall have the continuing responsibility of ensuring that an Aquifer well does not allow the commingling of undesirable water or constituents with fresh water or the unwanted loss of water through the well bore to other permeable strata.

(b)      If an Aquifer well is allowing the commingling of undesirable water or constituents with fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well recompleted in accordance with the applicable rules, then the casing in the well shall be perforated and grouted in a manner that will prevent the commingling or loss of water. If such a well has no casing then the well shall be cased and grouted, or plugged in a manner that will prevent such commingling or loss of water.

(c)      Authority staff may direct the landowner to take proper steps to prevent the commingling of undesirable water or constituents with fresh water, or the unwanted loss of water.

#### **§ 713.231      Well Pits**

(a)      No new well pits shall be allowed.

(b)      No person shall modify existing well pits. Any person modifying a well shall eliminate existing well pits and the licensed driller shall extend the casing a minimum of 12 inches above ground level and a minimum of 36 inches above the known flood level, unless a waiver has been granted by the general manager upon written request, and unprotected openings into the well casing that are above ground shall be sealed water tight and an air vent extended a minimum of 36 inches above the known flood level. Any flooring and the walls of the pit shall be broken and removed and the pit shall be filled with compacted earth.

#### **§ 713.233      Water Distribution and Delivery Systems**

The following requirements apply with respect to Aquifer wells operated by a water utility for municipal use:

(a)      The landowner and well owner are responsible for complying with this subchapter. The licensed driller or pump installer shall inform the landowner and well owner of their duty to comply with this section.

(b)      A buried discharge line between the pump discharge and the pressure tank or pressure system in any installation, including a deep well turbine or a submersible pump, shall not be under negative pressure at any time. With the exception of jet pumps, a check valve or an air gap shall be installed in a water line between the well casing and the pressure tank. Either a check valve, or an air gap, as applicable, shall be required on all irrigation well pumps whenever a pump is installed or repaired. All wells shall have either a check valve, or an air gap as applicable.

(c)      Wells shall be vented with watertight joints except as provided by Subsection (b).



(1) Watertight joints, where applicable under this section, shall terminate at least three feet above the known flood level or one foot above the established ground surface or the floor of a pump room or well room, whichever is higher.

(2) The casing vent shall be screened and point downward.

(3) Vents may be offset provided they meet the provisions of this section.

(4) Toxic or flammable gases, if present, shall be vented from the well. The vent shall extend to the outside atmosphere above the roof level at a point where the gases will not produce a hazard.

### **§ 713.235 Chemical Injection, Chemigation, and Foreign Substance Systems**

The following requirements apply with respect to Aquifer wells that utilize chemical injection, chemigation, or foreign substance systems.

(a) The landowner and well owner are responsible for complying with this subchapter. The licensed driller or pump installer shall inform the landowner and well owner of their duty to comply with this section.

(b) All irrigation distribution systems or water distribution systems into which any type of chemical (except disinfecting agents) or other foreign substances will be injected into the water pumped from Aquifer wells shall be equipped with an in-line, automatic quick-closing check valve capable of preventing pollution of the ground water and meeting ASME guide A112.14.1 regarding backwater values. The required equipment shall be installed on all systems whenever a pump is installed or repaired or at the time a chemical injection, chemigation or foreign substance unit is added to a water delivery system or not later than 180 days after August 21, 2003, if the well has a chemical injection, chemigation, or foreign substance unit in the delivery system. The type of check valve installed shall meet the following specifications:

(1) The body of the check valve shall be constructed of cast iron, stainless steel, cast aluminum, cast steel, or of a material and design that provides a sturdy integrity to the unit and is resistant to the foreign substance being injected. All materials shall be corrosion resistant or coated to prevent corrosion. The valve working pressure rating shall exceed the highest pressure to which the valve will be subjected.

(2) The check valve shall contain a suitable automatic, quick-closing and tight-sealing mechanism designed to close at the moment water ceases to flow in the downstream or output direction. The device shall, by a mechanical force greater than the weight of the closing device, provide drip-tight closure against reverse flow. Hydraulic back pressure from the system does not satisfy this requirement.

(3) The check valve construction should allow for easy access for internal and external inspection and maintenance. For purposes of this subsection, “easy access” shall be considered access that is not obstructed by other equipment and that allows fittings and other equipment to be removed and replaced with a minimum of tools without risk of breakage. All

internal parts shall be corrosion resistant. All moving parts shall be designed to operate without binding, distortion, or misalignment.

(4) The check valve shall be installed in accordance with the manufacturer's specifications and maintained in a working condition during all times in which any fertilizer, pesticide, chemical, animal waste, or other foreign substance is injected into the water system. The check valve shall be installed between the pump discharge and the point of chemical injection or foreign substance injection.

(5) A vacuum-relief device shall be installed between the pump discharge and the check valve in such a position and in such a manner that insects, animals, floodwater, or other pollutants cannot enter the well through the vacuum-relief device. The vacuum-relief device may be mounted on the inspection port as long as it does not interfere with the inspection of other anti-pollution devices.

(6) An automatic low pressure drain shall also be installed between the pump discharge and the check valve in such a position and in such a manner that any fluid which may seep toward the well around the flapper will automatically flow out of the pump discharge pipe. The drain must discharge away from rather than flow into the water supply. The drain must not collect on the ground surface or seep into the soil around the well casing.

(A) The drain shall be at least three-quarter ( $3/4$ ) inch in diameter and shall be located in the bottom of the horizontal pipe between the pump discharge and the check valve.

(B) The drain must be flush with the inside surface of the bottom of the pipe unless special provisions, such as a dam made downstream of the drain, forces seepage to flow into the drain.

(C) The opening outside of the drain shall be at least two (2) inches above the grade.

(7) The landowner or well owner may petition for a waiver from the Authority in writing to use an alternative check valve not fully meeting the specifications in this section. The petition should describe in detail the alternative check valve and explain why its use is preferable. The general manager will not approve a waiver petition to approve an alternative method that is less protective of the Aquifer than the methods stated elsewhere in this section.

### **§ 713.237 Pump Installation**

(a) During any repair or installation of a water well pump in an Aquifer well, the licensed pump installer shall make a reasonable effort to maintain the integrity of the well surface completion to protect groundwater quality.

(b) A new, repaired or reconditioned well, or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected.

(c) The pump must allow entry into the well casing for measurement of water levels.

- (d) The pump and piping must include a means to collect a water sample.

#### **§ 713.239 Alternative Minimum Standards**

(a) If the party having an Aquifer well drilled, deepened, plugged, or otherwise altered, the licensed driller, or the party plugging the well, finds any of the requirements or procedures prescribed by Subchapters C or D inapplicable, unworkable, or inadequate, combinations of the prescribed requirements or procedures or alternative procedures may be employed, provided that the proposed alternative requirements or procedures will prevent injury and pollution to the Aquifer. The general manager will not approve waiver petitions for an alternative method that is less protective of the Aquifer than the methods stated elsewhere in this subchapter.

(b) Proposals for waivers to use combinations of prescribed requirements or procedures or alternative requirements or procedures shall be submitted to the Authority for approval prior to their implementation.

(c) If the general manager approves such proposed alternative requirements or procedures, it shall not relieve the party from the obligation to comply with other applicable requirements of federal, state, or local law.

#### **§ 713.241 Well Reports**

(a) Every licensed driller who drills, deepens, or otherwise alters an Aquifer well, shall be properly licensed by the Department and shall make and keep a legible and accurate State Well Report on a form supplied by the Department. Each copy of a State Well Report, other than a Department copy, shall include the name, mailing address, and telephone number of the licensed driller.

(b) Every licensed driller shall deliver or transmit by first-class mail a photocopy of the State Well Report, and any other forms required by the Authority, to the Authority and a copy to the owner or person for whom the well was drilled, deepened or otherwise altered within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(c) If no well report is filed with the Authority within 60 days from the date of expiration of a well construction permit issued by the Authority, the Authority will presume that the licensed driller has failed to comply with this section. To avoid this presumption, the licensed driller may notify the Authority within 60 days after the date of expiration of a permit if the activities authorized by a permit have not been conducted.

#### **§ 713.243 Reporting Undesirable Water or Constituents**

(a) Each licensed driller shall inform, within 24 hours, the landowner or person having an Aquifer well drilled, deepened, or otherwise altered or their agent when undesirable water or constituents have been encountered.

- (b) Within thirty (30) days of encountering undesirable water or constituents, the

licensed driller shall submit the information to the Authority, and the landowner or person having the well drilled, deepened, or otherwise altered, on forms authorized by the Department:

(1) A statement signed by the licensed driller indicating that the landowner or person having the well drilled, deepened, or otherwise altered, has been informed that undesirable water or constituents have been encountered; and

(2) A copy of the Undesirable Water or Constituents Report required under 16 TEX. ADMIN. CODE § 76.701, as may be amended.

#### **§ 713.245 Field Inspections and Advance Notice**

To ensure compliance with this subchapter, the Authority may initiate field inspections, investigations, or observation of any Aquifer well, or any drilling, capping, plugging, completion, operation, alteration, maintenance, abandonment, or any other operations covered by this chapter. To effectuate this section, the licensed driller shall provide notice to the Authority at least two business days prior to the initiation of any well drilling, deepening, altering, capping, plugging or completion operations.

#### **§ 713.247 Injection Wells Prohibited; Certain Exceptions**

(a) Except as provided in Subsection (b), within the boundaries of the Authority, no person may:

(1) construct install, drill, alter, or complete an injection well that transects or terminates in the Aquifer; or

(2) alter a well to become an injection well that transects or terminates in the Aquifer.

(b) injection wells within the boundaries of the Authority that transect or terminate in the Aquifer may be constructed, installed, drilled, equipped, or completed only if:

(1) the wells meet the criteria in 30 TEX. ADMIN. CODE § 331.19; or

(2) water is injected through the wells by a municipally owned utility owned by the City of New Braunfels, and

(i) the water has a total dissolved solids concentration of less than 1,500 milligrams per liter and is not domestic wastewater, municipal wastewater, or reclaimed water as those terms are defined by 30 TEX. ADMIN. CODE Ch. 210, effective October 31, 2018;

(ii) the injection well terminates in a portion of the Aquifer that contains groundwater with a total dissolved solids concentration of more than 5,000 milligrams per liter;

(iii) if the water injected is state water, the utility has a water right or contract for use of the water that does not prohibit use of the water in an aquifer storage and recovery project; and

(iv) the injection of water complies with requirements imposed under Subchapter G, Chapter 27, TEX. WATER CODE.

## **Subchapter D. Well Closures**

### **Section**

713.300	Purpose
713.302	Applicability
713.304	Duty to Cap Wells
713.306	Duty to Plug Wells
713.308	Applications for Well Capping Permits
713.310	Basis for Approval of Capping Applications
713.312	Applications for Well Plugging Permits
713.314	Basis for Approval of Plugging Applications
713.316	Contents of Well Plugging and Capping Permits
713.318	Standards for Capping Wells
713.320	Standards for Plugging Wells
713.322	Alternative Minimum Standards for Capping and Plugging

### **§ 713.300 Purpose**

(a) The purpose of this subchapter is to implement §§ 1.03(17) and (21), 1.08(a), 1.15(a) and (b), 1.35(d), and 1.361 of the Act by regulating well closure activities:

- (1) to prevent the waste of groundwater in the Aquifer;
- (2) to prevent the pollution of groundwater in the Aquifer;
- (3) to protect the water quality of the Aquifer; and
- (4) to protect the water quality of the surface streams to which the Aquifer provides springflows.

