



**EDWARDS AQUIFER**  
A U T H O R I T Y

# **EDWARDS AQUIFER AUTHORITY RULES**

(Includes rules adopted through October 10, 2006)  
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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 laws applicable to the Authority 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.

## **CHAPTER 702. GENERAL DEFINITIONS**

### **Section**

702.1 General Definitions

### **§ 702.1 General Definitions**

(a) In its rules, the Authority employs two types of definitions: general definitions that apply to all rules of the Authority, and specific definitions that apply only to the chapters in which they are located. The specific definitions applying only to terms within a particular chapter are set out in that chapter.

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

(1) Act - The Edwards Aquifer Authority Act, Act of May 30, 1993, 73<sup>rd</sup> Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2353, as amended.

(2) Additional regular permit - A groundwater withdrawal permit issued by the Authority pursuant to the Act, § 1.18(a).

(3) Applicant - A person who files an application with the Authority.

(4) Application - A form document required by the Authority to initiate the process of obtaining the issuance of a permit, registration, exemption, license or any other Authority approval. A declaration of historical use is an application for an initial regular permit.

(5) 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.

(6) Aquifer recharge and storage permit - A permit issued by the Authority to authorize the recharge into and storage in the Aquifer of source water.

(7) Aquifer recharge, storage and recovery project, or project - Any artificial infrastructure and associated works and property, including alterations to a natural recharge feature, constructed after September 1, 1993, or for the modification of pre-September 1, 1993, artificial infrastructure, associated works and property, including alterations to a natural recharge feature, designed to artificially recharge source water into the Aquifer for storage and subsequent



retrieval for beneficial use, or for maintaining or augmenting springflows at Comal or San Marcos Springs.

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

(9) Authority - The Edwards Aquifer Authority.

(10) Authority's Groundwater Conservation Plan - Document prepared by the Authority pursuant to § 1.23(c) of the Act.

(11) Authority offices - The Authority's principal offices identified in § 701.5 of the Authority's rules (Business Office and Mailing Address of the Authority).

(12) 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.

(13) 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;

(B) otherwise approved as a BMP by the board pursuant to an application to convert base irrigation groundwater under §§ 707.428 (Applications to Convert Base Irrigation Groundwater), 711.340 (Conversion of Base Irrigation Groundwater), and 715.132 (Determinations of Conserved Base Irrigation Water) of the Authority's rules, and as may be approved by the board pursuant to § 711.342 (Basis for Granting Applications to Convert Base Irrigation Groundwater) of the Authority's rules; or

(C) otherwise approved as a BMP by the board pursuant to an application for variance from comprehensive water management plan under §§ 707.419 (Applications for Variance from Comprehensive Water Management Rules), and 715.10 (Variance Applications) as may be approved by the board pursuant to § 715.12 (Basis for Granting of Variance Applications) of the Authority's rules.

(14) Board - The board of directors of the Authority.

(15) 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.

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

- (17) Conservation - Any measure that would sustain or enhance water supply.
- (18) Declarant - An existing user who files a declaration of historical use.
- (19) Declaration of historical use (or declaration) - The form document required by the Authority to be filed pursuant to the Act, § 1.16(a). A declaration is an application for an initial regular permit.
- (20) Diversion - The removal of state water from a watercourse or impoundment.
- (21) Docket clerk - The docket clerk of the Authority as designated by the general manager.
- (22) 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.
- (23) Emergency permit - A groundwater withdrawal permit issued by the Authority pursuant to the Act, § 1.20(a).
- (24) 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 accordance with § 711.20 (4) (Eligibility for Exempt Well Status).
- (25) Existing well - A well drilled before June 1, 1993.
- (26) General manager - The executive director hired by the board to be the chief administrator of the Authority.
- (27) Groundwater - Water percolating below the surface of the earth.
- (28) Groundwater conservation plan – Pursuant to Subchapter C (Groundwater Conservation and Reuse Rules) of Chapter 715 (Comprehensive Water Management) of the Authority’s rules, document required to be submitted by permittees, interim authorization users, and contractual users who directly withdraw groundwater from the Aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer from a permittee or interim authorization user.
- (29) Groundwater withdrawal permit - A permit issued by the Authority

pursuant to § 1.15(b) of the Act authorizing the withdrawal of groundwater from the Aquifer.

(30) Historical period - The period from June 1, 1972, through May 31, 1993, inclusive.

(31) 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.

(32) Initial regular permit - A groundwater withdrawal permit issued by the Authority pursuant to the Act, § 1.16(d).

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

(34) Interruptible - When referring to a groundwater withdrawal permit, the conditioning of the right to withdraw groundwater from the Aquifer that makes the right subject to complete cessation, temporary curtailment, or reduction of the amount of groundwater that may be withdrawn from the Aquifer based upon the measurement of a water level at an index well, or as otherwise required by Chapter 715 of the Authority's rules (Comprehensive Water Management).

(35) Interruptible withdrawal amount ("junior rights") – the amount of groundwater as calculated under § 711.176(b)(6) (Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights) that may be withdrawn from the Aquifer pursuant to an initial regular permit under the Aquifer conditions specified in subchapter G (Withdrawal of Junior Rights) of chapter 715 (Comprehensive Water Management).

(36) Junior rights - has the meaning of "interruptible withdrawal amount" as defined by subsection (35) of this section.

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

(38) Monitoring well permit - A permit issued by the Authority pursuant to § 1.15(b) of the Act for the measuring of the water quality of the Aquifer or water level of the Aquifer.

(39) Municipal use - The use of water, within or outside of a municipality and its environs, supplied to the user by a third party, regardless of whether the third party is an individual, 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.

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

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

(42) Non-exempt permitted well - Any well, the groundwater withdrawals from which, are required to be authorized by interim authorization status or a groundwater withdrawal permit.

(43) Order - Any written directive of the board carrying out the powers and duties of the Authority under Article 1 of the Act.

(44) Permit - The written document issued by the Authority approving an application for a permit.

(45) Permittee - A person to whom the Authority has issued a permit.

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

(47) Petitioner - A person who files a petition with the Authority.

(48) 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.

(49) Project area - An area proximal to the recharge and storage site or to the recharge recovery location sufficient in size to encompass all easements, monitoring and observation areas, water quality protection areas, and structures associated with an Aquifer recharge, storage and recovery project.

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

(51) Recharge recovery permit - A permit issued by the Authority pursuant to § 1.15(b) for withdrawal of groundwater stored in the Aquifer pursuant to an Aquifer recharge and storage permit.

(52) Registrant - A person who files a registration with the Authority.

(53) Registration - The document required to be filed pursuant to the Act, § 1.33(b) or as may otherwise be required by the rules of the Authority.

(54) 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.

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

(56) Senior rights - has the meaning of “uninterruptible withdrawal amount” as defined by subsection (64) of this section.

(57) Source water - Any water resource that is proposed for or actually is artificially recharged into the Aquifer as the result of an Aquifer recharge, storage and recovery project.

(58) Springflow – Groundwater emanating from a natural formation, the rate of which is commonly expressed in cubic feet per second.

(59) Stored water – The amount of source water credited to an Aquifer recharge and storage project that has been recharged into the Aquifer and is in residence in the Aquifer prior to discharge by withdrawal pursuant to a recharge recovery permit, or emanation at Comal, San Marcos, or other springs.

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

(61) Term permit - A groundwater withdrawal permit issued by the Authority

pursuant to the Act, § 1.19(a).

(62) TWDB – The Texas Water Development Board.

(63) Underground water - Has the meaning of “groundwater” as defined by § 36.001(5), TEX. WATER CODE, as incorporated in paragraph (23) of this subsection.

(64) Uninterruptible withdrawal amount (“senior rights”) - the amount of groundwater as calculated under § 711.176 (Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights) that may be withdrawn from the Aquifer pursuant to an initial regular permit under the Aquifer conditions specified in § 711.164(a) and (b) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) and subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management).

(65) Uvalde Pool - That part of the Aquifer underlying the boundaries of the Authority and Uvalde County.

(66) Water supply facility - Any infrastructure designed for the supply of raw or potable water for any beneficial use, including a dam, reservoir, treatment facility, transmission facility, or recharge project.

(67) 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.

(68) Well construction permit - A permit issued by the Authority pursuant to § 1.15(b) of the Act for the construction or modification of wells or other works designed for the withdrawal of water from the Aquifer.

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

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

(71) 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.

## **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

### **§ 703.1 Applicability**

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

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

- (a) The board shall direct the general manager to conduct at least one public hearing on proposed rules of the Authority.
- (b) The general manager will set a time and place for all public hearings on proposed rules of the Authority.
- (c) Public hearings will be conducted in the manner the general manager 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 tape recorded.

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

(a) The general manager will provide, by using the United States mail, notice of a proposed rule to all applicants and permit holders.

(b) The notice will include:

(1) a statement of notice 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) The general manager will publish notice of a public hearing on a proposed rule in a newspaper of general circulation within the boundaries of the Authority at least 14 days before the date of the public hearing on the proposed rule.

(b) The notice will include:

(1) a statement of the general subject matter of the proposed rule;

(2) the date, time, and place, of the public hearing;

(3) the procedures for obtaining copies of the proposed rules and for submitting written comments;

(4) the date and time by which written comments must be filed with the Authority; and

(5) a statement regarding the opportunity to appear at the meeting at which a proposed rule is adopted as a final rule and make comments on the proposed rule and Authority responses.

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

(a) Written comments must be filed at the official address of the Authority. Alternatively, written comments may be hand delivered to the presiding officer of the public hearing. 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 identified and followed by the comments on the specifically identified proposed rule.



(c) The Authority shall allow 45 days for comment on a proposed rule, other than an emergency rule, before the board adopts the rule. 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 rule, state the reasons and justification for the rule and the Authority's responses to written comments.

(e) The meeting at which a proposed rule is adopted as a final rule must be an open meeting. The public must be allowed to make comments on the proposed rule 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 rule.

**§ 703.13 Effective Date of Rules**

A proposed rule becomes final and effective on the 10<sup>th</sup> day after the date the rule is adopted by the Board as a final rule.

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

**Section**

705.1 Groundwater  
705.3 Surface Water

**§ 705.1 Groundwater**

- (a) 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.

**CHAPTER 707. PROCEDURE BEFORE THE AUTHORITY**

**Subchapter A. Definitions**

**Section**

707.1 Definitions

**Subchapter B. General Provisions**

**Section**

707.101 Purpose  
707.102 Computation of Time  
707.103 Document Filing  
707.104 Service of Documents  
707.105 Change of Address or Telephone Number  
707.106 Use of Forms

**Subchapter C. Meetings of the Board**

**Section**

707.201 Meetings  
707.202 Conduct and Decorum at Board Meetings  
707.203 Filing Comments on Matter Set for a Board Meeting  
707.205 Orders or Resolutions Showing Board Action  
707.206 Audio Recordings  
707.207 Minutes  
707.208 Evidentiary Hearing Held by Board

**Subchapter D. Requirements for Applications, Registrations and Other Documents**

**Section**

707.301 Applicability  
707.302 Initiation of Proceedings  
707.303 Proper Applicant, Registrant or Filer  
707.401 Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership  
707.4011 Combination of Forms  
707.402 Conference with Authority Staff  
707.403 Application Fee  
707.404 Registration Fee  
707.405 Applications for Initial Regular Permits/Declarations of Historical Use  
707.406 Applications for Additional Regular Permits  
707.407 Applications for Term Permits  
707.408 Applications for Emergency Permits  
707.409 Application to Renew Emergency Permits

- 707.410 Well Registrations
- 707.411 Applications for Well Construction Permits
- 707.4111 Applications for Well Construction Permits to Construct Well Through the Edwards Aquifer
- 707.4112 Applications for Permits to Plug Well
- 707.4113 Applications to Consolidate Groundwater Withdrawal Permits
- 707.4114 Application for Delegation of Regulatory Authority
- 707.412 Meter Registration
- 707.413 Applications for Permits to Install or Modify Meter
- 707.414 Applications to Transfer Interim Authorization Status and Amend Application for Initial Regular Permit
- 707.415 Applications to Transfer Permit
- 707.416 Applications to Register an Exempt Well
- 707.417 Applications for Monitoring Well Permits
- 707.418 Applications for Aquifer Recharge and Storage Permits
- 707.4181 Applications for Recharge Recovery Permits
- 707.419 Applications for Variance from Comprehensive Water Management Rules
- 707.420 Applications for Groundwater Conservation Plan Approval
- 707.422 Applications for Agricultural Water Conservation Loans
- 707.428 Applications to Convert Base Irrigation Groundwater
- 707.429 Edwards Aquifer Water Well Drillers Registration

### **Subchapter E. Actions on Applications and Registrations by the Authority**

#### **Section**

- 707.501 Initial Action
- 707.502 Review for Administrative Completeness
- 707.503 Return of Applications and Registrations Deemed Not Administratively Complete
- 707.504 Technical Review
- 707.505 Amendments and Non-Substantive Changes to Applications and Registrations
- 707.507 Proposed Permit and Technical Summary
- 707.508 Proposed Approval and Technical Summary
- 707.509 Referral to Docket Clerk
- 707.510 Publication by the Authority of Notice of Proposed Permit and Technical Summary for Initial Regular Permits
- 707.5101 Publication by the Applicant of Notice of Proposed Permit and Technical Summary
- 707.5102 Notification of Proposed Denial
- 707.5103 Publication by the Applicant of Notice of Proposed Approval of Transfer
- 707.511 Supplementation of Application Required by Change in Rules
- 707.512 Withdrawal of Application
- 707.513 Action by Board on Applications Where There is no Right to a Contested Case Hearing
- 707.514 Action by Board on Applications Where There is a Right to a Contested Case Hearing but None Was Requested or All Requests Were Withdrawn
- 707.515 Actions on Applications by the General Manager

707.516	Correction to Permits by the General Manager
707.5161	Amendments to Permits by Board
707.517	Special Procedures Regarding Loss of Exempt Well Status
707.518	Special Procedures Regarding Emergency Permits
707.520	Special Procedures Regarding Determinations as to the Location of the Recharge Zone of the Aquifer

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

### **Section**

707.601	Applicability
707.602	Persons Entitled to a Contested Case Hearing
707.603	Form and Contents of Request for Contested Case Hearing
707.604	Time for Filing Request for Contested Case Hearing
707.605	Processing of Hearing Request
707.606	Action by Board on Hearing Request
707.607	Service of Documents filed in a Contested Case
707.608	Delegation to SOAH
707.609	Referrals to Contested Case Hearing
707.6091	Notice to Parties of Contested Case
707.610	Designation of Parties
707.6101	Discovery
707.6102	Issuance of Commission Requiring Deposition
707.6103	Depositions
707.6104	Expenses of Witness or Deponent
707.611	Burden of Proof
707.612	Commissions Requiring Deposition and Subpoenas
707.613	Remand to Board
707.6131	Informal Disposition of Contested Case
707.614	Certified Questions
707.615	Proposal for Decision
707.616	Waiver of Right to Review Judge's Proposal
707.617	Pleadings Following Proposal for Decision
707.618	Scheduling of Board Meeting
707.619	Oral Presentation Before the Board
707.6191	Transcription of Proceedings Before the Board
707.620	Reopening the Record
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707.6211	Notification of Decisions and Orders
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
707.626	Notice of Party Status

## **Subchapter A. Definitions**

### **Section**

#### **707.1 Definitions**

### **§ 707.1 Definitions**

The following words and terms, when used in this Chapter, will have the following meanings, unless the context clearly indicates otherwise:

(1) Chairman - the chairman of the board, as elected by the board pursuant to the Bylaws of the Authority.

(2) Contested case hearing - a proceeding governed by rules consistent with Subchapters C, D, and F, Chapter 2001, TEX. GOV'T CODE, Texas Administrative Procedures Act, and any applicable rules of the State Office of Administrative Hearings, 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.

(3) Director - a duly elected or appointed member of the board.

(4) Judge - A SOAH administrative law judge.

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

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

(7) Protestant - Any person opposing, in whole or in part, an application.

(8) Secretary - the secretary of the board, as elected by the board pursuant to the Bylaws of the Authority.

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

(10) Treasurer - the treasurer of the board, as elected by the board pursuant to the Bylaws of the Authority.

(11) Vice chairman - the vice chairman of the board, as elected by the board pursuant to the Bylaws of the Authority.

## **Subchapter B.            General Provisions**

### **Section**

707.101	Purpose
707.102	Computation of Time
707.103	Document Filing
707.104	Service of Documents
707.105	Change of Address or Telephone Number
707.106	Use of Forms

### **§ 707.101        Purpose**

The purpose of this chapter is to provide the procedures to be followed in Authority proceedings. Included in this chapter are general and specific procedures for the filing and processing of applications for permits, registrations, and applications for other types of approvals or authorizations that may be issued or granted by the Authority. These procedures are intended to allow the Authority to efficiently implement its powers and duties under its enabling legislation. These rules should be interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of the Authority's enabling legislation.

### **§ 707.102        Computation of Time**

In computing any period of time prescribed or allowed under the Authority's rules or orders, or by any applicable statute, 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, unless it is a Saturday, Sunday, or legal holiday on which the Authority office is closed, in which event 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 of this Chapter (Procedures for Contested Case Hearings on Applications), all documents required to be filed with the Authority shall be submitted to the appropriate or designated member of the Authority staff. Requests for contested case hearings shall be filed with the docket clerk.

(b) If appropriate, the general manager will assign a docket or application number to a matter. The docket or 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, he or she must file with the docket clerk the appropriate number of copies by mail, hand delivery or electronic transmittal within three days.

(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) 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 applicant fails to follow the requirements of this section, the Authority may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the Authority may choose not to consider documents filed within ten days of a board meeting.

(h) The Authority may waive one or more of the requirements of this section or impose additional filing requirements.

(i) 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 (Title 1, TEX. ADMIN. CODE, Chapter 155).

(j) This section does not apply to offers of evidence during a hearing.

#### **§ 707.104 Service of Documents**

(a) All documents filed and served under these rules, except as otherwise expressly provided, may be served by delivering a copy to the person to be served, or the person's duly authorized agent or attorney of record, either in person or by agent or by courier-receipted delivery or by United States mail, to the person's last known address, or by facsimile to the recipient's current telecopier number, or by such other manner as the Authority in its discretion may direct.

(b) Service by mail shall be complete upon deposit of the document, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Service by facsimile must be followed by serving an extra copy in person, by mail or by carrier-receipted delivery within one day.

(c) Whenever a person has the right or is required to do some act within a prescribed period after the service of a document upon the person and the document is served by mail or by facsimile, three days shall be added to the prescribed period. This subsection does not apply when documents are filed for consideration at a board meeting.



(d) The person or the person's attorney of record shall certify compliance with this rule in writing over signature and on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of the fact of service.

(e) Nothing herein shall preclude any person from offering proof that the notice or instrument was not received or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the Authority may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

(f) In contested case hearings, copies of all documents filed with the judge shall be served on the general manager no later than the day of filing.

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

Applicants, registrants, permittees, 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.

#### **§ 707.106 Use of Forms**

The general manager will furnish, without charge, forms and instructions for the preparation of any application, declaration, registration 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.

## **Subchapter C. Meetings of the Board**

### **Section**

707.201	Meetings
707.202	Conduct and Decorum at Board Meetings
707.203	Filing Comments on Matter Set for a Board Meeting
707.205	Orders or Resolutions Showing Board Action
707.206	Audio Recordings
707.207	Minutes
707.208	Evidentiary Hearing Held by Board

### **§ 707.201 Meetings**

(a) The board will meet as necessary for the conduct of business at times and places necessary for the performance of the Authority's duties. Meetings shall be scheduled in accordance with the Bylaws of the Authority. The Authority is subject to the Texas Open Meetings Act.

(b) Meetings of the board will be presided over by the chairman, or in the chairman's absence, the vice chairman, or in the absence of both the chairman and the vice chairman, the secretary, or in the absence of all three, the treasurer. In the absence of all four such officers, the voting directors present will elect a temporary chairman for that meeting.

(c) Business may be considered in accordance with Robert's Rules of Order or other standard rules of procedure as may be adopted by the directors from time to time. Directors may also, to the extent permitted by applicable laws, suspend any rules by a majority vote.

(d) Non-voting directors may participate in and comment on any matter before the board in the same manner as a voting director. A non-voting director may not vote on any matter before the board.

(e) Members of the South Central Texas Water Advisory Committee (SCTWAC) may participate in board meetings to represent downstream water supply concerns and assist in solutions to those concerns. SCTWAC members may request the chairman to permit them to address the board on such matters. SCTWAC members may not vote on matters before the board.

(f) The Parliamentarian will decide issues of parliamentary procedure, but may be overruled by majority vote of the board. The Parliamentarian is appointed to that position by the chairman pursuant to the Bylaws of the Authority.

### **§ 707.202 Conduct and Decorum at Board Meetings**

(a) Persons who attend or participate in a meeting should act in a manner that is

respectful of the conduct of public business and conducive to orderly and polite discourse.

(b) All persons shall comply with the chairman's directions concerning the offer of public comment, conduct and decorum. Before the meeting, any person who wishes to speak shall complete a public participation form and deliver it to the general manager or his or her representative at the meeting.

(c) Persons who have special requests concerning a presentation during a meeting shall make advance arrangements with the assistant to the secretary. A special request includes:

- (1) the presentation of audio or video recordings;
- (2) the need to move furniture, appliances, or easels;
- (3) alternative language interpreters; or
- (4) auxiliary aids or services, such as interpreters for persons who are hearing impaired, readers, large print, or braille.

#### **§ 707.203 Filing Comments on Matter Set for a Board Meeting**

In order to be included in the board packet for consideration by the board, written comments on matters set for a meeting of the board must be filed with the Authority no later than noon on the day that is eight calendar days prior to the board meeting.

#### **§ 707.205 Orders or Resolutions Showing Board Action**

The chairman or any director may sign written orders or resolutions to show actions taken at a meeting of the board if he or she did not vote against the actions reflected in the orders or resolutions.

#### **§ 707.206 Audio Recordings**

(a) The assistant to the secretary shall make audio recordings of meetings of the board that are open to the public pursuant to the Texas Open Meetings Act.

(b) Audio recordings shall also be made of closed sessions of the board as may be required by the Texas Open Meetings Act.

#### **§ 707.207 Minutes**

Actions taken in meetings will be incorporated in written minutes taken by the secretary or assistant to the secretary and signed by the secretary or the chairman.

**§ 707.208 Evidentiary Hearing Held by Board**

When an evidentiary hearing is held before the board, the procedures of Subchapter F of this Chapter (Procedures for Contested Case Hearings on Applications) shall apply. The chairman or a director designated by the chairman will preside over the hearing.

**Subchapter D. Requirements for Applications, Registrations and Other Documents**

**Section**

707.301	Applicability
707.302	Initiation of Proceedings
707.303	Proper Applicant, Registrant or Filer
707.401	Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership
707.4011	Combination of Forms
707.402	Conference with Authority Staff
707.403	Application Fee
707.404	Registration Fee
707.405	Applications for Initial Regular Permits/Declarations of Historical Use
707.406	Applications for Additional Regular Permits
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707.408	Applications for Emergency Permits
707.409	Application to Renew Emergency Permits
707.410	Well Registrations
707.411	Applications for Well Construction Permits
707.4111	Applications for Well Construction Permits to Construct Well Through the Edwards Aquifer
707.4112	Applications for Permits to Plug Well
707.4113	Applications to Consolidate Groundwater Withdrawal Permits
707.4114	Application for Delegation of Regulatory Authority
707.412	Meter Registration
707.413	Applications for Permits to Install or Modify Meter
707.414	Applications to Transfer Interim Authorization Status and Amend Application for Initial Regular Permit
707.415	Applications to Transfer Permit
707.416	Applications to Register an Exempt Well
707.417	Applications for Monitoring Well Permits
707.418	Applications for Aquifer Recharge and Storage Permits
707.4181	Applications for Recharge Recovery Permits
707.419	Applications for Variance from Comprehensive Water Management Rules
707.420	Applications for Groundwater Conservation Plan Approval
707.422	Applications for Agricultural Water Conservation Loans
707.428	Applications to Convert Base Irrigation Groundwater
707.429	Edwards Aquifer Water Well Drillers Registration

**§ 707.301 Applicability**

This subchapter applies to any application or registration filed with the Authority.

**§ 707.302      Initiation of Proceedings**

Any person who wishes to obtain a permit, authorization, or other approval from the Authority shall submit a written application to the Authority on a form provided by the general manager.

**§ 707.303      Proper Applicant, Registrant or Filer**

If a well or a proposed well has one owner, that owner shall file the application, registration or other document required to be filed by the Authority. If there is more than one owner, a joint application, registration or other document shall be filed by those owners. In such an instance, the owners shall select one among them to act for and represent the others in filing the application, registration or other document. Written documentation of such a selection satisfactory to the Authority shall be filed with the application, registration or other document. For the purposes of this section, unless ownership of the well by the 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.

**§ 707.401      Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership**

All applications, registrations and notices of transfer of ownership filed with the Authority 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, registrant or transferee. If the applicant, registrant or transferee is a partnership, the name of the partnership shall be followed by the words “a partnership.” If the applicant, registrant or transferee is acting as trustee for another, the trustee’s name shall be followed by the word “trustee.” If one other than the named applicant, registrant or transferee executes the application, registration or notice of transfer of ownership, the person executing the application, registration or notice of transfer of ownership shall provide their name, position, mailing address and telephone number.

(2) Signature of Applicant or Transferee. The application or notice of transfer of ownership shall be signed as follows:

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

(B) Joint applications and notices of transfer of ownership. A joint application

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

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

(D) If the applicant or transferee is an estate or guardianship, the application or notice of transfer of ownership 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 or notice.

(E) If the applicant or transferee is a corporation, public district, county, municipality or other corporate entity, the application or notice of transfer of ownership 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 or notice. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

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

This subsection does not apply to registrations.

(3) Attestation. Each applicant, registrant or transferee shall subscribe and swear or affirm under oath that the facts set out in the application, registration or notice of transfer of ownership 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, registration or notice. This requirement does not apply to well registrations. For well registrations, the registrant shall certify that all information provided therein is true.

#### **§ 707.4011 Combination of Forms**

The general manager may provide forms for applications and registrations that combine two or more applications and registrations in a manner that will reduce the need for persons to submit duplicative information to the Authority. Persons filing combined forms will be required to submit separate application or registration fees pertaining to each portion of the combined

form.

**§ 707.402 Conference with Authority Staff**

Applicants and registrants are encouraged to confer with the Authority staff on any questions concerning the preparation of an application or registration.

**§ 707.403 Application Fee**

For all applications other than for an agricultural water conservation loan, a non-refundable application fee of \$25 must accompany that application in order for it to be considered by the Authority. An application for an agricultural water conservation loan must be accompanied by a non-refundable application fee established by the Board. Authority staff is prohibited from processing any application unless the proper fee is tendered.

**§ 707.404 Registration Fee**

Unless waived by the Board, a registration fee of \$10 must accompany any registration for it to be filed by the Authority. Authority staff is prohibited from filing any registration unless the proper fee is tendered.

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

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), 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 the general manager 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 the general manager may require.

#### **§ 707.406 Applications for Additional Regular Permits**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for an additional 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 from which the withdrawal of groundwater is proposed and identifying the Aquifer pool that will serve as the source of the groundwater.

(3) Amount of Withdrawal. The total amount of groundwater proposed to be withdrawn and beneficially used on an annual and monthly basis, stated in number of acre-feet.

(4) Purpose of Use. The proposed purpose of use stated in definite terms. If the groundwater is to be used for more than one purpose, the approximate amount to be used for each purpose shall be clearly stated. If the amount to be used is less than the amount to be withdrawn, both the amount to be withdrawn and the amount to be used shall be specified. If the purpose of use is irrigation, documentation of the number of acres to be irrigated must be included as well.

(5) Rate of Withdrawal. The maximum rate of withdrawal that the well is capable of, in gallons per minute or cubic feet per second, shall be stated.

(6) Method of Withdrawal. A description of the method of withdrawal to be used (i.e., portable pump, stationary pump or artesian flow).

(7) Place of Use. The proposed place of use of groundwater to be withdrawn from each well.

(8) Well Address. The physical address of the property upon which the well (or proposed well) is located.

(9) Well Location. A legal description of the location of the well (or proposed well) including: the county; section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(10) Map. A city or county map with the location of property on which the well is located highlighted and the location of the well pinpointed.

(11) Water Conservation Plan. A description of proposed water conservation measures to be implemented.

(12) Water Reuse Plan. A description of proposed water reuse measures to be implemented.

(13) Meter. A description of the meter or other device installed on the well to be used for measuring the amount of groundwater withdrawn from the Aquifer.

(14) Other Permits. A complete list of all other permits applied for or issued by the

Authority to the applicant.

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

#### **§ 707.407 Applications for Term Permits**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for a term 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 from which the withdrawal of groundwater is proposed and identifying the Aquifer pool that will serve as the source of the groundwater.

- (3) Amount of Withdrawal. The total amount of groundwater proposed to be withdrawn from the Aquifer and beneficially used on an annual and monthly basis and over the entire term of the permit, stated in number of acre-feet.

- (4) Purpose of Use. The proposed purpose of use stated in definite terms. If the groundwater is to be used for more than one purpose, the approximate amount to be used for each purpose shall be clearly stated. If the amount to be used is less than the amount to be withdrawn, both the amount to be withdrawn and the amount to be used shall be specified. If the purpose of use is irrigation, documentation of the number of acres to be irrigated must be included as well.

- (5) Rate of Withdrawal. The maximum rate of withdrawal that the well is capable of, in gallons per minute or cubic feet per second, shall be stated.

- (6) Method of Withdrawal. A description of the method of withdrawal to be used (i.e., portable pump, stationary pump or artesian flow).

- (7) Place of Use. The proposed place of use of groundwater to be withdrawn from each well.

- (8) Well Address. The physical address of the property upon which the well (or proposed well) is located.

- (9) Well Location A legal description of the location of the well (or proposed well) including: the county; section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

- (10) Map. A city or county map with the location of the property on which the well is

located highlighted and the location of the well pinpointed.

(11) Water Conservation Plan. A description of proposed water conservation measures to be implemented.

(12) Water Reuse Plan. A description of proposed water reuse measures, if applicable, to be implemented.

(13) Meter. A description of the meter or other device installed on the well to be used for measuring the amount of groundwater withdrawn from the Aquifer.

(14) Other Permits. A complete list of all other permits applied for or issued by the Authority to the applicant.

(15) Proposed Term. A statement of the proposed period of time for which the term permit is requested.

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

#### **§ 707.408 Applications for Emergency Permits**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for an emergency 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 from which the withdrawal of groundwater is proposed.

(3) Amount of Withdrawal. The total amount of groundwater to be withdrawn from the Aquifer and beneficially used over the duration of the permit, stated in number of acre-feet.

(4) Purpose of Use. The proposed purpose of use stated in definite terms. If the groundwater is to be used for more than one purpose, the approximate amount to be used for each purpose shall be clearly stated.

(5) Rate of Withdrawal. The maximum rate of withdrawal that the well is capable of, in gallons per minute or cubic feet per second.

(6) Place of Use. The proposed place of use of groundwater to be withdrawn from the well.

(7) Well Address. The physical address of the property upon which the well is located.

(8) Well Location. A reasonably clear and precise description of the location of the well.

(9) Map. A city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed.

(10) Other Permits. A complete list of all other permits applied for or issued by the Authority to the applicant.

(11) Basis for Emergency. Information establishing that the issuance of the emergency permit is necessary to prevent the loss of life or to prevent a severe, imminent threat to the public health or safety.

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

#### **§ 707.409 Applications to Renew Emergency Permits**

(a) An application to renew an emergency permit must contain the information specified in § 707.408 of this chapter (Applications for Emergency Permits).

(b) Time to File. An application to renew an emergency permit must be filed with the Authority before the existing emergency permit has expired.

#### **§ 707.410 Well Registrations**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), a well registration shall contain the following, if available:

(1) Name and Address of Owner. The full name, physical and mailing addresses, and telephone number of the owner of the well.

(2) Well Address. The physical address of the property upon which the well is located.

(3) Well Location. A legal description of the location of the well, including: the county, section, block and survey, and the number of feet to the two nearest public streets or highways; or other adequate legal description approved by the Authority.

(4) Maps. If requested by the Authority:

(A) a city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed; and

(B) a map or plat of the property on which the well is located, drawn to scale,

not greater than 1000 feet to an inch (1" = 1000') that shows the pinpoint location of the well.

(5) Purpose of Use. The purpose of use of the groundwater.

(6) Amount of Withdrawal. The estimated total amount of groundwater withdrawn from the Aquifer and beneficially used on an annual and monthly basis, stated in number of acre-feet.

(7) Rate of Withdrawal. The maximum rate of withdrawal that the well is capable of, in gallons per minute.

(8) Depth. The depth of the well and depth of the cement casing.

(9) Pump. The size and type of the pump.

(10) Date of Construction. The date or approximate date that the well was constructed.

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

#### **§ 707.411 Applications for Well Construction Permits**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for a well construction 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 owner of the proposed well.

(2) Description of Proposed Activity. A description of the activity for which a Well Construction Permit is being sought (e.g., drilling a new well; altering an existing well, installing a larger pump).

(3) Well Address. The physical address of the property upon which the proposed well is to be located.

(4) Well Location. A legal description of the location of the proposed well, including: the county; section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(5) Maps.

(A) A city or county map with the location of the property on which the well is proposed to be located highlighted and the location of the proposed well pinpointed; and

(B) A map of the property on which the well is to be located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows:

- (i) the location of the proposed well;
  - (ii) the location of the three nearest wells within a one-quarter mile radius of the proposed location and the names and addresses of the owners of those wells; and
  - (iii) any existing or potential sources of contamination within 500 feet of the location of the proposed well that are known or should be known to the applicant such as existing and proposed livestock or poultry yards, septic system absorption fields, underground or above ground petroleum storage tanks.
- (6) Purpose of Use. The proposed purpose of use stated in definite terms. If the groundwater is to be used for more than one purpose, the approximate amount to be used for each purpose shall be stated.
- (7) Amount of Withdrawal. The total amount of groundwater proposed to be withdrawn from the Aquifer and beneficially used on an annual and monthly basis, stated in number of acre-feet.
- (8) Rate of Withdrawal. The maximum rate of withdrawal that the proposed well will be capable of, in gallons per minute or cubic feet per second.
- (9) Depth. The proposed depth of the well and proposed depth of cement casing.
- (10) Casing. The proposed depth of the cemented casing and cementing methodology.
- (11) Depth of Strata. The predicted depth to top of targeted water-bearing strata.
- (12) Pump. The size of the proposed pump and pumping method.
- (13) Proposed Construction Date. The approximate date that well construction operations are proposed to begin.
- (14) Identity of Well Drilling Contractor. The name, address, telephone number and license number of the well drilling contractor.
- (15) Other Permits. A list of all other permits applied for or issued by the Authority to the applicant.
- (16) Legal Basis of Right to Withdraw Groundwater. The applicant shall identify the claimed legal basis under which groundwater will be withdrawn from the Aquifer.
- (17) Any other information as may be required by the general manager.

**§ 707.4111 Applications for Well Construction Permits to Construct Well Through the Edwards Aquifer**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for a well construction permit to construct well through the Aquifer 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 proposed well.

(2) Well Address. The physical address of the property upon which the proposed well is to be located.

(3) Well Location. A legal description of the location of the proposed well including: the county, section, block and survey; and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Maps.

(A) A city or county map with the location of the property on which the well is proposed to be located highlighted and the location of the proposed well pinpointed; and

(B) A map of the property on which the well is to be located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows:

(i) the location of the proposed well; and

(ii) any existing or potential sources of contamination within 500 feet of the location of the proposed well that are known or should be known to the applicant such as existing and proposed livestock or poultry yards, septic system absorption fields, underground or above ground petroleum storage tanks.

(5) Depth. The proposed depth of the well and proposed depth of cement casing.

(6) Casing. The proposed depth of the cemented casing, proposed cementing methodology, and proposed method of insuring that no groundwater from the Aquifer enters the well.

(7) Depth of Strata. The predicted depth to top of targeted water-bearing strata.

(8) Proposed Construction Date. The approximate date that well construction operations are proposed to begin.

(9) Identity of Well Drilling Contractor. The name, address, telephone number and license number of the well drilling contractor.



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

#### **§ 707.4112 Applications for Permits to Plug Well**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for a permit to plug a well 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) Estimated start date of well plugging.

- (3) Maps.

- (A) a city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed; and

- (B) a map or plat of the property on which the well is located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows the location of the well and the distances between any septic systems, known wells, and property lines.

- (4) Well Address. The physical address of the property upon which the well is located.

- (5) Well Location. A legal description of the location of the well including: the county; section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

- (6) Depth. The depth of the well and depth of the cement casing.

- (7) Plugging Method. A detailed description and a diagram of the plugging method and materials to be used.

- (8) Identity of Well Drilling Contractor. The name, address, telephone number and license number of the well drilling contractor who will perform the plugging operation.

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

#### **§ 707.4113 Applications to Consolidate Groundwater Withdrawal Permits**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application to consolidate groundwater withdrawal permits 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 who seeks to consolidate two or more groundwater withdrawal permits.

(2) Description of Permits. A description of each permit sought to be consolidated, including the type of permit and the permit number.

(3) Well Operation and Management. A description of the manner in which the applicant's wells are operated and managed relating to the applicant's place and purpose of use.

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

#### **§ 707.4114 Application for Delegation of Regulatory Authority**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for delegation of regulatory authority filed by a groundwater conservation district shall contain the following:

(1) Name and Address of Groundwater Conservation District. The full name, physical and mailing addresses, phone number, fax number, and e-mail address of the groundwater conservation district.

(2) Description of Authority Sought. A full description of the powers or duties of the authority that the groundwater conservation district seeks to manage and control.

(3) Statutory Authority. A list of the groundwater conservation district's statutory powers authorizing full enforcement of the powers or duties to be delegated.

(4) Evidence demonstrating the groundwater conservation district has implemented all rules and policies necessary to fully implement the powers or duties to be delegated.

(5) Evidence demonstrating the groundwater conservation district has implemented a system designed to provide the Authority with adequate information with which to monitor the adequacy of the groundwater conservation district's performance in enforcing board rules and orders.

(6) A description of the groundwater conservation district's performance under other prior delegations.

(7) A description of the financial and staff resources the groundwater conservation district intends to commit if the application for delegation of regulatory authority is approved.

(8) Any other information as may be required by the board.

## § 707.412 Meter Registrations

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), a meter registration shall contain the following:

(1) Name and Address of Owner. The full name, physical and mailing address, telephone number, fax number, and e-mail address of the owner of the well on which the meter is installed.

(2) Well Address. The physical address of the property upon which the well on which the meter is installed is located.

(3) Well Location. A legal description of the location of the well on which the meter is installed including: the county, section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Map. A city or county map with the property on which the well on which the meter is installed highlighted and the location of the well pinpointed.

(5) Status of Well. Whether the well on which the meter is installed is an exempt well or a non-exempt permitted well.

(6) Purpose of Use. The purpose of use of groundwater withdrawn from the well on which the meter is installed stated in definite terms. If the groundwater is used for more than one purpose, the approximate amount to be used for each purpose shall be stated.

(7) Description of the Meter. A description of the meter or alternative measuring method including:

(A) a description of the method used to measure the flow rate;

(B) a description of the method used to measure the cumulative amount of groundwater withdrawn from the Aquifer;

(C) its size;

(D) the units in which the measurements will be recorded;

(E) a statement describing its accuracy;

(F) a description of its mechanical operation;

(G) a statement of whether the totalizer is resettable;

(H) the date that the meter was last calibrated and who calibrated it;

(I) the maximum cumulative amount of groundwater withdrawn from the Aquifer that the totalizer is capable of measuring;

(J) a description of its instantaneous readout capabilities for flow rate and total quantity measured; and

(K) a statement that the meter was installed according to the manufacturer's specifications.

(8) Date Installed. The date or approximate date that the meter was installed or the alternative measuring method was first implemented.

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

#### **§ 707.413 Applications for Permits to Install or Modify Meter**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for a permit to install or modify meter shall contain the following:

(1) Name and Address of Owner. The full name, physical and mailing address, telephone number, fax number, and e-mail address of the owner of the well on which the meter is proposed to be installed.

(2) Well Address. The physical address of the property upon which the well on which the meter is installed is located.

(3) Well Location. A legal description of the location of the well on which the meter is to be installed including: the county, section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Map. A city or county map with the property on which the well on which the meter is to be installed highlighted and the location of the well pinpointed.

(5) Status of Well. Whether the well on which the meter is to be installed is an exempt well or a non-exempt permitted well.

(6) Purpose of Use. The purpose of use of groundwater withdrawn from the well on which the meter is to be installed stated in definite terms. If the groundwater is used for more than one purpose, the approximate amount to be used for each purpose shall be clearly stated.

(7) Description of the Meter. A description of the meter or alternative measuring method including:

- (A) a description of the method used to measure the flow rate;
  - (B) a description of the method used to measure the cumulative amount of groundwater withdrawn from the Aquifer;
  - (C) its size;
  - (D) the units in which the measurements will be recorded;
  - (E) a statement describing its accuracy;
  - (F) a description of the manufacturer's quality control and assurance program;
  - (G) its normal operating range;
  - (H) its pressure rating;
  - (I) a description of its construction materials;
  - (J) a description of its design;
  - (K) a description of its mechanical operation;
  - (L) a statement of whether the totalizer is resettable;
  - (M) the maximum cumulative amount of groundwater withdrawn from the Aquifer that the totalizer is capable of measuring; and
  - (N) a description of its instantaneous readout capabilities for flow rate and total quantity measured.
- (8) any other information as may be required by the general manager.

**§ 707.414 Applications to Transfer Interim Authorization Status and Amend Application for Initial Regular Permit**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application to transfer interim authorization status and amend application for initial regular permit shall contain the following with respect to both the well which currently has interim authorization status and the well (or proposed well) to which the transfer is proposed:

- (1) Names and Addresses of Owners. The full name, physical and mailing addresses, telephone number, fax number, and e-mail addresses of the person who seeks to transfer his or her interim authorization status and the name and address of the person to whom that status is

proposed to be transferred as well as the name, address, and telephone numbers of any contact persons, if different from the transferor or transferee.

(2) Well Addresses. The physical addresses of the properties upon which the two wells are located.

(3) Well Locations. A legal description of two locations of the two wells including: the county, section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Maps. Two city, county, or state highway maps with the locations of the property on which the wells are located highlighted and the locations of the well pinpointed.

(5) Purposes of Use. The purpose of use for the well which has current interim authorization status and the proposed purpose of use for the well to which the transfer is proposed stated in definite terms. If the groundwater is used (or is proposed to be used) for more than one purpose, the approximate amount used for each purpose shall be clearly stated.

(6) Amount of Withdrawal. The amount of groundwater which is proposed to be withdrawn at the well to which the transfer is proposed.

(7) Place of Use. The place of use of groundwater withdrawn from the well under interim authorization status and the place of use of groundwater withdrawn from the well to which the transfer is proposed.

(8) Term of Transfer. The period of time for which the transfer is proposed.

(9) A copy of the transfer agreement and any supporting documents.

(10) For interim authorization status based on an application for an initial regular permit for irrigation use:

(A) if complete ownership of the total place of use including all (100%) of the historically irrigated acres is proposed to be transferred, no legal survey will be required.

(B) if ownership of only part of the place of use is proposed to be transferred, the Authority will assign a proportional amount of base irrigation groundwater rights to the transferee, unless a surveyed legal description and plat of the following is provided:

(i) the number of acres encompassing the place of use must be clearly indicated on the legal survey and plat;

(ii) a surveyed legal description and plat of the irrigated land on which the irrigation water was placed to beneficial use during the historical period must be identified and outlined;

(iii) the survey shall also show the historically irrigated acres conveyed to the transferee and the historically irrigated acres retained by the transferor;

(iv) the survey must be certified by a registered professional engineer, or registered professional surveyor, to be true and correct with the boundaries of the place of use and historically irrigated acres accurately delineated; and

(v) a separate U.S.G.S. 7.5 Minute Series (topographic) quad sheet reflecting the place of use.

(11) The price per acre-foot or other consideration.

(12) A meter reading taken on the last day of the month immediately preceding the month in which the application to transfer interim authorization status and amend application for initial regular permit is submitted to the Authority.

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

#### **§ 707.415 Applications to Transfer Permit**

In addition to the information specified in § 707.401 of this title (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application to transfer a permit shall contain the following with respect to both the currently non-exempt permitted well and the well (or proposed well) to which the transfer is proposed, if applicable:

(1) Names and Addresses of Owners. The full name, physical and mailing addresses, telephone and fax number, and e-mail addresses of the person who seeks to transfer his or her permitted right and the person to whom those rights are proposed to be transferred as well as the name, address, and telephone number of any contact persons, if different from the transferor or transferee.

(2) Well addresses. The physical addresses of the properties on which the two wells are located.

(3) Well Locations. A legal description of the locations of the two wells including: the county, section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Maps. Two city, county, or state highway maps with the location of the properties on which the wells are located highlighted and the locations of the well pinpointed.

(5) Purpose of Use. The purpose of use for the currently non-exempt permitted well and the proposed purpose of use for the well to which the transfer is proposed stated in definite terms. If the groundwater is used (or is proposed to be used) for more than one purpose, the approximate amount used for each purpose shall be clearly stated.

(6) Groundwater Withdrawal Amounts; Junior Rights and Senior Rights. The amount of groundwater proposed to be withdrawn at the well to which the transfer is proposed, and identification of the proposed amounts of, as applicable, junior rights, senior rights, base irrigation groundwater and unrestricted irrigation groundwater to be transferred.

(7) Places of Use. The place of use of groundwater withdrawn from the non-exempt permitted well and the place of use of groundwater withdrawn from the well to which the transfer is proposed.

(8) Term of Transfer. The period of time for which the transfer is proposed.

(9) A copy of the transfer agreement and any supporting documents.

(10) If the application is to transfer a groundwater withdrawal permit into the groundwater trust, then the following information should also be included in the application:

(A) Groundwater Withdrawal Permit Number. The permit number assigned to the groundwater withdrawal permit issued by the Authority;

(B) Legal Authority. Evidence that the applicant is the owner of the groundwater withdrawal permit and is authorized to transfer it to the groundwater trust;

(C) Good clear title. Evidence suitable to the Authority that the applicant has good title to the groundwater withdrawal permit and that it is free and clear of liens or other encumbrances, and that no challenges have been made or threatened by third parties to the applicant's claimed ownership of the groundwater withdrawal permit;

(D) Offering Price. The price at which the groundwater withdrawal permit is offered by the applicant;

(E) Purpose of Transfer. Whether the purpose of the transfer into the groundwater trust is for:

- (i) sale or resale;
- (ii) demand management;
- (iii) retirement; or
- (iv) other transfers.

(11) For an initial regular permit authorizing irrigation use:

(A) if complete ownership of the total place of use including all (100%) of the historically irrigated acres is proposed to be transferred, no legal survey will be required.



(B) if ownership of only part of the place of use is proposed to be transferred, the Authority will assign a proportional amount of base irrigation groundwater rights to the transferee, unless a surveyed legal description and plat of the following is provided:

(i) the number of acres encompassing the place of use must be clearly indicated on the legal survey and plat;

(ii) a surveyed legal description and plat of the irrigated land on which the irrigation water was placed to beneficial use during the historical period must be identified and outlined;

(iii) the survey shall also show the historically irrigated acres conveyed to the transferee and the historically irrigated acres retained by the transferor;

(iv) the survey must be certified by a registered professional engineer, or registered professional surveyor, to be true and correct with the boundaries of the place of use and historically irrigated acres accurately delineated; and

(v) a separate U.S.G.S. 7.5 Minute Series (topographic) quad sheet reflecting the place of use.

(12) The price per acre-foot or other consideration.

(13) A meter reading taken on the last day of the month immediately preceding the month in which the application to transfer permit is submitted to the Authority.

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

#### **§ 707.416 Applications to Register an Exempt Well**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application to register an exempt well 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 well (or proposed well).

(2) Well Address. The physical address of the property upon which the well (or proposed well) is located.

(3) Well Location. A legal description of the location of the well (or proposed well), including: the county, section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Map, Survey or Deed. A city or county map, recorded land survey, or a copy of the recorded deed for the land upon which the well (or proposed well) is located with the location or the proposed location of the well pinpointed.

(5) Purpose of Use. The purpose of use stated in definite terms. If the groundwater is or will be used for more than one purpose, the approximate amount used for each purpose shall be clearly stated.

(6) Place of Use. The place of use for the groundwater withdrawn from the well (or proposed well).

(7) Maximum Amount of Withdrawal Per Day. The maximum amount of groundwater that the well is (or will be) capable of withdrawing per day stated in gallons.

(8) Rate of Withdrawal. The maximum rate of withdrawal of groundwater that the well is (or will be) capable of, stated in gallons per minute or cubic feet per second.

(9) Depth. The depth or proposed depth of the well and the depth of the cement casing.

(10) Internal Diameter of Casing. The internal diameter of the well casing.

(11) Pump. The size of the pump and pumping method.

(12) Date of Construction. The approximate date that the well was (or will be) constructed.

(13) Well Driller. The name of the water well driller who constructed (or will construct) the well.

(14) Other Groundwater Withdrawal Rights Held by the Applicant. A list of all groundwater withdrawal permits or interim authorization withdrawal rights applied for or issued by the Authority to the applicant or obtained by the applicant through purchase or lease.

(15) Well Reports and Logs. A copy of any Texas State Water Well Report or well logs which pertain to the well.

(16) Well Jurisdiction: A statement regarding whether the well is located:

(A) within the limits of a municipality and, if so, the name of the municipality;

(B) within the extraterritorial jurisdiction of a municipality and, if so, the name of the municipality; or

(C) outside the limits and extraterritorial jurisdiction of any municipality.

(17) Information on whether the Well is Within a Subdivision Requiring Platting. If the applicant contends that the well (or proposed well) is not located within a subdivision requiring platting under Chapter 711, Subchapter C, of the Authority's rules (Exempt Wells), the applicant must provide a detailed explanation in support of that contention, identifying the specific exclusion in § 711.34(c) of the Authority's rules that the applicant contends is controlling, and must attach any relevant documents.

(18) Information on whether the Well Serves a Subdivision Requiring Platting. If the applicant contends that the well (or proposed well) does not (or will not) serve a subdivision requiring platting under Chapter 711, Subchapter C, of the Authority's rules (Exempt Wells), the applicant must provide a detailed explanation in support of that contention, and must attach any relevant documents.

(19) Plat. A copy of any recorded plat that includes the land upon which the well (or proposed well) is located, including indicia that the plat has been reviewed and approved by the commissioner's court or other governmental body responsible for approving it.

(20) Certification. A certification by the applicant that under the standards set forth in Chapter 711, Subchapter C, of the Authority's rules, the well (or proposed well): (1) is incapable of producing more than 25,000 gallons of water per day; (2) will be used solely for domestic or livestock use; and (3) is not within or serving a subdivision requiring platting.

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

#### **§ 707.417 Applications for Monitoring Well Permits**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for a monitoring well 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 owner of the well.

(2) Well Address. The physical address of the property upon which the well is located.

(3) Well Location. A legal description of the location of the well, including: the county, section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority.

(4) Map. A city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed.

(5) Purpose. A clear statement of the intended purpose of the monitoring well including a statement of whether monitoring is required by any other agency, as part of site investigation, cleanup or remedial action plan and whether the well is part of monitoring well

network.

(6) Method. A description of any method or device to be used to measure water depth and a description of any method or device to be used to measure water quality.

(7) Withdrawal Amount. The amount of water to be withdrawn per annum.

(8) Depth. The depth of the well stated in feet.

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

#### **§ 707.418 Applications for Aquifer Recharge and Storage Permits**

In addition to the information specified in § 707.401 (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership) of this chapter, an application for an Aquifer recharge and storage permit shall contain the following:

- (1) Complete name of the Aquifer recharge, storage and recovery project;
- (2) Name, address, and telephone number of the owner(s) of the project;
- (3) Name, address, and telephone number of the owner(s) of any recharge recovery well(s) associated with the project, if known;
- (4) Name, address, and telephone number of the owner(s) of the project site;
- (5) Project location with a legal description of the location of the project, including the county, section, block and survey, labor and league, the number of feet to the two nearest non-parallel property lines (legal survey lines), or other adequate legal description approved by the Authority;
- (6) Name of source water;
- (7) Location of point(s) of recharge indicated on a map of suitable scale to show the location of the point(s) of recharge by course and distance from a corner of an original land survey or other survey point of record; the location of all known existing wells within one mile of and within the project area, with appropriate differentiation by well type; the depth and location of all existing and proposed injection facilities, recovery wells, monitoring wells and the part of the Aquifer in which the water will be stored; any known possible sources of contamination within one mile of the project boundaries such as existing and proposed livestock or poultry yards, septic systems, and underground or aboveground storage tanks;
- (8) Copies of all legal documents, permits, or permit applications evidencing the legal right or the attempt to secure the legal right of the applicant to construct, operate and maintain the project;

(9) Detailed description of the recharge and storage method including method, size of facilities, well type, number, size and capacity, impoundments, pumps, drainage area, height and length of dams, outlet structure and controls, stage-outflow ratings, elevation to area capacity, and state recharge ratings, and water treatment facilities, as applicable;

(10) Procedures to measure or calculate artificial and natural recharge when the project is operational;

(11) Detailed source water quality and Aquifer water quality monitoring procedures to monitor and report to the Authority source water and Aquifer water quality within the perimeter of the project area and within one-quarter mile of the perimeter of the project area;

(12) Purpose of use for which the stored water will be subsequently withdrawn, or, if the recharge is for the purpose of increasing springflow, then an identification of the spring to be benefited and the anticipated augmentation or maintenance of the springflow directly attributable to the project, and all supporting calculations;

(13) Projected rate of recharge in cubic feet per second and the supporting calculations;

(14) Projected total amount of additional groundwater to be recharged monthly and annually by the project in acre-feet and the supporting calculations;

(15) Proposed date construction of project will commence and estimated date of project completion;

(16) Financial Capability. Documentary evidence demonstrating that the applicant has the financial ability to design, construct, operate and maintain the project for the term of the permit; and

(17) Any other information as determined by the general manager as necessary to determine the feasibility of the project and to properly evaluate the application.

#### **§ 707.4181 Applications for Recharge Recovery Permits**

In addition to the information specified in § 707.401 (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership) of this chapter, an application for a recharge recovery permit shall contain the following:

- (1) Name, address, and telephone number of the applicant;
- (2) Name, address and telephone number of an authorized representative, if any, of the applicant;
- (3) Proposed term of permit;

(4) Purpose of use for which the stored water will be subsequently withdrawn, or if the recharge is for the purpose of increasing springflow, then identification of the spring to be benefited and the anticipated augmentation or maintenance of the springflow directly attributable to the recharge recovery permit;

(5) Proposed maximum rate of withdrawal from the recovery well(s) measured in gallons per minute (“gpm”);

(6) Proposed formula for calculation from which the volume of withdrawals by purpose of use in acre-feet on a monthly and annual basis may be derived;

(7) Location of the proposed point(s) of withdrawal and recharge recovery point(s), with a legal description of the locations including the county, section, block and survey, labor and league; the number of feet to the two nearest non-parallel property lines (legal survey lines); or the designated well if registered with the Authority; or other adequate legal description approved by the Authority;

(8) Proposed place of use of water recovered from recharge recovery permit, with a legal description including the county, section, block and survey, labor and league; the number of feet to the two nearest non-parallel property lines (legal survey lines); or service area if used for municipal supply; or other adequate legal description approved by the Authority;

(9) Proposed source of water used to recharge;

(10) Proposed metering or alternative measuring method;

(11) Financial Capability. Documentary evidence demonstrating that the applicant has the financial ability to design, construct, operate and maintain the project for the term of the permit; and

(12) Any other information as determined by the general manager as necessary to determine the feasibility of the project and to properly evaluate the application.

#### **§ 707.419 Applications for Variance from Comprehensive Water Management Rules**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application for variance from the comprehensive water management rules shall include the following:

(1) Name, address and telephone number. The complete name, physical and mailing address and phone number of the applicant.

(2) Rule Variance. Specifically identify the rules and requirements from which a variance is sought.

(3) Description of the real property affected. A legal description of the real property or the activities occurring thereon that would be affected if the variance is not granted (including the survey name, number, volume, page(s) and abstract number), and, if the land is not owned by the applicant, the name, address and telephone number of the owner, and copies of all leases and other documents reflecting the applicant's right to or interest in the real estate.

(4) A detailed explanation of why the variance should be granted, including an explanation of how granting the variance will nonetheless accomplish the objectives sought to be advanced by the rule from which a variance is sought.

(5) Alternatives. A detailed description of the preferred alternative(s), specifically identifying any alternative water management strategy, practice, procedure or method sought to be used, including information on how the alternative(s) will be implemented and documented, and a showing that the alternative(s) would nonetheless accomplish the objectives sought to be advanced by the rule from which a variance is sought.

(6) Map. A map showing the location of the wells and the affected property for which the variance is sought.

(7) Third Party Harm. Detailed information showing that granting the variance will not cause significant harm to any other person or group of persons.

(8) Additional information. Any other information which may be required by the general manager.

#### **§ 707.420 Applications for Groundwater Conservation Plan Approval**

In addition to the information specified in § 707.401 (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership) of the Authority's rules, an application for conservation plan approval shall contain the following:

- (1) list of each groundwater withdrawal permit for which the application applies;
- (2) name of the applicant and the application, permit, docket, or transfer number assigned by the Authority;
- (3) address, telephone number, and fax number of the applicant;
- (4) name of the contact person or individual completing the application;
- (5) address, telephone number, and fax number of the contact person;
- (6) type of water use (municipal, industrial, or irrigation);
- (7) brief description of water use (golf course, feed lot, athletic field, etc.);

(8) a list of BMPs currently implemented and the date that each BMP was first implemented;

(9) an implementation schedule and status report for all BMPs that have not yet been implemented;

(10) a list of proposed alternative BMPs. Applicants proposing the use of alternative BMPs must submit a variance request to the board pursuant to an application for variance from comprehensive water management plan under §§ 707.419 (Applications for Variance from Comprehensive Water Management Rules), and 715.10 (Variance Applications) and as may be approved by the board pursuant to § 715.12 (Basis for Granting of Variance Applications) of the Authority's rules. Alternative BMPs must include the following elements: description, implementation schedule, coverage requirements, documentation, and water savings assumptions;

(11) calculations of past water savings for BMPs that have been implemented prior to March 31, 2004. Savings must be calculated according to the methods presented in Appendix F of the Authority's Groundwater Conservation Plan;

(12) identification of other entities with whom the applicant may be cooperating to implement the BMPs, and the steps taken to avoid double counting of water conservation savings;

(13) a statement as to whether the applicant has non-Aquifer alternative water supplies, and a description of how these supplies affect the duty to implement BMPs;

(14) for municipal users, the following must also be submitted in the application:

(A) annual water usage for the previous ten-year period (including the current year);

(B) projected annual water usage for the next ten-year period;

(C) 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;

(D) total number of connections;

(E) estimated per capita water usage;

(F) water conservation enforcement measures; and

(G) programs and implementation schedules to accomplish BMPs Muni-1 through Muni-4 and additional municipal BMPs required by § 715.110 (Best Management Practices) of the Authority's rules.



(15) for industrial users, the following must also be submitted in the application:

(A) information on the types (processes) of water use, and use by volume and by percent for each type of use (for landscaping uses provide the volume of water used per square foot);

(B) programs to accomplish BMPs Ind-1 and Ind-2 as set forth in Appendix C of the Authority's Groundwater Conservation Plan;

(C) if applicable, programs to accomplish BMPs Ind-3 through Ind-5 as set forth in Appendix C of the Authority's Groundwater Conservation Plan;

(D) if applicable, programs to accomplish BMPs Ind-6 through Ind-10 as set forth in Appendix C of the Authority's Groundwater Conservation Plan; and

(E) BMP implementation schedule consistent with § 715.110 (Best Management Practices) of the Authority's rules.

(16) for irrigation users, the following must also be submitted in the application:

(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) actions to be taken to detect and repair leaks in a timely manner;

(E) a description of the irrigation system showing that surge flow irrigation systems are utilized, or other irrigation systems that achieve at least 60% application efficiency. If other irrigation systems are used, the applicant must provide results of efficiency evaluations confirming that the systems achieve at least 60% application efficiency;

(F) a statement and documentary evidence that all efficiency evaluations must have been conducted no more than five years prior to the date the groundwater conservation plan is submitted to the Authority;

(G) if new equipment is installed, a schedule showing that implementation is staggered over the course of several years;

(H) if applicable, a schedule of portable equipment, such as surge systems, to demonstrate that water will be applied at improved efficiency;

(I) calculation showing that water savings were calculated according to the water savings worksheets provided in Appendix F (Water Savings Assumptions) of the

Authority's Groundwater Conservation Plan, or other Authority approved methods may be used to calculate estimated water savings; and

(J) any other information as may be required by the general manager or the board.

#### **§ 707.422 Applications for Agricultural Water Conservation Loans**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application submitted to the Authority for an agricultural water conservation loan pursuant to the TEX. WATER CODE, §§ 17.894-17.903 shall include the following:

(1) Name, address and telephone number. The applicant's complete name, physical and mailing addresses, phone and fax numbers, and e-mail address.

(2) Tax identification number and social security number. The applicant's social security number, or when the applicant is a corporation, partnership or other entity, the entity's tax identification number.

(3) The loan amount requested.

(4) Description of intended use of loan proceeds. A detailed description of the proposed use of the loan proceeds.

(5) Description of the item(s) to be purchased. A description of the item(s) and/or services proposed to be purchased with the loan proceeds, an itemized detail of the cost of each item and/or service to be purchased.

(6) Legal description of the real property affected. The legal description of the real property on which the conservation improvements and/or equipment are proposed to be made and/or be installed (including the survey name, number, volume, page(s) and abstract number) and, if the real property is not owned by the applicant, the name, address, telephone number of the owner of the real property and copies of all leases and other documents reflecting the applicant's right to or interest in the real property.

(7) EAA Application or Permit Number. If the loan applicant has applied to the Authority for any type of groundwater withdrawal permit, an identification of the permit application number or permit number.

(8) Credit references. The loan applicant shall identify as credit references:

(A) a primary lending institution;

(B) a secondary lending institution; and

- (C) if the applicant so chooses, additional credit references.

For each credit reference provided by the applicant, the applicant shall provide the name and address of the institution, the name of a loan officer or contact person, the type of account held by the applicant and the applicant's account number. The applicant shall also execute an authorization form that authorizes the credit references to furnish relevant financial information to the Authority and that includes an agreement to indemnify and hold the Authority and the credit references and their respective employees, agents, representatives and assigns harmless from and against any claims arising from release of the information regarding the applicant's credit history.

(9) Dealer's or manufacturer's invoice. A copy of a dealer's or manufacturer's invoice that states the purchase price, model, serial and other identifying numbers and associated installation costs of each item and/or service to be purchased with loan proceeds.

(10) Applicant's consent and compliance. A statement indicating that the applicant agrees to:

(A) grant the Authority and the Texas Water Development Board a first lien on the equipment that will be purchased with the loan proceeds and, if necessary to fully secure the loan, to grant other forms of security acceptable to the Authority which, cumulatively, equal or exceed in value the loan amount.

(B) obtain and keep in force throughout the term of the loan insurance on the collateral acceptable to the Authority to protect against all risks, including, but not limited to, loss from destruction and theft and that names the Authority as loss payee and provide proof of insurance to the Authority upon closing of the loan and annually thereafter.

(C) grant the Authority, its agents and employees authorization to perform a pre-closing inspection of the collateral securing the loan, including an irrigation system inspection and a post-closing irrigation system inspection and evaluation;

(D) execute and deliver to the Authority, in form and substance satisfactory to the Authority, such documents as the Authority shall deem necessary or desirable to perfect or maintain a perfected security interest in the collateral given to secure the loan or which may be necessary to comply with the provisions of the law of any jurisdiction in which the applicant may then be situated or in which any of the collateral may be located at any time and upon request of the Authority; and

(E) execute and deliver to the Authority a statement that the applicant is current on all Aquifer management fees payable to the Authority and has a properly installed and functioning meter on any Aquifer well related to the equipment to be financed.

(11) Financial records. A current financial statement for the applicant which includes a balance sheet, statement of cash flow and income statement, a statement providing the applicant's estimated annual income and estimated annual expenses; and copies of the

applicant's federal income tax returns for the preceding three years and, if available, the applicant's financial statement (balance sheet, statement of cash flow, and income statement), for the preceding two years.

(12) Organization, existence and authority. The following documents verifying the applicant's organization, existence and authority to enter into the transaction shall be submitted with the application:

(A) Corporate applications. For corporate applicants, a copy of the applicant's Certificate of Incorporation, a file-marked copy of its Articles of Incorporation and any amendments thereto, current bylaws, and resolution of the board of directors authorizing the corporation to enter into the transaction and naming the individual that is authorized by the corporation to execute documents on behalf of the corporation to conclude the transaction.

(B) Limited liability company applications. For limited liability company applicants, the company's Certificate of Organization, a file-marked copy of the company's Articles of Organization, current regulations and, if member managed, a resolution of the members authorizing the transaction, or, if manager managed, a resolution of the managers naming the individual that is authorized by the company to execute documents on behalf of the company to conclude the transaction.

(C) Partnership applications. For general and limited partnership applicants, the partnership agreement, if any, with all amendments thereto and a consent of the partners who are required to give consent under the partnership agreement or applicable law. If the applicant is a limited partnership, the certificate of limited partnership, with any amendments thereto, shall be submitted with the application. Additionally, financial statements of general partners of partnerships shall be submitted.

(13) Additional information. Any other information which may be required by the general manager of the Authority.

#### **§ 707.428 Applications to Convert Base Irrigation Groundwater**

In addition to the information specified in § 707.401 of this chapter (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), an application to convert base irrigation groundwater shall contain the following:

(1) Names and Addresses of Owners. The full name, physical and mailing addresses, telephone number, fax number, and e-mail address of the person who owns a regular permit.

(2) Change in Land Use and Loss of Agricultural Use Property Tax Designation. If the application is based on change in land use, a detailed description of all facts demonstrating the change in land use and the loss of agricultural use property tax designation and copies of any supporting documentation.

(3) Conservation. If the application is based on conservation:

(A) A statement that groundwater from the Aquifer has been conserved after the installation of water conservation equipment;

(B) Location. A legal description of the location of the water conservation equipment including: the county, section, block and survey, and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate legal description approved by the Authority;

(C) Map. A map showing the location of the water conservation equipment;

(D) Description of the Water Conservation Equipment. A description of the water conservation equipment;

(E) Date Installed. The date that the equipment was installed; and

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

(4) Groundwater Withdrawal Amount; Junior Rights and Senior Rights. The amount of groundwater proposed to be converted, and identification of the amounts as junior rights or senior rights.

#### **§ 707.429 Edwards Aquifer Water Well Driller Registrations**

Aquifer water well driller registrations shall be on forms provided by the general manager and shall include:

(1) Name and Address of Driller. The full name, physical and mailing addresses, telephone number, fax number and e-mail address of the person who desires to operate as a water well driller within the Authority's jurisdiction.

(2) License. A true and correct copy of a valid and current water well driller's license issued by the Texas Department of Licensing and Regulation.

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

## **Subchapter E.            Actions on Applications and Registrations by the Authority**

### **Section**

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### **§ 707.501        Initial Action on Applications and Registrations**

All applications and registrations received by the Authority shall be stamped or marked “Received” with the date of receipt clearly indicated.

### **§ 707.502        Review for Administrative Completeness**

(a) The general manager will conduct an initial review of each application or registration for administrative completeness within 45 business days of the receipt of the application or registration by the Authority and payment of applicable fees. For applications for emergency permits, such review shall be conducted within ten business days.

(b) In reviewing an application or registration for administrative completeness, the

general manager will assess whether the application or registration contains the necessary information in legible form to allow:

- (1) the general manager to forward the application or registration to be filed and maintained in the permanent records of the Authority;
  - (2) the Authority staff to conduct a technical review, if appropriate; and
  - (3) the general manager to take or recommend action on the application, as appropriate.
- (c) Upon determining that an application or registration is administratively complete, the general manager will notify the applicant by mail.

**§ 707.503 Return of Applications and Registrations Deemed Not Administratively Complete**

(a) If the general manager determines that an application or registration is not administratively complete, the general manager will notify the applicant or registrant of any such deficiencies by letter. Illegible applications and registrations will be returned to the applicant or registrant.

(b) The applicant or registrant may submit any additional necessary information in response to a letter sent by the general manager pursuant to subsection (a) of this section, within 30 days of receipt of the letter noting the deficiencies.

(c) If the additional necessary information is not forthcoming within 30 days of the date of receipt of the letter noting the deficiencies, the general manager will return the incomplete application or registration to the applicant or registrant.

**§ 707.504 Technical Review**

(a) After an application is determined by the general manager to be administratively complete, Authority staff will commence a technical review of the application as necessary and appropriate.

(b) The applicant shall be notified in writing of any additional material necessary for a complete technical review. If the applicant provides the information within 90 days of the date it is requested, Authority staff will complete the technical review of the application. If the necessary additional information is not received by the general manager within 90 days of the date the information is requested and the information is considered essential by the general manager, the general manager may return the application to the applicant. Decisions to return an application to the applicant during the technical review will be made on a case-by-case basis.

(c) The general manager or his designee is entitled to enter public or private 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 or a registration.

**§ 707.505 Amendments and Non-Substantive Changes to Applications and Registrations**

(a) Upon express written or verbal approval of the applicant or the applicant's agent (or the registrant or registrant's agent), any Authority employee may make non-substantive changes to an application or a registration. 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.

(b) Amendments to an application or registration may be made only by the applicant or the applicant's agent (or registrant or registrant's agent) and only in the form of a written, notarized amendment to the application or registration signed by the proper person. For the purposes of this section, amendments are changes that alter any of the information included in any application or registration pursuant to Subchapter D of this Chapter (Requirements for Applications, Registrations and Other Documents) for which no notice of transfer of ownership or transfer application is required to be filed.

(c) Following a non-substantive change or amendment under this section, the Authority shall update the Authority's application or registration records to reflect the change or amendment, as appropriate.

**§ 707.507 Proposed Permit and Technical Summary**

(a) Applicability. This section only applies to applications for groundwater withdrawal permits.

(b) Following completion of technical review, the general manager will determine whether to recommend granting or denying the application. If the general manager recommends granting the application, the general manager will prepare a proposed permit consistent with the Act and Authority rules. The proposed permit shall be filed along with the application. The proposed permit is subject to change by the general manager during the course of the proceedings on the application. The proposed permit shall be available for public review and inspection. If the general manager recommends to deny the application, the general manager will prepare a proposed denial stating the reasons for that recommendation.

(c) In conjunction with the proposed permit or denial, the general manager will prepare a technical summary that will include the following, as appropriate:

- (1) the applicant's name and address;
- (2) the location of each point of withdrawal;
- (3) the maximum beneficial amount of water that was used by the applicant during any one calendar year during the historical period;



- (4) the purpose(s) of use;
  - (5) any equitable adjustment made pursuant to § 711.94(f) of the Authority's rules (Beneficial Use) due to any effect of a requirement of or participation in a federal program on the applicant's historic use of groundwater;
  - (6) the maximum permit withdrawal amount stated on a per annum and per month basis;
  - (7) the maximum rate of withdrawal for each point of withdrawal in gallons per minute or cubic feet per second;
  - (8) a description of any existing metering or measuring devices;
  - (9) the place of use of the groundwater;
  - (10) notice that the general manager may modify the proposed permit, or seek additional information from the applicant, in the course of the Authority's proceeding on the application;
  - (11) any permit conditions;
  - (12) a statement that the applicant, any applicant for another groundwater withdrawal permit, or any permittee holding a groundwater withdrawal permit may file a request for a contested case hearing on the application on or before the 30th day after the date of publication of notice of proposed permit, authorization, approval or denial and technical summary; and
  - (13) any other information that the general manager determines to be appropriate.
- (d) The general manager will provide the applicant with a copy of the proposed permit (or denial) and the technical summary.

#### **§ 707.508 Proposed Approval and Technical Summary**

(a) **Applicability.** This section applies to all applications other than applications for groundwater withdrawal permits.

(b) Following completion of technical review, the general manager will prepare a proposed approval or authorization consistent with the Act and Authority rules (unless the general manager recommends to deny the application). The proposed approval or authorization will be filed with the docket clerk and presented to the Authority along with the application. The proposed approval or authorization is subject to change by the general manager during the course of the proceedings on the application. If the general manager recommends to deny the application, the general manager will prepare a proposed denial stating the reasons for that

recommendation.

(c) In conjunction with the proposed approval, authorization or denial, the general manager will prepare a technical summary that shall include the following, as appropriate:

- (1) the applicant's name and address;
- (2) the location of each point of withdrawal;
- (3) the purpose(s) of use;
- (4) the place of use of the groundwater; and
- (5) other information that the general manager determines appropriate.

(d) The general manager will notify the applicant by mail that technical review of the application is complete and provide the applicant with a copy of the proposed approval, authorization, or denial, and the technical summary.

**§ 707.509 Referral to Docket Clerk**

When administrative and technical review has been completed and the general manager has prepared the proposed permit, approval, authorization or denial, the proposed permit, approval, authorization or denial, and application will be forwarded to the docket clerk for presentation to the Authority for action and publication, if appropriate.

**§ 707.510 Publication by the Authority of Notice of Proposed Permit and Technical Summary for Initial Regular Permits**

(a) Applicability. This section applies only to applications for initial regular permits.

(b) The general manager will arrange for publication of a notice of the proposed permit and technical summary in:

- (1) a newspaper of general circulation throughout the Authority's jurisdiction;
- and
- (2) at least four other newspapers within the jurisdiction of the Authority.

(c) Time of Publication. The notice referred to in subsection (b) of this section will be published no later than 30 days following the referral of the proposed permit or denial to the docket clerk.

(d) The notice referred to in subsection (b) of this section will contain:

- (1) a description of the proposed permit including any conditions;

- (2) a brief description of the technical summary;
- (3) a statement that a copy of the proposed permit, technical summary, and application are available for inspection by the public at the offices of the Authority;
- (4) a statement that the proposed permit will be presented to the board for action within 60 days unless a request for hearing is submitted within 30 days pursuant to §§ 707.601-707.604 of this chapter (Procedures for Contested Case Hearings on Applications); and
- (5) a statement that the applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a contested case hearing on this application by filing with the docket clerk, on or before the 30th day after the publication of the notice of the proposed permit or denial, and technical summary in accordance with §§ 707.601-707.604 of this chapter.

**§ 707.5101 Publication by the Applicant of Notice of Proposed Permit and Technical Summary**

(a) **Applicability.** This section applies to applications for additional regular permits, term permits, Aquifer recharge and storage permits, and recharge recovery permits.

(b) Upon receipt of the proposed permit and the technical summary, the general manager will prepare a notice of the proposed permit and technical summary and forward that notice to the applicant. The notice will be forwarded to the applicant no later than 30 days following the referral of the proposed permit to the docket clerk.