(b) For the purposes of this subchapter, the following terms have the following meanings:

(1) open well - means a well that is open at the surface or through the casing, including any annulus or failure in the annular seal, the well seal, or sanitary seal that allows movement of water, contaminants, or other material between different subsurface formations or between subsurface formations and the ground surface. An open well is considered a deteriorated well;

(2) uncovered well - means a well that is open at the surface that is not a deteriorated well and can be properly capped.

### **§ 713.302 Applicability**

This subchapter applies to Aquifer wells located within the boundaries of the Authority.

### **§ 713.304      Duty to Cap Wells**

(a) It is the responsibility of landowners, or their lessee or licensed driller or pump installer, to cap or have capped any well that is open at the surface in accordance with:

- (1) 16 TEXAS ADMIN. CODE § 76.1004, as amended; and
- (2) this subchapter.

(b) No person may cap a well without first obtaining from the Authority a well capping permit. All landowners, or their lessee or licensed driller or pump installer, are required to maintain a copy of the permit at the site of the well capping activity.

(c) Capping shall be completed within 90 days after the capping permit is issued, unless otherwise provided in the permit.

(d) It is the responsibility of each licensed driller or pump installer to inform the landowner, or his lessee, that the well must be capped by the landowner, or his lessee, licensed driller, or pump installer, under the Authority's standards in this subchapter.

(e) It is the responsibility of the licensed driller of a newly drilled well and the licensed pump installer to place a cover over the boring or casing of any Aquifer well that is to be left temporarily unattended with the pump removed; however, no well shall be left unattended for longer than one month unless done so in compliance with Subsection (a). Well covers shall be capable of preventing surface pollutants from entering the well and of supporting a minimum of 400 pounds and shall be constructed in such a way that they cannot be easily removed by hand. A well capping permit is not required for this activity.

(f) If a capped well has not been placed into service within five years of the issuance of a capping permit, then the permit holder, in order to keep the well capped, must file an application to renew the capping permit, and must continue to do so at five-year intervals until the well is placed into service or plugged.

(g) Once a capping permit has been issued, the permit holder shall not engage in any capping activity without first providing to the Authority advance notice of the date and time at which capping operations will begin. Such notice shall be submitted to the Authority not less than two business days prior to the commencement of capping activities. Representatives of the Authority shall be entitled to attend and observe all capping activities, and may order capping operations to cease if they find that capping is not being conducted in compliance with requirements of this subchapter or the terms of the capping permit.

(h) If the owner or lessee of land on which an open or uncovered well is located fails or refuses to cap the well in compliance with Chapter 1901, TEX. OCCUPATIONS CODE, and the Authority's rules, the Authority may take enforcement action in accordance with § 717.116 to require the owner or lessee to cap the well.

### **§ 713.306      Duty to Plug Wells**

(a) It is the responsibility of the landowners, or their lessee or licensed driller or pump installer, to plug or have plugged an abandoned or deteriorated well.

(b) No person may plug a well without first obtaining from the Authority a well plugging permit. All landowners, or their lessee or licensed driller or pump installer, are required to maintain a copy of the permit at the site of the well plugging activity.

(c) Plugging shall be completed within 180 days from the date on which the landowner, or his or her lessee, learns of the well's abandonment or deteriorated condition, or by the date specified in any permit to plug the well, whichever is later.

(d) If the well is an abandoned well or a deteriorated well, it is the responsibility of each licensed driller or pump installer to inform the landowner, or his lessee, that the well must be plugged by the landowner, or his lessee, licensed driller, or licensed pump installer under the Authority's standards in this subchapter.

(e) It is the responsibility of the landowner or his lessee or licensed driller, to see that any Aquifer well which encounters undesirable water or constituents is plugged or converted into a monitoring well under the Authority's standards in this subchapter.

(f) Where a landowner, or his lessee or other person, denies a licensed driller or pump installer access to the well that requires plugging or otherwise precludes the driller or pump installer from plugging the well that has encountered undesirable water or constituents, the driller or pump installer shall, within 48 hours, provide to the Authority a copy of the statement prescribed in 16 TEX. ADMIN. CODE § 76.702(e)(1), as may be amended.

(g) It is the responsibility of the landowner, or his lessee, to plug or have plugged, a monitoring well that has not been used within the last 12 months, unless permission to continue to operate the monitoring well is obtained from the Authority.

(h) The person that plugs a well shall, within 30 days after plugging is complete, submit to the Authority a copy of the State Plugging Report required by the Department under 16 TEX. ADMIN. CODE § 76.700(2), as may be amended.

(i) Once a permit to plug a well has been issued, the permit holder shall not engage in any plugging activity without first providing to the Authority advance notice of the date and time at which plugging operations will begin. Such notice shall be submitted to the Authority not less than two business days prior to the commencement of plugging activities. Representatives of the Authority shall be entitled to attend and observe all plugging activities, and may order plugging operations to cease if they find that plugging is not being conducted in compliance with requirements of this subchapter or the terms of the permit to plug a well.

(j) If the owner or lessee of land on which an open or uncovered well is located fails or refuses to plug the well in compliance with Chapter 1901, TEX. OCCUPATIONS CODE, and the Authority's rules, the Authority may take enforcement action in accordance with § 717.116 to require the owner or lessee to plug the well.



### **§ 713.308 Applications for Well Capping Permits**

Persons desiring to cap a well, or required to cap a well under § 713.304, must file with the Authority an application for a permit to cap the well on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 713.310.

### **§ 713.310 Basis for Approval of Capping Applications**

(a) The general manager shall grant an application for a permit to cap a well if the following elements are established:

- (1) the applicant paid the application fee and any applicable administrative fee;
- (2) the well head is located within the boundaries of the Authority;
- (3) the applicant is legally entitled to cap the well;
- (4) the proposed capping would not negatively affect the Aquifer or other permit holders;
- (5) the well is not deteriorated, as shown by the natural gamma, caliper geophysical, or video well log, as determined to be appropriate in the judgment of the Authority, which is required to be submitted with the application;
- (6) the well will be capped consistent with the requirements of the Act, the Authority's rules, and any applicable local, state, or federal laws;
- (7) the application complies with the Act and the Authority's rules; and
- (8) the applicant is otherwise in compliance with the Act, the Authority's rules, other permits, and orders of the Board, and if not in compliance, the act of capping the well will result in the applicant coming into compliance.

(b) When issuing an application for a capping permit, the Authority may approve the capping method and materials proposed to be used by the applicant, or may prescribe modified or alternative capping methods or materials.

(c) The administrative fee under Section (a)(1) is \$100 for each capping permit and for each subsequent renewal under Section 713.304(f).

### **§ 713.312 Applications for Well Plugging Permits**

Persons desiring to plug a well, or required to plug a well under § 713.306, must file with the Authority an application for a permit to plug the well on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 713.314.

### **§ 713.314      Basis for Approval of Plugging Applications**

(a)      The general manager shall grant an application for a permit to plug a well if the following elements are established:

- (1)      The applicant paid the application fee;
- (2)      The well head is located within the boundaries of the Authority;
- (3)      The applicant is legally entitled to plug the well;
- (4)      The proposed plugging would not negatively affect the Aquifer or other permit holders;
- (5)      The well will be plugged consistent with the requirements of the Act, the Authority's rules, and any applicable local, state, or federal laws;
- (6)      the application complies with the Act and the Authority's rules; and
- (7)      the applicant is otherwise in compliance with the Act, the Authority's rules, other permits, and orders of the Board, and if not in compliance, the act of plugging the well will result in the applicant coming into compliance.

(b)      When issuing a permit to plug a well, the Authority may approve the plugging method and materials proposed to be used by the applicant or may prescribe modified or alternative plugging methods or materials which are consistent with the requirements of this subchapter.

### **§ 713.316      Contents of Well Plugging and Capping Permits**

Well plugging and capping permits shall contain the following:

- (1)      name, address and telephone number of the owner of the permit;
- (2)      name, address and telephone number of an authorized representative, if any, of the owner;
- (3)      permit category;
- (4)      permit term;
- (5)      a detailed description and diagram of the plugging or capping methods and materials authorized to be used;
- (6)      legal description suitable to the Authority of the property on which the well is located;
- (7)      reporting requirements as appropriate;

(8) notice that the permit is subject to the limitations provided in the Act and these rules; and

(9) any other appropriate terms or conditions as determined by the general manager to be appropriate for the plugging or capping of the well.

### **§ 713.318 Standards for Capping Wells**

Aquifer wells shall be capped in accordance with the standards in 16 TEX. ADMIN. CODE § 76.1004, as may be amended, and the following specifications:

- (a) the well cap must be capable of supporting 400 pounds and not be easily removable by hand;
- (b) provide a water-tight seal; and
- (c) the well head must comply with § 713.211.

### **§ 713.320 Standards for Plugging Wells**

Aquifer wells shall be plugged in accordance with the standards in 16 TEX. ADMIN. CODE § 76.1004, as may be amended, and the following specifications:

(a) Before plugging, the licensed driller or pump installer shall measure the depth and check to ensure that there are no obstructions within the well that may interfere with plugging operations. The licensed driller or pump installer shall pull, perforate, or drill out screens, casings and liner pipes whenever practicable to assure placement of an effective seal. The licensed driller or pump installer shall pull all reasonably removable casing, and a minimum of at least the upper five (5) feet of casing, liner pipe, brick, stone, metal, or other materials in all wells to prevent the passage of water along the casing and entering the water-bearing strata. Unless otherwise authorized by the Authority, the licensed driller or pump installer shall pull rather than cut the top joint of all plastic casings. If it is deemed not practicable to pull the top joint of a steel casing, the steel casing joint may be cut. The licensed driller or pump installer shall disinfect the well and fill materials by using a disinfecting solution with a minimum chlorine concentration of 50 mg/l, placed in the well. The licensed driller or pump installer shall place the fill material in the well after the water in the well has been disinfected. Grouts do not require disinfecting.

(b) The well owner shall provide to the Authority a geophysical log of the Aquifer well from bottom to top before plugging operations begin. The geophysical log shall be used to determine the condition of the well and whether protective measures in addition to those specified in this section should be mandated by the Authority to ensure the well is plugged sufficiently to protect the Aquifer. The geophysical log shall include a natural gamma ray log and caliper log. The natural gamma ray well log shall be presented to the Authority using a horizontal scale that spans the log data over a 5-inch linear grid on log track 4 as defined by American Petroleum Institute Recommended Practice 31A dated August 1997. Based upon the review of the geophysical log, the Authority reserves the right to request additional well data or impose more stringent plugging standards than those specified elsewhere in this section.

(c) If an Aquifer well is to be plugged, the entire well, including the annular space and casing, shall be pressure filled with grout via a tremie pipe from bottom up to the land surface in accordance with the following applicable procedures:

(1) For wells with no artesian flow of water:

(A) The licensed driller or pump installer shall completely fill the well, including the annular space and casing, with the grout appropriate for the well plugging circumstance.

(B) The licensed driller or pump installer shall not use sand or stone aggregate except for those wells for which a well record or geophysical log is on file with the Authority. Use of sand or stone aggregate shall be considered a special case and the method of filling and sealing such wells shall be subject to written approval by the Authority prior to sealing. Under these conditions, the Authority may allow the use of sand or stone aggregate to fill through the water-producing horizon below the base of the casing, if there is limited vertical movement of water in the formation and such movement will not adversely affect the quality and quantity of water in producing wells. Where sand or stone aggregate fill is allowed by the Authority, the licensed driller or pump installer shall place the grout appropriate for the well plugging circumstance immediately above the sand or stone aggregate fill, extending up to within two (2) feet of the ground surface. When used, stone aggregate may not be more than one-third (1/3) of the diameter of the well or two inches, whichever is smaller.

(C) The licensed driller or pump installer shall fill the uppermost two (2) feet of the borehole with clay or an impermeable material appropriate to the intended use of the land. In cases where bentonite grout is used to fill the well, the top two feet of grout must consist of cement as an atmospheric barrier.

(D) In the event the casing cannot be pulled or drilled out, the licensed driller or pump installer shall use the grout appropriate for the well plugging circumstance to fill the remaining length of the casing.

(2) For flowing artesian wells:

(A) the licensed driller or pump installer shall pressure cement such well with neat cement mixed with a minimum quantity of water that will permit handling. In order to place the cement, the driller or pump installer shall restrict the flow of water from the well.

(B) Stone aggregate not more than one-third (1/3) of the diameter of the hole, or two (2) inches, whichever is smaller, may be placed through the water-bearing horizon if its extent is known.

(C) The licensed driller or pump installer shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow. Temporary bridges shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction shall be acceptable. Heavy drilling mud may also be used to offset pressure in a flowing artesian well if the mud does not

consist of recycled material.

(D) The licensed driller or pump installer shall place the neat cement grout in one (1) continuous operation from the top of the packer, plug or bridge to five (5) feet below the land surface.

(E) The licensed driller or pump installer shall fill the uppermost five (5) feet of the borehole with clay or an impermeable material appropriate to the intended use of the land.

(F) In the event the casing cannot be pulled or drilled out, the licensed driller or pump installer shall use the grout appropriate for the well plugging circumstance to fill the remaining length of the casing.

(d) In lieu of the procedure in Subsection (c), any zone(s) contributing undesirable water or constituents, or the fresh water zone(s) within the well shall be isolated with grout plugs and the remainder of the well bore filled with bentonite grout (ten pounds per gallon mud or more with a marsh funnel viscosity of 50 seconds or equivalent) to form a base for a grout plug extending from a depth of not less than two feet to the land surface, or if the section(s) of well bore to be filled with bentonite grout has 100 feet or less of standing water the section(s) may be filled with a solid column of three-eighths ( $\frac{3}{8}$ ) inch or larger granular sodium bentonite hydrated at frequent intervals while strictly adhering to the manufacturers recommended rate and method of application. If a bentonite grout is used, it should be set sufficiently to support the two-foot thick grout plug. The top two feet above any bentonite grout or granular sodium bentonite shall be filled with cement as an atmospheric barrier.

### **§ 713.322 Alternative Minimum Standards for Capping and Plugging**

Licensed drillers or pump installer may apply to the Authority for a waiver in writing for an alternative method of plugging or capping a well. The petition should state in detail the alternative method proposed and all conditions applicable to the well that would make the alternative method preferable to those methods stated elsewhere in this section. The general manager will not approve an alternative method that is less protective of the Aquifer than the methods stated elsewhere in this section. Any person seeking a waiver from any provision of this subchapter may seek a the waiver under § 713.239.

## **Subchapter E.        Spill Reporting**

### **Section**

713.400	Purpose
713.401	Applicability
713.403	Notification Requirements
713.405	Reportable Quantities (RQ)
713.407	Authority Recommendation on Response
713.409	Action Required

### **§ 713.400        Purpose**

The purpose of this subchapter is to regulate certain activities having the potential to pollute the Aquifer and hydraulically-connected surface streams in order to protect existing and potential uses of groundwater. The activities addressed are those related to the response to unauthorized discharges in violation of a permit issued by the Commission under TEX. WATER CODE § 26.121, and discharges or spills of oil, petroleum products, used oil, hazardous substances, industrial solid waste or other substances on the recharge zone and contributing zone of the Aquifer.

### **§ 713.401        Applicability**

(a) This subchapter applies to discharges or spills that result in a release to the environment occurring within the:

(1) recharge zone of the Aquifer; or

(2) the contributing zone of the Aquifer five miles up-gradient of the recharge zone, or to the limit of the five-mile water quality buffer zone, whichever is less, excluding the portion of Cibolo Creek up-gradient of the recharge zone, as indicated on the official maps of the Authority.

(b) This subchapter does not apply to:

(1) releases only to air;

(2) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under 30 TEX. ADMIN. CODE Chapter 335, Subchapter A;

(3) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;

(4) discharges that are authorized by a permit, order, or rule issued under

federal law or any other law of the State of Texas;

(5) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency under 40 C.F.R. § 302.8;

(6) discharges or spills from motor vehicles, rolling stock or airplanes; or

(7) sources otherwise regulated by the Railroad Commission of Texas.

### **§ 713.403 Notification Requirements**

(a) In addition to notification requirements of the Commission, a responsible party shall notify the Authority of any discharge or spill that is in a quantity equal to or greater than the reportable quantity listed in § 713.405 in any 24-hour period.

(b) The responsible person shall notify the Authority as soon as possible but not later than 72 hours after the discovery of the spill or discharge.

(c) The responsible person shall notify the Authority in any reasonable manner, including by telephone, in person, or by any other method approved by the Authority. In all cases, the notification shall provide, to the extent known, the information listed in Subsection (d). The responsible person shall notify the Authority during normal business hours at the Authority's business office.

(d) The notification shall provide, to the extent known, the information in the following list. Copies of spill reports prepared for other governmental agencies shall satisfy this requirement if they contain, or are supplemented to contain, all the information required by this subsection. The notification shall contain:

- (1) the name, address and telephone number of the person making the report;
- (2) the date, time, and location of the spill or discharge;
- (3) a specific description or identification of the substances discharged or spilled;
- (4) an estimate of the quantity discharged or spilled;
- (5) the duration of the incident;
- (6) the name of the surface water or a description of the water affected or threatened by the discharge or spill;
- (7) the source of the discharge or spill;
- (8) a description of the extent of actual or potential water pollution or harmful

impacts to the environment and an identification of any environmentally sensitive areas or natural resources at risk;

(9) if different from Subsection (d)(1) of this section, the names, addresses, and telephone numbers of the responsible person and the contact person at the location of the discharge or spill;

(10) a description of any actions that have been taken, are being taken, and will be taken to contain and respond to the discharge or spill;

(11) any known or anticipated health risks;

(12) the source of potable water for the facility and any notices that may have been given to the water purveyor. If the facility is supplied by a water well or wells, include the number and location of the wells and the groundwater source for the wells;

(13) the identity of any governmental representatives, including state or local authorities or third parties, responding to the discharge or spill; and

(14) any other information that may be significant to the response action.

(e) The responsible person shall notify the Authority as soon as possible whenever necessary to provide information regarding a change in the response to the spill or discharge.

(f) Notifying the Authority that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred. Furthermore, if the responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the Authority documenting that determination. If the Authority agrees with that determination, the Authority will note the determination in the Authority's records. If the Authority disagrees with that determination, the Authority will notify the responsible person within 30 days.

(g) Complying with the notification requirements set forth in this section does not relieve, satisfy, or fulfill any other notification requirements imposed by other local, state, or federal law.

#### **§ 713.405 Reportable Quantities (RQ)**

(a) Hazardous substances. The RQ for hazardous substances shall be:

(1) for spills or discharges onto land - the quantity designated as the Final Reportable Quantity in Table 302.4 in 40 C.F.R. § 302.4;

(2) for spills or discharges into water - the quantity designated as the Final Reportable Quantity in Table 302.4 in 40 C.F.R. § 302.4, except where the Final Reportable Quantity is greater than 100 pounds in which case the RQ shall be 100 pounds;



(3) where no Final Reportable Quantity is designated in 40 C.F.R. § 302.4, the RQ shall be 100 pounds.

(b) Oil, petroleum product, and used oil.

(1) The RQ for crude oil and oil other than that defined as petroleum product or used oil shall be:

(A) for spills or discharges onto land - 210 gallons (five barrels); or

(B) for spills or discharges directly into water - quantity sufficient to create a sheen.

(2) The RQ for petroleum products and used oil shall be:

(A) except as noted in Subparagraph (2)(B) of this subsection, for spills or discharges onto land - 25 gallons;

(B) for spills or discharges to land from PST-exempted facilities - 210 gallons (five barrels); or

(C) for spills or discharges directly into water - quantity sufficient to create a sheen.

(c) The RQ for spills or discharges of industrial solid waste or other regulated substances into water or onto land shall be 100 pounds.

(d) The RQ for unauthorized spills or discharges in violation of a wastewater discharge permit issued by the Commission under TEX. WATER CODE § 26.027 shall be 500 gallons.

(e) When a regulated substance is mixed with any other substance:

(1) if the quantity of the regulated substance(s) in the spill or discharge is known, notification is required only where a RQ or more of any regulated substance is spilled or discharged; or

(2) if the quantity of the regulated substance(s) in the spill or discharge is not known, notification is required when the total amount of the spill or discharge equals or exceeds the RQ for any regulated substance present in the mixture.

#### **§ 713.407 Authority Recommendations on Response**

The general manager may make a written recommendation to state and local authorities and third parties regarding responding to the discharge or spill no later than 15 days from the

receipt of notice, or sooner as may be necessary to prevent or minimize the pollution of the Aquifer and hydraulically-connected surface streams.

**§ 713.409      Action Required**

(a)      The responsible person shall immediately abate and contain the spill or discharge and take all other appropriate actions in order to cease or prevent the pollution of the Aquifer. Reasonable response actions by the responsible party may include, but are not limited to, the following actions:

- (1)      arrival of the responsible person or response personnel hired by the responsible person at the site of the discharge or spill;
- (2)      initiating efforts to stop the discharge or spill as may be necessary to cease or prevent the pollution of the Aquifer;
- (3)      minimizing the impact to the public health and the Aquifer;
- (4)      neutralizing the effects of the incident on the Aquifer;
- (5)      removing the discharged or spilled substances as may be necessary to cease or prevent the pollution of the Aquifer; and
- (6)      managing the wastes.

(b)      In conducting its activities, the responsible person shall cooperate fully with the Authority, the Commission and the local incident command system.

(c)      If the Board believes that the responsible person is not abating and containing the spill or discharge and taking all other appropriate actions in order to cease or prevent the pollution of the Aquifer, then the Board may take such enforcement action as may, in its judgment, be appropriate as provided by the Act, Chapter 717, or other applicable law.

## **Subchapter F. Regulated Substances Registration, Storage, and Planning**

### **Section**

713.500	Purpose
713.501	Applicability
713.503	Registration of Facilities Storing Regulated Substances
713.505	General Storage Standards

### **§ 713.500 Purpose**

The purpose of this subchapter is to regulate certain activities having the potential to pollute the Aquifer and Hydraulically-connected surface streams in order to protect existing and potential uses of groundwater. The activities addressed are those related to the storage of regulated substances and the control of fires on the Recharge Zone and Contributing Zone of the Aquifer.

### **§ 713.501 Applicability**

(a) This subchapter applies to any facility storing regulated substances for resale or other non-residential use:

(1) within the Recharge Zone of the Aquifer; or

(2) within the Contributing Zone of the Aquifer five miles up-gradient of the Recharge Zone, or to the limit of the five-mile water quality buffer zone, whichever is less, excluding the portion of Cibolo Creek up-gradient of the Recharge Zone, as indicated on the official maps of the Authority.

(b) This subchapter does not apply to ASTs or USTs regulated under Subchapter G.

### **§ 713.503 Registration of Facilities Storing Regulated Substances**

(a) The Owner or Operator of a facility storing an aggregate quantity of more than 1,000 gallons of regulated substances in containers of less than 500 gallons that are located on the Recharge Zone shall register the facility on a form prescribed by the Authority and include the following information:

(1) The information specified in § 707.509; however, the signatory requirements for such registrations shall be described on the registration form rather than those contained in sections 707.509(a)(2) and (b);

(2) the name, physical and mailing address, telephone number, fax number, and email address of both the facility Owner and Operator.