(c) Within ten days of receiving the notice referred to in subsection (b) of this section, the applicant will publish that notice in:

- (1) a newspaper of general circulation throughout the Authority’s jurisdiction;

and

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

(d) The notice referred to in subsection (b) of this section will contain:

- (1) a description of the proposed permit including any conditions;
- (2) a brief description of the technical summary;
- (3) a statement that a copy of the proposed permit, technical summary, and application are available for inspection by the public at the offices of the Authority;
- (4) a statement that the proposed permit will be presented to the board for

action within 60 days unless a request for hearing is submitted within 30 days pursuant to §§ 707.601-707.604 of this chapter (Procedures for Contested Case Hearings on Applications); and

(5) a statement that the applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a contested case hearing on this application by filing with the docket clerk, on or before the 30th day after the publication of the notice of the proposed permit or approval and technical summary in accordance with §§ 707.601-707.604 of this chapter.

(e) The published notice will not be smaller than 15 square inches (96.8 square centimeters) with the shortest dimension at least three inches (7.6 centimeters).

(f) Within seven days of publishing the notice referred to in subsection (b) of this section, the applicant shall file with the Authority an affidavit certifying facts that constitute compliance with this section.

(g) If the Authority prepares notice that is required by this section and the applicant does not cause the notice to be published within ten days of receipt of that notice, the Authority may cause the notice to be published and the applicant shall reimburse the Authority for the cost of publication within 30 days of publication.

#### **§ 707.5102 Notification of Proposed Denial**

(a) Applicability. This section applies to the proposed denial of applications for initial regular permits, additional regular permits, term permits, Aquifer recharge and storage permits, and recharge recovery permits. This section also applies to proposed denial of:

(1) applications to transfer interim authorization status and amend application for initial regular permit where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek; and

(2) applications to transfer and amend permit where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek.

(b) The general manager will prepare a notice of proposed denial and forward that notice to the applicant. In the case of applications to transfer interim authorization status and amend application for initial regular permit or applications to transfer and amend permit that notice will be forwarded to the proposed transferee. The notice will be forwarded to the applicant (or transferee) no later than 30 days following the referral of the proposed denial to the docket clerk.

(c) The notice referred to in subsection (b) of this section will contain:

(1) a summary of the reason(s) for the proposed denial;

(2) a statement that the proposed denial will be presented to the board for action within 60 days unless a request for contested case hearing is submitted within 30 days pursuant to §§ 707.601-707.604 of this chapter (Procedures for Contested Case Hearings of Applications); and

(3) a statement that the applicant may request a contested case hearing on this application by filing with the Authority, on or before the 30<sup>th</sup> day after the applicant's receipt of the notice, in accordance with §§ 707.601-707.604 of this chapter.

**§ 707.5103 Publication by the Applicant of Notice of Proposed Approval of Transfer**

(a) Applicability. This section applies to:

(1) applications to transfer interim authorization status and amend application for initial regular permit where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek; and

(2) applications to transfer and amend permit where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek.

(b) Upon receipt of the proposed approval of transfer, the general manager will prepare a notice of the proposed approval of transfer and forward that notice to the applicant and the proposed transferee. The notice will be forwarded to the applicant and the transferee no later than 30 days following the referral of the proposed approval of transfer to the docket clerk.

(c) Within ten days of receiving the notice referred to in subsection (b) of this section, the applicant will publish that notice in:

(1) a newspaper of general circulation in the boundaries of Comal, Hays and Guadalupe Counties.

(d) The notice referred to in subsection (b) of this section will contain:

(1) a description of the proposed approval of transfer including any conditions;

(2) a statement that a copy of the proposed approval of transfer and application are available for inspection by the public at the offices of the Authority;

(3) a statement that the proposed approval of transfer will be presented to the board for action within 60 days unless a request for hearing is submitted within 30 days pursuant to §§ 707.601-707.604 of this chapter (Procedures for Contested Case Hearings on Applications); and

(4) a statement that the applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a

contested case hearing on this application by filing with the docket clerk, on or before the 30th day after the publication of the notice of the proposed approval of transfer in accordance with §§ 707.601-707.604 of this chapter.

(e) The published notice will not be smaller than 15 square inches (96.8 square centimeters) with the shortest dimension at least three inches (7.6 centimeters).

(f) Within seven days of publishing the notice referred to in subsection (b) of this section, the applicant shall file with the Authority an affidavit certifying facts that constitute compliance with this section.

(g) If the Authority prepares notice that is required by this section and the applicant does not cause the notice to be published within ten days of receipt of that notice, the Authority may cause the notice to be published and the applicant shall reimburse the Authority for the cost of publication within 30 days of publication.

#### **§ 707.511      Supplementation of Application Required by Change in Rules**

If any pending application is affected by a change in these rules before final action on the application is taken by the Authority, the applicant will have a right to submit information as necessary to comply with such change.

#### **§ 707.512      Withdrawal of Application**

(a) An applicant may submit to the Authority, in writing, a request to withdraw its application at any time before the proposed permit is issued.

(b) If the request to withdraw the application is with prejudice, the Authority will issue an order dismissing the application with prejudice. For the purposes of this section, a withdrawal of an application with prejudice means that the applicant waives any potential right to refile that application.

(c) If the request to withdraw the application is without prejudice, the general manager must agree, in writing, to such a withdrawal. For the purposes of this section, a withdrawal of an application without prejudice means that the applicant seeks to preserve any potential right to refile that application. If the general manager agrees to a withdrawal without prejudice, the general manager will submit a recommendation to the Authority that will include the reasons why he or she believes that such a withdrawal advances the policies set forth in the Act and the Authority's rules. The Authority may issue an order dismissing the application without prejudice or may decline to dismiss the application. Following a dismissal without prejudice, the applicant may file a new application. If the application is for an initial regular permit, the applicant must rely on the original declaration of historical use filed by that applicant.

**§ 707.513 Action by Board on Applications Where There is No Right to a Contested Case Hearing**

(a) **Applicability.** This section applies to applications for an agricultural water conservation loan and for a variance pursuant to subchapter B (Variance Procedures) of chapter 715 (Comprehensive Water Management). This section also applies to the denial of any application listed in § 707.515(b) of this chapter (Actions on Applications by the General Manager) and to a decision of the Board regarding the loss of exempt well status.

(b) **Scheduling the Board Meeting.** Following technical review and the referral of the proposed permit, approval, authorization or denial to the docket clerk, the general manager will schedule the presentation of the application and the proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application and the proposed permit, approval, authorization or denial.

(c) **Notice of Board Meeting.** The Authority will notify the applicant of the date of the board meeting referred to above via certified mail/return-receipt requested. If rescheduled by the board, the Authority will send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting. In addition, the Authority will provide public notice that the application and the permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Texas Open Meetings Act. Except to the extent that such items contain information excepted from public disclosure under the Texas Public Information Act, copies of the application and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the Authority during regular business hours.

(d) **Consolidation or Severance of Matters.** Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) **Oral Presentation Before the Board.** The applicant and the general manager or his or her designee may make an oral presentation at the board meeting at which the application and the proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 5 minutes each, excluding time for answering questions, unless the chairman establishes other limitations. Before the board meeting, the chairman may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

(f) **Public Comment.** In addition, public comment on the application and the proposed permit, approval, authorization or denial will be accepted pursuant to Subchapter C of this Chapter (Meetings of the Board).

(g) Upon consideration of the application and the proposed permit, approval, authorization or denial at its meeting, the board may grant or deny an application in whole or in

part, dismiss proceedings, amend or modify a proposed permit, or take any other appropriate action.

**§ 707.514 Action by Board on Applications Where There is a Right to a Contested Case Hearing But None Was Requested or Requests Were Withdrawn**

(a) **Applicability.** This section applies to all applications listed in § 707.510(a) of this chapter (Publication by the Authority of Notice of Proposed Permit and Technical Summary for Initial Regular Permits), § 707.5101(a) of this chapter (Publication by the Applicant of Notice of Proposed Permit and Technical Summary) and § 707.5103(a) of this chapter (Publication by the Applicant of Notice of Proposed Approval of Transfer), where, after the time for the filing of a hearing request provided in § 707.604 of this chapter (Time for Filing of Request for Contested Case Hearing):

- (1) no timely hearing request has been received;
- (2) all timely hearing requests have been withdrawn; or
- (3) the judge has remanded the application because of settlement.

(b) **Scheduling the Board Meeting.** Following the expiration of the time to file a hearing request pursuant to § 707.604 of this chapter, and if any of the conditions stated in subsection (a)(1)-(3) of this section have been met, the Authority will schedule the presentation of the application and the proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application and the proposed permit, approval, authorization or denial.

(c) **Notice of Board Meeting.** The Authority will notify the applicant of the date of the board meeting referred to above via certified mail/return-receipt requested. If rescheduled by the board, the Authority will send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting. In addition, the Authority will provide public notice that the application and the proposed permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Texas Open Meetings Act. Copies of the application and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the Authority during regular business hours.

(d) **Consolidation or Severance of Matters.** Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) **Oral Presentation Before the Board.** The applicant and the general manager or his or her designee may make an oral presentation at the board meeting in which the application and the proposed permit, approval, authorization or denial are presented to the board. Oral



presentations before the board will be limited to 5 minutes each, excluding time for answering questions, unless the chairman establishes other limitations. Before the board meeting, the chairman may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

(f) Public Comment. In addition, public comment on the application and the proposed permit, approval, authorization or denial will be accepted pursuant to Subchapter C of this Chapter.

(g) Upon consideration of the application and the proposed permit, approval, authorization or denial at its meeting, the board may grant or deny an application in whole or in part, dismiss proceedings, amend or modify a proposed permit, or take any other appropriate action.

### **§ 707.515 Actions on Applications by the General Manager**

(a) The purpose of this section is to delegate authority to the general manager to take action on behalf of the board for the actions listed in subsection (b) of this section.

(b) The general manager may approve the following:

- (1) applications for well construction permits;
- (2) applications for permit to plug well;
- (3) applications to register an exempt well;
- (4) applications for permit to install or modify meter;
- (5) applications to:

(A) transfer interim authorization status and amend application for initial regular permit in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek; or

(B) transfer and amend permit in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek;

- (6) applications for monitoring well permits;
- (7) applications for groundwater conservation plan approval;
- (8) applications for groundwater reuse plan approval; and
- (9) applications to consolidate groundwater withdrawal permits.

(c) Following technical review, the general manager may grant a permit, authorization or approval under this section if:

- (1) the application meets all relevant statutory and administrative criteria; and
- (2) the application does not raise new issues that require the interpretation of Authority policy.

(d) Following technical review, the general manager may suspend the processing of an application, authorization or other approval under this section if the applicant is in violation of the Act, the Authority's rules, an order of the Board, or the terms and conditions of a permit, or if the applicant has failed to come into compliance with the Act, the Authority's rules, an order of the Board, or the terms and conditions of a permit for a past violation.

(e) The general manager shall inform the applicant of his or her decision, where appropriate, by sending a copy of such permit, authorization or approval along with the technical summary to the applicant by certified mail/return-receipt requested.

#### **§ 707.516 Corrections to Permits by the General Manager**

(a) The general manager, on his own action or at the request of a permittee, may make non-substantive corrections to any permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The general manager must notify the permittee that the correction has been made.

(b) The general manager may issue non-substantive permit corrections under this section:

- (1) to correct a clerical or typographical error;
- (2) to change the mailing address of the permittee, if updated information is provided by the permittee in writing;
- (3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;
- (4) to describe more accurately the location of the point(s) of withdrawal specified in a permit;
- (5) to update or redraw maps that have been incorporated by reference in a permit;
- (6) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

### **§ 707.5161 Amendments to Permits by Board**

(a) A permittee or a permittee's agent may request substantive changes to a permit by filing a signed, written, notarized amendment to the permit. For the purposes of this section, amendments are changes that alter any information that was required to be included in the permit application pursuant to subchapter D of this chapter (Requirements for Applications, Registrations and Other Documents) for which no notice of transfer of ownership or transfer application is required to be filed.

(b) Following a properly filed amendment under this section, if the amendment complies with the Authority's rules, the Board shall issue an amended permit.

### **§ 707.517 Special Procedures Regarding Loss of Exempt Well Status**

(a) If the Authority receives information from a person other than the well owner indicating that the well no longer qualifies as an exempt well, the general manager will notify the owner of such information and provide an opportunity for the owner to demonstrate why the exempt well status should not be canceled. Such notification shall be sent to the owner by letter sent via certified mail/return-receipt requested.

(b) Information responding to notice provided by the general manager under subsection (a) of this section must be submitted within 30 days of the owner's receipt of such notice. This time period may be extended by the Authority.

(c) If no such information is submitted, or if upon review of such information, the general manager believes that exempt well status should be canceled, the general manager will submit a proposed denial of exempt well status to the Board pursuant to the procedures set forth in § 707.513 of this chapter (Action by Board on Applications Where There is No Right to a Contested Case Hearing).

### **§ 707.518 Special Procedures Regarding Emergency Permits**

(a) Applicability. This section applies to applications for emergency permits and applications to renew emergency permits only.

(b) If upon the completion of the abbreviated technical review pursuant to § 707.504(a) of this chapter (Technical Review), the general manager finds that the issuance of an emergency permit, or the renewal of an emergency permit, is warranted, the general manager will issue that permit for a term not exceeding 30 days. If the general manager finds that the issuance of an emergency permit, or the renewal of an emergency permit, is not warranted, the general manager will deny the permit. The applicant will be informed of the general manager's action and the reasons for that action as soon as possible by letter.

(c) Upon the issuance or denial of the emergency permit or renewal, the general manager will submit the permit, if any, and a statement summarizing the reasons for the general manager's action on the application for filing.

(d) The application and the statement for presentation to the board will be set for the next meeting in which notice of the board's consideration of the application may be provided to the public pursuant to the Texas Open Meetings Act.

(e) Following the opportunity for public comment the board may ratify the general manager's action, rescind the action, grant or renew the permit, or modify the permit.

**§ 707.520 Special Procedures Regarding Determinations as to the Location of the Recharge Zone of the Aquifer**

(a) Applicability. This section applies to requests for a determination of the recharge 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 (Water Quality), subchapter G (Recharge Zone Protection) may in writing request that the general manager determine whether the site is located on the recharge 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 an abbreviated technical review pursuant to § 707.504(a) (Technical Review), the general manager must find and determine whether the proposed site is on or outside of the recharge zone of the Aquifer. Within 15 days of completion of technical review, the general manager will inform the requestor in writing of the general manager's determination and the reasons therefore.

(c) By filing a written request for review within 15 days of the date of the general manager's notification of determination, the person filing the request for a recharge zone location determination may obtain review of the general manager's determination. The request for review must state the reasons why the general manager's determination is inaccurate. The request for review will be set for presentation to the board at a board meeting in which notice of the board's consideration of the request is provided to the public pursuant to the Texas Open Meetings Act. Following the opportunity for public comment, the board may review, rescind, or affirm the general manager's determination, or take any other action as may be appropriate.

(d) If the general manager receives information sufficient to provide a reasonable basis for the general manager to conclude that a person is or may be proposing to engage in an activity at a site that is prohibited or regulated by chapter 713 (Water Quality), subchapter G (Recharge Zone Protection) and the person has not filed a written request with the Authority for a determination in accordance with this section, the general manager will notify the owner of such information and provide an opportunity for the owner to file a recharge zone determination request. Such notification shall be sent to the owner by letter sent via certified mail/return-receipt requested. Information responding to the general manager's notice must be submitted within 10 days of the owner's receipt of the notice. This time period may be extended by the general manager at his discretion.

(e) If no such information is submitted, or if upon review of such information, the

general manager believes that the activity occurring at, or proposed to occur at the site, is prohibited or regulated by chapter 713 (Water Quality), subchapter G (Recharge Zone Protection), the general manager may take such enforcement action as may, in his judgment, be appropriate.

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

### **Section**

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### **§ 707.601    Applicability**

The provisions of this subchapter apply to contested case hearings on applications. Contested case hearings may be requested and granted in connection with applications for initial regular permits, additional regular permits, term permits, Aquifer recharge and storage permits,

and recharge recovery permits. Contested case hearings may also be requested and granted in connection with:

(1) applications to transfer interim authorization status and amend application for initial regular permit where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek; and

(2) applications to transfer permit, where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek.

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

Subject to any additional requirements or limitation set forth in the Authority's rules, the following persons or entities have a personal justiciable interest in and therefore are entitled to a contested case hearing on an application under this chapter:

- (1) the applicant for that permit or approval;
  - (2) an applicant for another groundwater withdrawal permit issued by the Authority;
- and
- (3) any permittee holding a groundwater withdrawal permit issued by the Authority.

### **§ 707.603 Form and Contents of Request for Contested Case Hearing**

(a) A request for a contested case hearing must be in writing and be filed by United States mail, facsimile, or hand-delivery with the docket clerk within the time provided by § 707.604 of this chapter (Time for Filing of Request for Contested Case Hearing).

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

(1) give the name, address, daytime telephone number, and, where possible, 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, where possible, 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: the applicant for that permit or approval; an applicant for another groundwater withdrawal permit issued by the Authority; or a permittee holding a groundwater withdrawal permit issued by the Authority.

(4) request a contested case hearing;

(5) provide any other information requested in the notice of proposed permit 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 the applicant, a copy of that request must be served on the applicant 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 or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

#### **§ 707.604 Time for Filing of Request for Contested Case Hearing**

Unless a longer time limit is specified in the notice of the proposed permit and technical summary, a hearing request must be filed with the docket clerk on or before the 30th day following the date of publication of the notice.

#### **§ 707.605 Processing of Hearing Request**

(a) **Applicability.** The requirements in this section apply only to hearing requests that are filed within the time period specified in § 707.604 of this chapter (Time for Filing of Request for Contested Case Hearing). Hearing requests not filed within the time period specified in § 707.604 of this chapter shall not be processed and shall be returned by the docket clerk to the person filing the request.

(b) After a hearing request is filed, the docket clerk will schedule the hearing request for a board meeting.

(c) The docket clerk will provide notice to the applicant, general manager and any persons making a timely hearing request at least 30 days prior to the first meeting at which the board will consider the request. The docket clerk will explain how the person may submit public comment, explain that the board may hold a public meeting, and explain the requirements of this subchapter.

(d) Persons may submit a written response to the hearing request no later than 20 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. The response should address the question of whether the person requesting the contested case hearing has a personal justiciable interest related to the application at issue.

(e) The person who filed the hearing request may submit a written reply to a response no later than six days before the scheduled board meeting at which the board will evaluate the



hearing request. Such a reply shall address only issues raised in any response filed with respect to the original hearing request. A reply shall be filed with the docket clerk and served on the same day on the general manager, the applicant, and any person filing hearing requests.

#### **§ 707.606 Action by Board on Hearing Request**

(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:

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

(2) determine that the person requesting the hearing 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 filed in a Contested Case**

(a) Service of all Documents Required. For any document filed with the Authority or the judge in a contested case, the person filing that document must serve a copy on all parties to the contested case including the general manager at or before the time that the request is filed.

(b) Certificate of Service. 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 permit a document to be filed without a certificate of service but will require the certificate be filed promptly thereafter.

#### **§ 707.608 Delegation to SOAH**

(a) The board may delegate to SOAH, by order, 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 (Title 1, Chapter 155, TEX. ADMIN. CODE) govern any contested case hearing of the Authority conducted by SOAH, as supplemented by this subchapter.

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

(a) When a case is referred to contested case hearing by the board, the docket clerk will, if appropriate, file a completed Request to Docket Case form (or any other form prescribed by SOAH) and otherwise provide any additional information as required by SOAH.

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

(1) notify the judge that under § 707.611 of the Authority's rules, the burden of proof is on the applicant to establish by convincing evidence that he is entitled to have an application for a groundwater withdrawal permit granted and that, accordingly, the applicant is required to prove, through stipulations or convincing evidence, all of the prima facie elements that establish a right to an initial regular permit;

(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.

#### **§ 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 SOAH rules.

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

(a) The general manager is a party in all contested case hearings.

(b) The applicant is a party in a contested case hearing on its application.

(c) The person who requested the contested case hearing that was granted by the Authority is a party to that contested case hearing.

(d) An applicant for an initial regular permit who files a notice of party status pertaining to § 707.626 of this chapter (Party Status) is a party in all contested case hearings for which notice has been given.

#### **§ 707.6101 Discovery**

Discovery in contested case proceedings 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.

#### **§ 707.6102 Issuance of Commission Requiring Deposition**

(a) On its own motion or on the written request of a party to a contested case pending before it, and on deposit of an amount that will reasonably ensure payment of the amount estimated to accrue under § 707.6104 of the Authority's rules, the Authority will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken.

(b) The commission will 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.

(c) The commission will require an officer to whom it is addressed to:

(1) examine the witness before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked the witness by a party to the proceeding, the state agency, or an attorney for a party or the agency.

(d) The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

### **§ 707.6103 Depositions**

Depositions in a contested case shall be governed by Sections 2001.096-2001.102 of the TEX. GOV'T CODE.

### **§ 707.6104 Expenses of Witness or Deponent**

(a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a 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 under this section 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 under this section at a rate that exceeds the maximum rates provided by law for state employees. An agency 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.

#### **§ 707.611 Burden of Proof**

The burden of proof is on the applicant to establish by convincing evidence that he is entitled to have an application for a groundwater withdrawal permit granted.

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

(a) Requests for issuance of commissions requiring deposition or subpoenas in a contested case 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 who will arrange for the request to be presented to the Board at its next meeting, in compliance with the Texas Open Meetings Act and other applicable law.

(c) In the case of a deposition, if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue under § 2001.103 of the TEX. GOV'T CODE, the Authority will issue a commission in accordance with § 2001.094 of the TEX. GOV'T CODE, 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.

(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 under § 2001.103 of the TEX. GOV'T CODE, the Authority will issue a subpoena in accordance with § 2001.089 of the TEX. GOV'T CODE 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 judge may remand an application to the Board if all timely hearing requests have been withdrawn or denied, all parties to a contested case reach a settlement so that no facts or issues remain controverted, or the party or parties requesting the hearing defaults. 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. The docket clerk will set the application for consideration at a Board meeting.

**§ 707.6131 Informal Disposition of Contested Case**

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

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

**§ 707.614 Certified Questions**

(a) At any time during a contested case proceeding, 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) which rules or statutes are applicable to a proceeding;
- (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. The docket clerk will place the certified issue on the agenda of the earliest possible meeting of the board that is not earlier than 20 days after its submission, in compliance with the Texas Open Meetings Act and other applicable law. The docket clerk will give the judge and parties notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed, parties to the proceeding may file briefs on the certified question. Within ten days of the filing of such briefs, parties may file responses to such brief. 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 Authority will issue a written decision on the certified issue within 60 days following the meeting at which the certified issue is considered. 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.

#### **§ 707.615 Proposal for Decision**

Following the completion of the contested case hearing, the judge shall submit a proposal for decision to the Authority and serve a copy on each party to the contested case. A proposal for decision shall, where applicable, include any recommended changes to the permit originally proposed by the general manager. The judge, when submitting the proposal for decision, shall notify the parties of the deadlines for the filing of exceptions and replies.

#### **§ 707.616 Waiver of Right to Review Judge's Proposal**

Any party may waive the right to review and comment upon the judge's proposal for decision. The waiver shall be either in writing or stated on the record at the hearing.

#### **§ 707.617 Pleadings Following Proposal for Decision**

(a) Unless right of review has been waived, any party to the contested case hearing may, within 20 days after the date of the judge's submittal of the proposal for decision, file exceptions or briefs in response to the proposal for decision with the docket clerk. Replies to exceptions or briefs, if any, shall be filed within 30 days after the date of submittal of the proposal for decision. Such exceptions, briefs or replies may include proposed findings of fact.

(b) The judge may file an amended proposal for decision in response to exceptions, replies, or briefs submitted by the parties. The parties are not entitled to file exceptions or briefs in response to the amended proposal for decision, but may raise any issues before the Authority as permitted by the Authority at the time of oral presentation.

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

(a) After receiving the proposal for decision, the docket clerk shall schedule the presentation of the proposal for decision to the board. The docket clerk shall provide notice to the parties of the date of the board meeting at which the proposal for decision will be presented and considered. The board may reschedule the presentation of the proposal for decision. The docket clerk will send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting.

(b) Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

**§ 707.619 Oral Presentation Before the Board**

(a) 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.

(b) Oral presentations before the board shall be limited to 5 minutes each, excluding time for answering questions, unless the chairman establishes other limitations. Before the board meeting, the chairman may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the board.

**§ 707.6191 Transcription of Proceedings Before the Board**

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

(b) The Authority may pay the cost of a transcript or may assess the cost to one or more parties.

**§ 707.620 Reopening the Record**

The board, on the motion of any party to a contested case 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 board will render its decision upon the expiration of 30 days or later following service of the judge's proposal for decision, unless the parties have waived review. The decision, if adverse to any party, must be in writing or stated in the record and will include findings of fact and conclusions of law separately stated.

(b) 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.

(c) If a party submits proposed findings of fact under § 707.617 of the Authority's rules, the decision will include a ruling on each proposed finding.

(d) The board's decision will be rendered no more than 90 days after the date that the

proposal for decision is presented to the board, unless the board determines that there is good cause for continuing the proceeding.

(e) The board may change a finding of fact or conclusion of law made by the 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 provided to the judge by the Authority pursuant to § 707.609 of the Authority's rules, 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.

### **§ 707.6211 Notification of Decisions and Orders**

(a) The Authority will notify all parties in a contested case either personally or by certified mail/return receipt requested of any decision or order.

(b) The Authority will send a copy of the decision or order in a contested case by first class mail to attorneys of record and will keep an appropriate record of the mailing. If a party is not represented by an attorney, the Authority will send a copy of the decision or order by first class mail to the party and will keep an appropriate record of the mailing.

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

### **§ 707.622 Motion for Rehearing**

(a) Filing motion. Only a party to the contested case proceeding may file a motion for rehearing. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the docket clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered 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, and official docket number assigned by the Authority;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.



(b) Reply to motion for rehearing. Only a party to the contested case proceeding may reply to a motion for rehearing. A reply to a motion for rehearing must be filed with the docket clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.

(c) Ruling on motion for rehearing.

(1) Upon the request of a board member, the motion for rehearing will be scheduled for consideration during a board meeting. Unless the board extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) 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. Thereafter, the board shall render a decision or order as required by this subchapter.

(d) Extension of time limits. With the agreement of the parties or on their own motion, the board may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking Authority action is not extended beyond 90 days after the decision or order.

(e) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

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

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

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

In the absence of a timely motion for rehearing, a decision or order of the board is final on the expiration of the period for filing a motion for rehearing. If a party files a motion for rehearing, a decision or order of the board is final and appealable on the date of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law.

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

(a) Petition. A person who was a party to a contested case before the Authority and is affected by a final decision or order of the Authority in that case may file a petition for judicial review within 30 days after the decision or order is final and appealable.

(b) The record. The record in a contested case 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 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 as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

**§ 707.626 Notice of Party Status**

(a) Any applicant for an initial regular permit may obtain party status in any or all contested cases by filing a notice thereof.

(b) A notice of party status must be in writing and be filed by United States mail, facsimile, or hand-delivery with the docket clerk within the time provided by § 707.604 of this chapter (Time for Filing of Request for Contested Case Hearing).

(c) The notice must contain the following information:

(1) the name, address, daytime telephone number, and, where possible, fax number of the person filing the request. If the request is made by a group or association, the request must identify the group and one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all the official communications and documents for the group.

(2) the style and docket number of the application for initial regular permit to

which party status is sought, unless party status is sought in all contested cases, in which case the notice must so state.

**CHAPTER 709. FEES**

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**Subchapter B. Registration Fees**

**Section**

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**Subchapter E. Special Permit Retirement Fees**

**[FRs Not Yet Adopted]**

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## **Subchapter A. Definitions**

### **Section**

709.1 Definitions

### **§ 709.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) 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.
- (2) Aquifer management fees-The fee authorized to be assessed by the Authority based:
  - (A) on 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 the Act, § 1.29(b).
- (3) 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 by the Authority.
- (4) Aquifer use-The withdrawal of groundwater from the Aquifer under interim authorization status pursuant to § 1.17 of the Act, under a final regular, term, or emergency

permit issued by the board, or by unauthorized users of the Aquifer.

(5) Cash needs approach-The method of determining annual operating revenue requirement of the Authority based on, and sufficient to cover, all cash needs for administrative and program expenses, including but not limited to, operation and maintenance expenses, costs of withdrawal reductions pursuant to § 711.176(c) of the Authority's rules (Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights) and § 711.180 of the Authority's rules (Voluntary Waiver of Applications for Initial Regular Permits), debt service and capital expenditures from current revenues for the specific fiscal year for which the annual operating revenue requirements have been determined and for which the Aquifer management and permit retirement fees for the corresponding fiscal year are intended to be adequate.

(6) Costs of Aquifer management-The reasonably necessary administrative and program expenses incurred or estimated to be incurred by the Authority to manage the Aquifer as authorized by Article 1 of the Act, and other applicable law.

(7) Downstream water right holder-The owner of any permit to divert and place to beneficial use surface water issued by the commission pursuant to chapter 11, TEX. WATER CODE, at any location in the Guadalupe River Basin below the orifices of Comal Springs or San Marcos Springs.

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

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

(10) 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.

(11) Permit retirement revenue requirement-The total revenues reflected in an annual budget adopted by the board that are reasonably required to adequately meet in each fiscal year all or a part of the projected costs of the retirement of initial regular permits.

(12) Permit retirement special fee-The fee authorized under § 1.29(c) of the Act to be assessed by the Authority to finance the retirement of initial regular permits pursuant to Chapter 715 (Comprehensive Water Management), Subchapter F (Regular Permit Retirement Rules).

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

## **Subchapter B. Registration Fees**

### **Section**

709.3	Purpose
709.5	Registration Fees; Applicability
709.7	Enforcement for Nonpayment

### **§ 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; Applicability**

The general manager shall assess a \$10 fee to file with the Authority any registration application. The fee shall be paid at the time the registration is filed.

### **§ 709.7 Enforcement for Nonpayment**

If the registrant has failed to pay the registration fee or is delinquent to the Authority with respect to any other fee that is due and owing from the registrant to the Authority, the general manager may:

- (1) refuse to accept for filing, or otherwise process, a registration application; or
- (2) commence any other action to enforce this subchapter as authorized by law.



**Subchapter C.            Permit Application Fees**

**Section**

709.9	Purpose
709.11	Permit Application Fees; Applicability
709.13	Enforcement for Nonpayment.

**§ 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; Applicability**

The general manager shall impose a \$25 fee to file with the Authority any application, including but not limited to, an application for a regular, term, or an emergency groundwater withdrawal permit, a well construction permit, monitoring well permit, Aquifer recharge and storage permit, and recharge recovery permits. The fee must be paid at the time the application is filed.

**§ 709.13           Enforcement for Nonpayment**

If the applicant has failed to pay the permit application fee or is delinquent to the Authority with respect to any other fee that is due and owing from the applicant to the Authority, the general manager may refuse to accept for filing, or otherwise process, a permit application.

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

### **Section**

709.15	Purpose
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709.21	Billing and Collection
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709.33	Enforcement for Nonpayment
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### **§ 709.15 Purpose**

The purpose of this subchapter is to establish the formula and procedures for the calculation, assessment, billing and collection of Aquifer management fees consistent with §§1.11(f) and 1.29(b) and (e) of the Act.

### **§ 709.17 Applicability**

Except for withdrawals of groundwater from the Aquifer made from an exempt well, Aquifer management fees shall be assessed by the Authority for all authorized and unauthorized withdrawals of groundwater from the Aquifer.

### **§ 709.19 Adoption and Assessment**

(a) Not later than December 31<sup>st</sup> of each year, the general manager shall, pursuant to this subchapter, calculate and assess an Aquifer management fee for the succeeding year.

(b) The Aquifer management fee shall be based on Aquifer use.

(c) The Aquifer management fee shall be based on two user blocks, and be uniform such that the average unit cost of groundwater, regardless of 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.

(d) The Aquifer management fee shall be calculated and assessed as follows:

(1) By resolution and order, the board shall adopt a Block 1 Aquifer management fee rate and budget reflecting its annual operating revenue requirement for the succeeding fiscal year based on a cash-needs approach. The budget shall determine the net annual operating revenue requirement by subtracting from the annual operating revenue requirement any carryover funding from the current fiscal year in addition to 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 for preceding calendar years.

(2) The general manager shall determine the total volume of Aquifer use authorized for withdrawal for the succeeding year by Block 1 non-agricultural users.

(3) By December 31st, the general manager shall calculate the Aquifer management fee that may be assessed against Block 1 non-agricultural use on a unit cost basis by dividing the net annual operating revenue requirements by the total authorized or contracted Aquifer use of Block 1 non-agricultural users.

(4) The general manager shall assess an Aquifer management fee for Block 2 agricultural users of \$2.00 per acre-foot.

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

(f) Aquifer management fees shall be assessed in the same manner and amount without regard to whether the groundwater withdrawal amounts are junior rights or senior rights.

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

(a) All persons authorized for Aquifer use under interim authorization status pursuant to § 1.17 of the Act and the rules of the Authority, or under a final groundwater withdrawal permit issued by the board, and all unauthorized users of the Aquifer, are required to pay to the Authority an Aquifer management fee as assessed pursuant to this subchapter.

(b) The general manager shall bill to and collect from all Aquifer users an Aquifer management fee for the fiscal year as calculated and assessed by the general manager pursuant to this subchapter, unless subject to a user contract under § 709.25 of this chapter (User Contracts),

(1) If the Aquifer use is agricultural, the Aquifer management fee shall be assessed on the total volume of groundwater withdrawn in a calendar year from the Aquifer by an Aquifer user.

(2) If the Aquifer use is non-agricultural, then the fee shall be assessed on:

(A) for an applicant qualifying for interim authorization status under § 1.17 of the Act, the historical, maximum beneficial use set forth in section 4B of the application for initial regular permit, irrespective of whether the groundwater was actually

withdrawn;

(B) for a permittee, the total volume of groundwater authorized to be withdrawn in a final permit issued by the board, irrespective of whether the groundwater was actually withdrawn; or

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

(c) Not later than December 31<sup>st</sup>, the general manager shall mail an Aquifer management fee invoice for the following year to all non-agricultural users. Not later than December 31<sup>st</sup>, the general manager 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 the general manager. 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 the general manager may assess, for every month thereafter that the invoice remains delinquent, a penalty equivalent to the maximum amount allowed by law.

(g) Each day that any Aquifer management fee is delinquent constitutes a separate violation of the Authority's rules.

(h) The general manager shall bill to and collect from all Aquifer users who, through a transfer approved by the Authority, obtain interim authorization status or a final groundwater withdrawal permit, 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 pursuant to the transferred rights by the transferee after the effective date of the transfer. The transferee shall submit a completed groundwater use report form and pay the Aquifer management fee in accordance with the requirements of subsection (e), above.

(2) If the transferee's use will be for non-agricultural use, then the transferee shall, except to the extent the non-agricultural Aquifer management fee has already been paid for that year by the transferor, 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 by the Authority, as follows:

(A) the Aquifer management fee shall be assessed on the transferred amount as set forth in subsection (b)(2), above; or on the amount as may be otherwise agreed to pursuant to a user contract executed pursuant to § 709.25(b) (User Contracts) of this chapter.

(B) the general manager will mail to the transferee an Aquifer management fee invoice within 30 days of the date the transfer is finally approved by the Authority; and

(C) 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.

(i) The general manager shall bill and collect aquifer management fees in the same manner and amount without regard to whether the groundwater withdrawal amounts are junior rights or senior rights.

### **§ 709.23      Limitation on Amount of Assessments**

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 as reflected in its adopted annual fiscal year budget.

### **§ 709.25      User Contracts**

In order to encourage water conservation, the general manager may contract with any non-agricultural user for the user to commit to Aquifer use less than an amount to which the user would otherwise be authorized, as follows:

(a) Except as otherwise set forth in subsection (b) below, not later than September 30<sup>th</sup> of the year preceding the calendar year for which a user contract will be effective, the general manager may contract with any non-agricultural user for the user to commit to Aquifer use less than an amount to which the user would otherwise be authorized. The Authority shall assess Aquifer management fees for the reduced amount of contracted Aquifer use. A user contract shall be effective on a calendar year basis and may not have a term of greater than a

one-year period.

(b) For any non-agricultural user who, through a transfer approved by the Authority, obtains interim authorization status or a final groundwater withdrawal permit, the general manager may, within 30 days of the date the transfer is approved, contract with such user for the user to commit to Aquifer use less than an amount to which the user would otherwise be authorized during the year in which the transfer is approved. Such a user contract shall terminate at the end of the year in which the transfer was approved and the contract was executed. If the transfer is approved later than September 30 in a given year, the general manager may, within 30 days of the date the transfer is approved, enter into a similar contract with the user for the subsequent calendar year. The Authority shall assess Aquifer management fees for the reduced amount of contracted Aquifer use.

**§ 709.27 Effective Period**

An Aquifer management fee calculated and assessed by the general manager shall be effective on a calendar year basis beginning January 1st through December 31st.

**§ 709.29 Prohibition on Expenditure of Aquifer Management Fees for Water Supply Facilities**

The Authority may not expend Aquifer management fee revenues for purchasing or operating water supply facilities.

**§ 709.31 Waiver of Fees**

If the Authority is a creditor of a person required to pay Aquifer management fees pursuant to § 709.17 of this chapter (Applicability) and § 709.21(a) of this chapter (Billing and Collection), the general manager may enter into a contract that authorizes a credit against the payment of Aquifer management fees that may be owed by the person as an offset to all or part of the amount owed to the person by the Authority.

**§ 709.33 Enforcement for Nonpayment**

If the general manager determines that an aquifer management fee is delinquent, enforcement for nonpayment may be as follows:

- (1) by suspending the processing of any application that the person owing the fee, or his successor in interest, may have pending before the Authority; or
- (2) commence any action to enforce payment and collection of the delinquent Aquifer management fee as may be authorized by law.

**§ 709.35 Prohibitions**

No person may withdraw groundwater from the Aquifer if the person, or his predecessor

in interest, is delinquent in the payment of an Aquifer management fee that is due and payable to the Authority.

**§ 709.37      Unauthorized Withdrawals**

(a) Any person who withdraws groundwater from the Aquifer without legal authority shall pay to the Authority an Aquifer management fee adopted, assessed, and in force and effect, for the period of time during which the unauthorized withdrawals were made.

(b) If a person makes withdrawals of groundwater from the Aquifer that are not being metered in accordance with subchapter M (Meters; Alternative Measuring Methods; and Reporting) of Chapter 711 (Groundwater Withdrawals) of the Authority's rules, the board may, if the withdrawals are for agricultural use, assess the Aquifer management fees based on the amount of water a permittee, or person with interim authorization status, is authorized to withdraw under the permit, or interim authorization, respectively.

**Subchapter E. Special Permit Retirement Fees**

**[FRs Not Yet Adopted]**



**Subchapter F.            Miscellaneous Fees**

**Section**

709.100	Purpose
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709.103	Notice of Transfer of Ownership Fee
709.104	Enforcement for Nonpayment

**§ 709.100     Purpose**

The purpose of this subchapter is to establish fees for miscellaneous applications and notices of transfer of ownership.

**§ 709.102     Agricultural Water Conservation Loan Application Fee; Applicability**

The Authority shall charge an applicant for an agricultural water conservation loan a one-time application fee of \$250 to cover costs of processing the loan applications. The fee shall be paid at the time the application is filed.

**§ 709.103     Notice of Transfer of Ownership Fee**

The Authority shall charge a \$25 fee for processing a notice of transfer of ownership.

**§ 709.104     Enforcement for Nonpayment**

If the applicant has failed to pay the application fee, or is delinquent with respect to any other fee that is due and owing from the applicant to the Authority, the general manager may refuse to accept for filing, or to otherwise process, the appropriate application or notice of transfer of ownership.

## **CHAPTER 711. GROUNDWATER WITHDRAWALS**

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## **Subchapter A. Definitions**

### **Section**

711.1 Definitions

### **§ 711.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) 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
  - (B) placed the groundwater to beneficial use.
- (2) Existing user - A person or the successor in interest of a 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.
- (3) Historical use - The lawful withdrawing and placing to beneficial use of groundwater from the Aquifer during the historical period.
- (4) 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.
- (5) Producing well - a well from which groundwater from the Aquifer is capable of being withdrawn for a beneficial use.
- (6) 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;



(D) 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;

(E) 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;

(F) 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;

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

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

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

(J) 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.

## **Subchapter B. General Provisions**

### **Section**

711.10	Purpose
711.12	Activities Requiring a Permit
711.14	Withdrawals Not Requiring a Groundwater Withdrawal Permit
711.16	Wells Requiring Registration
711.17	Delegation of Regulatory Authority to Groundwater Conservation Districts

### **§ 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) provide for Aquifer management through the application of management mechanisms consistent with law and appropriate to the Aquifer system;
- (4) manage, conserve, preserve and protect the Aquifer;
- (5) increase Aquifer recharge;
- (6) prevent waste of groundwater in the Aquifer; and
- (7) prevent water pollution in the Aquifer.

### **§ 711.12 Activities Requiring a Permit**

(a) Except as provided in § 711.14 of this chapter (Withdrawals Not Requiring a Groundwater Withdrawal Permit) and subsection (b) of this section, a person desiring to engage in any of the following activities is required to obtain a permit from the Authority before the commencement of the activity:

- (1) withdrawing groundwater from the Aquifer;
- (2) constructing, installing, drilling, equipping, completing, or altering a well, or other works, designed for the withdrawal of groundwater from the Aquifer;
- (3) constructing, installing, drilling, equipping, completing, or altering a well, or other works, designed for the monitoring of the water quality or level of the Aquifer;

(4) installing, equipping, completing, or altering a well pump on a well designed for the withdrawal of groundwater from the Aquifer;

(5) constructing, installing, drilling, equipping, completing or altering a well or other works designed to withdraw groundwater from an aquifer other than the Aquifer, and which intersects the Aquifer;

(6) recharging water into the Aquifer; or

(7) storing water within the Aquifer.

(b) The requirement to obtain a well construction permit under subsections (a)(2)-(4) does not apply to the performance of routine operation and maintenance after construction and installation of a well if the well is:

(1) an existing non-exempt well that qualifies for interim authorization status under the Act, § 1.17, and subchapter D of this chapter (Interim Authorization);

(2) an existing non-exempt well for which a groundwater withdrawal permit has been issued by the board; or

(3) an existing exempt well.

#### **§ 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 issued by the Authority:

(1) wells qualifying for interim authorization status under the Act, § 1.17, and Subchapter D of this chapter (Interim Authorization); or

(2) exempt wells.

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

(a) A person who owns a well designed for the withdrawal of groundwater from the Aquifer, which is in existence on the effective date of this rule, must register the well with the Authority by filing a well registration form provided by the general manager. Well registrations required by this subsection must be filed no later than December 31, 2005.

(b) The owner of any well designed for the withdrawal of groundwater from the Aquifer, which is constructed after the effective date of this rule, is required to register the well with the Authority by filing a well registration form provided by the general manager 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 or an application for 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.

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

(a) By order, the board may delegate all or part of its powers or duties to manage and control the Aquifer.

(b) Any groundwater conservation district desiring to receive a delegation of powers or duties from the board under this section must file with the Authority an application for delegation of regulatory authority.

(c) The board may not approve an application to delegate regulatory authority unless a groundwater conservation district demonstrates to the satisfaction of the board the following:

(1) the groundwater conservation district has the statutory powers necessary for full enforcement of the powers or duties to be delegated;

(2) the groundwater conservation district has implemented all rules and policies necessary to fully implement the programs to be delegated;

(3) the groundwater conservation district has implemented a system designed to provide the Authority with adequate information with which to monitor the adequacy of the groundwater conservation district's performance in enforcing board rules and orders;

(4) if applicable, a review of the groundwater conservation district's past performance and experience in enforcing powers and duties delegated to it by the board demonstrates that the groundwater conservation 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 groundwater conservation district has adequate financial and staff resources to implement and enforce the powers or duties delegated to it.

(d) The board may deny an application for delegation of regulatory authority if a groundwater conservation district has previously had a delegation terminated under subsection

(f) of this section.

(e) Upon approval of an application for delegation of regulatory authority under this section, the board shall enter an order authorizing the general manager to enter into an interlocal contract with the groundwater conservation district providing for the terms and conditions of the delegation of powers or duties, including oversight by the general manager. The interlocal contract must be consistent in all respects with the order approving the application for delegation of regulatory authority. 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.

(f) If the board determines that a groundwater conservation district has failed to adequately enforce or implement any powers or duties delegated to it under this section, the board shall immediately provide to the groundwater conservation district notice that sets forth the reasons for its determination and the actions that the groundwater conservation district must take to retain the delegated authority. Not later than the tenth day after the date the notice is given, the groundwater conservation 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 groundwater conservation 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 to the groundwater conservation district under this section. The board shall provide to the groundwater conservation 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.

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

(h) 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**

711.18	Definitions
711.20	Eligibility for Exempt Well Status
711.21	Requirement to File Application to Register an Exempt Well
711.22	Effect of Exempt Well Status
711.24	Nature of Exempt Well Withdrawals
711.28	New Well Construction Permits and Exempt Well Status Determinations
711.30	Authorized Uses; Place of Use
711.32	Production Limitation
711.34	Platting of Subdivisions
711.36	Wells Within a Subdivision Requiring Platting
711.38	Wells Serving a Subdivision Requiring Platting
711.40	Subsequent Creation of Subdivisions; Loss of Exempt Well Status Due to Transfer of Ownership; Notice to Purchasers
711.42	Vacation or Cancellation of Subdivisions
711.44	Loss of Exempt Well Status; Notice of Changed Circumstances
711.46	Dual Status Wells Prohibited
711.48	Conversion of Well Status

### **§ 711.18 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

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

- (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.

(2) 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.

(3) 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.
- (4) Tract of land - A lot, piece, or parcel of land irrespective of size.

**§ 711.20 Eligibility for Exempt Well Status**

A well qualifies for exempt well status if:

- (1) it is capable of producing no more than 25,000 gallons of water a day;
- (2) it will be used solely for domestic or livestock use; and
- (3) it is not within or serving a subdivision requiring platting; or
- (4) the well is 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.

**§ 711.21 Requirement to File Application to Register an Exempt Well**

(a) An owner of an existing or proposed well for which the owner seeks exempt well status shall file an Application to Register an Exempt Well. An application to register an exempt well must be filed no later than the date established by the board in an order requiring the filing of applications to register an exempt well in accordance with this rule.

(b) If the owner of a non-exempt permitted well desires to convert that well to one with exempt well status, the owner must file with the Authority an application to register an exempt well.

(c) Exempt well registrations are transferable only as to ownership pursuant to subchapter L of this chapter (Transfers).

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

(a) Except as provided in subsection (b) of this section, and for wells exempt under § 711.20(4), 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 the requirements of:

(1) subchapter M of this chapter (Meters; Alternative Measuring Methods; and Reporting);

(2) § 711.12(a)(1) of this chapter (Activities Requiring a Permit);

(3) § 711.98(a) of this chapter (Initial Regular Permits); and

(4) subchapters D (Aquifer Management Fees) and E (Special Permit Retirement Fees) of chapter 709 (Fees).

(c) Unless the well status is converted pursuant to § 711.48 of this chapter (Conversion of Well Status), the owner of an exempt well may not obtain a groundwater withdrawal permit for the well, nor will the well qualify for interim authorization status.

## **§ 711.24 Nature of Exempt Well Withdrawals**

Because withdrawals of groundwater from the Aquifer from exempt wells are not made pursuant to a permit, such withdrawals are not subject to §§ 1.14(b) and (c) of the Act.

## **§ 711.28 New Well Construction Permits and Exempt Well Status Determinations**

Any person who, after the effective date of these rules, proposes to construct a well which is believed to qualify for exempt well status pursuant to the criteria in § 711.20 of this chapter (Eligibility for Exempt Well Status), shall first apply for and obtain an exempt well status determination pursuant to § 711.21 of this chapter (Requirement to File Application to Register an Exempt Well), and apply for and obtain a new well construction permit pursuant to subchapter C (Well Construction, Operation and Maintenance) of chapter 713 (Water Quality) of the Authority's rules, prior to beginning construction of the well.

## **§ 711.30 Authorized Uses; Place of Use**

Withdrawals of groundwater from the Aquifer from exempt wells may be beneficially used:

(a) only for domestic or livestock use; and

(b) only on the tract of land on which the exempt well is located or on an adjacent tract of land owned by the same exempt well owner.



**§ 711.32      Production Limitation**

The owner of an exempt well may not produce more than 25,000 gallons of water a day. Such a well must also be either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons per day.

**§ 711.34      Platting of Subdivisions**

(a) Except as provided in subsection (b) of this section, subdivisions of land are classified as requiring platting.

(b) The following subdivisions of land are not classified as requiring platting:

(1) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality divides the tract into two or more parts, but:

(A) does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent thereto; and

(B) the tract is to be used primarily for agricultural use, as defined in Section 1-d, Article VIII, Texas Constitution, or for farm, ranch, wildlife management, or timber production use within the meaning of Section 1-d-1, Article VIII, Texas Constitution.

(2) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality:

(A) divides the tract into four or fewer parts;

(B) does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent thereto; and

(C) each lot is to be sold, given, or otherwise transferred to an individual who is related to the owner of the tract within the third degree by consanguinity or affinity, as determined under chapter 573, TEX. GOV'T CODE;

(3) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality:

(A) divides the tract into two or more lots and each lot of the subdivision is more than 10 acres in area; and

(B) does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to thereto;

(4) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality:

(A) divides the tract into two or more lots;

(B) sells all of the lots to veterans through the Veterans Land Board program; and

(C) the owner does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to thereto;

(5) The subdivision is a tract of land owned by the state or any state agency, board, or commission, or owned by the permanent school fund or any other dedicated funds of the state, unless the subdivision lays out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to thereto;

(6) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality divides the tract into two or more lots and:

(A) the tract is owned by a political subdivision of the state;

(B) the tract is situated in a flood plain; and

(C) the lots are sold to adjoining landowners;

(7) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality divides the tract into two lots and:

(A) does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to thereto;

(B) ownership of at least one new part is to be retained by the owner of the larger, subdivided tract; and

(C) ownership of the other new part is to be transferred to another person who will further subdivide the tract subject to the plat filing requirements of chapter 232, TEX. LOC. GOV'T CODE;

(8) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality:

(A) divides the tract into two or more lots;

(B) does not lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to thereto;

(C) transfers all lots to persons who owned an undivided interest in the original tract; and

(D) a plat is filed before any further development of any part of the tract;

(9) The owner of a tract of land located within the limits or the extraterritorial jurisdiction of a municipality divides the tract into parts greater than five acres, where each part has access and no public improvement is being dedicated;

(10) The owner of a tract of land located wholly within the limits of a municipality with a population of 5,000 or less divides the tract into parts larger than 2 ½ acres and the tract abuts any part of an aircraft runway;

(11) The owner of a tract of land located within a subdivision of land that:

(A) occurred prior to January 17, 2001; and

(B) when final action is taken on the well owner's application to register an exempt well:

(i) the subdivision does not have retail water service; and

(ii) the subdivision is not scheduled by a municipal distribution system to be provided retail water service within one year from the date the application to register an exempt well was filed with the Authority; or

(12) The owner of a tract of land located outside the limits and the extraterritorial jurisdiction of a municipality:

(A) divides the tract into two or more lots;

(B) each lot of the subdivision is equal to or greater than 10 acres in area; and

(C) when final action is taken on the well owners application to register an exempt well:

(i) the subdivision does not have retail water service, and the subdivision is not scheduled by a municipal distribution system to be provided retail water service within one year from the date the application to register an exempt well was filed with

the Authority; or

(ii) it is economically infeasible to:

(1) provide water service to the tract; or

(2) in the event the tract already has water service, extend the water service line to the location on the tract where the exempt well is proposed to be installed.

### **§ 711.36 Wells Within a Subdivision Requiring Platting**

A well is within a subdivision requiring platting if the well bore is physically constructed and installed within the boundaries of a tract of land that is required to be platted pursuant to § 711.34 of this chapter (Platting of Subdivisions).

### **§ 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 two or more households located within a subdivision requiring platting.

### **§ 711.40 Subsequent Creation of Subdivisions; Loss of Exempt Well Status Due to Transfer of Ownership; Notice to Purchasers**

(a) If an otherwise exempt well installed on or after February 18, 2005 is located on land subsequently encompassed within a subdivision requiring platting, the exempt well retains its exempt status only if:

(1) the well does not serve a subdivision requiring platting;

(2) the well otherwise continues to meet the requirements for an exempt well;

and

(3) except for transfers described in TEX. PROP. CODE § 5.008(e), ownership of the land on which the well is located has not been transferred.

(b) The owner of a well that meets the requirements of subsection (a) of this section, who then subsequently transfers ownership of the land on which the well is located, except for transfers described in TEX. PROP. CODE § 5.008(e), shall give to the transferee a written notice substantially similar to the notice prescribed by subsection (c).

(c) Notice to a transferee of loss of exempt well status shall be executed and must, at

a minimum, read substantially similar to the following:

“CONCERNING THE PROPERTY AT \_\_\_\_\_

SELLER’S DISCLOSURE OF LOSS OF EXEMPT WELL STATUS

(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER’S KNOWLEDGE OF THE RULES OF THE EDWARDS AQUIFER AUTHORITY WITH RESPECT TO THE LOSS OF EXEMPT WELL STATUS FOR ANY WELL INSTALLED ON OR AFTER FEBRUARY 18, 2005 LOCATED ON THIS PROPERTY. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR SELLER’S AGENTS.

The Edwards Aquifer Authority Act (“Act”) and the rules of the Edwards Aquifer Authority (“Authority”) generally require that all owners of wells that withdraw groundwater from the Edwards Aquifer (“Aquifer”) obtain a groundwater withdrawal permit from the Authority *prior to* withdrawing groundwater from the Aquifer. However, owners of a well that qualifies for “exempt well status” are not required to obtain a groundwater withdrawal permit from the Authority. Instead, the exempt well must be registered and the Authority must determine if the well qualifies for exempt well status.

A well installed on or after February 18, 2005, that qualifies for exempt well status, which is located on land subsequently encompassed within a subdivision requiring platting, loses its status as an exempt well if: (1) ownership of the land on which the well is located is transferred to another person or entity other than as described in TEX. PROP. CODE § 5.008(e), or (2) the well no longer meets the requirements for an exempt well under the Edwards Aquifer Authority Act and the Authority’s Rules. **BECAUSE THE WELL(S) LOCATED ON THIS PROPERTY MAY BE AN EXEMPT WELL, WAS INSTALLED ON OR AFTER FEBRUARY 18, 2005, AND THE SALE OF THIS PROPERTY DOES NOT MEET THE REQUIREMENTS OF TEX. PROP. CODE § 5.008(e), PRIOR TO MAKING OR CONTINUING TO MAKE WITHDRAWALS OF GROUNDWATER FROM THE WELL(S), YOU MUST OBTAIN A GROUNDWATER WITHDRAWAL PERMIT FROM THE AUTHORITY.**

You are advised to contact the Authority with any questions. The Authority’s offices are located at 1615 N. St. Mary’s St., San Antonio, Texas 78215. The phone number for the Authority is (800) 292-1047 or (210) 222-2204.”

(d) The notice prescribed in subsection (c) shall be delivered by the seller to the Authority and the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property.

(e) This section does not apply to any well drilled prior to February 18, 2005. Pre-February 18, 2005 wells shall be governed by the prior versions of this section that are applicable to the well.

#### **§ 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 located within or 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) Except as provided in § 711.40 of this chapter (Subsequent Creation of Subdivisions; Loss of Exempt Well Status Due to Transfer of Ownership; Notice to Purchasers), 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;

(2) the original construction and equipping of the well is modified or altered so as to make the well capable of producing groundwater from the Aquifer at a rate in excess of 25,000 gallons per day; or

(3) the well subsequently begins to serve a subdivision requiring platting.

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

#### **§ 711.46 Dual Status Wells Prohibited**

(a) A well may either be an exempt well or a well for which a permit is required, but not both simultaneously.

(b) If separately metered in accordance with the requirements of § 711.402(e) of this chapter (Duty to Install and Operate Meter; Meter Installation Deadlines), withdrawals for exempt use may be made from a permitted non-exempt irrigation well.

(c) Withdrawals for uses requiring a groundwater withdrawal permit may not be made from an exempt well.

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

(a) The owner of a non-exempt 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 an application to register an exempt well pursuant to § 711.21 of this chapter (Requirement to File Application to Register an Exempt Well). No person may withdraw groundwater for irrigation, municipal, or industrial purposes from a well converted to exempt status from non-exempt status, unless:

- (1) the well is converted back from exempt status to non-exempt status; or
- (2) the Authority approves a transfer of the point of withdrawal for the formerly non-exempt 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 non-exempt permitted well if the owner files an application to transfer and amend pursuant to § 707.414 of the Authority's rules (Applications to Transfer Interim Authorization Status and Amend Application for Initial Regular Permit), or § 707.415 of the Authority's rules (Applications to Transfer Permit). Except as provided in § 711.46 of this chapter (Dual Status Wells Prohibited), no person may withdraw groundwater for exempt domestic or livestock use from a well converted to a non-exempt status from exempt status.

## **Subchapter D. Interim Authorization**

### **Section**

711.60	Eligibility for Interim Authorization Status
711.62	Effect of Interim Authorization Status
711.64	Nature of Interim Authorization Withdrawals
711.66	Period of Interim Authorization
711.68	Authorized Uses
711.70	Interim Authorization Groundwater Withdrawal Amounts
711.72	Interim Authorization Groundwater Withdrawal Conditions
711.74	Effect of Action Taken by the Authority During Interim Authorization

### **§ 711.60 Eligibility for Interim Authorization Status**

A well qualifies for interim authorization status if, on December 30, 1996, it was a producing, non-exempt well from which the person owning the well, who is an existing user and timely filed a declaration, made withdrawals of groundwater from the Aquifer.

### **§ 711.62 Effect of Interim Authorization Status**

A person owning a well qualifying for interim authorization status may, during the well's interim authorization period, continue to withdraw and beneficially use groundwater from the Aquifer without waste.

### **§ 711.64 Nature of Interim Authorization Withdrawals**

Withdrawals of groundwater from the Aquifer during the interim authorization period are made pursuant to the statutory authority provided in § 1.17 of the Act.

### **§ 711.66 Period of Interim Authorization**

For a well qualifying for interim authorization status:

- (1) the interim authorization period begins December 30, 1996; and
- (2) the interim authorization period ends on:

(A) December 30, 1996, if the person owning the well did not file a declaration for the well on or before that date; or

(B) the January 1st after the date that the board issues a final and appealable order acting on the declaration for the well.



**§ 711.68 Authorized Uses**

During the interim authorization period, a person owning a well qualifying for interim authorization status may beneficially use groundwater withdrawn from the Aquifer through the well only for the purpose(s) of use designated in the person's declaration and falling within one or more of the following categories:

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

**§ 711.70 Interim Authorization Groundwater Withdrawal Amounts**

During a well's interim authorization period, a person owning a well qualifying for interim authorization status may withdraw on an annual basis an amount not to exceed the lesser of the following amounts:

- (1) the person's historical, maximum beneficial use claimed in § 4B of a declaration;  
or
- (2) if the person is an applicant in a contested case hearing that has been pending for a period of at least one year, an amount otherwise determined by the Board.

**§ 711.72 Interim Authorization Groundwater Withdrawal Conditions**

In addition to the applicable standard groundwater withdrawal conditions in subchapter F of this chapter (Standard Groundwater Withdrawal Conditions), withdrawals of groundwater from the Aquifer under interim authorization status are conditioned upon the well being in compliance with all applicable laws related to the following:

- (a) well construction;
- (b) well approval;
- (c) well location;
- (d) well spacing;
- (e) well operation; and
- (f) junior and senior rights.

**§ 711.74      Effect of Action Taken by the Authority During Interim Authorization**

No action taken by the board or the general manager during the interim authorization period shall in any way bind either the Authority or the applicant with respect to any issue of fact or law that may arise in any pending or subsequent application for a groundwater withdrawal permit.

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

### **Section**

711.90	Permit Categories
711.91	Requirement to File an Application for a Groundwater Withdrawal Permit
711.92	Authorized Uses
711.94	Beneficial Use
711.96	Non-Aquifer Groundwater
711.98	Initial Regular Permits
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711.110	Monitoring Well Permits
711.112	Contents of Groundwater Withdrawal Permits
711.118	Contents of Monitoring Well Permits
711.120	Groundwater Withdrawal Permit Consolidation

### **§ 711.90 Permit Categories**

The Authority may issue the following permits:

- (1) initial regular permits;
- (2) additional regular permits;
- (3) term permits;
- (4) emergency permits;
- (5) Aquifer recharge and storage permits;
- (6) recharge recovery permits;
- (7) well construction permits; and
- (8) monitoring well permits.

### **§ 711.91 Requirement to File an Application for a Groundwater Withdrawal Permit**

Any person seeking to withdraw groundwater from the Aquifer, unless exempted from the permit requirement by §§ 1.16(c) and 1.33 of the Act and § 711.20 of the Authority's rules (Eligibility for Exempt Well Status), must file with the Authority an application for a groundwater withdrawal permit.

**§ 711.92 Authorized Uses**

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.

**§ 711.94 Beneficial Use**

- (a) Groundwater withdrawn from the Aquifer must:
  - (1) have been placed to beneficial use without waste during the historical period; or
  - (2) be placed to beneficial use without waste after the historical period.
- (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.

#### **§ 711.96 Non-Aquifer Groundwater**

(a) The Authority may not issue to an applicant 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 pursuant to § 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 of this chapter (Eligibility for Exempt Well Status) 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 transferable pursuant to subchapter L of this chapter (Transfers).

(e) The term of an initial regular permit is perpetual.

(f) If in effect, initial regular permits may be proportionally adjusted in accordance with the proportional adjustment rules pursuant to subchapter G of this chapter (Groundwater Available for Permitting; Proportional Adjustment; and Equal Percentage Reduction).

(g) If in effect, initial regular permits may be retired in accordance with the following rules:

(1) the equal percentage reduction rules pursuant to subchapter G of this chapter (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reduction);

(2) the regular permit retirement rules pursuant to subchapter F (Regular Permit Retirement Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management); or

(3) the groundwater trust rules pursuant to subchapter N of this chapter (Groundwater Trust).

(h) If in effect, initial regular permits may be suspended in accordance with the following rules:

(1) the demand management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management); or

(2) the groundwater trust rules pursuant to subchapter N of this chapter (Groundwater Trust).

(i) Initial regular permits may be interrupted in accordance with the following rules:

(1) for junior rights, subchapter G (Withdrawal of Junior Rights) of chapter 715 (Comprehensive Water Management); and

(2) for senior rights, the demand management and critical period management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management).

(j) Initial regular permits may be abandoned pursuant to subchapter H of this chapter (Abandonment).

(k) 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 physically 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 physically 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 physically 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.

(1) The board shall issue withdrawal amounts to an applicant for an initial regular permit pursuant to § 711.176 of this chapter (Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights) or as modified by § 711.180 of this chapter (Voluntary Waiver of Applications for Initial Regular Permits).

**§ 711.100 Additional Regular Permits**

(a) Any person owning a well, or proposing to construct a well, may apply for an additional regular permit if:

- (1) final determinations have been made by the board on all applications for initial regular permits filed with the Authority on or before December 30, 1996; and
- (2) the board has issued an order stating that the Authority is accepting for filing applications for additional regular permits.

(b) Unless the board has issued the order authorizing applications for additional regular permits to be filed with the Authority, the general manager may not process any application received and must return the application to the applicant along with any application fee submitted. The board may not issue such an order until a final determination has been made on all applications for initial regular permits. When the general manager is authorized to accept for filing applications for additional regular 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) Additional regular permits are transferable pursuant to subchapter L of this chapter (Transfers).

(d) The term of an additional regular permit is perpetual.

(e) If in effect, additional regular permits may be retired in accordance with the following rules:

(1) the equal percentage reduction rules pursuant to subchapter G of this chapter (Groundwater Available for Permitting; Proportional Adjustment; Equal Percentage Reduction);

(2) the regular permit retirement rules pursuant to subchapter F (Regular Permit Retirement Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management); and

(3) the groundwater trust rules pursuant to subchapter N of this chapter (Groundwater Trust).

(f) If in effect, additional regular permits may be suspended in accordance with the following rules:

(1) the demand management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management); or

(2) the groundwater trust pursuant to subchapter N of this chapter (Groundwater Trust).

(g) If in effect, additional regular permits may be interrupted in accordance with the demand management and critical period management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management).

(h) Additional regular permits may be abandoned pursuant to subchapter H of this chapter (Abandonment).



(i) Subject to the duty of the Board to determine the amount of groundwater that may be withdrawn under an additional regular permit, the Board shall grant an application for an additional regular permit if the following elements are established by convincing evidence:

- (1) the applicant paid the application fee;
- (2) the application identifies an existing or proposed well(s);
- (3) the well head is physically 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 physically located within and discharged directly from the Aquifer;
- (6) the place of use at which the withdrawals are proposed to be beneficially used is physically located within the boundaries of the Authority;
- (7) the withdrawals are proposed to be placed to a beneficial use for irrigation, municipal, or industrial use;
- (8) there remains water available for permitting after the board has made final determinations on:
  - (A) all applications for initial regular permits;
  - (B) any restorations of proportional adjustments or equal percentage reductions pursuant to § 711.304 of this chapter (Allocation of Additional Groundwater Supplies); and
  - (C) all prior applications for additional regular permits;
- (9) the well does not qualify for exempt well status;
- (10) the proposed withdrawal of groundwater is consistent with chapter 715 of the Authority's rules (Comprehensive Water Management);
- (11) the application complies with the Act; and
- (12) the application complies with the rules of the Authority.

(j) The board shall issue a groundwater withdrawal amount to an applicant for an additional regular permit in an amount that is consistent with chapter 715 of the Authority's rules (Comprehensive Water Management).

**§ 711.102 Term Permits**

(a) Any person owning a well, or proposing to construct a well, may apply for a term permit.

(b) Unless the board has issued an order authorizing applications for term permits to be filed with the Authority, the general manager may not process any application received and must return the application to the applicant along with any application fee submitted. When the general manager 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. The board may not issue an order authorizing applications for term permits to be filed with the Authority during any period of time in which junior rights are authorized to be withdrawn under subchapter G (Withdrawal of Junior Rights) of chapter 715 (Comprehensive Water Management).

(c) Term permits are transferable only as to ownership pursuant to subchapter L of this chapter (Transfers).

(d) Term permits shall be interrupted as follows:

(1) for wells completed in the San Antonio Pool, the level of the Aquifer is equal to or less than 665 feet above mean sea level as measured at well J-17; and

(2) 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 by convincing evidence:

(1) the applicant paid the application fee;

(2) the application identifies an existing or proposed well(s);

(3) the well head is physically 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 physically located within and discharged directly from the Aquifer;

- (6) the withdrawals are proposed to be placed to a beneficial use;
- (7) the place of use at which the withdrawals are proposed to be beneficially used is physically located within the boundaries of the Authority;
- (8) groundwater is available for permitting from the San Antonio or Uvalde Pools, as appropriate;
- (9) the well does not qualify for exempt well status;
- (10) the applicant is in compliance with other groundwater withdrawal permits, if any;
- (11) the proposed withdrawal of groundwater under the term permit, if granted, would not unreasonably negatively affect other permittees;
- (12) the proposed withdrawal of groundwater is consistent with chapter 715 of the Authority's rules (Comprehensive Water Management);
- (13) the proposed use of groundwater is economically feasible in relation to the proposed length of the term;
- (14) 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;
- (15) the applicant will take all reasonable measures to ensure conservation of water withdrawn;
- (16) the applicant has no other source of water from a municipal distribution system;
- (17) the application complies with the Act; and
- (18) the application complies with the rules of the Authority.

(g) The board shall issue a groundwater withdrawal amount to an applicant for a term permit in the amount that is consistent with chapter 715 of the Authority's rules (Comprehensive Water Management).

(h) By January 15 of each year for which the board order is in effect authorizing applications for term permits to be filed with the Authority, the board by order shall determine the total quantity of groundwater that may be withdrawn from each pool of the Aquifer for that calendar year pursuant to term permits. At any time by order of the board this determination may be revised as appropriate based upon actual Aquifer conditions to be consistent with chapter 715

of the Authority's rules (Comprehensive Water Management).

**§ 711.104 Emergency Permits**

- (a) Any person owning a well may apply for an emergency permit.
- (b) Emergency permits are transferable only as to ownership pursuant to subchapter L of this chapter (Transfers).
- (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 if the following elements are established by convincing evidence:
  - (1) the applicant paid the application fee;
  - (2) the application identifies an existing or proposed well(s);
  - (3) the well head is physically 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 physically located within and discharged directly from the Aquifer;
  - (6) the withdrawals are proposed to be placed to a beneficial use for irrigation, municipal, or industrial use;
  - (7) the place of use at which the withdrawals are proposed to be beneficially used is physically located within the boundaries of the Authority;
  - (8) the well does not qualify for exempt well status;
  - (9) the applicant is in compliance with other groundwater withdrawal permits, if any;
  - (10) the applicant will take all reasonable measures to ensure conservation of water withdrawn;
  - (11) the applicant has no other source of water from a municipal distribution system;

(12) issuance of the permit is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety;

(13) the withdrawal amounts authorized in all other groundwater withdrawal permits issued to the applicant by the Authority have been exhausted;

(14) the application complies with the Act; and

(15) the application complies with the rules of the Authority.

(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 demonstrated in the application.

(g) An emergency permit is renewable pursuant to the rules of the Authority and the conditions of the permit.

#### **§ 711.110 Monitoring Well Permits**

(a) Any person seeking to perform one of the activities set forth in § 711.12(a)(3) of the Authority's rules (Activities Requiring a Permit) must file an application for a monitoring well permit with the Authority.

(b) Monitoring well permits are transferable only as to ownership pursuant to subchapter L of this chapter (Transfers).

(c) Monitoring well permits are not interruptible.

(d) A monitoring well permit is valid for ten years and may be renewed.

(e) The Board shall grant an application for a monitoring well permit if the following elements are established by convincing evidence:

(1) the applicant paid the application fee;

(2) the application identifies an existing or proposed well(s);

(3) the well head is physically located within the boundaries of the Authority;

(4) the well is a monitoring well;

(5) the groundwater proposed to be monitored by the well immediately prior to its intake into the well casing will be physically located within and discharged directly from the Aquifer;

(6) the applicant will take all reasonable measures to ensure conservation of water withdrawn;

(7) the application complies with the Act; and

(8) the application complies with the rules of the Authority.

**§ 711.112 Contents of Groundwater Withdrawal Permits**

Groundwater withdrawal permits issued by the Authority 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;
- (6) maximum rate of withdrawal in gallons per minute;
- (7) total maximum volume of withdrawals by purpose in acre-feet on an annual basis allocated between junior rights and senior rights, if any, and between base irrigation groundwater and unrestricted irrigation groundwater, if applicable;
- (8) location of the point(s) of withdrawal;
- (9) place of use;
- (10) source of groundwater;
- (11) metering or alternative measuring method;
- (12) conditions for retirement of permits;
- (13) conditions for suspension of withdrawals;
- (14) conditions for interruption of withdrawals;
- (15) conditions for renewal, if applicable;
- (16) reporting requirements;

(17) notice that the permit is subject to the limitations provided in the Act and these rules;

(18) the standard groundwater withdrawal conditions set forth in subchapter F of this chapter (Standard Groundwater Withdrawal Conditions);

(19) any other appropriate conditions on the withdrawal of groundwater from the Aquifer as determined by the Authority; and

(20) any other information required by the board to implement the Act or the Authority's rules.

### **§ 711.118 Contents of Monitoring Well Permits**

Monitoring well permits issued by the Authority 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;
- (7) maximum volume of withdrawals by purpose in acre-feet on an annual basis;
- (8) legal description of the location of the well, including:
  - (A) county;
  - (B) section, block and survey; and
  - (C) other adequate legal description, as may be required by the Authority;
- (9) purpose of the monitoring activity;
- (10) the source of groundwater;
- (11) size of the pump, pumping rate, pumping method, and other construction specifications for metering or alternative measuring method;

(12) internal diameter, total well depth, depth of cement casing, size, and other well construction specifications as appropriate;

(13) construction specification for other monitoring equipment to be installed in and associated with the well;

(14) reporting requirements;

(15) notice that the permit is subject to the limitations provided in the Act and these rules;

(16) any other appropriate conditions on the well construction as determined by the Authority; and

(17) any other information required by the board to implement the Act or the Authority's rules.

**§ 711.120 Groundwater Withdrawal Permit Consolidation**

(a) Any person owning two or more groundwater withdrawal permits of the same permit category may apply to consolidate those permits.

(b) The Board shall grant an application to consolidate permits if the following elements are established by convincing evidence:

(1) the applicant paid the application fee;

(2) the applicant owns two or more groundwater withdrawal permits of the same permit category;

(3) the applicant is in compliance with the permits sought to be consolidated;

(4) the applicant is in compliance with other permits the applicant holds from the Authority;

(5) the application complies with the Act;

(6) the application complies with the rules of the Authority; and

(7) the permits authorize the withdrawal of groundwater from a common point of withdrawal(s); or

(8) the permits authorize the withdrawal of groundwater from different points of withdrawal; the points of withdrawal are operated and managed by the permittee; the points of withdrawal are all located within the same pool; and the points of withdrawal are all located either east of Cibolo Creek or west of Cibolo Creek.



(c) Permits that have been consolidated shall be recorded consistent with § 711.356 (County Recordation of Transfers) of this chapter.

## **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 required to be contained in a groundwater withdrawal permit issued by the Authority for, among other things:

- (1) the protection of the water quality of the groundwater of the Aquifer;
- (2) the protection of the water quality of the surface streams to which the Aquifer provides springflow;
- (3) the achievement of water conservation, and the maximization of the beneficial use of groundwater available for withdrawal from the Aquifer;
- (4) the protection of 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) the providing for instream uses, bays, and estuaries.

### **§ 711.132 Applicability**

This subchapter applies to all groundwater withdrawal permits.