(3) a general description of the types and volume of regulated substances stored at the facility;

(4) a site location map, prepared and stamped by a Qualified Groundwater Professional, that includes a facility diagram with a north arrow and scale, and identifies:

- (A) all recharge features;
- (B) the locations of all water wells and monitoring wells;
- (C) site drainage patterns;
- (D) the locations of all storm sewer inlets;
- (E) the locations of all firefighting water connections; and
- (F) the location(s) of any regulated substance traps incorporated in the site design; and

(5) Any other information relevant to the storage of regulated substances at the facility as may be required by Authority staff.

(b) The Owner or Operator of a facility storing an aggregate quantity of more than 1,000 gallons of regulated substances in containers of less than 500 gallons that are located on the Contributing Zone shall register the facility on a form prescribed by the Authority and include the following information:

(1) The information specified in § 707.509; however, the signatory requirements for such registrations shall be described on the registration form rather than those contained in sections 707.509(a)(2) and (b);

(2) the name, physical and mailing address, telephone number, fax number, and email address of both the facility Owner and Operator;

(3) a general description of the types and volume of regulated substances stored at the facility;

(4) a site location map, including a facility diagram with a north arrow and scale; and

(5) Any other information as may be required by Authority staff.

(c) Owners and Operators are responsible for compliance with this section.

(d) Each registration shall be renewed every three years after initial registration.

#### **§ 713.505 General Storage Standards**

The Owner or Operator of a facility with any container less than 500 gallons in size used to store regulated substance shall maintain the container in a manner that prevents physical damage to

the container, such as crushing, puncturing, rupture, or corrosion and protects against damage.

## **Subchapter G. Aboveground and Underground Storage Tanks**

### **Section**

713.601	Purpose
713.603	Applicability
713.604	Registration of Aboveground and Underground Storage Tanks
713.605	Requirements and Prohibitions for Aboveground Storage Tanks
713.606	Secondary Containment for Aboveground Storage Tanks Located on the Recharge Zone
713.607	Requirements and Prohibitions for Underground Storage Tanks
713.608	Tertiary Containment for Underground Storage Tanks Located on the Recharge Zone
713.609	Major Modifications for Aboveground and Underground Storage Tanks
713.610	Notifications and Commencement of Construction
713.611	Operational Status of Aboveground and Underground Storage Tanks
713.612	Recognized Capacity Program for Underground Storage Tanks
713.613	Exemptions
713.614	General Storage Standards
713.615	Inspections and Compliance
713.616	Action Required for Release, Discharge, or Spill

### **§ 713.601 Purpose**

(a) The purpose of this subchapter is to regulate certain activities having the potential for polluting the Aquifer and Hydraulically-connected surface streams in order to protect existing and potential uses of groundwater. The activities addressed are those connected with ASTs and USTs containing regulated substances

(b) Consistent with § 1.01 and § 1.08(a) of the Act, and TEX. WATER CODE § 26.401, the goal of this subchapter is that the existing quality of groundwater in the Aquifer be maintained, consistent with the protection of public health and welfare, the propagation and protection of terrestrial and aquatic life, the protection of the environment, and the maintenance and enhancement of the long-term economic health of the state.

(c) Nothing in this subchapter is intended to restrict the powers of the Commission or any other governmental entity to prevent, correct, or curtail activities that result or may result in pollution of the Aquifer or Hydraulically-connected surface waters.

### **§ 713.603 Applicability**

This subchapter applies to existing and proposed ASTs with a reservoir capacity of 500 gallons or greater and all USTs that are installed or constructed:

- (a) on the Recharge Zone; or
- (b) within the Contributing Zone five miles up-gradient of the Recharge Zone, or to the limit of the five-mile water quality buffer zone, whichever is less, excluding the portion of Cibolo

Creek up-gradient of the Recharge Zone, as indicated on the official maps of the Authority.

**§ 713.604 Registration of Aboveground and Underground Storage Tanks**

(a) The Owner or Operator of a regulated AST or UST located on the Recharge Zone shall register the tank on a form prescribed by the Authority, and include the following information:

(1) The information specified in § 707.509; however, the signatory requirements for such registrations shall be described on the registration form rather than those contained in sections 707.509(a)(2) and (b);

(2) The name, physical and mailing address, telephone number, fax number, and e-mail address of the AST or UST Owner and Operator;

(3) The name, physical and mailing address, telephone number, fax number, and e-mail address of the Owner of the facility where the AST or UST is located;

(4) The physical location, mailing address, and telephone number of the facility;

(5) The TCEQ facility identification number(s), if any, for the facility where the AST or UST is located;

(6) The tank identification number in accordance with § 713.605(b);

(7) The date each AST or UST was installed;

(8) The contents and volume of each AST or UST;

(9) A facility map which includes the location and identification number of each AST or UST;

(10) A list of any governmental agency registration numbers applicable to the ASTs or USTs or the facility;

(11) The type of containment (tertiary, secondary, or none at the time of registration) for each AST or UST;

(12) The operational status of each AST or UST; and

(13) Any other information relevant to the storage of regulated substances in an AST or UST as may be required by Authority staff.

(b) The Owner or Operator of an AST or UST located on the Contributing Zone shall register the tank on a form prescribed by the Authority, and include the following information:

(1) Location of the facility where the AST or UST is located;

(2) The contents and volume of each AST or UST; and

(3) Any other information relevant to the storage of regulated substances in an AST or UST as may be required by Authority staff.

(c) Owners and Operators are responsible for compliance with this section.

(d) An Owner or Operator of a regulated AST or UST shall register all ASTs or USTs located at the same facility on the same form.

(e) Each registration shall be renewed every three years after initial registration.

(f) An updated registration documenting any changes or additional information concerning the status of any regulated tanks or facilities shall be filed with the Authority within 30 days of the occurrence of the change or addition, or within 30 days from the date on which the Owner or Operator first became aware of the change or addition.

(g) The Owner or Operator of an AST or UST located on the Recharge Zone may not fill the AST or UST unless a registration is on file and approved by the Authority.

#### **§ 713.605 Requirements and Prohibitions for Aboveground Storage Tanks**

(a) No person may install or construct a regulated AST in, above, or on the Recharge Zone unless the construction of the AST complies with the major modification process in Section 713.609 or its associated exemptions.

(b) Each AST located on the Recharge Zone shall have an identification number which shall be clearly and legibly marked on the AST and identified on both the tank's registration and associated facility map. The identification number may be the same as used for Commission registration requirements, but if the AST does not have a Commission registration number, an identification number must be assigned to the AST by the Owner or Operator.

(c) Irrespective of any other provision in these rules, no later than December 31, 2018, the Owner or Operator of an existing, regulated AST located on the Recharge Zone shall:

(1) incorporate an approved method of secondary containment; or

(2) remove the AST from service by:

(A) temporary removal from service in accordance with § 713.611(a);

(B) permanent abandonment in place in accordance with § 713.611(b); or

(C) permanent removal from the Recharge Zone in accordance with § 713.611(c).

#### **§ 713.606 Secondary Containment for Aboveground Storage Tanks Located on the Recharge Zone**

(a) Secondary containment for an AST located on the Recharge Zone shall consist of the



following general design standards:

(1) constructed within a controlled drainage area sized to capture one and one-half (1.5) times the storage capacity of the AST or ASTs;

(2) constructed of, and in a material impervious to, the substance(s) being stored; and

(3) constructed to direct spills to a convenient point for collection and recovery.

(b) The Owner or Operator of an AST located on the Recharge Zone may propose an alternative method to the general design standards for secondary containment through the application for major modification process. Alternative standards may consist of elements such as double walled containers that incorporate a leak detection sensor, the installation of a roof above a drainage area, or double walled piping. The general manager will not approve an alternative method that is less protective of the Aquifer than the general design standards contained in subsection (a).

#### **§ 713.607 Requirements and Prohibitions for Underground Storage Tanks**

(a) On or after October 18, 2002, no person may install or have installed any UST for the purpose of storing or otherwise containing regulated substances on the Recharge Zone, unless the UST is:

(1) the result of an Authority-approved major modification associated with the incorporation of tertiary containment for the UST under subsection (c); or

(2) the installation of a new UST resulting from a transfer of recognized capacity in accordance with § 713.612.

(b) Any UST installed on or after October 18, 2002, that is not in compliance with subsection (a) shall be permanently removed from the Recharge Zone.

(c) Irrespective of any other provision in these rules, within thirty years from the date of installation, the Owner or Operator of a UST installed prior to October 18, 2002, and located on the Recharge Zone shall:

(1) incorporate a method for tertiary containment through the major modification process contained in § 713.609; or

(2) remove the UST from service by:

(A) temporary removal from service in accordance with § 713.611(a);

(B) permanent abandonment in place in accordance with § 713.611(b); or

(C) permanent removal from the Recharge Zone in accordance with § 713.611(c).

#### **§ 713.608 Tertiary Containment for Underground Storage Tanks Located on the Recharge**

## **Zone**

At a minimum, tertiary containment for all USTs located on the Recharge Zone shall consist of an additional wall or barrier installed outside of a form of secondary containment (tank or piping) or other secondary barrier in a manner designed to prevent a release of the contents of the UST from migrating beyond the tertiary wall or barrier before the release can be detected. Tertiary containment systems include, but are not limited to impervious liners and vaults surrounding a secondary tank and/or piping system, or equivalent triple wall tank or piping system as approved by the general manager.

### **§ 713.609 Major Modifications for Aboveground and Underground Storage Tanks**

(a) Except as provided in subsection (c), the Owner or Operator of an AST or UST located on the Recharge Zone who intends to perform any major modification on any AST or UST must submit an application for major modification to the Authority on a form prescribed by the Authority containing relevant information related to the requirements of this subchapter and § 707.509 and obtain an approval letter from the general manager prior to the commencement of construction of the modification.

(b) For the purposes of this subsection, a major modification is:

(1) replacement of an existing UST with:

(A) a UST of identical or less volume capacity than the UST being replaced;

(B) a UST with more volume capacity than the UST being replaced if the added capacity is the result of a transfer of capacity in accordance with § 713.612;

(C) multiple USTs where the combined volume capacity of all replacement USTs is less than or equal to the UST being replaced; or

(D) multiple USTs where the combined volume capacity of all replacement USTs is greater than the UST being replaced if the added capacity is the result of a transfer of capacity in accordance with § 713.612;

(2) installation or construction of new or replacement piping;

(3) an upgrade to proper containment in accordance with § 713.605(c) or 713.607(c);

(4) installation or construction of a new UST through a transfer of capacity in accordance with § 713.612; or

(5) installation or construction of a new AST in accordance with § 713.605(a).

(c) This section does not apply to:

(1) ASTs that have incorporated or will incorporate a form of secondary

containment as part of an Aboveground Storage Tank Facility Plan or Edwards Aquifer Protection Plan approved by the Commission if:

- (A) a copy of the plan is submitted to the Authority;
- (B) documentation of plan approval by the Commission is submitted to the Authority; and
- (C) documentation of any modifications or exceptions associated with the plan is submitted to the Authority;

(2) emergency actions to halt or prevent leaks or ruptures; and

(3) routine and minor maintenance activities related to the tank and piping systems, such as: any tank integrity assessment or other activity requiring entrance of any persons into a tank; addition or replacement of cathodic protection systems, release detection systems, spill and overfill prevention equipment, or monitoring wells; tightening loose fittings and joints; adjusting and calibrating equipment; conducting routine inspections and tests; and the substitution or in-kind replacement of any obsolete or malfunctioning AST or UST components for any purpose other than the required upgrade to proper containment in accordance with § 713.605(c) or 713.607(c). Replacement of malfunctioning or obsolete piping will only be considered to be a routine and minor maintenance activity under this subsection if the amount of piping being replaced does not exceed 20 percent of the overall amount of piping associated with the AST or UST. Activities that require a change to a UST or AST's operations are not considered to be routine or minor maintenance activities.