### **§ 711.134 Standard Conditions**

Any groundwater withdrawal permit issued by the Authority is subject to and the permittee shall comply with the following conditions:

- (1) the construction, operation and maintenance of wells pursuant to subchapter C (Well Construction, Operation and Maintenance) of chapter 713 of the Authority's rules (Water Quality);
- (2) the abandonment and closure of wells pursuant to subchapter D (Abandoned Wells; Well Closures) of chapter 713 of the Authority's rules (Water Quality);
- (3) the spacing of wells pursuant to subchapter E (Well Spacing) of chapter 713 of the Authority's rules (Water Quality);

- (4) the installation, operation and maintenance of well fields pursuant to subchapter F (Well Head Protection) of chapter 713 of the Authority's rules (Water Quality);
- (5) the recharge of the Aquifer pursuant to subchapter J of this chapter (Aquifer Recharge, Storage and Recovery Project);
- (6) taking no action that pollutes or contributes to the pollution of the Aquifer;
- (7) the beneficial use and utilization of groundwater withdrawn from the Aquifer, including groundwater that is reused, pursuant to subchapter C (Groundwater Conservation and Reuse Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management);
- (8) not wasting groundwater within or withdrawn from the Aquifer pursuant to subchapters E (Groundwater Withdrawal Permits) and I of this chapter (General Prohibitions);
- (9) the beneficial use and utilization of groundwater withdrawn from the Aquifer pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management);
- (10) the interruption of the right to withdraw and beneficially use groundwater from the Aquifer pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management);
- (11) the installation, operation and maintenance of meters and alternative measuring methods pursuant to subchapter M of this chapter (Meters; Alternative Measuring Methods; and Reporting);
- (12) the keeping and filing of reports pursuant to subchapter M of this chapter (Meters; Alternative Measuring Methods; and Reporting), and any other applicable law or rule;
- (13) the use of groundwater withdrawn from the Aquifer only for an authorized beneficial use and without waste pursuant to subchapter E (Groundwater Withdrawal Permits) and I of this chapter (General Prohibitions);
- (14) proportional adjustment pursuant to subchapter G (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reductions) of this chapter (Groundwater Withdrawal Permits);
- (15) retirement by equal percentage reductions pursuant to subchapter G (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reductions) of this chapter (Groundwater Withdrawal Permits);
- (16) withdrawal reduction pursuant to subchapter E (Withdrawal Reduction Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management);
- (17) retirement pursuant to subchapter F (Regular Permit Retirement Rules) of chapter

715 of the Authority's rules (Comprehensive Water Management);

(18) the acquisition of additional water supplies pursuant to subchapter G (Alternative Water Supply Rules) of chapter 715 of the Authority's rules (Comprehensive Water Management);

(19) the provision of notice of changes in name and mailing address of the permittee pursuant to § 707.105 of the Authority's rules (Change of Name, Address or Telephone Number);

(20) the payment of all registration, application, aquifer management, and retirement fees pursuant to chapter 709 of the Authority's rules (Fees);

(21) the cessation of withdrawals under interim authorization status pursuant to subchapter D (Interim Authorization) of this chapter (Groundwater Withdrawal Permits);

(22) abandonment pursuant to subchapter H (Abandonment) of this chapter (Groundwater Withdrawal Permits);

(23) the restoration of equally proportionally reduced amounts pursuant to subchapter K (Additional Groundwater Supplies) of this chapter (Groundwater Withdrawal Permits);

(24) the transfer of the permit pursuant to subchapter L (Transfers) of this chapter (Groundwater Withdrawal Permits);

(25) the prohibition on the use of groundwater withdrawn from the Aquifer at a place of use outside of the boundaries of the Authority pursuant to § 711.220 of this chapter (Place of Use Outside of Authority Boundaries);

(26) compliance with the terms and conditions of the permit;

(27) compliance with the Act;

(28) compliance with the rules of the Authority; and

(29) any other condition as may, in the discretion of the board, be reasonable and appropriate.

**Subchapter G. Groundwater Available for Permitting; Proportional Adjustment; Equal Percentage Reduction**

**Section**

711.160	Purpose
711.162	Applicability
711.164	Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits
711.166	Groundwater Available for Permitting for Term Permits
711.168	Groundwater Available for Permitting for Emergency Permits
711.170	Groundwater Available for Permitting for Monitoring Well Permits
711.171	Relation of Permitted Withdrawal Cap to Recharge Recovery Amounts
711.172	Proportional Adjustment of Initial Regular Permits.
711.174	Equal Percentage Reduction of Initial Regular Permits
711.176	Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights
711.180	Voluntary Waiver of Applications 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 permits that may be issued by the Authority;
- (2) establish the procedures for implementing proportional adjustments under § 1.16(e) of the Act; and
- (3) establish the procedures for implementing equal percentage reductions under § 1.21(c) of the Act.

**§ 711.162 Applicability**

This subchapter applies only to the groundwater withdrawal permits as specifically identified in each section herein.

**§ 711.164 Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits**

- (a) Except as provided by subsection (c), unless increased pursuant to § 1.14(d) of the Act and Subchapter K (Additional Groundwater Supplies), the amount of groundwater from the Aquifer that the board may permit to be withdrawn on an uninterruptible basis as senior rights pursuant to initial regular permits and additional regular permits for the period from the effective date of these rules through December 31, 2007, shall not exceed 450,000 acre-feet for each

calendar year under the following Aquifer conditions:

(1) for wells in the San Antonio Pool, whenever the water level of the Aquifer as measured at well J-17 is equal to or greater than 650 feet above mean sea level;

(2) for wells in the Uvalde Pool, whenever the water level of the Aquifer as measured at well J-27 is equal to or greater than 845 feet above mean sea level.

(b) Except as provided by subsection (c), unless increased pursuant to § 1.14(d) of the Act and Subchapter K of this chapter (Additional Groundwater Supplies), the amount of groundwater from the Aquifer that the board may permit to be withdrawn pursuant to initial and additional regular permits for the period beginning January 1, 2008, and continuing thereafter, shall not exceed 400,000 acre-feet for each calendar year.

(c) The amount of groundwater authorized to be withdrawn from the Aquifer pursuant to initial regular permits and additional regular permits that are transferred into the Authority's groundwater trust and managed pursuant to §§ 711.514 (Holding of Groundwater Withdrawal Permits as a Demand Management Strategy) or 711.516 (Retirement of Groundwater Withdrawal Permits From the Groundwater Trust) is not subject to the maximum total permitted withdrawals provided for in subsections (a) and (b) of this section.

(d) Senior rights are subject to management and interruption under subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management).

#### **§ 711.166 Groundwater Available for Permitting for Term Permits**

(a) The amount of groundwater authorized to be withdrawn from the Aquifer pursuant to term permits is not subject to the maximum total permitted withdrawals provided for in § 711.164(a) and (b) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

(b) The amount of groundwater from the Aquifer that the board may permit to be withdrawn pursuant to term permits shall not exceed the number of acre-feet for each calendar year established by the board in its order issued under § 711.102 of this chapter (Term Permits) authorizing the filing of applications for term permits when the following index wells are measuring at the following groundwater levels:

(1) for wells within the San Antonio Pool, well J-17 is greater than 665 feet above mean sea level; or

(2) for wells within the Uvalde Pool, well J-27 is greater than 865 feet above mean sea level.

**§ 711.168 Groundwater Available for Permitting for Emergency Permits**

(a) The amount of groundwater authorized to be withdrawn from the Aquifer pursuant to emergency permits is not subject to the maximum total permitted withdrawals provided for in § 711.164(a) and (b) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

(b) Irrespective of the groundwater levels of wells J-17 or J-27, the amount of groundwater from the Aquifer that the board may permit to be withdrawn pursuant to emergency permits shall not exceed the amount necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety for each calendar year.

**§ 711.170 Groundwater Available for Permitting for Monitoring Well Permits**

(a) The amount of groundwater authorized to be withdrawn from the Aquifer pursuant to monitoring well permits is not subject to the maximum total permitted withdrawals provided for in § 711.164(a) and (b) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

(b) Irrespective of the groundwater levels of wells J-17, TD 69-47-306, or J-27, the amount of groundwater from the Aquifer that the board may permit to be withdrawn pursuant to monitoring well permits shall not exceed the amount reasonably necessary to properly collect water quality samples from the Aquifer for each calendar year.

**§ 711.171 Relation of Permitted Withdrawal Cap to Recharge Recovery Amounts**

The amounts of recharge recovered and withdrawn pursuant to a recharge recovery permit are not subject to the maximum total permitted withdrawals provided for in § 711.164(a) and (b) of this Chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

**§ 711.172 Proportional Adjustment of Initial Regular Permits**

(a) Applicability. This section applies only to initial regular permits.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Historical average minimum - an amount, as determined by the Authority, 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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(2) Irrigator minimum - an amount, as determined by the Authority, 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.

(3) Maximum historical use (“MHU”) - the amount of groundwater from the Aquifer as determined by the Authority that, unless proportionally adjusted, an applicant for an initial regular permit is authorized to withdraw 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.

(4) Operate a well - the withdrawal of groundwater from a well for a beneficial use.

(5) 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 in subsection (g)(5) of this section. 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.

(c) Purpose of Proportional Adjustment. The purpose of proportional adjustment is to adjust the aggregate maximum historical use of all initial regular permits to attain the amount of groundwater available for permitting in § 711.164(a) of this subchapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

(d) Proportionality. An adjustment is proportional when the adjustment of the maximum historical use of an initial regular permit maintains a constant ratio in relation to the adjustment of the maximum historical use of all other permits.

(e) Duty to Proportionally Adjust. If the total aggregate maximum historical use of all initial regular permits exceeds the amount of groundwater available for permitting in § 711.164(a) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits), the board shall, pursuant to this section, proportionally adjust the maximum historical use of each permit.

(f) Proportional Adjustment Orders. 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.

(g) Proportional Adjustment Procedure. Proportional adjustment of initial regular permits, if required, shall be performed as follows:

(1) For each applicant who is to be issued an initial regular permit, the board shall determine and assign a maximum historical use.

(2) For each applicant for irrigation use who is to be issued an initial regular permit, the board shall determine and assign an irrigator minimum, if any.

(3) For each applicant who operated a well for three or more years during the historical period and who is to be issued an initial regular permit, the board shall determine and assign an historical average minimum, if any.

(4) Phase-1 Proportional Adjustment Factor. If the total of all maximum historical uses of all applicants for initial regular permits to whom the board will issue an initial regular permit exceeds 450,000 acre-feet per annum, then the board shall calculate a Phase-1 proportional adjustment factor ("PA-1 Factor") as follows:

PA-1 Factor	=	$\frac{\text{total of all MHUs} - 450,000 \text{ AF/annum}}{\text{total of all MHUs}}$
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(5) Phase-1 Proportionally Adjusted Amount. The board shall then calculate a proportionally adjusted amount ("PA-1 amount") for each applicant to be issued an initial regular permit as follows:

PA-1 amount	=	MHU	-	(PA-1 Factor	x	MHU)
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(6) Step-up Amount. 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) Phase- 2 Proportional Adjustment Factor. If the total of all PA-1 amounts plus all step-up amounts remaining after the Board has issued agreed orders pursuant to § 711.180 of this chapter (Voluntary Waiver of Applications for Initial Regular Permits) exceeds 450,000 acre-feet per annum, then the board shall calculate a Phase-2 proportional adjustment factor (“PA- 2 Factor”) as follows:

PA-2 Factor	=	(total of remaining PA-1 amounts + total of remaining SUAs) - <u>450,000 AF/annum</u> total of remaining PA-1 amounts + total of remaining SUAs
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(8) Phase-2 Proportionally Adjusted Amount. The board shall then calculate a Phase-2 proportionally adjusted amount (“PA-2 amount”) for each applicant issued an initial regular permit as follows:

(A) For each applicant eligible to receive a step-up amount:

PA-2 amount	=	(PA-1 amount +	-	(PA-2 Factor	x	(PA-1 amount +
		SUA)				SUA))

(B) For each applicant not eligible to receive a step-up amount:

PA-2 amount	=	PA-1 amount	-	(PA-2 Factor	x	PA-1 amount)
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(9) The board shall issue an initial regular permit to each eligible applicant establishing a groundwater withdrawal amount authorized to be withdrawn as provided in § 711.176(b) and (c) of this chapter (Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights).

(h) If the board issues a proportional adjustment order, then the board shall account for all groundwater proportionally adjusted from each initial regular permit. If additional groundwater becomes available for permitting pursuant to § 1.14(d) of the Act and subchapter K of this chapter (Additional Groundwater Supplies), then the proportionally adjusted amounts shall be restored through the inverse application of subsection (g) of this section in accordance

with § 711.304(3) of this chapter (Allocation of Additional Groundwater Supplies).

**§ 711.174 Equal Percentage Reduction of Initial Regular Permits**

(a) This section applies only to initial regular permits.

(b) Equal percentage reduction pursuant to § 1.21(c) of the Act is the retirement of initial regular permits and shall be implemented in accordance with chapter 715 (Comprehensive Water Management), subchapter F (Regular Permit Retirement Rules).

**§ 711.176 Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights**

(a) If the aggregate maximum historical use of all applicants to be issued initial regular permits does not exceed the amount of groundwater available for permitting in § 711.164(a) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits), then an applicant shall receive an initial regular permit authorizing the withdrawal of groundwater from the Aquifer in the amount of the maximum historical use.

(b) If the aggregate maximum historical use of all applicants to be issued initial regular permits exceeds the amount of groundwater available for permitting in § 711.164(a) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits), then an applicant shall receive an initial regular 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, and no PA-2 amount is calculated pursuant to § 711.172(g)(7) and (8) (Proportional Adjustment of Initial Regular Permits), then in an amount equal to the applicant's PA-1 amount as calculated in § 711.172(g)(4) and(5);

(2) if the applicant does not qualify for an irrigator or historical average minimum, and a PA-2 amount is calculated pursuant to § 711.172(g)(7) and (8) of this chapter (Proportional Adjustment of Initial Regular Permits), then in an amount equal to the applicant's PA-2 amount;

(3) if the applicant qualifies for an irrigator or historical average minimum, no PA-2 amount is calculated pursuant to § 711.172(g)(7) and (8) of this chapter (Proportional Adjustment of Initial Regular Permits), 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(g)(4) and (5), then in an amount equal to the applicant's PA-1 amount;

(4) if the applicant qualifies for an irrigator or historical average minimum, no PA-2 amount is calculated pursuant to § 711.172(g)(7) and (8) of this chapter (Proportional

Adjustment of Initial Regular Permits), 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(g)(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);

(5) if the applicant qualifies for an irrigator or historical average minimum, a PA-2 amount is calculated pursuant to § 711.172(g)(7) and (8) of this chapter (Proportional Adjustment of Initial Regular Permits), 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-2 amount, then in an amount equal to the applicant's PA-2 amount; or

(6) if the applicant qualifies for an irrigator or historical average minimum, a PA-2 amount is calculated pursuant to § 711.172(g)(7) and (8) (Proportional Adjustment of Initial Regular Permits), 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-2 amount, then in an amount equal to the applicant's PA-2 amount. In such a case, the difference, in acre-feet, between the applicant's PA-2 amount and the applicable minimum may, through December 31, 2007, be withdrawn on an interruptible basis as junior rights only as provided in subchapter G (Withdrawal of Junior Rights) of chapter 715 (Comprehensive Water Management).

(c) Initial regular permits issued by the board pursuant to this section may be issued with a provisional groundwater withdrawal amount until the total amount of groundwater permitted for withdrawal in initial regular permits is finally determined following an opportunity for contested case hearings on all initial regular permit applications, as provided in § 711.172(f) of this chapter (Proportional Adjustment of Initial Regular Permits). The Authority may periodically issue Proportional Adjustment Orders in order to ensure that the amount of groundwater permitted for withdrawal in initial regular permits does not exceed the amount available for permitted withdrawals under § 711.164 of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

### **§ 711.180 Voluntary Waiver of Applications for Initial Regular Permits**

At any time the board may enter an agreed order for declaration of waiver of all or part of an applicant's maximum historical use, PA amount, step up amount, base irrigation groundwater or unrestricted irrigation groundwater claimed in or proposed for an application for an initial regular permit.

## **Subchapter H. Abandonment**

### **Section**

711.190	Purpose
711.192	Applicability
711.194	Permit Conditions
711.198	Voluntary Abandonment

### **§ 711.190 Purpose**

The purpose of this subchapter is to establish the circumstances under which a groundwater withdrawal permit may be abandoned.

### **§ 711.192 Applicability**

This subchapter applies to the abandonment of any groundwater withdrawal permits.

### **§ 711.194 Permit Condition**

All groundwater withdrawal permits issued shall be subject to abandonment.

### **§ 711.198 Voluntary Abandonment**

At any time the board may enter an agreed order for declaration of abandonment evidencing the present intent of the owner of a groundwater withdrawal permit to discontinue permanently the withdrawal and beneficial use of all or part of the groundwater under the permit.

## **Subchapter I. General Prohibitions**

### **Section**

711.220	Place of Use Outside Authority Boundaries
711.222	Withdrawals from New Wells
711.224	Unauthorized Activities
711.226	Unregistered Exempt Wells
711.228	Compliance with Law
711.230	Waste Prevention
711.232	Pollution of the Aquifer
711.234	Nuisances

### **§ 711.220 Place of Use Outside Authority Boundaries**

(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) of this section, 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 a new well only if the withdrawal is made from one of the following wells:

(1) an exempt well;

(2) a well for which a groundwater withdrawal permit has been issued by the Authority; or

(3) a well identified as a point of withdrawal in an approved transfer of interim authorization status or groundwater withdrawal permit.

### **§ 711.224 Unauthorized Activities**

(a) Except as provided in the Act, §§ 1.15(b), 1.16(c), 1.17(a) and 1.33(a) and (c) and § 711.14 of this chapter (Withdrawals Not Requiring a Groundwater Withdrawal Permit), a person may not withdraw groundwater from the Aquifer unless authorized pursuant to a groundwater withdrawal permit issued by the Authority.

(b) A person may not construct, install, drill, equip, complete, alter, operate, or

maintain a new well unless authorized pursuant to a well construction permit issued by the Authority.

(c) A person may not operate a well at a higher rate of production than the rate approved for the well in a groundwater withdrawal permit.

**§ 711.226 Unregistered Exempt Wells**

A person may not make withdrawals from an existing exempt well unless an approved registration form is on file with the Authority.

**§ 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 of the Aquifer**

A person may not pollute or contribute to the pollution of the Aquifer.

**§ 711.234 Nuisances**

The following are declared to be nuisances:

- (1) the wasting of groundwater within or water withdrawn from the Aquifer;
- (2) the operation of a well at a higher rate of production than the rate approved for the well; and
- (3) the pollution or contribution to the pollution of the Aquifer.

## **Subchapter J. Aquifer Recharge, Storage and Recovery Projects**

### **Section**

711.240	Applicability
711.241	Purpose
711.242	Definitions
711.243	Activities Requiring an Aquifer Recharge and Storage Permit
711.244	Activities Requiring a Recharge Recovery Permit
711.245	Pre-September 1, 1993 Projects
711.246	Natural Recharge
711.247	Historic Recharge
711.248	Artificial Recharge
711.249	Authorized Purposes for Artificial Recharge of the Aquifer
711.250	Recharge Methods
711.251	Permissible Source Water for Recharge of the Aquifer
711.252	Water Rights in Source Water
711.253	Protection of the Water Quality of the Aquifer
711.254	Water Quality of Source Water
711.255	Aquifer Recharge and Storage Permits
711.256	Notice to Groundwater Conservation Districts
711.257	Acquisition of Other Permits as Condition to Aquifer Recharge and Storage Permit
711.258	Basis for Approval of Application for Aquifer Recharge and Storage Permit
711.259	Contents of Aquifer Recharge and Storage Permits
711.260	Recharge Recovery Permits
711.261	Recharge Recovery Amounts
711.262	Expert Testimony to Establish Recharge, Storage and Recovery Amounts
711.264	Basis for Approval of Application for Recharge Recovery Permit
711.265	Contents of Recharge Recovery Permit
711.266	Authority Participation in Aquifer Recharge, Storage and Recovery Projects
711.268	Management of Recharge Water from Authority-Owned Projects
711.269	Aquifer Recharge, Storage and Recovery Interlocal Contracts With Political Subdivisions
711.270	Monthly Reporting
711.271	Operations Report
711.272	Review of Permits

### **§ 711.240 Applicability**

This subchapter applies to Aquifer recharge, storage and recovery projects located within the Authority's boundaries.



### **§ 711.241 Purpose**

The purpose of this subchapter is to promote the augmentation and management of waters recharged into the Aquifer in order to:

- (1) augment the amount of groundwater that may be available for subsequent withdrawal for beneficial uses from the Aquifer; or
- (2) maintain or augment the amount of springflows at San Marcos and Comal Springs.

### **§ 711.242 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **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.

(2) **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 September 1, 1993.

(3) **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.

(4) **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.

### **§ 711.243 Activities Requiring an Aquifer Recharge and Storage Permit**

(a) No person shall commence construction, install, drill, equip, complete, alter, operate or maintain an Aquifer recharge and storage project without first having obtained from the Authority an Aquifer recharge and storage permit.

(b) Any Aquifer recharge and storage project constructed on or after September 1, 1993, must obtain an Aquifer recharge and storage permit from the Authority.

**§ 711.244 Activities Requiring a Recharge Recovery Permit**

No person may commence construction of, install, drill, equip, complete, alter, operate or maintain a recharge recovery well or use an existing well for such purpose without first having obtained from the Authority a recharge recovery permit.

**§ 711.245 Pre-September 1, 1993 Projects**

(a) The Authority will not issue an Aquifer recharge and storage permit for any structure, facility, or works constructed prior to September 1, 1993, that may recharge into the Aquifer.

(b) Any structure, facility, or works constructed prior to September 1, 1993, that 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, is eligible to be issued an Aquifer recharge and storage permit.

(c) The Authority may issue an Aquifer recharge and storage permit for any structure, facility, or works constructed on or after September 1, 1993, that may recharge into the Aquifer

**§ 711.246 Natural Recharge**

The Authority will not issue an Aquifer recharge and storage permit or recharge recovery permit for water naturally recharged into the Aquifer, or that otherwise would have recharged into the Aquifer, irrespective of the construction, operation, and maintenance of an Aquifer recharge, storage and recovery project.

**§ 711.247 Historic Recharge**

The Authority will not issue Aquifer recharge and storage permits, or recharge recovery permits, for historic recharge to the Aquifer.

**§ 711.248 Artificial Recharge**

The Authority may issue an Aquifer recharge and storage permits, or recharge recovery permits, for source water artificially recharged into the Aquifer that otherwise would not have been recharged into the Aquifer but for the operation of a Aquifer recharge, storage and recovery project constructed or modified on or after September 1, 1993.

**§ 711.249 Authorized Purposes for Artificial Recharge of the Aquifer**

Artificial recharge of the Aquifer must have as its primary purpose:

(1) the augmentation of the amount of groundwater available for withdrawal from the Aquifer through the storage of source water in the Aquifer that is incidental to, and in furtherance of, the subsequent withdrawal of stored water for beneficial use for irrigation, industrial or municipal purposes;

(2) augmentation of the amount of groundwater available to maintain or increase springflows at Comal or San Marcos Springs; or

(3) any other beneficial use of water recognized by law.

#### **§ 711.250 Recharge Methods**

The Aquifer may be artificially recharged through the following methods:

(1) injection of source water that is groundwater withdrawn from the Aquifer directly into the confined or recharge zone of the Aquifer through an Aquifer storage injection well;

(2) infiltration of source water from the surface into and through the unsaturated zone to the water table portion of the Aquifer through either a natural streambed or altered natural recharge feature or through the impoundment of source water behind a dam in a reservoir either of which may occur or be located on a watercourse upstream of or in the recharge zone of the Aquifer; or

(3) any other artificial method determined by order of the board to recharge the Aquifer consistent with the Act or this subchapter.

#### **§ 711.251 Permissible Source Water for Recharge into the Aquifer**

(a) Except as provided in subsections (b)-(d) of this section, any source water that a person has the legal right to divert and place to beneficial use is eligible for recharge into the Aquifer.

(b) For Aquifer recharge, storage and recovery projects of the Authority undertaken pursuant to § 711.266(b) (Authority Participation in Aquifer, Recharge, Storage and Recovery Projects) of this chapter, the following source water may not be recharged into the Aquifer:

(1) surface water that is:

(A) the historic yield of the floodwater to the Nueces River basin as determined by the commission; or

(B) surface water from a watercourse located within the recharge zone of the Aquifer the diversion of which for recharge into the Aquifer would impair senior water rights or vested riparian rights; or

(C) surface water that is not recharged through a natural recharge

feature; or

(2) groundwater that is:

(A) withdrawn from a point of withdrawal that is located within Uvalde County and transported to a point of recharge outside of Uvalde County;

(B) withdrawn from a point of withdrawal that is located within Medina County and transported to a point of recharge outside of Medina County; or

(C) withdrawn from an aquifer other than the Aquifer that has been designated by the commission as a priority groundwater management area pursuant to § 35.012, TEXAS WATER CODE; or

(D) withdrawn from an aquifer other than the Aquifer and recharged through an injection well; or

(3) reclaimed water as that term is defined in § 210.3, 30 TEX. ADMIN. CODE (Definitions for Use of Reclaimed Water).

(c) For Aquifer recharge, storage and recovery projects of a political subdivision undertaken pursuant to § 1.44 of the Act and § 711.269 (Aquifer Recharge, Storage and Recovery Interlocal Contracts With Political Subdivisions) of this chapter, the following source water may not be recharged into the Aquifer:

(1) surface water that is not recharged through a natural recharge feature; or

(2) groundwater that is:

(A) withdrawn from an aquifer other than the Aquifer that is not recharged through a natural recharge feature;

(B) withdrawn from a point of withdrawal that is located within Uvalde County and transported to a point of recharge outside of Uvalde County;

(C) withdrawn from a point of withdrawal that is located within Medina County and transported to a point of recharge outside of Medina County; or

(D) withdrawn from an aquifer other than the Aquifer that has been designated by the commission as a priority groundwater management area pursuant to § 35.012, TEXAS WATER CODE; or

(3) reclaimed water as that term is defined in § 210.3, 30 TEX. ADMIN. CODE (Definitions for Use of Reclaimed Water).

(d) For all other Aquifer recharge, storage and recovery projects, the following source

water may not be recharged into the Aquifer:

(1) surface water that is:

(A) not recharged through a natural recharge feature;

(B) the normal or ordinary flows of watercourses located within Kinney, Uvalde, Medina, Bexar, Comal, or Hays counties; or

(C) the storm and flood waters of watercourses located within Kinney, Uvalde, Medina, Bexar, Comal, or Hays counties, if:

(i) the waters proposed to be recharged into the Aquifer are already appropriated by a person other than the applicant;

(ii) if recharged into the Aquifer, an unreasonable loss of state water will occur; or

(iii) the stored water cannot be withdrawn at a later time for application to a beneficial use; or

(2) groundwater that is:

(A) withdrawn from an aquifer other than the Aquifer that is not recharged through a natural recharge feature;

(B) withdrawn from a point of withdrawal that is located within Uvalde County and transported to a point of recharge outside of Uvalde County;

(C) withdrawn from a point of withdrawal that is located within Medina County and transported to a point of recharge outside of Medina County; or

(D) withdrawn from an aquifer other than the Aquifer that has been designated by the commission as a priority groundwater management area pursuant to § 35.012, TEXAS WATER CODE; or

(3) reclaimed water as that term is defined in § 210.3, 30 TEX. ADMIN. CODE (Definitions for Use of Reclaimed Water).

(e) For purposes of this section, the historic yield of the floodwater to the Nueces River basin means, as determined by the commission, is equal to the lesser of:

(1) the average annual yield for the period from 1950 to 1987; or

(2) the annual yield for 1987.

### **§ 711.252 Water Rights in Source Water**

If the application for an Aquifer recharge and storage permit is granted, the applicant must obtain ownership of the water rights to the source water within two years after the effective date of the permit, or within a period of time thereafter, to be determined by the board, if reasonable efforts are being made to obtain ownership of the water rights to the source water by the applicant.

### **§ 711.253 Protection of the Water Quality of the Aquifer**

The Authority may not approve an application for an Aquifer recharge and storage permit unless the protection of the water quality of the Aquifer is demonstrated in the application for an Aquifer recharge and storage permit and, if issued, provided for in the permit.

### **§ 711.254 Water Quality of Source Water**

(a) It is the purpose of these water quality standards to ensure the highest water quality and safety of the native groundwater in the Aquifer with respect to microbiological, chemical, and radiological quality for use as water for public water supplies in the Aquifer region.

(b) The quality of source water at the point of entry of recharge into the Aquifer, shall meet or exceed the applicable water quality standards as follows:

(1) if the source water is groundwater and the recharge method is artificial injection into the Aquifer, §§ 290.106 (Maximum Containment Levels for Inorganic Contaminants), 290.107 (Maximum Containment Levels for Organic Contaminants), 290.108 (Maximum Containment Levels for Radiological Contaminants), 290.109 (Maximum Containment Levels for Microbial Contaminants), 290.110 (Maximum Residual Disinfectant Concentrations), 290.111 (Turbidity Levels), 290.112 (Treatment Standards for Total Organic Carbon (TOC)), 290.113 (Maximum Containment Levels for Total Trihalomethanes (TTHM) and Haloacetic Acids (Five) (HAA5)), 290.114 (Maximum Containment Levels for Chlorite and Bromate), and 290.117 (Regulation of Lead and Copper), 30 TEX. ADMIN. CODE; or

(2) if the source water is groundwater or surface water and the recharge method is natural infiltration through the unsaturated zone or direct recharge through a naturally occurring conduit communicating directly with the water table portion of the Aquifer, chapter 307, 30 TEX. ADMIN. CODE (Texas Surface Water Quality Standards) or the natural water quality of surface water that has recharged the Aquifer.

(c) Source water that does not meet the water quality criteria in subsection (b) is required to be treated to meet or exceed the criteria prior to recharge into the Aquifer.

### **§ 711.255 Aquifer Recharge and Storage Permits**

(a) Any person proposing to commence construction of an Aquifer recharge, storage

and recovery project may apply for an Aquifer recharge and storage permit, if the board has issued an order stating that the Authority is accepting for filing applications for Aquifer recharge and storage permits.

(b) Unless the board has issued an order authorizing applications for Aquifer recharge and storage permits to be filed with the Authority, the general manager may not process any application received and must return the application to the applicant along with any application fee submitted. When the general manager is authorized to accept for filing applications for an Aquifer recharge and storage permit, they shall be processed within 18 months after a determination that they are administratively complete.

(c) Aquifer recharge and storage permits are transferable pursuant to subchapter L (Transfers) of this chapter.

(d) Aquifer recharge and storage permits may not be proportionally adjusted pursuant to the proportional adjustment rules pursuant to subchapter G (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reduction) of this chapter.

(e) Aquifer recharge and storage permits may not be retired pursuant to the following rules:

(1) the equal percentage reduction rules pursuant to subchapter G (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reduction) of this chapter; or

(2) the regular permit retirement rules pursuant to subchapter F (Regular Permit Retirement Rules) of chapter 715 (Comprehensive Water Management).

(f) Aquifer recharge and storage permits may not be suspended pursuant to the following rules:

(1) the demand management and critical period management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management); or

(2) the groundwater trust pursuant to subchapter N (Groundwater Trust) of this chapter.

(g) Aquifer recharge and storage permits may not be interrupted pursuant to the demand management and critical period management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management).

(h) Aquifer recharge and storage permits may be abandoned pursuant to subchapter H (Abandonment) of this chapter.

(i) Aquifer recharge and storage permits may not be canceled pursuant to subchapter H (Abandonment) of this chapter.

(j) An Aquifer recharge and storage permit may be issued for a fixed term not to exceed the operational life of the project, as determined by the Authority.

(k) An Aquifer recharge, storage and recovery interlocal contract entered into pursuant to § 1.44 of the Act and § 711.269 (Aquifer Recharge, Storage and Recovery Interlocal Contracts with Political Subdivisions) of this chapter is deemed to be an Aquifer recharge and storage permit.

#### **§ 711.256 Notice to Groundwater Conservation Districts**

(a) If the source water of the application is groundwater proposed to be withdrawn from an aquifer under the jurisdiction of a groundwater conservation district, then the applicant shall:

(1) provide a copy of the application to each groundwater conservation district that has jurisdiction over the source groundwater;

(2) cooperate with each district that has jurisdiction over the source groundwater to ensure compliance with the rules of each district; and

(3) comply with the rules of each district that has jurisdiction over the groundwater governing the withdrawal of source groundwater and transport of the source groundwater outside of the boundaries of the district.

(b) If the rules of a district require that an applicant reach an agreement with a district that has jurisdiction over the source groundwater regarding the withdrawal and transport of the groundwater to the Aquifer for recharge, then compliance with the agreement shall be included as a condition of any Aquifer recharge and storage permit or recharge recovery permit issued by the Authority.

#### **§ 711.257 Acquisition of Other Permits as Condition to Aquifer Recharge and Storage Permit**

The Authority may issue an Aquifer recharge and storage permit conditioned upon the applicant's receipt of all other permits and approvals required by law. These permits and other authorizations include, but are not limited to, those related to surface water rights, groundwater exportation, pretreatment, water treatment, well construction, injection wells, dam safety, dredge and fill, watercourse channel alterations, environmental impacts, and threatened and endangered species, if applicable.



**§ 711.258 Basis for Approval of Applications for Aquifer Recharge and Storage Permits**

The Board shall grant an application for an Aquifer recharge and storage permit if the following elements are established by convincing evidence:

- (1) the applicant paid the application fee.
- (2) the project applied for is for the alteration, modification, construction, operation or maintenance of an Aquifer recharge, storage and recovery project;
- (3) the proposed recharge is artificial recharge into the Aquifer;
- (4) the proposed recharge is not historic recharge of the Aquifer;
- (5) artificial and natural recharge may be accurately measured;
- (6) the project, if constructed and operated, will result in the augmentation of the amount of groundwater available for withdrawal from the Aquifer through the storage of source water in the Aquifer that is for the subsequent withdrawal of stored water for beneficial use for irrigation, industrial or municipal purposes; or the augmentation of the amount of groundwater available to maintain or increase springflows at Comal Springs or San Marcos Springs;
- (7) the applicant will have the ownership, control, and legal right to appropriate and transport the source water for recharge of and storage in the Aquifer;
- (8) the source water is legally eligible to be recharged into the Aquifer;
- (9) the source water meets or exceeds all applicable water quality standards;
- (10) the water quality of the Aquifer will be protected for the life of the project;
- (11) the rights of permittees holding initial regular permits will be protected;
- (12) all or a substantial part of the stored water will subsequently be available for recovery for a beneficial use, or for maintenance or increase of the springflows of Comal Springs or San Marcos Springs;
- (13) the source water stored in the Aquifer can be successfully recovered from the Aquifer for beneficial use, or discharged from Comal or San Marcos Springs for maintenance or increase of springflows;
- (14) the method of recharge will likely be successful;
- (15) the introduction of source water into the Aquifer will not degrade the physical, chemical, or biological quality of the native groundwater inconsistent with §§ 711.253

(Protection of the Water Quality of the Aquifer) and 711.254 (Water Quality of Source Water);

(16) the project site and design, and location and depth of the Aquifer at the point of recharge and place of storage are suitable;

(17) the project is sited and designed to optimize the beneficial use of groundwater available for withdrawal from the Aquifer;

(18) the nature and extent of the surface development activity proximate to the point(s) of recharge and over the place of storage do not present unreasonable risk to the quality of the source water or the native groundwater in the Aquifer;

(19) the application was not filed for the purpose of speculation, but instead the applicant has the present intention to directly and promptly pursue the completion of the project as set out in the application, which may be evidenced by a contract with an end user;

(20) approval of the application would be consistent with the Act;

(21) the applicant has the financial ability to design, construct, operate and maintain the project for the term of the permit; and

(22) approval of the application would be consistent with the Authority's rules.

#### **§ 711.259 Contents of Aquifer Recharge and Storage Permits**

Aquifer recharge and storage permits issued by the board shall contain the following information:

- (1) Project name;
- (2) Name address, and telephone number of project owner(s);
- (3) If known, name, address and telephone number of owners of recharge recovery well(s);
- (4) Name, address and telephone number of owner(s) of project site;
- (5) Project location;
- (6) Recharge recovery point(s) location;
- (7) Name of source water;
- (8) Location of point(s) of recharge;
- (9) Authorization to construct, operate and maintain the project;

- (10) Description of the authorized recharge and storage method;
- (11) Procedures to measure or calculate artificial and natural recharge after the project is operational;
- (12) Procedures to monitor source water and Aquifer water quality;
- (13) Purpose of use;
- (14) Predicted rate of recharge;
- (15) Predicted amount of recharge;
- (16) Date of construction and time of completion;
- (17) Requirement that the permittee operate and maintain the project for optimum recharge; and
- (18) Any other terms and conditions as required by the board to comply with the Act and the Authority's rules.

**§ 711.260 Recharge Recovery Permits**

(a) Any person owning a well, or proposing to construct a well, may apply for a recharge recovery permit, if the board has issued an order stating that the Authority is accepting for filing applications for recharge recovery permits.

(b) Unless the board has issued an order authorizing applications for recharge recovery permits to be filed with the Authority, the general manager may not process any application received and must return the application to the applicant along with any application fee submitted. When the general manager is authorized to accept for filing applications for recharge recovery permits, they shall be processed within 18 months after they are determined to be administratively complete by the Authority.

(c) Recharge recovery permits are transferable pursuant to subchapter L (Transfers) of this chapter.

(d) Recharge recovery permits may not be proportionally adjusted pursuant to the proportional adjustment rules pursuant to subchapter G (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reduction) of this chapter.

(e) Recharge recovery permits may not be retired pursuant to the following rules:

(1) the equal percentage reduction rules pursuant to subchapter G (Groundwater Available for Permitting, Proportional Adjustment, Equal Percentage Reduction)

of this chapter; or

(2) the regular permit retirement rules pursuant to subchapter F (Regular Permit Retirement Rules) of chapter 715 (Comprehensive Water Management).

(f) Recharge recovery permits may not be suspended pursuant to the following rules:

(1) the demand management and critical period management rules pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management); or

(2) the groundwater trust pursuant to subchapter N (Groundwater Trust) of this chapter.