(d) The General Manager shall approve an application for major modification if the following information is submitted and the following elements are established:

(1) the applicant has paid the application fee as established by § 707.511;

(2) if the major modification is to an existing AST or UST, the tank is registered with the Authority;

(3) the description of the major modification meets the requirements of this subchapter, including the incorporation of a proper method of containment in accordance with § 713.606 or 713.608;

(4) if the major modification is to a UST, any geological assessment associated with the USTs required Underground Storage Tank Plan submitted to or approved by the Commission in accordance with Chapter 213 of 30 TEX. ADMIN. CODE is provided;

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

(6) the applicant is otherwise in compliance with the Act, the Authority's rules, other permits, and orders of the Board, or if not in compliance, the major modification will result in the applicant coming into compliance.

(e) An approval for a major modification expires after one year if the major modification

has not been commenced. The approval term may be extended by one additional 180-day period by Authority staff. In order to obtain an extension, the Owner or Operator must submit a written request to Authority staff explaining the need for the extension. If the Owner or Operator demonstrates a need for an extension and demonstrates that the failure to initiate the major modification within the original one-year term is not due to the Owner or Operator's own lack of diligence, then Authority staff may authorize the extension. Upon expiration of the term, including any extension granted, the authorization automatically expires and is canceled.

**§ 713.610      Notifications and Commencement of Construction**

(a)      An Owner or Operator shall provide written notice to the Authority:

(1) at least thirty days prior to any intended commencement of construction associated with an AST or UST; and

(2) at least two business days prior to the actual commencement of construction associated with an AST or UST.

(b)      Commencement of construction of any major modification may not begin without first obtaining general manager approval of an application for major modification.

**§ 713.611      Operational Status of Aboveground and Underground Storage Tanks**

(a)      An AST or UST may be temporarily removed from service and remain in place if the AST or UST remains properly empty while out of service. For the purposes of this subsection, an AST or UST is properly empty when:

(1)      all regulated substances have been removed as completely as possible by accepted industrial standards; and

(2)      any residue from stored regulated substances which remains does not exceed a depth of 2.5 centimeters and does not exceed 0.3 percent by weight of the system at full capacity.

(b)      An AST or UST may be permanently abandoned in place by the following methods:

(1) any UST shall be permanently removed from service pursuant to 30 TEX. ADMIN. CODE § 334.55. However, the solid inert material referenced in § 334.55(c)(2)(A) may only consist of a cement/concrete based slurry; or

(2) any AST shall be made inoperable by perforating the tank in such a way that it is no longer capable of containing regulated substances and removing all piping and ancillary equipment.

(c)      An AST or UST may be permanently removed from service by removing the tank from the Recharge Zone; however, any documentation of release determinations or site assessments conducted when the tank is permanently removed from the Recharge Zone shall be made available upon request by the Authority.

(d) An Owner or Operator shall provide written notice to the Authority in accordance with § 713.610 for any removal from service or permanent abandonment in place.

#### **§ 713.612 Recognized Capacity Program for Underground Storage Tanks**

(a) This section only applies to USTs located on the Recharge Zone.

(b) The Authority shall assign a recognized capacity for underground storage to each facility. The Authority shall determine the amount of recognized capacity for each facility by combining the volume of all regulated USTs at a facility that are registered with the Authority and in compliance with this subchapter.

(c) The Authority shall record the recognized capacity for each facility on a form prescribed by the Authority and update the information as necessary. The Authority shall provide a copy of each applicable form to the Owner of the facility, and if different, the Owner and Operator of each UST listed on the registration associated with the facility. An Owner or Operator may request the Board review the determination of recognized capacity under the procedure described in § 707.521(g).

(d) In assigning a recognized capacity to each facility, the Authority makes no determination or representation of the legal ownership of such capacity.

(e) Recognized capacity associated with a UST may be reserved for possible transfer or for future use by the Owner or Operator for no more than ten years under the following scenarios:

(1) a UST is permanently removed from service by being either permanently abandoned in place or permanently removed from the Recharge Zone in accordance with § 713.611; or

(2) a major modification of a UST results in a net loss in capacity (e.g., an existing tank is replaced with a tank of less volume capacity). In such a scenario, the capacity lost may be reserved.

(f) Unless good cause is shown, recognized capacity associated with a UST may not be reserved and will be reduced if timely notification in accordance with § 713.611(d) is not provided prior to the UST being permanently removed from service.

(g) If a reduction of recognized capacity is required under Subsection (e), the amount reduced shall be equal to the volume of the UST that was permanently removed from service.

(h) The ten-year-timeframe for reservation of capacity will run from the date of action submitted on the required updated registration associated with the UST for which reservation of capacity is sought.

(i) A new UST may be installed on the Recharge Zone through a transfer of recognized capacity that ensures the installation of the new UST will not add to the overall cumulative storage capacity of all regulated USTs that legally existed on the Recharge Zone on October 18, 2002.

(j) In order to install a new UST through a transfer of recognized capacity, the Owner or

Operator of the proposed tank shall provide the Authority with the following:

- (1) an application for major modification in accordance with § 713.609;
- (2) a registration for the new UST in accordance with § 713.604; and
- (3) if the transfer of recognized capacity requires an existing UST to be permanently removed from service:
  - (A) identification of the existing UST that will be permanently removed from service, including an updated registration for the identified tank; and
  - (B) if applicable, documentation of an agreement between the Owner of the existing UST and the Owner of the proposed UST to have the existing UST permanently removed from service; and
  - (C) written consent to the transfer of recognized capacity from any party with an ownership interest in the UST that is to be permanently removed from service; or
- (4) if the transfer of recognized capacity involves capacity that was reserved under subsection (d):
  - (A) documentation of an agreement between the owner of the reserved capacity and the Owner of the proposed UST to transfer the reserved capacity; and
  - (B) identification of the source of the reserved capacity.
- (k) Commencement of construction may not begin for any new UST until the associated application for major modification has been approved by the Authority, and if applicable, the existing UST that is the subject of the transfer of recognized capacity has been permanently removed from service in accordance with Authority rules.

### **§ 713.613 Exemptions**

- (a) The following types of ASTs and USTs (including any associated piping) are exempt from the registration and containment requirements contained in this subchapter:
  - (1) Mobile refuelers that meet the following criteria:
    - (A) have a capacity of 600 gallons or less;
    - (B) are regularly moved around the facility for the purpose of refueling and/or aiding in the maintenance of vehicles or equipment;
    - (C) are used in conjunction with portable spill containment devices; and
    - (D) are stored or parked on an impervious surface when not in use for more than 8 hours;
  - (2) Mobile tanks such as those attached to tanker trucks that are designed to

transport regulated substances from one location to another unless:

- (A) the tank remains at a facility for more than 30 consecutive days; or
- (B) the tank both dispenses regulated substances and is refilled while at the same facility;

(3) Tanks used for storing heating oil for consumptive use on the residential premises where the tank is located;

(4) Tanks associated with an on-site sewage disposal system as defined by TEX. HEALTH & SAFETY CODE § 366.002;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Stormwater or wastewater collection systems that do not contain a regulated substance;

(7) Flow-through process tanks that do not contain a regulated substance;

(8) Tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas under the TEX. NAT. RES. CODE § 91.101;

(9) Transformers or other electrical equipment containing a regulated substance and that is used in the transmission of electricity, including temporary containers used solely for maintenance of such transformers or other electrical equipment, to the extent that such a transformer or equipment is exempted from regulations regarding containment by the U. S. Environmental Protection Agency or the Commission;

(10) Pipeline facilities, including gathering lines, if such facilities are regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C., § 1671, et seq.); or

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C., § 2001, et seq.);

(11) Interstate pipeline facilities if such facilities are regulated under any of the following state laws:

(A) Chapter 111, TEX. NAT. RES. CODE;

(B) Chapter 117, TEX. NAT. RES. CODE; or

(C) §§ 121.201 and 121.206, Texas Utilities Code;

(12) Any wastewater treatment tank (including an oil-water separator and any pretreatment facility), which is an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, under either §§ 307(b) or 402, 33 U.S.C. § 1251, et seq.;

(B) permitted under Chapter 26, TEX. WATER CODE; or

(C) a structure which is compliant with Commission requirements as they relate to Chapter 213, 30 TEX. ADMIN. CODE;

(13) Sumps which have a capacity of less than 110 gallons;

(14) Emergency spill protection or emergency overflow containment tanks, including certain sumps and secondary or tertiary containment systems, which are used solely for the temporary storage or containment of regulated substances resulting from a leak, spill, overfill, or other unplanned release, provided that such tanks must be inspected for a release no less than once every month; and

(15) Any AST system which during its entire operational life has exclusively contained only regulated substances at such dilute concentrations that any release would not pose any significant threat to human health and safety or the environment.

(b) In-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold less than 100 gallons of hydraulic oil that are exempt under the TEX. WATER CODE § 26.344(e), are also exempt from regulation under this subchapter.

(c) Upon request by the Authority, the Owner or Operator of an AST or UST claimed to be exempted under this section must provide appropriate documentation or other information in a timely manner to support that claim

#### **§ 713.614 General Storage Standards**

Regardless of any provision or exemption contained in this subchapter, any storage of regulated substances shall be done in a manner that prevents physical damage to the container, such as crushing, puncturing, rupture, or corrosion and protects against damage from exposure to the elements.

#### **§ 713.615 Inspections, and Compliance**

(a) Compliance with the provisions of this subchapter does not relieve the Owner or Operator of an AST or UST from the responsibility of compliance with any other rules directly and/or indirectly affecting the AST or UST and the associated stored regulated substances.

(b) Owners and Operators of an AST or UST are responsible for any violations or noncompliant activities resulting from the actions or inactions by any installer, contractor, operator, or other person who is employed or otherwise engaged by an Owner or Operator of an AST or UST.

(c) The Authority shall consider the Operator of an AST or UST that is in violation of



this section to be the:

(1) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(2) primary subject of an enforcement action or order.

(d) Except as otherwise provided for in this subchapter, any UST located on the Recharge Zone shall be operated and maintained in accordance with Chapter 334 of 30 TEX. ADMIN. CODE, this includes requirements for corrosion protection, release detection, and spill and overfill prevention control. In addition, any tank located on the Recharge Zone shall be operated and maintained in accordance with any requirements contained in an Aboveground or Underground Storage Tank Plan approved by the Commission and in accordance with Chapter 213 of 30 TEX. ADMIN. CODE.

(e) Upon request from the Authority, the Owner or Operator of a tank located on the Recharge Zone shall supply documentation of all testing results required to be performed on the tanks by state or federal law.

#### **§ 713.616 Action Required for Release, Discharge, or Spill**

(a) Any release, discharge or spill from an AST or UST in a reportable quantity under § 713.405 of the Authority's rules must be reported and addressed in accordance with the requirements contained in Chapter 713, Subchapter E, of the Authority's rules.

(b) Any release, discharge or spill from an AST or UST into a containment structure or drainage area shall be removed from the controlled area for disposal within 96 hours of the discovery of the release, discharge or spill.