(g) Recharge recovery permits may not be interrupted pursuant to the demand management and critical period management plan rules in effect pursuant to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management).

(h) Recharge recovery permits may be abandoned pursuant to subchapter H (Abandonment) of this chapter.

(i) Recharge recovery permits may not be canceled pursuant to subchapter H (Abandonment) of this chapter.

(j) A recharge recovery permit may be issued for a fixed term not to exceed the operational life of the Aquifer recharge, storage and recovery project, as determined by the Authority.

(k) An Aquifer recharge, storage and recovery interlocal contract entered into pursuant to § 1.44 of the Act and § 711.269 (Aquifer Recharge, Storage and Recovery Interlocal Contracts with Political Subdivisions) of this chapter is deemed to be a recharge recovery permit.

#### **§ 711.261 Recharge Recovery Amounts**

(a) A permittee holding a recharge recovery permit may withdraw and recover the groundwater available in storage of an Aquifer recharge, storage and recovery project as determined by the board as follows:

(1) the total monthly amount of available water based on a calculation of artificial recharge attributable to the Aquifer recharge, storage and recovery project less the following amounts:

(A) the additional water discharged through springs due to the stored water;

(B) artificial recharge attributable and permitted to another Aquifer recharge, storage and recovery project;

(C) loss of stored water; and

(D) an amount of groundwater not to be recovered to compensate the Authority in lieu of Aquifer management fees as may be determined by the board.

(b) A permittee holding a recharge recovery permit is entitled to withdraw and recover the measured amount of water recharged during any 12-month calendar period that is determined to be water available in storage under subsection (a) in the following 12-month calendar period. However, a permittee may also withdraw stored water during any time the stored water is available for recovery as set forth in a recharge recovery permit.

#### **§ 711.262 Expert Testimony to Establish Recharge, Storage and Recovery Amounts**

In the event that a contested case hearing is held on an application for a recharge and storage permit or a recharge recovery permit, the expert testimony of a qualified groundwater professional testifying at the hearing shall be required to establish the amount of recharge and storage authorized by a recharge and storage permit and the amount of withdrawals authorized by a recharge recovery permit.

#### **§ 711.264 Basis for Approval of Applications for Recharge Recovery Permits**

Subject to the duty of the board to determine the amount of groundwater that may be withdrawn under a recharge recovery permit, the board shall grant an application for a recharge recovery permit if the following elements are established by convincing evidence:

- (1) the applicant paid the application fee;
- (2) the application identifies an existing or proposed project as a point(s) of recharge for groundwater into the Aquifer;
- (3) the part of the project putting water into the Aquifer is physically located within the boundaries of the Authority;
- (4) the application identifies an existing or proposed well(s) as a withdrawal point for groundwater;
- (5) the well head is physically located within the boundaries of the Authority;
- (6) the groundwater proposed to be withdrawn from the well immediately prior to its intake into the well casing will be physically located within and discharged directly from the Aquifer;
- (7) the withdrawals are proposed to be placed to a beneficial use for irrigation,

industrial, or municipal use or to any other lawful use;

(8) the recovery wells are constructed and will be operated and maintained in compliance with chapter 713 (Water Quality) of the Authority's rules;

(9) the place of use at which the withdrawals are proposed to be beneficially used is physically located within the boundaries of the Authority;

(10) groundwater is available for withdrawal from the appropriate pool;

(11) the rights of permittees holding initial regular permits will be protected;

(12) the well does not qualify for exempt well status;

(13) the applicant is in compliance with other groundwater withdrawal permits, if any, issued by the Authority;

(14) the proposed withdrawal of groundwater under the recharge recovery permit, if granted, would not unreasonably negatively affect other permittees;

(15) the project is sited and designed to optimize the beneficial use of groundwater available for withdrawal from the Aquifer;

(16) continuous minimum springflows of the Comal Springs and San Marcos Springs, necessary to protect endangered and threatened species to the extent required by federal law, will not be negatively impacted when compared to springflow conditions if the project did not exist;

(17) approval of the application would be consistent with the Act; and

(18) approval of the application would be consistent with the Authority's rules.

#### **§ 711.265 Contents of Recharge Recovery Permits**

Recharge recovery permits issued by the board shall contain the following information:

(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;

(6) maximum rate of withdrawal in gallons per minute or a calculation method from which gallons per minute may be derived;

(7) the formula for calculation from which monthly rates of withdrawal in acre-feet may be derived;

(8) maximum volume of withdrawals by purpose of use in acre-feet on an annual basis;

(9) location of the point(s) of withdrawal;

(10) place of use;

(11) metering or alternative measuring method;

(12) conditions for interruption of withdrawals;

(13) conditions for renewal;

(14) reporting requirements;

(15) notice that the permit is subject to the limitations provided in the Act and the Authority's rules;

(16) the applicable standard groundwater withdrawal conditions set forth in subchapter F (Standard Groundwater Withdrawal Conditions) of this chapter;

(17) any other appropriate conditions for the recovery of stored water from the Aquifer as determined by the Authority; and

(18) any other information required by the board to implement the Act or the Authority's rules.

#### **§ 711.266 Authority Participation in Aquifer Recharge, Storage and Recovery Projects**

(a) The Authority may contract with a person who uses groundwater from the Aquifer for the authority, or that person, to construct, operate, own, finance and maintain an Aquifer recharge, storage and recovery project.

(b) The Authority may build or operate recharge dams in the recharge zone of the Aquifer if the recharge is made to augment the yield of the Aquifer and the Aquifer recharge, storage and recovery project does not impair senior water rights or vested riparian rights.

(c) The Authority may install pumps and other equipment necessary to recharge the Aquifer.

**§ 711.268 Management of Recharged Water from Authority-Owned Projects**

Any Aquifer recharge and storage permit or recharge recovery permit issued to the Authority for an Aquifer recharge, storage and recovery project owned by the Authority will be assigned to and managed in the Authority's groundwater trust pursuant to subchapter N (Groundwater Trust) of this chapter.

**§ 711.269 Aquifer Recharge, Storage and Recovery Interlocal Contracts With Political Subdivisions**

(a) The Authority may enter into an interlocal contract with any political subdivisions of the state under chapter 791, TEX. GOV'T CODE, to provide for artificial recharge to the Aquifer and for the subsequent recovery of the water by the political subdivision.

(b) An interlocal contract entered into under this section is deemed to be an Aquifer recharge and storage permit and a recharge recovery permit.

(c) The interlocal contract must contain the following terms or conditions:

(1) Name of the parties;

(2) Purpose of the interlocal contract;

(3) Legal status of the political subdivision;

(4) Legal authority of the political subdivision to engage in recharge;

(5) A statement that the political subdivision has the legal authority to enter into the interlocal contract;

(6) A statement that all prerequisite governmental actions have been taken by the governing body of the political subdivision to authorize the political subdivision to enter into the contract;

(7) Attachments of the resolution and certificate of resolution approving the interlocal contract and authorizing the person to execute the contract on behalf of and as an act of the political subdivision;

(8) Identification of the ownership of the Aquifer recharge, storage and recovery project;

(9) Method by which the recharge will occur, including, but not limited to, dams, injection wells, among other methods, as approved by the Authority;

(10) Plans and specifications of the infrastructure by which the recharge to the Aquifer will occur, as approved by the Authority;



- (11) Attachments of all applicable permits that have been obtained or detailed plans and timetables for the acquisition of all applicable permits that have not yet been secured;
- (12) Identification of the source water that will be recharged to the Aquifer;
- (13) A statement that the source of water is subject to the legal control of the political subdivision;
- (14) Attachments of all permits or other documents evidencing a water right(s) owned by the political subdivision authorizing the source water to be diverted and placed to beneficial use for recharge purposes or detailed plans and timetables for the acquisition of all applicable permits that have not yet been secured;
- (15) A statement that the political subdivision intends to recover the stored water and place it to beneficial use; or if the political subdivision does not intend to recover the stored water and place it to beneficial use, then the identification of the assignees of the political subdivision;
- (16) If applicable, attachment of the assignment of the right to recover the stored water and place it to beneficial use;
- (17) A map attached identifying the following locations:
  - (A) place of use;
  - (B) point(s) of recharge; and
  - (C) point(s) of withdrawal or recharge recovery wells;
- (18) Purpose of use of the recovered stored water;
- (19) Rate of withdrawal in:
  - (A) acre-feet per annum; and
  - (B) gallons per minute;
- (20) Contract term;
- (21) Reporting requirements;
- (22) Water quality parameters applicable to the source water;
- (23) Method by which the water quality of the Aquifer will be protected as approved by the Authority;

(24) Plans and specifications of the water quality protection infrastructure as approved by the Authority;

(25) Type of recharge recovery well(s);

(26) Plans and specifications of any new recharge recovery wells, or construction documents, if available, for any existing wells;

(27) A statement that the protection of the water quality of the Aquifer will be provided;

(28) A statement that the protection of the rights of the holders of initial regular permits will be provided;

(29) Method for determining monthly withdrawal schedule, in acre-feet per annum; and

(30) Any other term or condition deemed appropriate by the board to implement the purposes of this subchapter, other applicable rules of the Authority, and the Act.

(d) The Authority may not unreasonably deny a request to enter into an interlocal contract. A denial by the Authority is unreasonable if an interlocal contract that meets the requirements of the Act, this subchapter, and any other applicable rules of the Authority, is negotiated, reduced to final form, and the board fails to authorize the execution of the interlocal contract by appropriate resolution and order.

#### **§ 711.270 Monthly Reporting**

(a) The holder of an Aquifer recharge and storage permit shall file a written report on a form prescribed by the Authority indicating for the previous calendar month the following:

(1) if applicable, for reservoirs:

(A) daily record of reservoir stage and contents;

(B) daily record of inflow and outflow; and

(C) daily record of precipitation;

(2) recharge rates, with and without the project;

(3) artificial recharge volume with calculations of recharge amounts, with and without the project;

(4) source of water recharged to the Aquifer;

- (5) water quality of the source water; and
- (6) any known negative impacts on the water quality of the Aquifer.

(b) The holder of a recharge recovery permit shall file a written report on a form prescribed by the Authority indicating for the previous calendar month the following:

- (1) volume recovered by purpose of use;
- (2) recovery rates; and
- (3) dates of withdrawal from recharge recovery wells.

### **§ 711.271 Operations Report**

(a) On the five-year anniversary date of the issuance of an Aquifer recharge and storage permit, or a recharge recovery permit, and every ten years thereafter or upon a more frequent schedule established by the general manager, the permittee shall provide the general manager with an operations report describing what efforts the permittee has made to:

- (1) operate and maintain the facilities;
- (2) optimize the recovery and beneficial use of stored water without experiencing unreasonable losses of stored water;
- (3) identify and describe any impacts identified during the operation of the project; and

(A) a summary of all data, information and analyses associated with any monitoring during the operation of the project; and

(B) an analysis of the performance of the recharge, storage and recovery project.

(b) The following items shall accompany the operation report described in (a):

- (1) a comparison of project performance with predictions submitted with the application for an Aquifer recharge and storage permit or a recharge recovery permit;
- (2) an assessment of the project in terms of protecting the groundwater quality of the Aquifer;
- (3) source water quality monitoring data;
- (4) Aquifer water quality data;

(5) dates of withdrawals from recharge recovery wells; and

(6) any additional information the general manager determines is necessary for appropriate evaluation of the project.

**§ 711.272 Review of Permits**

(a) Every Aquifer recharge and storage permit and recharge recovery permit shall be reviewed by the Authority on the five-year anniversary date of the issuance of the permit and every five years thereafter or upon a more frequent schedule established by the general manager

(b) The general manager may initiate an amendment to an Aquifer recharge and storage permit or recharge recovery permit pursuant to §§ 707.418 (Applications for Aquifer Recharge and Storage Permits) or 707.4181 (Applications for Recharge Recovery Permits) of the Authority's rules, as may be appropriate, for consideration by the board, if the general manager determines that a permittee is in violation of any term or condition of an Aquifer recharge and storage permit or a recharge recovery permit.

(c) A permit holder may submit to the general manager a request that the general manager initiate a permit amendment pursuant to (b) on a form provided by the Authority.

## **Subchapter K. Additional Groundwater Supplies**

### **Section**

711.290	Purpose
711.292	Applicability
711.294	Water Management Strategies
711.296	General Manager's Additional Water Supply Report
711.298	Board Order Finding Additional Water Supplies
711.300	Consultation with State and Federal Agencies
711.302	Board Order Increasing the Permitted Withdrawal Cap
711.304	Allocation of Additional Groundwater Supplies

### **§ 711.290 Purpose**

The purpose of this subchapter is to establish the procedures for the board to determine if there are additional groundwater supplies available from the Aquifer providing the basis for an increase in the amount of permitted withdrawals under § 1.14(b) and (c) of the Act, and § 711.164 of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

### **§ 711.292 Applicability**

This subchapter applies only to:

- (1) initial regular permits; and
- (2) additional regular permits.

### **§ 711.294 Water Management Strategies**

The following water management strategies, if implemented, may potentially provide a basis to determine if there are additional groundwater supplies available from the Aquifer to increase the amount of permitted withdrawals:

- (1) conservation;
- (2) springflow augmentation;
- (3) diversions of surface water downstream of Comal and San Marcos Springs pursuant to § 1.30 of the Act;
- (4) reuse;
- (5) supplemental recharge;

- (6) conjunctive management of surface and subsurface water;
- (7) drought management plans; and
- (8) other water management strategies that may result in additional groundwater supplies available for withdrawal from the Aquifer.

**§ 711.296 General Manager's Additional Water Supply Report**

(a) No later than November 30<sup>th</sup>, 2001 , the general manager shall prepare and submit a report to the board containing the following information for all ongoing or completed studies, or implemented water management strategies, for the period covered by the report related to the management and availability of supplies of groundwater from the Aquifer:

- (1) name of study or strategy;
- (2) name of entities providing funding;
- (3) cost of study or strategy;
- (4) study completion date, or strategy implementation date;
- (5) name of entity preparing the study or implementing the strategy;
- (6) name and title of Authority liaison, if any;
- (7) a statement of the purpose of the study or strategy;
- (8) an identification of the data used in performing the study, or implementing the strategy;
- (9) an identification of the methodology used in performing the study, or implementing the strategy;
- (10) a statement of the benefit or potential benefit to the Authority expected from the study or strategy;
- (11) if completed, an abstract of the study or strategy;
- (12) a recommendation whether the study or strategy provides a technical basis for the board to determine that additional supplies are available from the Aquifer to increase the permitted withdrawal cap established in § 711.164(a) and (b) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits);

- (13) a recommendation as to the specific amount of additional supplies in acre-feet per annum that are available for withdrawal from the Aquifer, if any;
- (14) a reasoned analysis supporting the recommendation;
- (15) supporting documentation as appropriate; and
- (16) any other appropriate information as may be determined by the general manager or the board.

(b) The additional water supply report referred to in subsection (a) of this section shall be updated and supplemented by the general manager no later than June 30, 2004, December 31, 2007, and every five years thereafter.

### **§ 711.298 Board Order Finding Additional Water Supplies**

Based on the general manager's report required by § 711.296 of this chapter (General Manager's Additional Water Supply Report), the board may issue an order determining that additional supplies are available for withdrawal from the Aquifer and proposing to increase the permitted withdrawal cap if it finds that:

- (1) studies, or implemented water management strategies, authorized under § 711.294(a) of this subchapter (Water Management Strategies) have been completed or implemented, as appropriate;
- (2) the general manager has submitted to the board an additional water supply report;
- (3) the report demonstrates that additional groundwater supplies are present in the Aquifer; and
- (4) the report demonstrates that the supplies are available for withdrawal from the Aquifer.

### **§ 711.300 Consultation with State and Federal Agencies**

(a) If the board issues an order under § 711.298 of this chapter (Board Order Finding Additional Water Supplies), the general manager shall consult with appropriate state and federal agencies concerning any environmental impacts that may arise if the board increases the permitted withdrawal cap established in § 711.164(a) and (b) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

(b) After consultation has concluded, the general manager shall prepare a consultation report and submit the report to the board containing the comments of the agencies.

### **§ 711.302 Board Order Increasing the Permitted Withdrawal Cap**

Based on the general manager's additional water supply report and the consultation report, the board may issue an order increasing the permitted withdrawal cap established in § 711.164(a) and (b) of this chapter (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) if it finds that:

- (1) the board issued an order determining that additional supplies are available for withdrawal from the Aquifer pursuant to § 711.298 of this subchapter (Board Order Finding Additional Water Supplies);
- (2) the general manager consulted with appropriate state and federal agencies concerning the proposed increase in the permitted withdrawal cap;
- (3) the withdrawal of the additional groundwater supplies will not adversely affect the water quality of the Aquifer;
- (4) withdrawal of the additional groundwater supplies will not reduce springflows at Comal Springs or San Marcos Springs to levels prohibited by applicable federal or state law; and
- (5) withdrawal of the additional groundwater supplies will not interfere with the rights of the owners of initial regular permits.

### **§ 711.304 Allocation of Additional Groundwater Supplies**

If the board issues an order under § 711.302 of this chapter (Board Order Increasing the Permitted Withdrawal Cap), the additional groundwater shall be allocated as follows:

- (1) if the additional groundwater supplies are attributable to a water management strategy identified in § 711.294(1)-(8) of this chapter (Water Management Strategies) and the water management strategy is paid for by an entity other than the Authority then the additional groundwater is allocated to the entity paying for the strategy. If multiple entities pay for the water management strategy, then the additional groundwater shall be allocated to those entities paying for the strategy on a *pro rata* basis consistent with their percentage contributions; or
- (2) if the additional groundwater supplies are attributable to a water management strategy identified in § 711.294 of this chapter (Water Management Strategies) and the water management strategy is paid for or implemented by the Authority, then the additional groundwater will be allocated, to the extent water is available, to restore on a *pro rata* basis any reductions from initial regular permittees' maximum historical use in the following order of priority:
  - (A) conversion of the interruptible PA-2 amount into an uninterruptible withdrawal amount under § 711.164(a) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) of this subchapter;



(B) retirements of initial regular permits made pursuant to § 1.21(c) of the Act and subchapter H (Withdrawal Reductions and Regular Permit Retirement Rules) of chapter 715 (Comprehensive Water Management); and

(C) any proportionally adjusted amounts under § 711.172(h) of this chapter (Proportional Adjustment of Initial Regular Permits).

## **Subchapter L. Transfers**

### **Section**

711.320	Definitions
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711.358	Effective Date of Transfers
711.360	Transfers Subject to Law
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711.364	Transfer Impact Monitoring Report

### **§ 711.320 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) base irrigation groundwater - The 50 percent portion, in acre-feet per annum, of the:

(A) groundwater withdrawal amount as calculated pursuant to § 711.176 of this chapter (Groundwater Withdrawal Amounts for Initial Regular Permits; Interruptible Withdrawals of Phase-2 Proportional Amounts as Junior Rights) for an initial regular permit for irrigation purposes; or

(B) section 4B amount in a declaration, for interim authorization status, for irrigation purposes, which, unless converted to unrestricted groundwater pursuant to § 711.340 of this Chapter (Conversion of Base Irrigation Groundwater), must be used in accordance with the original initial regular permit and must pass with transfer of the ownership of the irrigated

lands owned by the holder of the initial regular permit and identified as the place of use in such permit.

(2) groundwater withdrawal amount - The amount of groundwater from the Aquifer, in acre-feet per annum, which is authorized to be withdrawn under a regular permit issued by the board, or pursuant to interim authorization status, under § 711.70 of this chapter (Interim Authorization Groundwater Withdrawal Amounts).

(3) transfer-A change in a permit, or application for a permit, as follows:

- (A) ownership;
- (B) point(s) of withdrawal;
- (C) purpose of use;
- (D) place of use; or
- (E) maximum rate of withdrawal.

(4) unrestricted irrigation groundwater-The groundwater withdrawal amount for an initial regular permit, or interim authorization status, for irrigation purposes which is not base irrigation groundwater.

(5) water conservation equipment - Any BMP as defined in § 702.1(b)(12) (General Definitions) of the Authority's rules, the installation and operation of which results in less groundwater from the Aquifer being required for irrigation purposes at the place of use identified in an initial regular permit, or an application for an initial regular permit.

### **§ 711.322 Applicability**

(a) This subchapter applies to transfers of the following:

- (1) applications for initial regular permits;
- (2) interim authorization status associated with applications for initial regular permits; and

(3) initial regular, additional regular, term, emergency, well construction, monitoring well, recharge recovery permits as well as exempt well registrations.

(b) This subchapter does not apply to the:

- (1) wholesale or retail sale of groundwater on a commodity basis to a person under a utility service contract, water supply contract, or similar document, unless the implementation of the contract results in a transfer; or

- (2) retirements of regular permits by the Authority.

#### **§ 711.324 Prohibited Transfers**

(a) Term, emergency, well construction, and monitoring well permits as well as exempt well registrations are not transferable except for ownership.

(b) The place of use for any permit or interim authorization status may not be transferred to a place of use located outside of the boundaries of the Authority.

(c) Except as provided in § 711.338 of this chapter (Transfer of Base Irrigation Groundwater), the place or purpose of use for all or part of the base irrigation groundwater component of either an initial regular permit or interim authorization status is not transferable.

#### **§ 711.326 Recharge Recovery Permits**

Recharge recovery permits are transferable only as to ownership, purpose of use, and place of use. Transfers of the point of withdrawal of a recharge recovery permit may be made by filing an application to transfer a recharge recovery permit.

#### **§ 711.328 Transfer of Ownership**

(a) Except as provided in subsections (c) and (e), the ownership of a permit or an application for a permit may be transferred separately from the ownership of a place of use or point of withdrawal.

(b) Absent an express reservation of rights in the transferor, the transfer of ownership of the place of use or point of withdrawal for a permit or an application for a permit is presumed to transfer ownership of the permit or application for a permit.

(c) The ownership of all or part of an initial regular permit issued for base irrigation groundwater shall pass with the transfer of ownership of the irrigated lands owned by the holder of the initial regular permit and identified as the place of use in such permit.

(d) In a transfer of the ownership of the place of use or point of withdrawal identified in an initial regular permit, the ownership of all or part of the initial regular permit issued for unrestricted irrigation groundwater may be reserved to the transferor.

(e) In a transfer of the ownership of the place of use or point of withdrawal identified in an initial regular permit, the ownership of all or part of the initial regular permit issued for base irrigation groundwater may not be reserved to the transferor.

#### **§ 711.329 Transfers of Junior and Senior Rights**

- (a) The ownership or use of junior or senior rights may be transferred separately from

one another.

(b) Transfers of the ownership or use of the groundwater withdrawal amount of an initial regular permit, or interim authorization status, that were filed prior to the effective date of this rule are allocated pro rata by the Authority between junior rights and senior rights. In the event the transfer is later amended or expires, then the pro rata allocation no longer applies and subsection (c) of this section becomes applicable.

(c) Transfers of the ownership or use of the groundwater withdrawal amount of an initial regular permit, or interim authorization status, that are filed on or after the effective date of this rule, shall be allocated between junior rights and senior rights as provided for in the transfer application or notice of transfer of ownership, as appropriate.

### **§ 711.330 Authorized Transferors**

(a) Existing users owning a well(s) qualifying for interim authorization status are authorized to make transfers of an application for a regular permit and its associated interim authorization status consistent with this subchapter.

(b) Permittees are authorized to make transfers of a regular permit consistent with this subchapter.

### **§ 711.332 Transfer Term**

(a) A well's interim authorization status may be transferred for a period beginning December 30, 1996, but no later than two years after a transfer application is filed, and such term shall not begin prior to the date an administratively complete application to transfer an application for an initial regular permit is filed with the Authority pursuant to § 711.352 (Basis for Granting Applications to Transfer). Interim authorization status may be transferred for a term not to exceed the termination of the status pursuant to § 1.17(d) of the Act and § 711.66 (Period of Interim Authorization), or as provided by the final order granting or general manager's letter approving an application to transfer and amend an application for an initial regular permit pursuant to § 711.352 (Basis for Granting Applications to Transfer).

(b) Upon termination of interim authorization status, a transferee is not required to file a new application to transfer regular permit, and a transfer of groundwater withdrawal rights remains in effect, if:

(1) a prior application to transfer interim authorization status and amend application for regular permit has been filed with and approved by the Authority;

(2) the interim authorization period expired due to the issuance of an initial regular permit to the transferor; and

(3) the groundwater withdrawal amount authorized by the initial regular permit is greater than or equal to the amount of groundwater withdrawals authorized by all

effective transfers of interim authorization status.

(c) Upon termination of interim authorization status, a transferee of such status is required to file a new application to transfer regular permit if:

(1) the interim authorization period expired due to the issuance of an initial regular permit to the transferor; and

(2) the groundwater withdrawal amount authorized by an initial regular permit is less than the amount of groundwater withdrawals authorized by all effective transfers of the interim authorization status.

(d) A permit may be transferred for a period beginning no later than two years after a transfer application is filed, and such term shall not begin prior to the date an administratively complete application to transfer is filed with the Authority pursuant to § 711.352 (Basis for Granting Applications to Transfer). A permit may be transferred for a term not to exceed the date provided in a final order granting or general manager's letter approving an application to transfer permit pursuant to § 711.352 (Basis for Granting Applications to Transfer).

(e) The general manager may not process an application to transfer permit requested to be effective for the calendar year in which the application was filed unless:

(1) the application was filed on or before November 1<sup>st</sup>; or

(2) if filed after November 1<sup>st</sup>, on the date of filing the application, the applicant has not withdrawn groundwater in excess of the authorized annual groundwater withdrawal amount in the applicant's initial regular permit.

(f) This section does not apply to transfers of ownership under § 711.348 (Notice of Transfer of Ownership).

#### **§ 711.334 Transfer of Non-Irrigation Groundwater**

Except as provided in § 711.324(b) of this chapter (Prohibited Transfers) and § 711.352 of this chapter (Basis for Granting Applications to Transfer), without restriction as to place or purpose of use, a permittee may transfer an initial or additional regular permit issued for a purpose of use other than irrigation.

#### **§ 711.336 Transfer of Unrestricted Irrigation Groundwater**

Except as provided in § 711.324(b) of this chapter (Prohibited Transfers), without restriction as to place or purpose of use, a permittee may transfer all or part of a regular permit issued for unrestricted irrigation groundwater.

**§ 711.338      Transfer of Base Irrigation Groundwater**

(a) Except as provided in subsections (b) and (c) of this section, a permittee may not transfer the place or purpose of use for all or part of an initial regular permit issued for base irrigation groundwater.

(b) A permittee may temporarily transfer the place of use for all or part of an initial regular permit issued for base irrigation groundwater to another place of use owned by the permittee. Such a temporary transfer becomes void if the permittee subsequently transfers the ownership of the place of use of the initial regular permit to a third party. § 711.328 (c) of this chapter (Transfer of Ownership) would then control, and the base irrigation groundwater shall pass with the transfer of ownership of the irrigated lands identified as the place of use in the initial regular permit.

(c) A permittee may temporarily transfer by a lease with a term not in excess of ten years the place of use for all or part of an initial regular permit issued for base irrigation groundwater to another place of use not owned by the permittee. If the permittee subsequently transfers the ownership of the original place of use of the initial regular permit to a third party, then § 711.328(c) of this chapter (Transfer of Ownership) would then control, and the base irrigation groundwater shall pass with the transfer of ownership of the irrigated lands originally identified as the place of use in the initial regular permit. However, during the term of the lease, the party to whom the permittee has transferred the ownership of the place of use of the initial regular permit shall take title of the irrigated lands originally identified as the place of use of the initial regular permit subject to the lease.

**§ 711.340      Conversion of Base Irrigation Groundwater**

The portion of an initial regular permit constituting base irrigation groundwater may be converted to a regular permit for unrestricted irrigation groundwater by filing an application to convert base irrigation groundwater consistent with § 707.428 of the Authority’s rules (Applications to Convert Base Irrigation Groundwater).

**§ 711.342      Basis for Granting Applications to Convert Base Irrigation Groundwater**

(a) The Board shall grant an application to convert base irrigation groundwater to unrestricted irrigation groundwater if it finds that:

- (1) the application complies with the Act and the Authority rules;
- (2) all applicable fees have been paid;
- (3) all applicable reports have been filed; and
- (4) a groundwater conservation plan has been approved by the Authority; and

either:

(A) the land use for the irrigated lands identified as the place of use in an original initial regular permit is changed, as evidenced by some physical alteration or development, such that the irrigated lands can no longer be designated for agricultural use pursuant to TEX. TAX CODE § 23.42, and a determination that such a change in land use has occurred has been made by the chief appraiser of the county in which the land is located pursuant to TEX. TAX CODE § 23.55; or

(B) groundwater from the Aquifer will be conserved after the installation of water conservation equipment pursuant to a groundwater conservation plan approved by the Authority pursuant to § 715.124 (Basis for Granting Applications to Approve Groundwater Conservation Plans) of the Authority's rules; and

(5) the total volume of groundwater to be converted is quantified, and properly allocated between junior rights and senior rights.

(b) No transfer of base irrigation groundwater applied to be converted to unrestricted irrigation groundwater is effective until the board issues a final order granting an application to convert base irrigation groundwater.

(c) Upon issuance of a final order granting an application to convert base irrigation groundwater under this section, the Authority shall issue an amended initial regular permit.

(d) All orders of the board converting base irrigation groundwater shall allocate the amount converted to unrestricted irrigation groundwater between junior rights and senior rights as follows:

(1) for conversion applications filed prior to the effective date of these rules, the allocation between junior rights and senior rights shall be deemed to be pro rata; and

(2) for conversion applications filed on or after the effective date of these rules, the allocation between junior rights and senior rights shall be as provided for in the conversion application.

#### **§ 711.344 Transfers During a Demand Management or Critical Period**

A permitted user, interim authorization status user, or contractual user subject to subchapter D (Demand Management and Critical Period Management Rules) of chapter 715 (Comprehensive Water Management) may, during a demand management or critical period, withdraw groundwater from the Aquifer pursuant to a transfer of senior rights only under the following circumstances:

(1) if the transfer is an inter-pool transfer, the transfer was filed in accordance with § 711.358 (Effective Date of Transfers) on or before November 1st of the year immediately preceding the year in which the demand management or critical period is in effect, the groundwater was scheduled for withdrawal as a Quarterly Scheduled Withdrawal Amount in a quarterly withdrawal schedule pursuant to § 715.204 (Authorized Withdrawals; Demand



Management and Critical Period Withdrawal Schedules), and none of the water to be transferred was carried forward from an earlier quarter under § 715.208 (Groundwater Carryforwards Generally Prohibited; Irrigation Carryforwards); or

(2) if the transfer is an intra-pool transfer and the groundwater was scheduled for withdrawal as a Quarterly Scheduled Withdrawal Amount in the same quarter in a quarterly withdrawal schedule pursuant to § 715.204 (Authorized Withdrawals; Demand Management and Critical Period Withdrawal Schedules), and none of the water to be transferred was carried forward from an earlier quarter under § 715.208 (Groundwater Carryforwards Generally Prohibited; Irrigation Carryforwards).

### **§ 711.348 Notice of Transfer of Ownership**

(a) If the ownership of all or a portion of a permit, or an application for a permit, is transferred, and no transfer of the point of withdrawal, place of use, purpose of use or maximum rate of withdrawal is proposed, then within 30 days after the transfer, the transferee shall file with the Authority a notice of transfer of ownership on a form prescribed by the Authority, which shall include the information specified in § 707.401 (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership) and a copy of any transfer agreement and supporting documents. In the notice of transfer of ownership, the water rights transferred shall be allocated between junior rights and senior rights.

(b) A notice of transfer of ownership must be accompanied by a \$25 processing fee, or the Authority will not process the notice.

(c) For transfers of less than all of an initial regular permit for irrigation use, the transferee shall:

(1) provide a survey of the irrigated land on which the irrigation water was placed to beneficial use during the historical period and a separate U.S.G.S. 7.5 Minute Series (topographic) quad sheet reflecting the place of use. The survey shall identify the legal description of the place of use conveyed to the transferee as well as the place of use retained by the transferor. The survey must be certified by a registered professional engineer, or registered professional surveyor, to be true and correct, with the boundaries of the place of use and historically irrigated acres accurately delineated; and

(2) allocate the volumes of junior rights and senior rights being transferred between base irrigation groundwater and unrestricted irrigation groundwater.

(d) The general manager shall review the notice for completeness. If the notice is complete, and the transfer otherwise complies with this subchapter, the general manager shall:

(1) for a transfer of an application for an initial regular permit, execute a letter approving the transfer, change the permit application records of the Authority and update the Authority's transfer database to reflect the change in ownership; or

(2) for a transfer of a permit, execute a letter approving the transfer and issue an amended or new permit to the transferor or transferee, or both, as appropriate.

(e) A transferee under this section is responsible for determining whether any reports or fees are owed to the Authority with respect to the transferred application or permit. A transferee under this section assumes responsibility for submitting any outstanding reports to the Authority, to the extent relevant information is available, and for paying any outstanding fees to the Authority.

### **§ 711.350 Transfer of and Amendments to Permits and Applications for Permits**

(a) Except as provided in § 711.348 of this subchapter (Notice of Transfer of Ownership) for transfers only of ownership and § 711.332 (Transfer Term), a transferee shall file an application to transfer a permit, or an application for a permit, consistent with §§ 707.415 of the Authority's rules (Applications to Transfer Permit); and § 707.414 of the Authority's rules (Applications to Transfer Interim Authorization Status and Amend Applications for Regular Permits), respectively.

(b) Except as provided in § 711.348 of this subchapter (Notice of Transfer of Ownership) for transfers only of ownership, no transfer of a permit, or an application for a permit, is effective until the Board, has issued a final order granting an application to transfer, or, if delegated, the general manager has executed a letter approving the transfer.

(c) A transferee under this section is responsible for determining whether any reports or fees are owed to the Authority with respect to the transferred application or permit. A transferee under this section assumes responsibility for submitting any outstanding reports to the Authority, to the extent relevant information is available, and for paying any outstanding fees to the Authority.

### **§ 711.352 Basis for Granting Applications to Transfer**

The Board shall grant an application to transfer a permit, or an application for a permit, if it finds that:

- (1) the application complies with the Act and the Authority's rules;
- (2) the transferor is in compliance with all applicable provisions of the Act, the Authority's rules, any orders of the Board and the terms or conditions of any permits, or the transferee has settled the transferor's noncompliance with the Act, the Authority's rules, an order of the Board, or the terms and conditions of a permit for a past violation;
- (3) the application complies with the Authority's comprehensive management plan;
- (4) the application complies with § 711.332(e) (Transfer Term);
- (5) all applicable fees have been paid;

- (6) all applicable reports have been filed;
- (7) the total volume of groundwater to be transferred is quantified, and properly allocated, as applicable, between junior rights, senior rights, base irrigation groundwater and unrestricted irrigation groundwater.
- (8) if required, all surveys and plats for an initial regular permit for irrigation use or an application for an initial regular permit for irrigation use have been filed with the Authority;
- (9) the point of withdrawal of a permit or an application for a permit is either:
  - (A) not transferred from a point located west of Cibolo Creek to east of Cibolo Creek; or
  - (B) transferred from a point located west of Cibolo Creek to east of Cibolo Creek, and
    - (i) aquatic and wildlife habitat will be protected;
    - (ii) species that are designated as threatened or endangered under applicable federal and state law will be protected;
    - (iii) springflows of Comal Springs and San Marcos Springs will not be affected during critical drought conditions; and
    - (iv) continuous minimum springflows of the Comal Springs and San Marcos Springs will be maintained to protect endangered and threatened species to the extent required by federal law; and
- (10) for an application for an initial regular permit filed by a federal facility, the approval by the Authority of the transfer of ownership of the application from the federal facility to another person occurs prior to September 1, 2003.

**§ 711.354 Transfer Data Base**

The Authority shall create and maintain a data base, and other records and files as may be appropriate, to record all transfers. The Authority will file and record all appropriate transfer documents, including notice of transfer of ownership and final orders granting applications to transfer and amend, in the transfer data base.

**§ 711.356 County Recordation of Transfers**

(a) Within 30 days of issuance of a new or amended permit to the transferee based on a notice of transfer of ownership, or the issuance of a final order granting or general manager's letter approving an application to transfer a permit, as appropriate, the transferee must file the

new or amended permit for recordation in the deed records of:

(1) the counties in which the point of withdrawal and the place of use are identified in the permit; and

(2) the counties to which the point of withdrawal and place of use are transferred as identified in the new or amended permit.

(b) Within 30 days of issuance of an amended permit to the transferor based on a notice of transfer of ownership, or the issuance of a final order granting or general manager's letter approving an application to transfer, as appropriate, the transferor must file the new or amended permit for recordation in the deed records of the counties specified in subsection (a)(1) - (2) above.

(c) Within 30 days of issuance of a final order granting or general manager's letter approving an application to transfer a permit for a specified term, the transferee must file a Memorandum of Lease in the form provided by the Authority for recordation in the deed records of the counties specified in subsection (a)(1) - (2).

#### **§ 711.358 Effective Date of Transfers**

No transfer is effective unless:

(1) a notice of transfer of ownership has been filed and recorded with the Authority;  
or

(2) the board, or, if delegated, the general manager, issues a final order granting an application to transfer and amend that has been filed and recorded with the Authority.

#### **§ 711.360 Transfers Subject to Law**

All transfers are subject to the Act, the rules of the Authority, the regular permit conditions, and all other applicable law.

#### **§ 711.362 Transfers by Federal Agencies**

If a federal agency transfers its application for an initial regular permit, and the federal agency continues to make withdrawals from the Aquifer as if it had not made the transfer, then the board or the general manager, as appropriate, shall reduce the authorized withdrawal amount of the transferee's interim authorization or initial regular permit in an amount equal to the federal facility withdrawals that are subject to the transfer.

#### **§ 711.364 Transfer Impact Monitoring Report**

The general manager shall monitor the impact resulting from transfers issued pursuant to § 711.352 of this chapter (Basis for Granting Applications to Transfer). Not later than two years

from the effective date of these rules, the general manager shall prepare a report to the board making findings and recommendations concerning such impacts.

## **Subchapter M. Meters; Alternative Measuring Methods; and Reporting**

### **Section**

711.400	Applicability
711.401	Requirement to File Application for Permit to Install or Modify Meter
711.402	Duty to Install and Operate Meters; Meter Installation Deadlines
711.404	Ownership, Maintenance, and Costs of Meters
711.406	Meter Installation Registration and Permit; Waiver of Duty to Install and Operate Meter; Approval of Alternative Measuring Method
711.408	Pre-Existing Meters and Alternative Measuring Methods
711.410	Notice of Condition Affecting Accuracy of Meter; Corrective Action
711.412	Removal and Disabling of Meters
711.414	Meter Reading; Groundwater Use Reporting
711.416	Entry on Land
711.418	Prohibition
711.420	Enforcement

### **§ 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 the owner of an exempt well.

### **§ 711.401 Requirement to File Application for Permit to Install or Modify Meter**

Any person seeking to install a new meter or modify an existing meter must file with the Authority an application for a permit to install or modify a meter. Any person seeking to employ an alternative measuring method or modify an existing alternative measuring method must file with the Authority an application for a permit to install or modify a meter as well. For the purpose of this chapter, the term “modify” in connection with a meter means to make any physical change to the meter other than standard maintenance. Meters registered with the Authority prior to the effective date of these rules through the filing of forms previously prescribed by the Authority need not file another meter registration. This section does not apply to meters owned by the Authority.

### **§ 711.402 Duty to Install and Operate Meter; Meter Installation Deadlines**

- (a) Except as provided in subsection (b) of this section, the owner of a well shall install and operate a meter to measure the flow rate and cumulative amount of groundwater withdrawn from the well.
- (b) Pursuant to § 711.406 of this chapter (Meter Installation, Registration, and Permit; Waiver of Duty to Install and Operate a Meter; Approval of Alternative Measuring Method), the

owner of a well may apply to the Authority to waive the duty to install a meter in favor of an alternative measuring method of determining the amount of groundwater withdrawn from the Aquifer. If the Authority approves a waiver for the owner of a well with an approved alternative measuring method, then the term “meter” as used in this subchapter shall mean “alternative measuring method.”

(c) A meter shall be installed by the owner of a well no later than six months after the effective date of these rules. This deadline does not apply to meters installed by the Authority pursuant to § 711.404(b) of this chapter (Ownership, Maintenance, and Cost of Meters).

(d) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer’s standards, instructions, or recommendations, and shall ensure an error of not greater than  $\pm$  five percent.

(e) Permitted non-exempt irrigation wells from which exempt withdrawals are allowed under subsection (b) of § 711.46 of this chapter (Dual Status Wells Prohibited) shall be constructed so that both permitted and exempt withdrawals are metered separately and not commingled. In such instances, the well owner is responsible for installing, operating, and maintaining two meters that comply with the requirements of this subchapter: one to measure permitted withdrawals and the other to measure exempt withdrawals.

#### **§ 711.404 Ownership; Maintenance; and Costs of Meters**

(a) Except as provided in subsection (b), the owner of a well shall be responsible for the installation, operation, maintenance, and repair of the meter associated with that well.

(b) For any irrigation well in existence on September 1, 1993 that is not capped and from which withdrawals were made 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.

#### **§ 711.406 Meter Installation, Registration, and Permit; Waiver of Duty to Install and Operate Meter; Approval of Alternative Measuring Method**

(a) Except as provided in subsection (d), no meter or alternative measuring method may be installed or modified prior to obtaining a permit to install or modify a meter pursuant to § 711.401 (Requirement to File Application for Permit to Install or Modify Meter) from the Authority and completion of a registration form to the Authority pursuant to § 707.412 of the Authority’s rules (Meter Registrations).

(b) The meter registrations and applications for a permit to install or modify a meter shall show the following:

(1) the meter or alternative measuring method has a certified error of not greater than  $\pm$  five percent;

(2) for a meter, it meets the American Water Works Association design and operation standards for design, materials, and accuracy;

(3) the meter or alternative measuring method has a non-resettable totalizer, or lock box with resettable digital readout;

(4) the totalizing register of the meter or alternative measuring method has the capacity to record the total quantity of groundwater withdrawn from the Aquifer for at least one full year; and

(5) the meter or alternative measuring method if equal to or greater than a discharge diameter of 4.0 inches, has an instantaneous readout for both flow rate and total quantity measured;

(6) the meter, or alternative measuring method, if used for the distribution of potable water, shall be American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 certified; and

(7) for an alternative measuring method, if the interest of the Authority in ensuring accurate and uniform groundwater withdrawal data for compliance and Aquifer management purposes is outweighed by the burden on the applicant to install and operate a meter.

(c) Within 5 days after installation or modification, the owner of the meter shall give written notice to the Authority of the installation or modification and the intended start date so the Authority may inspect and approve the meter installation or modification.

(d) Subsection (a) does not apply to meters installed by the Authority under § 711.404(b) of this chapter (Ownership, Maintenance and Costs).

#### **§ 711.408 Pre-Existing Meters and Alternative Measuring Methods**

(a) An owner of an existing well equipped with a meter or alternative measuring method must register the meter or alternative measuring method with the Authority by filing with the Authority a meter registration form provided by the general manager. Meter registrations must be filed with the Authority no later than 180 days from the effective date of these rules. This requirement does not apply to any meter owned by the Authority. The Authority need not register any of its own meters.

(b) Except as provided in subsection (c), all meters existing on the effective date of these rules, shall be inspected by the Authority for compliance with the meter specifications set forth in § 711.406(b) of this chapter (Meter Installation, Registration, and Permit; Waiver of Duty to Install and Operate Meter; Approval of Alternative Measuring Method). If the meter complies with these specifications, the general manager shall approve the meter in writing and advise the owner of the approval. If the meter does not comply with these specifications, the



general manager will issue a notice of deficiency and direct the owner of the meter to install a new meter or modify the existing meter in compliance with this subchapter.

(c) This section does not apply to a meter owned and installed by the Authority under § 711.404(b) of this chapter (Ownership, Maintenance and Cost of Meters).

#### **§ 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, of any kind whatsoever, may exist that affects the accuracy of a meter, then the owner of the well shall, within seven days of learning of the fact(s), notify the general manager that the accuracy of the meter may be in question.

(b) The general manager 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, 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, including for routine maintenance, unless the owner gives the Authority notice, in writing, on a form provided by the general manager, of the intent to remove or disable the meter. Except in cases of routine maintenance, such notice must be approved in writing by the general manager before the meter is removed or disabled.

(b) A meter may be removed or otherwise disabled, only by the owner of the meter or its authorized representative.

(c) During a period that a meter is removed or otherwise disabled, groundwater may not be withdrawn from the well, unless the general manager has approved an alternative measuring method pursuant to § 711.406 of this chapter (Meter Installation, Registration, and Permit; Waiver of Duty to Install and Operate Meter; Approval of Alternative Measuring Method) and § 707.515 of the Authority's rules (Actions on Application by the General Manager).

#### **§ 711.414 Meter Reading; Groundwater Use Reporting**

(a) Every permittee, or person with interim authorization status, shall accurately read the meter on a monthly and on an annual basis and shall file the results with the Authority by way of a written Annual Groundwater Use Report on a form prescribed by the Authority. The annual groundwater use report form prescribed by the Authority shall provide spaces to report total withdrawals for both the entire year, and on a month-by-month basis. Withdrawals shall be reported for both junior rights and senior rights. Every permittee, or person with interim authorization status, shall assure that the Annual Groundwater Use Report reflects the withdrawals made during the preceding calendar year and shall include information on the

amount of withdrawals made on both an annual and on a month-by-month basis.

(b) For all wells other than irrigation wells, a completed Annual Groundwater Use Report must be returned to the general manager by no later than January 31<sup>st</sup> of each year. The Authority shall mail annual groundwater use report forms to the users of such wells during January of each year.

(c) For irrigation wells, a completed Annual Groundwater Use Report must be returned to the general manager by no later than January 31<sup>st</sup> of each year. The Authority shall mail annual groundwater use report forms to the users of such wells during December of each year.

(d) Annual groundwater use report forms shall be furnished to anyone on request. In completing the report, a permittee, or person with interim authorization status, shall fill in the blanks to the best of his knowledge and ability in accordance with the instructions that accompany each form.

(e) No annual groundwater use report is required to be filed by persons owning an exempt well, although the Authority encourages persons owning exempt wells to file such a report.

#### **§ 711.416 Entry on Land**

At any reasonable time, the Authority may enter the land of the owner on which a well is situated for the purpose of inspecting the condition of the meter, conducting maintenance and repair activities if authorized, collecting water samples, or performing tests. The Authority will make all reasonable efforts to coordinate the entry with the owner of the land on which the well is situated.

#### **§ 711.418 Prohibition**

No person may take any action that disables or impairs a meter from accurately measuring and recording the flow rate and cumulative amount of groundwater withdrawn from a well.

#### **§ 711.420 Enforcement**

If the withdrawals are not being metered in accordance with this subchapter, the board may:

- (1) issue an order suspending the right to make withdrawals from a well;
- (2) issue an order requiring corrective action to bring the operation of the well into compliance with this subchapter; or
- (3) commence any other action to enforce this subchapter as authorized by law.

## **Subchapter N. Groundwater Trust**

### **Section**

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711.504	Other Transfers Authorized
711.506	Groundwater Withdrawal Permits Authorized for Transfer Into the Groundwater Trust
711.508	Acquisition of Groundwater Withdrawal Permits for Transfer Into the Groundwater Trust
711.510	Sales of Groundwater Withdrawal Permits From the Groundwater Trust
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711.514	Holding of Groundwater Withdrawal Permits as a Demand Management Strategy
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711.538	Groundwater Withdrawal Permit Transfer Contracts
711.540	Expedited Transfers From the Groundwater Trust

### **§ 711.500 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Groundwater trust – An account of groundwater withdrawal permits held in trust and administered by the Authority pursuant to this subchapter.
- (2) Groundwater trust transfer contract - A contract between the Authority and a transferor governing the transfer of groundwater withdrawal permits into the groundwater trust.
- (3) Groundwater withdrawal permit transfer contract - A contract between the

Authority and a transferee governing the transfer of groundwater withdrawal permits from the groundwater trust.

(4) Permit – all or part of a groundwater withdrawal permit issued by the Authority.

(5) Transfer – has the definition of “transfer” as defined in § 711.320(3) (Definitions) of subchapter L (Transfers) of this chapter.

(6) Transferee - A person to whom the Authority has transferred all or part of a groundwater withdrawal permit held by the Authority in the groundwater trust.

(7) Transferor - An owner of a groundwater withdrawal permit who transfers all or part of the permit into the groundwater trust.

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

#### **§ 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 wherein the Authority may acquire groundwater withdrawal permits to accomplish the following purposes:

(1) hold the permits in trust for sale, or resale, to persons who may use groundwater from the Aquifer within the Authority’s jurisdiction;

(2) hold the permits in trust for transfer, other than by sale or resale, to persons who may use groundwater from the Aquifer within the Authority’s jurisdiction;

(3) hold permits in trust as a means of managing overall demand on the Aquifer;

(4) hold permits for resale or retirement as a means of complying with §§ 1.14, 1.16, 1.21, and 1.29 concerning withdrawal reduction requirements under the Act.

#### **§ 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 pursuant to subchapter L (Transfers) of this chapter.

#### **§ 711.506 Groundwater Withdrawal Permits Authorized for Transfer Into the Groundwater Trust**

The following groundwater withdrawal permits may be acquired for, held in, and administered by the Authority in the groundwater trust:

- (1) initial regular permits;
- (2) additional regular permits; and
- (3) recharge recovery permits.

**§ 711.508 Acquisition of Groundwater Withdrawal Permits for Transfer Into the Groundwater Trust**

The Authority may acquire, through purchase, assignment, pledge, exchange, lease, gift, or any other means, groundwater withdrawal permits for transfer into the groundwater trust.

**§ 711.510 Sales of Groundwater Withdrawal Permits From the Groundwater Trust**

Unless specifically authorized in the groundwater trust transfer contract, the Authority may not sell, lease, transfer or resell a groundwater withdrawal permit held by the Authority in the groundwater trust.

**§ 711.512 Other Transfers of Groundwater Withdrawal Permits From the Groundwater Trust**

Consistent with the groundwater trust transfer contract and this subchapter, the Authority may make other transfers of groundwater withdrawal permits held in the groundwater trust in any manner the Authority considers necessary or reasonable. All transfers of permits from the groundwater trust shall comply with subchapter L (Transfers) of this chapter.

**§ 711.514 Holding of Groundwater Withdrawal Permits as a Demand Management Strategy**

(a) Consistent with the groundwater trust transfer contract and this subchapter, the Authority may hold groundwater withdrawal permits in the groundwater 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 groundwater withdrawal permit held in the groundwater trust for demand management purposes.

(b) The amount of groundwater authorized to be withdrawn from the Aquifer pursuant to initial regular permits and additional regular permits that are transferred into the groundwater trust and managed pursuant to this section is not subject to the maximum total permitted withdrawals provided for in subsections (a) and (b) of § 711.164 (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

**§ 711.516 Retirement of Groundwater Withdrawal Permits From the Groundwater Trust**

(a) Unless specifically authorized in the groundwater trust transfer contract, the Authority may not retire a groundwater withdrawal permit held by the Authority in the groundwater trust. All retirements of permits from the groundwater trust shall comply with subchapter F (Regular Permit Retirement Rules) of Chapter 715 (Comprehensive Water Management) of the Authority's rules. Prior to the issuance by the Board of a retirement order, the Authority may not sell, resell, or otherwise transfer any part of a groundwater withdrawal permit held in the groundwater trust for retirement purposes. After the issuance of a retirement order by the Board, the general manager shall update the permit database to reflect the retired groundwater right.

(b) The amount of groundwater authorized to be withdrawn from the Aquifer pursuant to initial regular permits and additional regular permits that are transferred into the groundwater trust and managed pursuant to this section is not subject to the maximum total permitted withdrawals provided for in subsections (a) and (b) of § 711.164 (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits).

**§ 711.518 Application to Transfer Groundwater Withdrawal Permit Into the Groundwater Trust**

An owner of an initial regular permit, additional regular permit, or recharge recovery permit issued by the Authority may file an application to transfer a groundwater withdrawal permit into the groundwater trust consistent with § 707.415 (Applications to Transfer Permit) of subchapter D (Requirements for Applications, Registrations and Other Documents) of Chapter 707 (Procedure Before the Authority) of the Authority's rules.

**§ 711.520 Basis for Granting an Application to Transfer Groundwater Withdrawal Permit Into the Groundwater Trust**

(a) The decision to grant or deny an application to transfer a groundwater withdrawal permit into the groundwater trust is at the discretion of the board. The decision to grant or deny the application is final and non-appealable.

(b) The board may grant an application to transfer and amend permit into the groundwater trust if it finds that:

(1) The requirements of § 711.352 (Basis for Granting Applications to Transfer) of subchapter L (Transfers) of this chapter are satisfied;

(2) The groundwater withdrawal permit is an initial regular permit, additional regular permit, or recharge recovery permit;

(3) The applicant is the owner of the permit;

(4) The applicant has the legal authority to transfer the groundwater withdrawal permit to the groundwater trust;

(5) The requirements of subchapter L (Transfers) of this chapter are met;

(6) The applicant has good clear title to the groundwater withdrawal permit, free and clear of liens or other encumbrances, and no challenges have been made or threatened by third parties to the applicant's claimed ownership of the groundwater withdrawal permit;

(7) The groundwater withdrawal permit has not been abandoned pursuant to § 711.198 (Voluntary Abandonment) of subchapter H (Abandonment) of this chapter;

(8) The applicant is in compliance with the Act, the Authority's rules, and other laws applicable to the groundwater withdrawal permit in question;

(9) The trust term is consistent with the Authority's management and administrative objectives for the groundwater trust;

(10) The agreed upon price is consistent with the Authority's management and administrative objectives for the groundwater trust;

(11) The purpose of the transfer is consistent with the Authority's management and administrative objectives for the groundwater trust;

(12) Acquisition of the groundwater withdrawal permit would further the purposes of the groundwater trust;

(13) There are sufficient funds appropriated and available to acquire the groundwater withdrawal permit or, if there are insufficient funds on hand or the board is of the opinion that existing funds should not be immediately expended for such acquisition, whether the applicant is willing to transfer the groundwater withdrawal permit to the groundwater trust on a contingency basis, with payment to be made to the applicant only if and after the groundwater withdrawal permit is subsequently transferred from the groundwater trust to a third party; and

(14) The groundwater trust transfer contract attached to the order of the board granting the application is acceptable in all respects to the board.

#### **§ 711.522 Groundwater Trust Transfer Contract**

For each application to transfer a groundwater withdrawal permit into the groundwater trust that is granted, the Authority and the transferor must enter into a written groundwater trust transfer contract acceptable to and binding on the parties which sets forth and governs the details of the transfer of the groundwater withdrawal permit into the groundwater trust.

#### **§ 711.524 Rights and Obligations of Transferor**

Upon transfer of the groundwater withdrawal permit into the groundwater trust, the transferor shall have the following rights, restrictions, duties, and obligations:

(1) So long as the transferor's groundwater withdrawal permit is held in the groundwater trust, the transferor shall have no right to withdraw groundwater from the Aquifer pursuant to the transferred groundwater withdrawal permit;

(2) The transferred groundwater withdrawal permit shall remain in the groundwater 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 groundwater withdrawal permit transferred to the groundwater trust;

(4) The transferor shall not undertake any action which could lead to the invalidation of the transferred groundwater withdrawal 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 groundwater withdrawal permit transferred by the transferor to the groundwater trust without the prior written approval of the board. Further, the groundwater withdrawal permit transferred by the transferor to the groundwater trust 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 groundwater withdrawal permit is held in the groundwater trust, the transferor shall not be assessed by the Authority any Aquifer management fees for the groundwater withdrawal permit transferred to the groundwater trust, however, the transferor shall remain liable for any Aquifer management fees already assessed against him at the time the groundwater withdrawal permit is transferred into the groundwater trust.

#### **§ 711.526 Rights and Obligations of the Authority**

Upon transfer of the groundwater withdrawal permit into the groundwater trust, the Authority shall have the following rights, restrictions, duties, and obligations:

(1) So long as the groundwater withdrawal permit is held in the groundwater trust, the Authority shall have the right to sell, resell, transfer, hold the permit as means of managing overall demand, or retire the permit as may be provided in the groundwater trust transfer contract;

(2) The transferred groundwater withdrawal permit shall remain in the groundwater



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 groundwater withdrawal permit transferred to the groundwater trust;

(4) The groundwater withdrawal permit transferred by the transferor to the groundwater trust 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 groundwater withdrawal permit is held in the groundwater trust, the Authority shall not assess the transferor any Aquifer management fees for the groundwater withdrawal permit transferred to the groundwater trust, however, the transferor shall remain liable for any Aquifer management fees already assessed against him at the time the groundwater withdrawal permit is accepted into the groundwater trust.

#### **§ 711.528 Abandonment or Cancellation of Groundwater Withdrawal Permits**

When considering whether a groundwater withdrawal 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 groundwater withdrawal permit in question was held by the groundwater trust.

#### **§ 711.530 Offerings of Groundwater Withdrawal Permits Held in the Groundwater Trust**

(a) Groundwater withdrawal permits held in the groundwater 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, the general manager shall publish notice of offering that specifies the following:

(1) the amount of groundwater withdrawal permits being made available for transfer from the groundwater trust under the current offering;

(2) the Authority's offering price (or the procedure for determining the Authority's offering price) under the current offering;

(3) the deadline for submitting applications to transfer a groundwater withdrawal permit from the groundwater trust for the current offering; and

(4) the procedures for submitting applications for the current offering.

(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 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 Application to Transfer Groundwater Withdrawal Permit From the Groundwater Trust**

Any person may file an application to transfer a groundwater withdrawal permit from the groundwater trust consistent with § 707.415 (Applications to Transfer Permit) of subchapter D (Requirements for Applications, Registrations and Other Documents) of Chapter 707 (Procedure Before the Authority) of the Authority's rules during any period of time in which a notice of offering issued pursuant to § 711.530 of this chapter is in effect.

**§ 711.534 Processing of Application to Transfer Groundwater Withdrawal Permit From the Groundwater Trust**

All applications to transfer a groundwater withdrawal permit from the groundwater 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 an Application to Transfer Groundwater Withdrawal Permit From the Groundwater Trust**

(a) The decision to grant or deny an application to transfer a groundwater withdrawal permit from the groundwater trust is completely at the discretion of the board. The decision to grant or deny the application is final and non-appealable.

(b) The board may grant an application to transfer groundwater withdrawal permit from the groundwater trust if it finds that:

(1) The requirements of § 711.352(1)-(5) (Basis for Granting Applications to Transfer) of subchapter L (Transfers) of this chapter are met;

(2) The applicant has the legal authority to make the application;

(3) The requirements of subchapter L (Transfers) of this chapter are met;

(4) The proposed use of the groundwater right is reasonably related to the stated purposes of the groundwater trust;

(5) The groundwater withdrawal permit account in the groundwater trust is adequate and sufficient for the proposed transfer by the applicant;

(6) The applicant is in compliance with all applicable provisions of the Act, the Authority's rules, and all other laws applicable to the groundwater withdrawal permit in question;

(7) The applicant's history of compliance with the Act, the Authority's rules and other laws applicable to the Aquifer is good;

(8) The trust term is consistent with the Authority's management and administration objectives for the groundwater trust;

(9) The offering price is consistent with the Authority's management and administrative objectives for the groundwater trust;

(10) The purpose of the transfer is consistent with the Authority's management and administrative objectives for the groundwater trust;

(11) The applicant has sufficient funds available to pay for the transfer of the groundwater withdrawal permit; and

(12) The groundwater withdrawal permit transfer contract attached to the order of the board granting the application is acceptable to the board in all respects.

#### **§ 711.538 Groundwater Withdrawal Permit Transfer Contracts**

For each application to transfer a groundwater withdrawal permit from the groundwater trust that is granted, the Authority and the transferee must enter into a written groundwater withdrawal permit transfer contract acceptable to and binding on the parties which sets forth and governs the details of the transfer of the groundwater withdrawal permit from the groundwater trust.

#### **§ 711.540 Expedited Transfers From the Groundwater Trust**

The provisions of §§ 711.530 – 711.538 of this chapter notwithstanding, a transfer of a groundwater withdrawal permit from the groundwater trust may be made by the Authority pursuant to the special procedures set out in § 707.518(b)-(e) (Special Procedures Regarding Emergency Permits) of subchapter E (Actions on Applications and Registrations by the Authority) of Chapter 707 (Procedure Before the Authority) of the Authority's rules.

## **CHAPTER 713. WATER QUALITY**

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#### **Section**

713.1 Definitions

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

**[FRs Not Yet Adopted]**

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**Section**

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## **Subchapter A. Definitions**

### **Section**

713.1 Definitions

### **§ 713.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Abandoned well** - A well that has not been in use for six (6) consecutive months. A well is considered to be in use if:

(A) the well is not a deteriorated well, contains the casing, pump, and pump column in good condition and, where required, is properly registered with the Authority and, where required, is permitted by the Authority or qualifies for interim authorization status; or

(B) the well is not a deteriorated well, has been capped and, where required, is properly registered with the Authority and, where required, is permitted by the Authority or qualifies for interim authorization status.

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

(3) **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; or

(C) that performs the functions set out in § 713.1(28)(A)-(H).

(4) **Artesian well** – A well where the groundwater level or potentiometric surface is above the top of the geologic unit containing the aquifer.

(5) **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.

(6) **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.

(7) Capped well - A well that is closed or capped 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.

(8) 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. Casing shall conform to the standards provided in § 713.211 (Standards of Completion for Wells).

(9) 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.

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

(11) 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.

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

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

(14) Constituents - Elements, ions, compounds, or substances that may cause the degradation of the soil or ground water.

(15) 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.

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

(17) 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.

(18) 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.

(19) 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.

(20) Dry litter poultry facility - Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(21) 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.

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

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

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

(25) Granular sodium bentonite - Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) that has the specific characteristic of swelling in freshwater.

(26) 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) 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.

(C) Cement-bentonite grout – A mixture of one (1) 94-pound sack of 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.

(27) 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, 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, or any solid waste, or other substance that is designated to be hazardous by the commission, pursuant to the TEXAS WATER CODE § 26.263 or Texas Health and Safety Code § 361.003.

(28) 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.

(29) Injection well driller - A person who drills, bores, cores, alters, or constructs an injection 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 an injection well driller and is not primarily responsible for the drilling operation.

(30) 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.

(31) 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.

(32) Licensed driller - Any person who holds a license issued pursuant to the provisions of Chapter 51 or Chapter 1901, TEXAS OCCUPATIONS CODE.

(33) Licensed pump installer - A person who holds a license issued under Chapter 51 or Chapter 1902, TEXAS OCCUPATIONS CODE.

(34) 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.

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

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

(37) 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.

(38) 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).

(39) 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.

(40) 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.

(41) 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.

(42) 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.

(43) Public water system - A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the commission in chapter 290, 30 TEX. ADMIN. CODE.

(44) 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.

(45) 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.

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

(47) Regulated substance -

(A) any substance designated as a hazardous substance 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, 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, or any solid waste, or other substance that is designated to be hazardous by the commission, pursuant to the TEXAS WATER CODE § 26.263 or Texas Health and Safety Code § 361.003; or

(B) petroleum or petroleum product.

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

(49) 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.

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

(51) 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.

(52) 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.”

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

(54) 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.

(55) 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.

(56) Water table well – A well where the groundwater level or potentiometric surface is below the top of the geologic unit containing the aquifer.

(57) 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.

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

(59) Well driller – A water well driller, injection well driller, dewatering well driller, or monitoring well driller, or any driller who holds a license pursuant to Chapter 1901 or 1902 of the TEXAS OCCUPATIONS CODE. The term includes the owner or operator of a well or the contractor or drilling supervisor. 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.

(60) 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.

(61) 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.

**Subchapter B. General Provisions**

**[FRs Not Yet Adopted]**

## **Subchapter C. Well Construction, Operation and Maintenance**

### **Section**

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### **§ 713.200 Purpose**

The purpose of this subchapter is to 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 certain well construction, operation, and maintenance activities, and Aquifer recharge activities to prevent the waste or pollution of groundwater in the Aquifer.

### **§ 713.2001 Applicability**

This subchapter applies to Aquifer wells located within the boundaries of the Authority.

### **§ 713.201      Responsibility**

(a) In addition to complying with the requirements of 16 TEX. ADMIN. CODE Chapter 76, all well drillers, landowners and persons engaging in an activity for which a well construction permit is required pursuant to § 711.12(a)(2)-(5) (Activities Requiring a Permit) shall adhere to the provisions of this chapter prescribing the location of wells and proper drilling, completion, operation, maintenance, capping, and plugging.

(b) All well drillers, landowners and persons engaging in an activity for which a well construction permit is required pursuant to § 711.12(a)(2)-(5) (Activities Requiring a Permit) are required to maintain at the site of the well construction activity a copy of the well construction permit issued in accordance with this subchapter authorizing such activity.

(c) No well driller shall commence an activity for which a well construction permit is required pursuant to § 711.12(a)(2)-(5) (Activities Requiring a Permit) without first obtaining a copy of the well construction permit issued in accordance with this subchapter authorizing such activity.

(d) Where a landowner or person engaging in an activity for which a well construction permit is required pursuant to § 711.12(a)(2)-(5) (Activities Requiring a Permit) denies a well driller access to the well to complete the well to established standards and thereby precludes the well driller from performing his or her duties under the TEXAS WATER CODE, 16 TEX. ADMIN. CODE ch. 76, or this chapter, the well 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 person authorizing the well work shall complete the well to established standards within ten days of notification by the general manager.

(e) Where a person or landowner engaging in an activity for which a well construction permit is required pursuant to § 711.12(a)(2)-(5) (Activities Requiring a Permit) denies a well driller access to the well that requires plugging or completion or otherwise precludes the well driller from plugging or completing the well that has encountered undesirable water or constituents, the well 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      Well Construction Permits**

(a) Any person seeking to perform one of the activities set forth in § 711.12(a)(2) - (4) of the Authority's rules (Activities Requiring a Permit) must file an application for a well construction permit with the Authority.

(b) Any person seeking to perform one of the activities set forth in § 711.12(a)(5) of the Authority's rules (Activities Requiring a Permit) must file an application for a well construction permit to construct well through the Aquifer.

(c) Any person seeking to construct, install, drill, equip, complete, or alter an injection well (as defined in § 713.1(28)) must file an application for a well construction permit



with the Authority.

(d) Well construction permits are transferable only as to ownership pursuant to subchapter L (Transfers) of chapter 711 (Groundwater Withdrawals) of the Authority's rules.

(e) A well constructed pursuant to a well construction permit must be completed within 180 days of the issuance of the permit. The permit term may be extended by one additional 180-day extension period by the general manager. In order to obtain such an extension, the holder of a well construction permit must submit a written request to the general manager explaining the need for the extension. If the holder of the well construction permit 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 the general manager may authorize the extension. Upon expiration of the term, including any extension granted, the permit automatically expires and is canceled.

(f) The Board shall grant an application for a well construction permit under subsection (a) if the following elements are established by convincing evidence:

- (1) the applicant paid the application fee;
- (2) the application identifies a proposed or an existing well(s);
- (3) the well head is or will be physically 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 physically located within and discharged directly from the aquifer;
- (6) the withdrawals are proposed to be placed to a beneficial use for domestic or livestock use, irrigation use, municipal use, or industrial use;
- (7) the place of use at which the withdrawals are proposed to be beneficially used is physically located within the boundaries of the Authority;
- (8) the applicant has a legal right to make withdrawals from the well;
- (9) the quantity of groundwater the well would be capable of producing, if constructed, is consistent with the quantity of groundwater the applicant proposes to produce pursuant to exempt well status or pursuant to a groundwater withdrawal permit;
- (10) the applicant is in compliance with other permits the applicant holds from the Authority;

(11) the proposed well construction and operation would not unreasonably negatively affect the aquifer or other permittees;

(12) the well will be constructed, operated and maintained consistent with all applicable local, state, and federal well construction, operation, and maintenance law;

(13) the well will be constructed, operated and maintained consistent with the standards and requirements of this chapter;

(14) the application complies with the Act; and

(15) the application complies with the rules of the Authority.

(g) The general manager shall grant an application for a well construction permit under subsection (b) if the following elements are established by convincing evidence:

(1) the applicant paid the application fee;

(2) the application identifies a proposed or an existing well(s);

(3) the well head is or will be physically located within the boundaries of the Authority;

(4) the well is a withdrawal point for groundwater;

(5) the applicant is in compliance with other permits the applicant holds from the Authority;

(6) the proposed well construction and operation would not unreasonably negatively affect the aquifer or other permittees;

(7) the well will be constructed, operated and maintained consistent with all applicable local, state, and federal well construction, operation, and maintenance law;

(8) the well will be constructed, operated and maintained consistent with the standards and requirements of this chapter;

(9) the application complies with the Act; and

(10) the application complies with the rules of the Authority.

#### **§ 713.204 Contents of Well Construction Permits**

Well construction permits issued by the Authority 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;
- (7) legal description of the location of the well, including:
  - (A) county;
  - (B) section, block and survey; and
  - (C) other adequate legal description, as may be required by the Authority;
- (8) identification of the specific legal authority of the applicant to make withdrawals of groundwater from the aquifer from the well;
- (9) the source of groundwater;
- (10) size of the pump, pumping rate, pumping method, and other construction specifications for metering or alternative measuring 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;
- (13) notice that the permit is subject to the limitations provided in the Act and these rules;
- (14) any other appropriate conditions on the well construction as determined by the Authority; and
- (15) any other information required by the board to implement the Act or the Authority's rules.

**§ 713.205 Drilling by Unlicensed or Unregistered Well Driller Prohibited**

No person may, within the geographical boundaries of the Authority, engage in the drilling, boring, coring, construction, alteration or modification of an Aquifer well unless the

person first:

(1) holds a well driller's license issued pursuant to the provisions of Chapter 51 or Chapter 1901, TEXAS OCCUPATIONS CODE; and

(2) registers with the Authority pursuant to § 707.429 of the Authority's rules (Edwards Aquifer Water Well Driller Registrations).

### **§ 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 (Standards of Completion for Wells) and 713.235 of this chapter (Chemical Injection, Chemigation and Foreign Substance Systems), 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 and in compliance with local groundwater district rules or incorporated city ordinances.

(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 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), of this section, 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) of this section, below.

(d) For non-exempt 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 wells classified as exempt in accordance with § 711.20 (Eligibility for Exempt Well Status), 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; or
- (B) the continuous injection method.

(f) The well driller or well owner shall within 60 days of the completion of the well:

(1) perform a constant discharge specific capacity test for a minimum of one hour and report the results to the Authority in gallons per minute per foot of drawdown. The report will include pumping rate, pumping time, and water level measurements obtained. This subpart does not apply to wells drilled through the Aquifer to deeper aquifers;

(2) perform a water level measurement and report the results to the Authority. This subpart does not apply to wells drilled through the Aquifer to deeper aquifers;

(3) 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,

and indicate the location of the well on a USGS 7.5 minute topographic map;

(4) 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. For non-exempt wells and exempt 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; and

(5) For wells drilled through the Aquifer to deeper aquifers, the geophysical log shall demonstrate that the Aquifer has been properly isolated from other aquifers.

(g) Logging technicians shall submit, on a form provided by the Authority, a statement certifying that the log for the well identified on the log header is true and correct.

(h) The well driller shall not use any material containing lead in constructing an Aquifer well.

(i) 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.

(j) 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 or plugged in accordance with this section and § 713.303 of this chapter (Standards for Plugging Wells).

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) 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 well driller to select the proper hydraulic collapse pressure for casing to be installed.

(4) A person seeking to construct a monitoring well shall apply for a variance from this subsection under § 713.239 (Alternative Minimum Standards) of this chapter, and then, in accordance with the variance, may use materials other than plastic or steel for casing, such as fluoropolymer, glass-fiber-reinforced epoxy, or various stainless steel alloys.

(p) Each well 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.

(q) Each well 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.

(r) 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 milligrams per liter (mg/l), shall be placed in the well as required by the American Water Works Association (AWWA), pursuant to ANST/AWWA C654-87 and the United States Environmental Protection Agency (EPA).

(s) 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**

In addition to the other requirements of this chapter, if a well 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 forthwith 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 well 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 milligrams per liter (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 milligrams per liter (mg/l) or if hydrocarbons are present.

(5) For class V injection wells that encounter undesirable water or constituents, the well 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 in addition to the other requirements of this chapter, be cased to prevent the mixing of water or constituent zones.

(b) Aquifer wells producing undesirable water or constituents shall, in addition to the other requirements of this chapter, 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 Aquifer Wells Drilled before the Effective Date of these Chapter 713 Rules**

(a) Aquifer wells drilled prior to the effective date of these Chapter 713 rules, will, unless abandoned, be grandfathered without further modification unless the well is found to be a threat to public health and safety or to water quality, or the well is not registered or, where required, properly permitted or operating pursuant to interim authorization status with the Authority. 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.

(b) If the annular space around the well casing at the surface is not adequately sealed as set forth in this section, 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 § 713.303 of this chapter (Standards for Plugging Wells) or repaired. Procedures for repairs shall be submitted to the general manager for approval prior to implementation.

(3) If a well driller or pump installer finds any of the procedures described by this section to be inapplicable, unworkable, or inadequate, alternative procedures may be employed provided that the proposed alternative procedures will prevent injury and pollution and that the procedures shall be submitted to the Authority for approval prior to their implementation and further provided that the Authority will not approve 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.

#### **§ 713.219 Modification of Wells**

If an Aquifer well constructed prior to the effective date of these Chapter 713 rules is modified, or repaired, the work shall include those changes necessary to make the well conform to this chapter.

(a) Activities that will invoke this rule include installing additional casing, repairing existing casing, adjusting the well depth, or any work that may affect the integrity of the annular space seal.

(b) Activities that will not invoke this rule 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.

#### **§ 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.

**§ 713.227 Authority Access**

With respect to any Aquifer well, the well and meter device, if a meter device is required, shall be made accessible to the Authority for the purposes of compliance inspection, meter reading, and water quality testing or water level measurement within 48 hours of notification from the Authority.

**§ 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 porous 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) The general manager of the Authority 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 well 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 Authority, 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:

(a) The landowner and well owner are responsible for complying with the rules and regulations under the standards set forth in this section. The well driller or pump installer shall inform the landowner and well owner of their duty to comply with the rules and regulations under the standards set forth in 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) of this section.

(1) Watertight joints, where applicable pursuant to the provisions of this rule, 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 rule.

(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.

(a) The landowner and well owner are responsible for complying with the rules and regulations under the standards set forth in this section. The well driller or pump installer shall inform the landowner and well owner of their duty to comply with the rules and regulations under the standards set forth in 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 A 112.14.1 regarding backwater valves. 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 the effective date of these Chapter 713 rules, 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 the Authority in writing for permission 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 Authority will not 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 well driller, or the party plugging the well, finds any of the requirements or procedures prescribed by subchapter C or D of this chapter 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 Authority will not approve an alternative method that is less protective of the Aquifer than the methods stated elsewhere in this section.