(c) If the Authority believes that the Owner or Operator is not abating and containing the spill, release, or discharge and taking all other appropriate actions in order to cease or prevent the pollution of the Aquifer, then the Authority may take such enforcement action as may, in its judgment, be appropriate as provided by the Act, Chapter 717, or other applicable law.

(d) If the actions taken under subsections (a) or (b) to stop the spill, release, or discharge go beyond those routine and minor maintenance activities described in § 713.609(c)(3), after successfully abating and containing the release, discharge, or spill, the Owner or Operator of any AST or UST for which a release, discharge, or spill has been detected shall either permanently remove the AST or UST from service in accordance with §713.611 or replace the tank through a major modification in accordance with § 713.609. If the release, discharge, or spill was solely from the piping associated with the AST or UST, and the actions taken to stop the spill, release, or discharge go beyond those routine and minor maintenance activities described in § 713.609(c)(3), then the piping shall be replaced through a major modification. Either action requires the filing and approval of an application for major modification.

## **Subchapter H. Prohibitions**

### **Section**

713.701 Pollution Prevention

713.703 Prohibition on the Use of Coal Tar-Based Pavement Sealant Products

### **§ 713.701 Pollution Prevention**

A person may not pollute or contribute to the pollution of the Aquifer.

### **§ 713.703 Prohibition on the Use of Coal Tar-Based Pavement Sealant Products**

(a) The use of coal tar-based pavement sealant products is prohibited after December 31, 2012.

(b) This section applies to actions located within Comal and Hays Counties on, above, or within:

(1) the recharge zone of the Aquifer, including the area identified on the official maps of the Authority; or

(2) the contributing zone of the Aquifer five miles up-gradient of the recharge zone, or to the limit of the five-mile water quality buffer zone, whichever is less, including the area identified on the official maps of the Authority.

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## **CHAPTER 715. COMPREHENSIVE WATERMANAGEMENT**

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#### **Section**

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**Subchapter A.**       **[Reserved]**

## **Subchapter B.          Variance Procedures**

### **Section**

715.10	Variance Applications
715.12	Basis for Granting Variance Applications
715.14	Variance Conditions
715.16	Rescission of Variance

### **§ 715.10          Variance Applications**

Any person seeking a variance from some part of this chapter may file with the Authority an application for variance on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 715.12.

### **§ 715.12          Basis for Granting Variance Applications**

By order, the Board shall grant a variance application if it finds that the following elements are established by convincing evidence:

- (1) the applicant paid the application fee;
- (2) the applicant has specifically identified the rules from which a variance is sought;
- (3) all applicable reports have been filed;
- (4) a detailed explanation as to why the variance should be granted;
- (5) granting the variance will accomplish the objectives sought to be advanced by the rule from which a variance is sought;
- (6) granting the variance will not cause significant harm to any other person;
- (7) the application complies with the Act and the Authority's rules; and
- (8) the applicant is in compliance with the Act, the Authority's rules, other permits, and orders of the Board; and
- (9) the applicant has provided any other information required by the general manager.

### **§ 715.14          Variance Conditions**

- (a) The Board may grant a variance for a term and with any conditions the Board deems appropriate.

(b) The Board may require a person granted a variance to file reports containing such information as is relevant to monitoring the continuing appropriateness of the variance and compliance with its terms and conditions.

**§ 715.16      Rescission of Variance**

By order, the Board may rescind an order granting a variance at any time due to changed circumstances, new information, or failure of the holder of the variance to abide by the terms and conditions of the variance, the Act, the Authority's rules, or any order of the Board.



## **Subchapter C. Groundwater Conservation and Reuse**

### **Section**

715.100	Purpose
715.102	Applicability
715.104	Duty to Conserve
715.106	Duty to Implement Groundwater Conservation Plans
715.110	Best Management Practices
715.114	Approval of Plans; Filing Deadlines
715.116	Triennial Status Reports
715.120	Plan Revisions
715.122	Contents of Plans
715.124	Basis for Plan Approval

### **§ 715.100 Purpose**

The purpose of this subchapter is to implement §§ 1.01, 1.14(a)(3), 1.23 and 1.25 of the Act to ensure the reasonably effective conservation by persons beneficially using groundwater from the Aquifer. Implementation of this subchapter will encourage, promote, and document conservation measures by users of the Aquifer. The development and implementation of groundwater conservation plans assist the Authority and users in the successful management of groundwater consumption, and will enable the Authority to improve water use efficiency. The implementation of water conservation measures will reduce the amount of groundwater required to be withdrawn from the Aquifer to meet current demand thereby maximizing the beneficial use of groundwater available for future withdrawal or use from the Aquifer by others.

### **§ 715.102 Applicability**

This subchapter applies to permit holders.

### **§ 715.104 Duty to Conserve**

All permit holders shall implement all reasonable measures to conserve the use of groundwater withdrawn from the Aquifer and to be conservative in water use consistent with the subchapter. This duty is in effect on a year-round basis.

### **§ 715.106 Duty to Implement Groundwater Conservation Plans**

(a) Except as provided by Subsections (b) and (c), all permit holders shall implement a groundwater conservation plan.

(b) Irrigation permit holders are not required to implement groundwater conservation plans if the permit holder's application efficiency is 60% or greater. Irrigation permit holders claiming this exception must file an irrigation assessment on a form prescribed by the Authority for review and approval.

(c) Owners of permitted wells authorized to withdraw no more than three acre-feet of groundwater annually are not required to implement a groundwater conservation plan.

(d) Lessees are required to implement a groundwater conservation plan if the lease is for more than three years.

(e) Permit holders who lease additional groundwater withdrawal rights, regardless of the term of the lease, must use the leased water in a manner consistent with their existing groundwater conservation plan.

(f) Groundwater conservation plans shall be effective at all times of the year.

(g) The Authority will accept equivalent groundwater conservation plans and related status reports prepared for other public entities in furtherance of compliance under this subchapter.

#### **§ 715.110 Best Management Practices**

(a) Each BMP in the Authority's Groundwater Conservation Plan includes four sections: a description, coverage requirements, requirements for documentation, and water savings assumptions. The Description section defines and sets the scope of each practice. The Coverage Requirements section sets forth actions that are recommended in order to properly complete BMP implementation. The Documentation Requirements section outlines the information typically required to confirm BMP implementation. The Water Savings Assumptions section provides water savings estimates and demonstrates how savings are typically calculated.

(b) The BMPs for municipal permit holders are found in Appendix B of the Authority's Groundwater Conservation Plan.

(c) The BMPs for industrial permit holders are found in Appendix C of the Authority's Groundwater Conservation Plan.

(d) The BMPs for irrigation permit holders are found in Appendix D of the Authority's Groundwater Conservation Plan.

(e) Municipal permit holders are required to implement BMPs Muni-1 through Muni-3 (system water audits, leak detection and repair; metering of all new connections and retrofit of existing connections; and a water waste prohibition) and are required to meet the associated coverage and documentation requirements of those BMPs.

(f) Industrial permit holders must implement BMPs Ind-1 and Ind-2 (system water audits, leak detection and repair; and a water waste prohibition) and are required to meet the associated coverage and documentation requirements of those BMPs.

(g) Except as provided by § 715.106(b), all irrigation permit holders must implement BMPs Irr-1 and/or Irr-2 (surge flow irrigation system or sprinkler and micro irrigation systems).

(h) Permit holders shall meet a 90-day deadline for commencement of operation and provide a timeframe for full implementation for each required BMP.

#### **§ 715.114 Approval of Plans; Filing Deadlines**

(a) Persons required to submit plans shall file with the Authority the plan for approval containing relevant information related to the requirements in this subchapter and §§ 707.509, 715.122 and 715.124 no later than the following dates:

USER CATEGORY	FILING DEADLINE
Municipal permit holders	03/31/2004
Industrial permit holders	06/30/2004
Irrigation permit holders	09/30/2004
Transferees	Within 90 days of the date on the Authority letter notifying the transferee of the requirement to submit a groundwater conservation plan

(b) Applicants subject to plan requirements after March 31, 2004 must submit a plan no later than March 31st of the following year from the date their groundwater transfer is approved by the Authority.

(c) Applicants subject to plan requirements after June 30, 2004, must submit a plan no later than June 30th of the following year from the date their groundwater transfer is approved by the Authority.

(d) Applicants subject to plan requirements after September 30 2004, must submit a plan no later than September 30th of the following year from the date their groundwater transfer is approved by the Authority.

#### **§ 715.116 Triennial Status Reports**

(a) Persons required to implement a plan shall file a triennial plan status report no

later than the following dates:

<b>USER CATEGORY</b>	<b>FILING DEADLINE</b>
Municipal user	March 31 <sup>st</sup> of every third year beginning 2009
Industrial user	June 30th of every third year beginning 2010
Irrigation user	September 30th of every third year beginning 2011

**§ 715.120 Plan Revisions**

Plans shall be reviewed by the Authority at least once every six years. After review, the Authority may require revisions to a plan.

**§ 715.122 Contents of Plans**

Groundwater conservation plans shall be submitted on the form prescribed by the Authority. In addition to the information specified in § 707.509, a plan shall contain the following:

- (1) name of applicant and permit number;
- (2) name, address, telephone number, and fax number of the permit holder;
- (3) name, address, telephone number, and fax number of the contact person;
- (4) name, address, telephone number, and fax number of the person preparing the plan;
- (5) type of water use (municipal, industrial, or irrigation);
- (6) brief description of water use (golf course, nursery, athletic field, etc.);
- (7) a list of BMPs currently implemented and the date that each BMP was first implemented;
- (8) proposed implementation schedule for all required BMPs that have not yet been implemented;
- (9) identification of other entities with whom the permit holder may be cooperating to implement the BMPs, and the steps taken to avoid double counting of water conservation savings;
- (10) for municipal and industrial permit holders, a prohibition of landscape watering or irrigation during periods of peak water loss due to evapotranspiration (typically between the hours following 10:00 a.m. until 8:00 p.m.), unless performed with a hand-held or soaker hose;
- (11) for municipal permit holders, the following must also be submitted in the plan:

(A) types of accounts (residential, commercial, industrial, etc.) and number of customers in each, and water use by volume and by percent for each type of account;

(B) total number of connections;

(C) estimated per capita water usage (gallons per person per day);

(D) water conservation enforcement measures; and

(E) programs and implementation schedules to accomplish applicable BMPs;

(12) for industrial users, the following must also be submitted in the plan:

(A) information on the types (processes) of water use; and

(B) use by volume and by percent for each type of use (for landscaping uses provide the volume of water used per square foot);

(13) for irrigation users, the following must also be submitted in the plan:

(A) a map or plat to scale indicating the number of irrigated acres per farm;

(B) current irrigation methods;

(C) the organization of the farm to reflect the different irrigation methods and different irrigation practices utilized;

(D) a description of the irrigation system showing that surge flow irrigation systems are utilized, or other irrigation systems that achieve 60% or greater application efficiency. If other irrigation systems are used, the applicant must provide results of efficiency evaluations confirming that the systems achieve 60% or greater application efficiency; and

(E) a statement and documentary evidence that all efficiency evaluations have been conducted no more than five years prior to the date the plan is submitted.

(14) any other information as may be required by Authority staff.

#### **§ 715.124 Basis for Plan Approval**

The general manager shall approve a plan if the plan meets the following:

(1) the plan complies with the Act and the Authority's rules;

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

(3) the plan demonstrates the permit holder is using or will use reasonable measures

to be conservative in water use; and

(4) the plan, if implemented, will promote the maximization and efficient beneficial use of groundwater from the Aquifer.

## **Subchapter D. Water Conservation Grants**

### **Section**

715.136	Purpose
715.138	Applicability
715.140	Water Conservation Grant Funds
715.144	Water Conservation Grants
715.154	Applications for Water Conservation Grants
715.156	Basis for Approval of Grant Applications
715.164	Release of Funds
715.166	Enforcement of Grant Terms

### **§ 715.136 Purpose**

(a) The purpose of this subchapter is to:

- (1) implement the Regional Water Conservation Program; and
- (2) implement §§ 1.11(d) and 1.24 of the Act.

(b) For the purposes of this subchapter, Regional Water Conservation Program means the water conservation program as described in Section 5.1.3 of the Edwards Aquifer Habitat Conservation Plan for Incidental Take Permit No. TE63663A-0.

### **§ 715.138 Applicability**

This subchapter governs the Authority's financial assistance program for water conservation grants and the Regional Water Conservation Program. Edwards Aquifer permit holders, their contract users, and owners of exempt wells may apply for a water conservation grant from the Authority.

### **§ 715.140 Water Conservation Grant Funds**

(a) The Authority shall establish and maintain a water conservation grant fund for implementation of the Regional Water Conservation Program. The Authority shall fund this program in an annual amount needed for full implementation of the program.

(b) The Authority may establish and maintain a water conservation grant fund for activities that are not associated with the Regional Water Conservation Program. The Authority may maintain a balance for such a fund that in its judgment is appropriate. The Authority is under no obligation to fund this program at any particular level, and may, in its discretion, choose not to fund the program or discontinue funding at any time.

## **§ 715.144 Water Conservation Grants**

The Authority may make water conservation grants for water conservation and water reuse, including financing the purchase or installation of equipment or facilities. Grants may also be made for capital equipment or materials, labor, preparation costs, and installation costs to improve efficiency of water delivery, use, or application for existing systems.

## **§ 715.154 Applications for Water Conservation Grants**

(a) An applicant that desires to obtain a water conservation grant from the Authority shall complete and submit a grant application to the Authority on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 715.156.

(b) Each year, when funds are available, the general manager shall propose a grant or series of grants not associated with the Regional Water Conservation Program for which applications may be submitted and establish eligibility requirements appropriate for the purposes of and activities under the proposed grant or grants.

(c) A grant may be made by direct award only if:

(1) the grant is associated with the Regional Water Conservation Program and meets the requirements contained in the Edwards Aquifer Habitat Conservation Plan; or

(2) the grant is not associated with the Regional Water Conservation Plan and the general manager determines and documents that a selection of recipients by solicitation of proposals or applications is not feasible; and

(3) awarding the grant is in the best interest of the EAA and its mission.

## **§ 715.156 Basis for Approval of Grant Applications**

The Board may approve a grant application if it finds that:

(1) the public interest would be served in granting the application;

(2) the applicant has the legal authority and ability to make an application for a water conservation grant;

(3) funding exists for the project;

(4) approving the application will further water conservation of the Aquifer;

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

(6) the applicant meets all eligibility requirements associated with the proposed grant or series of grants;



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

(8) the terms of the grant contract are satisfactory to the Board.

**§ 715.164 Release of Funds**

The general manager shall not release any funds approved by the Board in granting an application for a water conservation grant until after the execution of all appropriate documents or as the general manager may deem appropriate.

**§ 715.166 Enforcement of Grant Terms**

Any failure to abide by a grant contract or agreement may lead to termination of the grant and any other additional remedies available under applicable law.

## **Subchapter E. Critical Period Management Plan**

### **Section**

715.200	Purpose
715.202	Applicability
715.210	Monthly Reports
715.212	Commencement and Expiration of Critical Period Stages
715.218	Interruption of Withdrawals
715.219	Finishing Out Crop Irrigation; Additional Crops
715.221	Critical Period Stage V
Appendix	Table 1 - Critical Period Triggers, Stages, and Withdrawal Reductions

### **§ 715.200 Purpose**

The purpose of this chapter is to:

- (1) effectively control the Aquifer to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries and the economic development of the state and region;
- (2) recognize the extent of the hydro-geologic connection and interaction between surface water and groundwater;
- (3) protect aquatic and wildlife habitat;
- (4) protect species that are designated as threatened or endangered under applicable federal or state law;
- (5) provide for instream uses, bays, and estuaries; and
- (6) implement §§ 1.14(f) and (h), and 1.26 of the Act.

### **§ 715.202 Applicability**

- (a) This subchapter applies to holders of initial regular permits, or their contract users.
- (b) This subchapter does not apply to persons authorized to withdraw equal to or less than three acre-feet of groundwater annually.

### **§ 715.210 Monthly Reports**

- (a) Persons withdrawing groundwater from the Aquifer during a critical period stage must file monthly groundwater withdrawal reports on a form prescribed by the Authority. The

form shall contain the following information:

- (1) name, address, and telephone number;
  - (2) contact person and title;
  - (3) initial regular permit number;
  - (4) reporting month;
  - (5) by well, the total volume of groundwater withdrawn during the reporting month based on beginning and ending meter readings; and
  - (6) any other information required by Authority staff.
- (b) Monthly groundwater withdrawal reports must be filed with the Authority no later than ten business days after the end of the month.
- (c) This section does not apply during any critical period stage in which an irrigator is finishing out a crop under § 715.219(a). However, if an irrigator plants an additional crop under § 715.219(c) in the same calendar year, then this section applies during critical period stages beginning the month in which the additional crop is planted.

#### **§ 715.212 Commencement and Expiration of Critical Period Stages**

- (a) A critical period stage commences on the date and time specified in the notice of commencement issued by the general manager. The notice shall also contain a statement that persons intending to finish out an already planted crop must file the notices required by § 715.219.
- (b) The notice of commencement shall be:
- (1) published in a newspaper of general circulation throughout the Authority's jurisdiction;
  - (2) published in at least four other newspapers within the jurisdiction of the Authority; and
  - (3) posted on the Authority's internet site.
- (c) The general manager shall issue notice of commencement of a critical period stage if at least one of the applicable triggering conditions in Table 1 are satisfied.
- (d) A critical period expires upon the occurrence of one of the following:
- (1) on the 30<sup>th</sup> day after issuance of a notice of commencement, unless the

level of the Aquifer continues to be less than the applicable value in Table 1; or

(2) the general manager issues a notice of expiration because the applicable Aquifer triggers in Table 1 no longer exist.

(e) The general manager will issue a notice of expiration by posting on the Authority's internet site.

#### **§ 715.218 Interruption of Withdrawals**

(a) The groundwater withdrawal amounts for initial regular permits may be interrupted during a critical period stage. The permit holder's groundwater withdrawal amount is contained in an initial regular permit, as may be adjusted upward or downward through transfers. The interruption coefficients to be applied during a critical period stage to reduce a permit holder's authorized groundwater withdrawal amount are set out in Table 1.

(b) If no critical period stage is in effect for any part of a year, then the entire groundwater withdrawal amount may be withdrawn during that year.

(c) If one critical period stage is in effect for an entire year, then an amount not to exceed the adjusted groundwater withdrawal amount for that year may be withdrawn calculated as follows:

Adjusted amount = amount x (1.00 - applicable interruption coefficient).

(d) If a single critical period stage is in effect for less than an entire year and no other stage is in effect for the remainder of the year, then an amount not to exceed the adjusted groundwater withdrawal amount for that year may be withdrawn calculated as follows:

Adjusted amount = amount x (1.00 - (applicable interruption coefficient x (number of days in stage / 365))).

(e) If two or more different critical period stages are in effect during a year, then an amount not to exceed the adjusted groundwater withdrawal amount for that year may be withdrawn calculated as follows, using two or more interruption coefficients, as appropriate:

Adjusted amount = amount x (1.00 - (interruption coefficient<sub>x</sub> x (number of days in stage x / 365)) + (interruption coefficient<sub>y</sub> x (number of days in stage y / 365))).

#### **§ 715.219 Finishing Out Crop Irrigation; Additional Crops**

(a) Notwithstanding the existence of any critical period stage, a person authorized to withdraw groundwater from the Aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed in Table 1, be allowed to finish out a crop already planted in the calendar year during which the critical period is in effect. Except as provided in Subsection (e), a crop is considered to be already planted if seeds, sprigs, or trees for commercial orchards have

been placed in the ground and not harvested prior to a determination by the Authority that a crop needs exemption from the withdrawal reductions prescribed in Table 1. A crop needing such an exemption may be finished out by continued irrigation until as indicated in the following table:

<b>CATEGORY</b>	<b>EXAMPLES</b>	<b>CONTINUED IRRIGATION TO FINISH OUT CROP</b>
Cereal and oil crops	Grasses (barley, corn, millets, oats, rye, sorghum, wheat), peanuts, sunflower etc.	Until harvested
Forage Crops	Legumes (alfalfa) and grasses (coastal Bermuda, etc.) used for hay production.	One additional cutting after submittal of notice of intent to finish out a crop is submitted.
Forage Crops	Legumes (alfalfa) and grasses (coastal Bermuda, etc.) used for grazing.	Until forage crop goes dormant
Fiber and Misc. Crops	Cotton, jute, flax etc.	Until harvested
Tree and Fruit Crops	All fruit bearing trees	Until harvested
Vegetable Crops	Cabbage, cucumbers, melons lettuce, onions, peppers, squash, etc.	Until harvested

The Authority shall make a determination that a crop needs an exemption if irrigation of the crop through harvest would require a permit holder to exceed his or her reduced permitted groundwater withdrawal amount after applying the applicable interruption coefficients in § 715.218 at the applicable stage interruption coefficient in effect on the day of the crop's harvest. Demonstration of the need for an exemption for a crop shall be provided on a Notice of Finishing Out a Crop form as prescribed by the Authority.

(b) If a person demonstrates in the Notice of Finishing Out a Crop form that a crop needs an exemption, the Authority shall not enforce the applicable interruption coefficients contained in § 715.218 in order to allow a person to finish irrigating the crop. The Notice of Finishing Out a Crop form shall provide spaces and instructions to calculate the applicable critical period reductions, report the type of crop, the date of planting, the crop size in acres irrigated, the estimated or actual date of final irrigation, the meter reading that corresponds, as near as possible, with the date of final irrigation, and any other relevant information that Authority staff may require. Persons finishing out a crop may file a Notice of Finishing Out a Crop form at any time during the calendar year; however, such a form shall not be filed after December 1<sup>st</sup>.

(c) A person's Notice of Finishing Out a Crop will be given no force or effect, be returned by the Authority, and the person will be subject to all applicable reductions to permitted groundwater withdrawal amounts in accordance with Table 1 and the interruption coefficients in § 715.218, if the person exercising the right to obtain an exemption for a crop through the use of a Notice of Finishing Out a Crop form:

(1) irrigates additional crops with their Edwards Aquifer groundwater withdrawal rights after harvesting the crop that was the subject of the Notice of Finishing Out a Crop; or

(2) transfers any remaining Edwards Aquifer groundwater withdrawal rights after harvesting the crop that was the subject of the Notice of Finishing Out a Crop.

(d) A person who harvests a crop prior to the date of the issuance of a notice of commencement of a stage of critical period and who has not irrigated for any purpose after such a harvest, may file a Notice of Finishing Out a Crop form if retroactive application of the interruption coefficients in § 715.218 would cause the person to exceed the reduced permitted groundwater withdrawal amount. After review of the notice, the Authority shall make a retroactive determination and deem the person to have finished irrigating an applicable crop as provided in subsection (b). In such a situation, the person shall, on a form prescribed by the Authority, provide a meter reading that corresponds, as near as possible, with the date of last irrigation and provide evidence that no subsequent crops were planted and irrigated.

(e) Nothing in this section shall be construed or interpreted to authorize a person to withdraw more than the authorized groundwater withdrawal amount in the person's groundwater withdrawal permit or permits as unadjusted by § 715.218.

(f) Nothing in this section shall be construed or interpreted to authorize a person to withdraw more than the authorized groundwater withdrawal amount in the person's groundwater withdrawal permit or permits as unadjusted by § 715.218.

#### **§ 715.221 Critical Period Stage V**

Critical Period Stage V, as described in Table 1, becomes effective upon the earlier of:

- (a) issuance of a board order; or
- (b) issuance of an incidental take permit by the United States Fish and Wildlife Service.

#### **Appendix**

**Table 1 - Critical Period Triggers, Stages, and Withdrawal Reductions\***

SAN ANTONIO POOL				
COMAL SPRINGS FLOW (CFS)	SAN MARCOS SPRINGS FLOW (CFS)	INDEX WELL J-17 LEVEL (MSL)	CRITICAL PERIOD STAGE*	WITHDRAWAL REDUCTION - SAN ANTONIO POOL
< 225	< 96	< 660	I	20%
< 200	< 80	< 650	II	30%
< 150	N/A	< 640	III	35%
< 100	N/A	< 630	IV	40%
< 45/40**	N/A	<625	V**	44%

UVALDE POOL				
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<b>COMAL SPRINGS FLOW (CFS)</b>	<b>SAN MARCOS SPRINGS FLOW (CFS)</b>	<b>INDEX WELL J-27 LEVEL (MSL)</b>	<b>CRITICAL PERIOD STAGE*</b>	<b>WITHDRAWAL REDUCTION - UVALDE POOL</b>
N/A	N/A	N/A	I	N/A
N/A	N/A	< 850	II	5%
N/A	N/A	< 845	III	20%
N/A	N/A	< 842	IV	35%
N/A	N/A	< 840	V	44%

\* A change to a critical period stage with higher withdrawal reduction percentages, including initially into Stage I for the San Antonio Pool and Stage II for the Uvalde Pool, is triggered if the 10-day average of daily springflows at the Comal Springs or the San Marcos Springs or the 10-day average of daily Aquifer levels at the J-17 or J-27 Index Wells, as applicable, drop below the lowest number of any of the trigger levels for that stage. A change from any critical period stage to a critical period stage with a lower withdrawal reduction percentage, including existing from

Stage I for the San Antonio Pool and Stage II for the Uvalde Pool, is triggered only when the 10-day average of daily springflows at the Comal Springs and the San Marcos Springs and the 10-day average of daily Aquifer levels at the J-17 or J-27 Index Wells, as applicable, are all above the same stage trigger level.

\*\* In order to enter into Critical Period Stage V, the applicable springflow trigger is either less than 45 cfs based on a ten-day rolling average or less than 40 cfs based on a three-day rolling average. Expiration of Critical Period Stage V is based on a ten-day rolling average of 45 cfs or greater.



## **CHAPTER 717. ENFORCEMENT**

### **Section**

717.100	Purpose
717.102	Applicability
717.104	Notice and Access
717.106	Enforcement Actions by the General Manager
717.108	Enforcement Actions by the Board
717.110	Judicial Civil Enforcement
717.112	Civil Penalties
717.114	Cease and Desist Orders
717.116	Plugging, Sealing or Marking of Wells
717.118	Administrative Penalties

### **§ 717.100 Purpose**

The purpose of this chapter is to facilitate the enforcement of the Act, the Authority's rules, orders of the Board, and the terms and conditions of permits.

### **§ 717.102 Applicability**

This chapter applies to any person, or their predecessor in interest, who violates the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit issued by the Authority.

### **§ 717.104 Notice and Access**

The Authority, through any of its authorized officers, agents, employees, or representatives, may enter upon private or public property within the Authority's regulatory jurisdiction, for the purpose of determining whether any violation has occurred. An authorized officer, agent, employee, or representative of the Authority may enter private or public property at any reasonable time for this purpose. The persons conducting such entry shall observe the establishment's rules concerning safety, internal security, and fire protection and shall notify any occupant of their presence and present proper identification.

### **§ 717.106 Enforcement Actions by the General Manager**

If the general manager determines that a person, or his predecessor in interest, has committed a violation, he or she may suspend the processing of any application that the person has pending before the Authority.

### **§ 717.108 Enforcement Actions by the Board**

If the Board determines that a person, or his predecessor in interest, has committed, is

committing, or is threatening to commit a violation, it may, after providing a 10-day written notice to the person and an opportunity for the person to appear and be heard at a meeting of the Board:

(1) suspend the processing of any application that the person has pending before the Authority, until the violation is remedied;

(2) suspend any permit or other authorization, which is held by that person, until the violation is remedied;

(3) issue an order requiring the person to cease and desist the violation and requiring corrective action to resolve the violation and to bring the person into compliance;

(4) issue an order to plug, seal, or mark a well in order to prevent any person from unlawfully withdrawing groundwater from the well, or to prevent the pollution of the Aquifer;

(5) commence any action authorized by law to address the violation, including issuing an order, assessing an administrative penalty, or filing a civil suit in state district court seeking an injunction, a mandatory injunction, civil penalties, and attorney's fees and other costs associated with bringing a suit; or

(6) enter into, or authorize the general manager to enter into, a settlement agreement with the person.

#### **§ 717.110 Judicial Civil Enforcement**

(a) The Authority may file a civil suit in state district court against any person to obtain an injunction, a mandatory injunction, civil penalties, and attorney's fees and other costs associated with bringing the suit for any violation.

(b) Each day of a continuing violation constitutes a separate violation.

#### **§ 717.112 Civil Penalties**

(a) Any person who commits a violation is subject to a civil penalty in state district court of not less than \$100 or more than \$10,000 for each violation and for each day of violation, in addition to attorney's fees and other costs associated with bringing a suit.

(b) All civil penalties recovered by the Authority shall be paid to the Authority.

#### **§ 717.114 Cease and Desist Orders**

(a) After determining that a person has violated and continues to commit a violation, the Board may issue an order directing the person to:

(1) immediately cease and desist all such violations;

(2) immediately comply with all applicable requirements; and

(3) take such appropriate remedial or preventive action as may be needed to properly address a continuing violation.

(b) If the person does not comply with a cease and desist order, the Board may take any other action authorized by law.

#### **§ 717.116 Plugging, Sealing or Marking of Wells**

(a) If the Board determines that it is reasonably necessary to ensure that a well is not operated in violation of applicable law, the Board may issue an order for Authority staff to plug, seal or mark any well to prevent any person from unlawfully withdrawing groundwater from the well or to prevent the pollution or waste of the Aquifer. For wells for which the owner refuses to plug or cap the well in accordance with Chapter 1901, TEX. OCCUPATIONS CODE, Authority staff or a person, firm or corporation employed by the Authority may go on the land and plug or cap the well safely and securely.

(b) The Board's authority to issue an order includes, but is not limited to, the following circumstances:

(1) a permit has been granted, but the applicable fees have not been paid within the time period provided for payment;

(2) representations have been made by the owner or operator of the well that no groundwater is to be withdrawn from a well during a particular period;

(3) no application has been filed for a permit to withdraw groundwater from an existing well not qualifying for exempt or limited production status that withdraws groundwater from the Aquifer;

(4) the Board has denied, cancelled, or revoked a permit;

(5) permit conditions have not been met; or

(6) a threat of, or potential for, contamination to the Aquifer exists.

(c) Authority staff may physically mark the well to indicate that the Authority has plugged or sealed the well. Authority staff may also undertake other appropriate action to prevent contamination of the Aquifer, preclude operation of the well or to identify unauthorized operation of the well.

(d) Tampering with, altering, damaging, or removing the seal or marking placed by the Authority on the well, or in any other way violating the integrity of the Authority's seal or mark, or withdrawing groundwater from a well that has been plugged, sealed, or marked shall constitute a violation and shall subject the person performing that action, as well as any well owner or operator who authorizes or allows that action, to such penalties as provided by applicable law.

(e) The well owner or operator is responsible for reimbursing the Authority for all expenses incurred.

(f) Reasonable expenses incurred by the Authority in closing or capping a well under Subsection (a) constitute a lien on the land on which the well is located.

(g) The lien described by Subsection (f) arises and attaches on recordation of, in the deed records of the county where the well is located, an affidavit executed by and person conversant with the facts stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or lessee, after notification, to close or cap the well before the expiration of 10 days after the notification;
- (5) the closing or capping of the well by the Authority, or by an authorized agent, representative, or employee of the Authority; and,
- (6) the expense incurred by the Authority in closing or capping the well.

#### **§ 717.118 Administrative Penalties**

(a) If after an examination of the facts, the general manager concludes that a person has committed a violation, the general manager may issue a preliminary report stating the facts on which he bases his or her conclusion, recommending that an administrative penalty be imposed, and recommending the amount of the proposed penalty. Authority staff shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the occurrence of the violation, the amount of the penalty, or both.

(b) Not later than the 10<sup>th</sup> day after the date on which the person charged with committing the violation receives the notice, the person may either provide the Authority with written consent to the report, including consent to the recommended penalty, or make a written request for an informal review by the Authority setting forth the person's response to the general manager's report, including any arguments and facts supporting the response.

(c) If the person charged with committing the violation consents to the recommended penalty, or fails timely to request an informal review, the Board shall assess the penalty in accordance with this section. Authority staff shall give the person written notice of the Board's action. The person shall pay the penalty not later than the 30<sup>th</sup> day after the date on which the person receives the notice.

(d) If the person charged with committing a violation requests an informal review, Authority staff shall conduct the review. Authority staff shall give the person written notice of the results of the review.

(e) Not later than the 10<sup>th</sup> day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (d), the person may make a written request for a hearing to the Authority. Hearings under this subsection are contested case hearings as defined by § 702.1(47).

(f) If, after informal review, a person charged with committing a violation fails to request a formal hearing in a timely manner, the Board shall assess the penalty. Authority staff shall give the person written notice of the Board's action. The person shall pay the penalty not later than the 30<sup>th</sup> day after the date on which the person receives the notice.

(g) If after an examination of the facts, including an examination of the general manager's report and the response to the report, if any, the Board concludes that a person has committed a violation, the Board may assess an administrative penalty against that person in an amount of not less than \$100 nor more than \$1,000 for each violation and for each day of a continuing violation.

(h) In determining the amount of the penalty, the Board shall consider:

- (1) the history of previous violations;
- (2) the amount necessary to deter future violations;
- (3) efforts to correct the violation;
- (4) enforcement costs relating to the violation; and
- (5) any other matters that justice may require.

(i) Within 30 days after the date the Board's order assessing an administrative penalty is issued, the person found to have committed a violation shall:

- (1) pay the amount of the penalty; or
- (2) pay the amount of the penalty and file a petition for judicial review in state district court contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review in state district court contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(j) Within the 30-day period, a person who acts under Subsection (i)(3) may:

- (1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the Authority by certified mail.

(k) If the Authority receives a copy of an affidavit under Subsection (j)(2), it may file a contest to the affidavit with the court within five days after the date the copy is received. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(l) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the Board may refer the matter to the Texas Attorney General for collection of the amount of the penalty.

(m) Judicial review of the Board's assessment of an administrative penalty under this section:

(1) is instituted by filing a petition on the Authority in accordance with TEX. GOV'T CODE § 2001.175; and

(2) is under the substantial evidence rule.

(n) If the district court sustains the finding of the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the finding of the occurrence of the violation, the court shall order that no penalty is owed.

(o) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

- (p) A penalty collected under this section shall be remitted to the Authority.