(b) Proposals 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 Authority 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 well 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 Department.

(b) Every well 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 well driller has failed to comply with this section. To avoid this presumption, the well driller may notify the Authority within 60 days after the date of expiration of a well construction permit if the activities authorized by a well construction permit have not been conducted.

#### **§ 713.243 Reporting Undesirable Water or Constituents**

(a) Each well 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 well 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 well 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 pursuant to 16 TEX. ADMIN. CODE § 76.701, as may be amended.

#### **§ 713.245 Advance Notice and Field Inspections**

To ensure compliance with this chapter, 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 well 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, equip, 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 they meet the criteria set forth in 30 TEX. ADMIN. CODE § 331.19.



## **Subchapter D. Abandoned Wells; Well Closures**

### **Section**

713.300	Purpose
713.3001	Applicability
713.301	Well Plugging and Capping
713.303	Standards for Plugging Wells
713.305	Permits to Plug a Well

### **§ 713.300 Purpose**

The purpose of this subchapter is to implement §§ 1.03(17) and (21), 1.08(a), 1.11(d)(8), 1.15(a) and (b), and 1.35(d) of the Act by regulating certain well closure activities to prevent the waste or pollution of groundwater in the Aquifer.

### **§ 713.3001 Applicability**

This subchapter applies to Aquifer wells located within the boundaries of the Authority.

### **§ 713.301 Well Plugging and Capping**

(a) It is the responsibility of the landowner and any person engaging in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) to cap or have capped, under the standards set forth in 16 TEX. ADMIN. CODE § 76.1004, as may be amended, any well that is open at the surface.

(b) It is the responsibility of the landowner and any person engaging in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) to plug or have plugged, under the standards set forth in § 713.303 (Standards for Plugging Wells) of this chapter, a well that is an abandoned well or a deteriorated well. Such plugging shall be completed within 180 days from the date on which the landowner or other person learns of the well's abandonment or deteriorated condition, or by the date specified in any permit to plug the well issued by the Authority, whichever is later.

(c) All well drillers, landowners and persons engaging in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) are required to maintain at the site of the well plugging activity a copy of the well plugging permit issued in accordance with this subchapter authorizing such activity.

(d) No well driller shall engage in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) to plug or have plugged an Aquifer well without first obtaining a copy of the well plugging permit issued in accordance with this subchapter authorizing such activity.

(e) It is the responsibility of each well driller to inform the landowner and person engaging in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) that the well must be plugged by the landowner, licensed driller, or a licensed pump installer, under the standards set forth in § 713.303 (Standards for Plugging Wells) of this chapter, if the well is an abandoned well or a deteriorated well.

(f) It is the responsibility of the licensed driller, landowner and person engaging in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) to see that any Aquifer well which encounters undesirable water or constituents is plugged or is converted into a monitoring well under the standards set forth in § 713.211 of this chapter (Standards of Completion for Wells) or § 713.303 of this chapter (Standards for Plugging Wells).

(g) In addition to the other requirements of this section, it is the responsibility of the landowner and person engaging in an activity for which a well plugging permit is required pursuant to this section and § 711.12(a)(2)-(5) (Activities Requiring a Permit) to plug or have plugged, under the standards set forth in § 713.303 (Standards for Plugging Wells), 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 completes, caps or plugs a well described in subsections (a), (b), (d) or (e) of this section shall, within 30 days after capping or plugging is complete, submit to the Authority a copy of the State Plugging Report required by the Department pursuant to 16 TEX. ADMIN. CODE § 76.700(2), as may be amended.

(i) It is the responsibility of the well driller of a newly drilled well and the 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. 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.

### **§ 713.303 Standards for Plugging Wells**

Aquifer wells which are required to be plugged under the standards set forth in § 713.301 of this chapter (Well Plugging and Capping) shall be plugged in accordance with the following specifications:

(a) Preparation of Aquifer wells to be plugged. Before plugging, the well driller shall measure the depth and check to ensure that there are no obstructions within the well that may interfere with plugging operations. The well driller shall pull, perforate, or drill out screens, casings and liner pipes whenever practicable to assure placement of an effective seal. The well driller 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 well driller 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 well driller shall disinfect the well and fill materials by using a disinfecting solution with a minimum chlorine concentration of 50 milligrams per liter (mg/l), placed in the well. The well driller 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 well driller shall completely fill the well, including the annular space and casing, with the grout appropriate for the well plugging circumstance.

(B) The well driller 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 well driller 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 well driller 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 well driller 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 well driller 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 well driller 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 well driller 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 well driller 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 well driller 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 well driller 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) of this section, 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.

(e) Well drillers may petition the general manager in writing for an alternative method of plugging 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 Authority will not approve an alternative method that is less protective of the Aquifer than the methods stated elsewhere in this section.

### **§ 713.305 Permits to Plug a Well**

(a) Any person seeking to plug a well or otherwise required to have a well plugged pursuant to § 713.301 (Well Plugging and Capping) must file an application for a permit to plug a well with the Authority and obtain such a permit before plugging the well.

(b) The well for which the permit is issued must be plugged within 90 days of the issuance of the permit or, by the date specified in § 713.301(b) (Well Plugging and Capping), if applicable, whichever is later.

(c) The Board 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 physically 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 permittees; and
- (5) The well will be plugged consistent with the requirements of this chapter and any applicable local, state, or federal laws.

(d) 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 chapter.

(e) 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 written 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 chapter or the terms of the permit to plug a well.

**Subchapter E. Well Spacing**

**[FRs Not Yet Adopted]**

**Subchapter F. Well Head Protection**

**[FRs Not Yet Adopted]**

## **Subchapter G. Recharge Zone Protection**

### **Section**

713.600	Definitions
713.601	Purpose
713.603	Applicability
713.604	Determining the Location of the Recharge Zone
713.605	Exemptions for Aboveground and Underground Storage Tank Systems
713.607	General Prohibition Against New Aboveground or Underground Storage Tank Systems
713.609	Requirements for Major Modifications
713.611	Other General Provisions

### **§ 713.600 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) 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; it does not refer to tanks located outside of the recharge zone.

(2) Aboveground storage tank - a nonvehicular device that is 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 to contain an accumulation of regulated substances. Such term does not include any:

(A) Tanks with a combined capacity of 600 gallons or less used for storing motor fuel for noncommercial purposes;

(B) Tanks used for storing heating oil for consumptive use on the premises where stored;

(C) Tanks associated with an on-site sewage disposal system as defined by TEXAS HEALTH AND SAFETY CODE § 366.002;

(D) Pipeline facility (including gathering lines);

(i) which is regulated under 49 U.S.C. §§ 60101 et seq.; or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in 49 U.S.C. §§ 60101 et seq., and which is determined by the Secretary of the United States Department of Transportation to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;



- (E) Surface impoundment, pit, pond, or lagoon;
  - (F) Stormwater or wastewater collection system that does not contain a regulated substance;
  - (G) Flow-through process tank that does not contain a regulated substance;
  - (H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
  - (I) Tanks with a combined capacity of 110 gallons or less.
- (3) Aboveground storage tank facility - the site, tract, or other area where one or more aboveground storage tank systems are located, including all adjoining contiguous land and associated improvements owned by the same property owner.
- (4) Aboveground storage tank system – any one or a combination of aboveground storage tanks, including any associated piping.
- (5) AST - an aboveground storage tank.
- (6) AST System - an aboveground storage tank system.
- (7) Operator - any person in day-to-day control of and having responsibility for the daily operation of the underground or aboveground storage tank system.
- (8) Owner - a person who currently holds legal possession or ownership of a total or partial interest in an AST or a UST. For the purposes of this chapter, 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 TEXAS 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.
- (9) Piping - all pipes in a AST or UST system, 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.
- (10) Secondary containment - a containment method by which a secondary wall, jacket, or barrier is installed around the primary storage vessel (e.g., tank or piping) in a manner designed to prevent a release of the contents of the primary storage vessel from migrating beyond the secondary wall or barrier before the release can be detected. Secondary containment

systems include, but are not limited to: double-wall tank and/or piping systems, and impervious liners, jackets, containment boots, sumps, or vaults surrounding a primary (single-wall) tank and/or piping system.

(11) Tertiary containment - a containment method approved and installed by an installer licensed by the Texas Commission on Environmental Quality by which an additional wall or barrier is installed outside of the secondary storage vessel (e.g., tank or piping) or other secondary barrier in a manner designed to prevent a release 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.

(12) Underground storage tank - 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. Such term does not include any:

(A) tanks used for storing heating oil for consumptive use on the premises where stored;

(B) tanks associated with an on-site sewage disposal system as defined by TEXAS HEALTH AND SAFETY CODE § 366.002;

(C) pipeline facility (including gathering lines);

(i) which is regulated under 49 U.S.C. §§ 60101 et seq.; or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in 49 U.S.C. §§ 60101 et seq., and which is determined by the Secretary of the United States Department of Transportation to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(D) surface impoundment, pit, pond, or lagoon;

(E) stormwater or wastewater collection system that does not contain a regulated substance;

(F) flow-through process tanks that do not contain a regulated substance;

(G) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(H) storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(13) Underground storage tank facility - the site, tract, or other defined area where one or more underground storage tank systems are located, including all contiguous land and associated improvements owned by the same property owner.

(14) Underground storage tank system - any one or combination of underground storage tanks and/or 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 ten percent or more beneath the surface of the ground.

(15) UST - an underground storage tank.

(16) UST system - an underground storage tank system.

### **§ 713.601 Purpose**

(a) The purpose of this subchapter is to regulate certain activities having the potential for polluting the Aquifer and hydrologically connected surface streams in order to protect existing and potential uses of groundwater. The activities addressed are those connected with AST and UST systems containing regulated substances located in, above, or on the recharge zone of the Aquifer.

(b) Consistent with § 1.01 and § 1.08(a) of the Act, and § 26.401 of the TEXAS WATER CODE, 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 hydrologically connected surface waters.

### **§ 713.603 Applicability**

This subchapter applies to existing AST and UST systems and those systems proposed to be installed or constructed in, above, or on the recharge zone of the Aquifer.

### **§ 713.604 Determining the Location of the Recharge Zone**

(a) The approximate location of the recharge zone is delineated on the maps identified below in Table 1 – Official Recharge Zone Maps of the Edwards Aquifer Authority incorporated by reference into this rule. These maps are hereby adopted by the Authority as its official recharge zone maps and are located at the Authority’s offices.

(b) Whether a specific site or activity is physically located on the recharge zone will be determined by the general manager. In making this determination, the general manager must base his decision by reference to either the Authority’s official maps, or site specific geological

data, as the general manager may in his 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 zone location determinations are to be processed according to the procedures set forth in § 707.520 (Special Procedures Regarding Determinations as to the Location of the Recharge Zone of the Aquifer).

<b>TABLE 1 - OFFICIAL RECHARGE 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>
Bull Waterhole	June 1999
Salmon Peak	June 1999
Turkey Mountain	March 1974
Laguna	June 1999
Mustang Waterhole	March 1974
Chalk Bluff	March 1974
Sycamore Mountain	June 1999
Lake Creek	June 1999
Reagan Wells	June 1999
Deep Creek	June 1999
Sevenmile Hill	March 1974
Knippa	March 1974
Concan	June 1999
Magers Crossing	June 1999
Utopia	March 1974
Trio	March 1974
Comanche Waterhole	March 1974
Flatrock Crossing	March 1974
Texas Mountain	March 1974
Sabinal NE	March 1974
Mustang Valley	March 1974
Twin Hollow	March 1974
Timber Creek	March 1974
Quihi	March 1974
Riomedina	March 1974

<b>TABLE 1 - OFFICIAL RECHARGE 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>
Medina Lake	March 1974
San Geronimo	March 1974
Helotes	June 1999
Van Raub	March 1974
Camp Bullis	March 1974
Castle Hills	June 1999
Longhorn	March 1974
Bulverde	March 1974
Bergheim	March 1974
Anhalt	March 1974
Smithson Valley	March 1974
Bat Cave	March 1974
Schertz	March 1974
New Braunfels West	March 1974
Sattler	March 1974
Devils Backbone	March 1974
New Braunfels East	March 1974
Hunter	March 1974
San Marcos South	March 1974
Wimberley	March 1974
San Marcos North	March 1974
Driftwood	March 1974
Mountain City	March 1974
Buda	March 1974
Signal Hill	July 1984

**§ 713.605 Exemptions for Aboveground and Underground Storage Tank Systems**

(a) The following AST containment devices (including any connected piping) are exempt from regulation under this subchapter:

(1) Tanks with a combined capacity of 600 gallons or less used for storing motor fuel for purposes other than sale;

- (2) Tanks with a combined capacity of 110 gallons or less;
- (3) Tanks used for storing heating oil for consumptive use on the premises where stored;
- (4) Tanks associated with an on-site sewage disposal system as defined by TEXAS HEALTH AND 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 pursuant to the Natural Resources Code, § 91.101;
- (9) Transformers or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States Environmental Protection Agency under Title 40 Code of Federal Regulations, Part 280;
- (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) the Natural Resources Code, Chapter 111;
  - (B) the Natural Resources Code, Chapter 117; or
  - (C) Texas Civil Statutes, Articles 6053-1 and 6053-2;
- (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 pursuant to the federal Clean Water Act, under either § 402 or § 307(b), 33 U.S.C. § 1251, et seq.;

(B) permitted pursuant to the TEXAS WATER CODE, Chapter 26; or

(C) a structure which is part of a Water Pollution Abatement Plan (WPAP) approved pursuant to 30 TEX. ADMIN. CODE Chapter 213;

(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, and where the regulated substances are routinely removed within 48 hours of the discovery of the release, provided that such tanks must be inspected for a release no less than once every month;

(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; and

(16) Tanks with a combined capacity of 600 gallons or less used for storing motor fuel for the fueling of unlicensed vehicles for commercial purposes.

(b) The following UST containment devices (including any connected piping) are exempt from regulation under this subchapter:

(1) Tanks used for storing heating oil for consumptive use on the premises where stored;

(2) Tanks associated with an on-site sewage disposal system as defined by TEXAS HEALTH AND SAFETY CODE § 366.002;

(3) Surface impoundments, pits, ponds, or lagoons;

(4) Stormwater or wastewater collection systems that do not contain a regulated substance;

(5) Flow-through process tanks that do not contain a regulated substance;

(6) 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 pursuant to the Natural Resources Code, § 91.101;

(7) Transformers or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States Environmental Protection Agency under Title 40 Code of Federal Regulations, Part 280;

(8) 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.);

(9) Interstate pipeline facilities if such facilities are regulated under any of the following state laws:

(A) the Natural Resources Code, Chapter 111;

(B) the Natural Resources Code, Chapter 117; or

(C) Texas Civil Statutes, Articles 6053-1 and 6053-2;

(10) 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 pursuant to the federal Clean Water Act, under either § 402 or § 307(b), 33 U.S.C. § 1251, et seq.;

(B) permitted pursuant to the TEXAS WATER CODE, Chapter 26; or

(C) a structure which is part of a Water Pollution Abatement Plan (WPAP) approved pursuant to 30 TEX. ADMIN. CODE Chapter 213;

(11) Sumps which have a capacity of less than 110 gallons;

(12) 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, overflow, or other unplanned release, and where the regulated substances are routinely removed within 48 hours of the discovery of the release, provided that such tanks must be inspected for a release no less than once every month; and

(13) Any UST 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.



(c) Partial exemption. 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 TEXAS WATER CODE § 26.344(e), are also exempt from regulation under this subchapter.

(d) Upon request by the Authority, the owner and operator of a tank claimed to be exempted under this section must provide appropriate documentation or other information in a timely manner to support that claim.

**§ 713.607 General Prohibition Against New Aboveground or Underground Storage Tanks and Systems**

On or after the effective date of these rules, no person may install or have installed an AST or UST system for the purpose of storing or otherwise containing regulated substances in, above, or on the recharge zone.

**§ 713.609 Requirements for Major Modifications**

(a) On or after the effective date of these rules, any owner or operator who intends to perform or have performed any major modification on an AST system located in, above, or on the recharge zone, as listed in subsection (c) of this section, must incorporate a method for tertiary containment.

(b) On or after the effective date of these rules, any owner or operator who intends to perform or have performed any major modification on a UST system located in, above, or on the recharge zone, as listed in subsection (c) of this section, must:

(1) incorporate a method for tertiary containment approved by the Authority;  
or

(2) remove the UST system.

(c) A major modification for purposes of this section includes any of the following:

(1) tank replacement; or

(2) installation of new or replacement piping for existing tanks.

(d) The requirements of this section are not applicable to routine and minor maintenance activities related to the tank and piping systems, such as: tank repairs; 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 overflow prevention equipment, or monitoring well; 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 system components for any purpose other than required upgrading. Additionally, the requirements of this section are not applicable to

emergency actions to halt or prevent leaks or ruptures.

(e) Any owner or operator who intends to perform or have performed any major modification on an existing AST system, as listed in subsection (c) of this section, must prior to commencing the modification, obtain an approval letter from the general manager of the Authority, approving the method of tertiary containment to be used. Any owner or operator subject to this subsection shall provide notice to the Authority at least two business days prior to the initiation of any modification.

(f) Any owner or operator who intends to perform or have performed any major modification on an existing UST system, as listed in subsection (c) of this section, must, prior to commencing the modification, obtain an approval letter from the general manager of the Authority, approving the method of tertiary containment to be used. Any owner or operator subject to this subsection shall provide notice to the Authority at least two business days prior to the initiation of any modification.

(g) In any case where the requirements of this section apply, the Authority may enter the land on which an AST or UST tank system is situated, for purposes of inspecting the AST or UST tank systems.

#### **§ 713.611 Other General Provisions**

(a) Other regulations. Compliance with the provisions of this subchapter by an owner or operator of an AST or UST system does not relieve such owner or operator from the responsibility of compliance with any other regulations directly and/or indirectly affecting such tanks and the stored regulated substances, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Department of Health, State Board of Insurance, Texas Commission on Fire Protection, Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, the Commission, and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(b) Owner and operator responsibility.

(1) Owners and operators 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 system;

(2) The Authority shall consider the person who is in day-to-day control of an AST or UST system at a site that is in violation of this section to be the:

(A) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(B) primary subject of an enforcement action or order;

(3) The liability of certain taxing units as owners or operators of AST and UST systems is conditionally and specifically limited, in accordance with the provisions and conditions of the TEXAS WATER CODE, § 26.3516;

(4) The liability of certain lenders as owners or operators of AST and UST systems is conditionally and specifically limited, in accordance with the provisions and conditions of the TEXAS WATER CODE, § 26.3514;

(5) The liability of certain corporate fiduciaries as owners or operators of AST and UST systems is conditionally and specifically limited, in accordance with the provisions and conditions of the TEXAS WATER CODE, § 26.3515; and

(6) Except as otherwise provided for in this subchapter, the owners or operators of AST and UST systems shall operate and maintain the systems in accordance with 30 TEX. ADMIN. CODE Chapter 334 (Underground and Aboveground Storage Tanks).

(c) Irrespective of any other provision in these rules, fifteen years from the effective date of these rules, all AST systems existing on or after the effective date and located in, on, or above the recharge zone shall be removed or shall incorporate a method for tertiary containment approved by the Authority.

(d) Irrespective of any other provision in these rules, thirty years from the date of the installation of a UST system, all UST systems must:

- (1) incorporate a method for tertiary containment approved by the Authority;
- or
- (2) be removed.

(e) Irrespective of any other provision in these rules, any UST system for which a leak is determined to exist pursuant to 30 TEX. ADMIN. CODE § 334.74 must:

- (1) incorporate a method for tertiary containment approved by the Authority;
- or
- (2) be removed.

## **CHAPTER 715. COMPREHENSIVE WATER MANAGEMENT**

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**Subchapter H. Pools and Index Wells**

**[FRs Not Yet Adopted]**

## **Subchapter A. Definitions**

### **Section**

715.1 Definitions

### **§ 715.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) **Adjusted Quarterly Withdrawal Amount** – The amount of groundwater that a user may withdraw in any quarter in which one or more demand management or critical period stages is in effect, as calculated pursuant to § 715.218 (Interruption of Withdrawals During Demand Management and Critical Periods) of this chapter.

(2) **Agricultural water conservation loan** - A loan from the Authority to a borrower for a project.

(3) **Agricultural water conservation loan fund** - A special reserve fund created in the Authority's general fund pursuant to § 715.140 (Agricultural Water Conservation Loan Fund) of this chapter.

(4) **Borrower** - A person that receives a loan from the Authority.

(5) **c.f.s.** - Cubic feet per second.

(6) **Closing** - The time at which all of the requirements for the funding of a loan have been completed under § 715.160 (Loan Closing) of this chapter and an exchange of debt for delivery of funds to either the applicant or an equipment vendor, escrow agent, bank, or a trust agent for the applicant's benefit has occurred.

(7) **Comal Springs** – Groundwater emerging from the Aquifer in Landa Park in the City of New Braunfels, Texas, 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.

(8) **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.

(9) **Contractual user** - A person who uses groundwater from the Aquifer pursuant to a

contract with a permitted user or an interim authorization user for his own use or resale to a third party irrespective of whether the person:

(A) is delivered the water on a metered or unmetered basis at a discrete delivery point; or

(B) directly withdraws the water at an authorized point of withdrawal owned or operated by the contractual user based on a transfer of a groundwater withdrawal permit or interim authorization status.

(10) Critical period - Any day of a calendar year when the notice of commencement of critical period of the general manager is in effect in accordance with § 715.216 (Commencement and Expiration of Critical Period Management for the San Antonio and Uvalde Pools) of this chapter.

(11) Crop irrigation - Has the meaning of “irrigation use” as defined in § 1.03(12) of the Act and § 702.1(b)(28) of the Authority’s rules.

(12) Debt - All bonds, notes, certificates, book-entry obligations, and other obligations issued or authorized to be issued by an applicant for an agricultural water conservation loan.

(13) Demand management period - Any day of a calendar year when the notice of commencement of demand management period of the general manager is in effect in accordance with § 715.212 (Commencement and Expiration of Demand Management Period for the San Antonio Pool) of this chapter.

(14) Discretionary use - The beneficial use of groundwater from the Aquifer as determined by an applicant or permittee.

(15) Escrow - The transfer of funds to an escrow agent or trust agent.

(16) Fund - Agricultural water conservation loan fund maintained by the Authority.

(17) Interim authorization user - A person who withdraws groundwater from the Aquifer from a well with interim authorization status.

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

(19) Loan - Agricultural water conservation loan.

(20) Nondiscretionary use - Any use of groundwater from the Aquifer that is not discretionary use as determined by an applicant or permittee.

(21) Nonresidential landscape irrigation - Any landscape irrigation that is not residential landscape irrigation.



(22) 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.

(23) Permitted user - A person who owns a groundwater withdrawal permit issued by the Authority.

(24) Project - Improvements installed or constructed with loan proceeds obtained in full or part from an agricultural water conservation loan.

(25) Quarterly Scheduled Withdrawal Amount - The amount of groundwater that a person plans to and is authorized to withdraw for each quarter in which a demand management or critical period is in effect, as stated in the person's demand management and critical period withdrawal schedule filed with the Authority pursuant to subsection (c) of § 715.204 (Authorized Withdrawals; Demand Management and Critical Period Withdrawal Schedules) of this chapter.

(26) Recreational and pleasure use - The beneficial use of groundwater from the Aquifer for the following:

- (A) fishing;
- (B) swimming;
- (C) boating; or
- (D) hunting.

(27) Release - The time at which funds are made available to a borrower pursuant to a loan agreement.

(28) Residential landscape irrigation - The use of water from the Aquifer to grow, maintain, or sustain ornamental, decorative, or other plant cover of yards, gardens, or the grounds associated with a single-family or duplex residence.

(29) San Marcos Springs - Groundwater emerging from the Aquifer at Spring Lake in the City of San Marcos, Texas, 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.

(30) 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.

(31) 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.

## **Subchapter B. Variance Procedures**

### **Section**

715.10	Variance Applications
715.12	Basis for Granting of Variance Applications
715.14	Variance Conditions
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### **§ 715.10 Variance Applications**

Any person seeking a variance from the operation of this chapter may file with the Authority an application for a variance pursuant to § 707.419 (Applications for Variance from Comprehensive Water Management Rules) of Chapter 707 (Procedure Before the Authority) of the Authority's rules.

### **§ 715.12 Basis for Granting of Variance Applications**

By order, the board shall grant an application for variance if it finds that all of the following elements are established by convincing evidence:

- (1) the applicant paid the application fee;
- (2) the applicant has specifically identified the rules and requirements from which a variance is sought;
- (3) all applicable reports have been filed;
- (4) the applicant has provided a detailed explanation as to why the variance should be granted;
- (5) granting the variance will nonetheless 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 or group of persons;
- (7) the application complies with the Act;
- (8) the application complies with the Authority's rules; 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 which shall be set out in the order granting the variance application.

(b) The board may require a person granted a variance to file reports with the Authority containing such information as is relevant to monitoring the continuing appropriateness of the variance and compliance with the terms and conditions of the variance.

**§ 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 Rules**

### **Part 1 Groundwater Conservation Plans**

#### **Section**

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715.126	Landscape Watering

#### **§ 715.100 Purpose**

The purpose of this part of this subchapter is to implement §§ 1.01, 1.14(a), 1.23 and 1.25 of the Act and thereby ensure the implementation of reasonably effective water conservation measures by persons beneficially using groundwater from the Aquifer. Implementation of this subchapter will encourage, promote, and document conservation measures by users of the Aquifer within the Authority's jurisdiction. The development and implementation of groundwater conservation plans will assist the Authority and the users of groundwater from the Aquifer with 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 the withdrawal or beneficial use of groundwater from the Aquifer by:

- (1) permittees;
- (2) interim authorization users;

(3) contractual users who directly withdraw groundwater from the Aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer from a permitted or interim authorization user; and

(4) owners of exempt wells.

#### **§ 715.104 Duty to Conserve**

All permitted users, interim authorization users, contractual users, and owners of exempt wells have a duty to implement all reasonable measures to conserve the use of groundwater withdrawn from the Aquifer and take all reasonable measures to be conservative in water use. This duty is in effect on a year-round basis.

#### **§ 715.106 Duty to Prepare and Implement Groundwater Conservation Plan**

(a) Except as provided by subsections (b) and (c), all permitted users, interim authorization users and contractual users (including transferees of leases from permitted or interim authorization users), who directly withdraw groundwater from the Aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer of a groundwater withdrawal permit or interim authorization status, shall prepare and implement a groundwater conservation plan in accordance with this subchapter.

(b) An irrigation user is only required to prepare and implement a groundwater conservation plan if:

(1) the irrigation user's application efficiency, as demonstrated by an Irrigation Assessment Form submitted to the Authority, is less than 60%; or

(2) the irrigation user seeks to convert base irrigation groundwater to unrestricted irrigation groundwater.

(c) Owners of non-exempt wells with interim authorization status or an initial regular permit authorized to withdraw no more than three acre-feet of groundwater annually are not required to prepare and implement a groundwater conservation plan.

(d) All groundwater conservation plans shall be effective at all times of the year.

#### **§ 715.108 Condition of Withdrawals**

(a) After December 31, 2004, no person required by § 715.106 (Duty to Prepare and Implement Groundwater Conservation Plan) to prepare and implement a groundwater conservation plan may withdraw groundwater from the Aquifer without having submitted an administratively complete groundwater conservation plan to the general manager.

(b) All persons required by § 715.106 (Duty to Prepare and Implement Groundwater Conservation Plan) to prepare and implement a groundwater conservation plan shall make all

withdrawals and place the water to beneficial use consistent with an approved groundwater conservation plan applicable to the person, according to the schedule for implementation of the groundwater conservation plan provided in § 715.110(m) of this subchapter (Best Management Practices).

(c) Except as provided by § 715.106(b) and (c) (Duty to Prepare and Implement Groundwater Conservation Plan), the duty to withdraw and use groundwater from the Aquifer consistent with an applicable groundwater conservation plan shall be made a condition of any groundwater withdrawal permit issued by the Board, or any transfer of any rights to withdraw groundwater under interim authorization status or a groundwater withdrawal permit.

### **§ 715.110 Best Management Practices**

(a) Each BMP as set forth 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 which must be accomplished in order to properly complete BMP implementation. The Documentation Requirements section outlines the information that must be submitted to the Authority to confirm BMP implementation. Except as provided in § 715.112 (Water Savings Assumptions) of this chapter, the water savings assumptions section provides water savings estimates and demonstrates how savings should be calculated.

(b) The BMPs for municipal users are found in Appendix B of the Authority's Groundwater Conservation Plan.

(c) The BMPs for industrial users are found in Appendix C of the Authority's Groundwater Conservation Plan.

(d) The BMPs for irrigation users are found in Appendix D of the Authority's Groundwater Conservation Plan.

(e) All municipal users must implement BMPs Muni-1 through Muni-4;

(f) In addition to implementing BMPs Muni-1 through Muni-4, municipal users with 500 to 3,300 connections (small systems) must implement no less than five additional BMPs to be chosen from BMPs Muni-5 through Muni-16;

(g) In addition to implementing BMPs Muni-1 through Muni-4, municipal users with 3,300 to 10,000 connections (medium systems) must implement no less than seven additional BMPs to be chosen from BMPs Muni-5 through Muni-16;

(h) In addition to implementing BMPs Muni-1 through Muni-4, municipal users with more than 10,000 connections (large systems) must implement no less than nine additional BMPs to be chosen from BMPs Muni-5 through Muni-16.

- (i) All industrial users must implement BMPs Ind-1 and Ind-2.
- (j) If applicable, industrial users must implement BMPs Ind-3 through Ind-5.
- (k) If applicable, industrial users must implement BMPs Ind-6 through Ind-10.

(l) Except as provided by § 715.106(b) and (c) (Duty to Prepare and Implement Groundwater Conservation Plan), all irrigation users must implement BMPs Irr-1 and one BMP to be chosen from BMPs Irr-2 through Irr-6.

(m) All persons withdrawing groundwater from the Aquifer shall implement the BMPs applicable to them according to the following schedule:

USER CATEGORY	BMP	IMPLEMENTATION SCHEDULE
Municipal user  – less than 500 connections  – 500 to 3,300 connections  – 3,300 to 10,000 connections  – More than 10,000 connections	– Nos. 1 to 4  – Nos. 1 to 4 and 5 from Nos. 5 to 16  – Nos. 1 to 4 and 7 from Nos. 5 to 16  – Nos. 1 to 4 and 9 from Nos. 5 to 16	– March 31, 2004  – March 31, 2004, and as specified in the groundwater conservation plan  – March 31, 2004, and as specified in the groundwater conservation plan  – March 31, 2004, and as specified in the groundwater conservation plan
Industrial user  – Industrial user required by the Authority’s Groundwater Conservation Plan to implement additional BMPs	Nos. 1 to 2  – Nos. 1 to 2 and additional BMPs from Nos. 3 to 10	June 30, 2004  – June 30, 2004, and as specified in the groundwater conservation plan
Irrigation user  – Irrigation user required to submit a plan by § 715.106(b)  – Optional	– No. 1 and 1 from Nos. 2 to 6  – Nos. 7-12	–September 30, 2004, and as specified in the groundwater conservation plan  – As specified in the groundwater conservation plan



(n) No person required by § 715.106 (Duty to Prepare and Implement Groundwater Conservation Plan) to prepare and implement a groundwater conservation plan may withdraw groundwater from the Aquifer if they do not timely implement the BMPs on or before the dates and times set out in subsection (m).

(o) Persons withdrawing groundwater from the Aquifer may work with the Authority or with other persons making withdrawals of groundwater from the Aquifer to achieve BMP implementation. When implementing BMPs through cooperative programs with either the Authority or other persons, water savings must be calculated for each applicant separately, so as not to double count savings.

(p) Persons withdrawing groundwater from the Aquifer utilizing alternative water in conjunction with Aquifer groundwater may be eligible to reduce BMP requirements. Municipal users may achieve smaller system status by replacing Aquifer usage with usage of alternative water. To determine the actual number of required BMPs a municipality is required to complete, the number of connections is multiplied by the ratio of the amount of water supplied from the Aquifer divided by the total amount of water used by the municipality.

(q) All BMPs must be implemented by September 30, 2010. Implementation may be staggered if an implementation schedule is provided in the groundwater conservation plan and approved by the Authority.

**§ 715.112 Water Savings Assumptions**

The volume of groundwater on an annual basis conserved after the implementation of any particular BMP shall be determined based on the water savings assumptions set out in Appendix F of the Authority's Groundwater Conservation Plan. These assumptions may be rebutted by site specific information set out in an application to approve a groundwater conservation plan under §§ 707.420 (Applications for Groundwater Conservation Plan Approval) approved pursuant to § 715.124 (Basis for Granting Applications to Approve Groundwater Conservation Plans) of the Authority's rules. All water savings calculations shall be filed with the Authority on forms prescribed by the Authority.

**§ 715.114 Filing Deadlines for Groundwater Conservation Plan and Applications to Approve**

(a) All persons required to submit a groundwater conservation plan pursuant to this chapter shall file with the Authority a groundwater conservation plan and an application to approve such plan no later than 4:30 p.m. on the following dates:

<b>USER CATEGORY</b>	<b>FILING DEADLINE</b>
Municipal user	03/31/2004
Industrial user	06/30/2004

USER CATEGORY	FILING DEADLINE
Irrigation user	09/30/2004

(b) No person required by § 715.106 (Duty to Prepare and Implement Groundwater Conservation Plan) to prepare and implement a groundwater conservation plan may withdraw groundwater from the Aquifer if they have not filed their groundwater conservation plan and application for approval on or before the dates and times set out in subsection (a).

**§ 715.116 Annual Groundwater Conservation Plan Status Reports**

(a) All persons required by § 715.106 (Duty to Prepare and Implement Groundwater Conservation Plan) to prepare and implement a groundwater conservation plan shall file with the Authority an annual groundwater conservation plan status report no later than 4:30 p.m. on the following dates:

USER CATEGORY	FILING DEADLINE
Municipal user	March 31 of each year
Industrial user	June 30 of each year
Irrigation user	September 30 of each year

(b) After the initial filing deadlines provided in § 715.114(a) (Filing Deadlines for Groundwater Conservation Plan and Applications to Approve), no person required by § 715.106 (Duty to Prepare and Implement Groundwater Conservation Plan) to prepare and implement a groundwater conservation plan may withdraw groundwater from the Aquifer if they have not filed their groundwater conservation plan, status report, and application on or before the dates and times set out in subsection (a).

**§ 715.118 Term of Groundwater Conservation Plan**

Approved groundwater conservation plans expire six years after the date of approval by the Authority.

**§ 715.120 Plan Revisions**

A groundwater conservation plan shall be reviewed by the general manager at least every six years. The general manager may require the revision of a groundwater conservation plan on less than six-year intervals based upon additional or updated information.

**§ 715.122 Contents of Groundwater Conservation Plans**

(a) Groundwater conservation plans for municipal users shall be submitted on a form provided by the Authority for municipal users.

(b) Groundwater conservation plans for industrial users shall be submitted on a form provided by the Authority for industrial users.

(c) Groundwater conservation plans for irrigation users shall be submitted on a form provided by the Authority for irrigation users.

**§ 715.124 Basis for Granting Applications to Approve Groundwater Conservation Plans**

The board shall grant an application to approve a groundwater conservation plan if it finds that the plan meets the following:

- (1) the application complies with the Act and the Authority's rules;
- (2) the groundwater conservation plan complies with the Act and the Authority's rules;
- (3) the applicant is current on the payment of all applicable fees due and owing the Authority;
- (4) the application and plan demonstrate the applicant is using or will use all reasonable measures to be conservative in water use; and
- (5) the plan, if implemented, will maximize the efficient beneficial use of groundwater from the Aquifer.

**§ 715.126 Landscape Watering**

(a) The Authority shall not approve a groundwater conservation plan for municipal users, or where applicable, industrial users, that does not prohibit residential or non-residential landscape irrigation between the hours following 10:00 a.m. until 8:00 p.m.

(b) Water utilities shall establish a monitoring and enforcement program for residential and nonresidential landscape irrigation in accordance with subsection (a). This section applies irrespective of whether a customer is within the city limits or the extraterritorial jurisdiction of a municipal water utility.

### **Part 3 Conversion of Conserved Base Irrigation Groundwater**

#### **Section**

715.128	Purpose
715.130	Applicability
715.132	Determinations of Conserved Base Irrigation Water

#### **§ 715.128 Purpose**

The purpose of this part of this subchapter is to implement § 1.34(b) of the Act and thereby establish the procedure by which persons who install water conservation equipment may convert and transfer the water conserved.

#### **§ 715.130 Applicability**

(a) This part of this subchapter applies to any person desiring to convert and transfer that part of the base irrigation groundwater of an initial regular permit for irrigation purposes which is conserved after the installation of water conservation equipment.

(b) This part of this subchapter applies only to groundwater conserved after the installation of water conservation equipment installed on or after January 1, 1990.

#### **§ 715.132 Determinations of Conserved Base Irrigation Groundwater for Purposes of Transfer**

The volume of groundwater on an annual basis that is conserved after the installation of water conservation equipment shall be determined by the board based on the irrigation water savings assumptions set out in Appendix F of the Authority's Groundwater Conservation Plan. These assumptions may be rebutted by site specific information as may be set out in an application to convert base irrigation groundwater under §§ 707.428 (Applications to Convert Base Irrigation Groundwater) and 711.340 (Conversion of Base Irrigation Groundwater) and as may be approved by the board pursuant to § 711.342 (Basis for Granting Applications to Convert Base Irrigation Groundwater) of the Authority's rules.

## **Part 5            Agricultural Water Conservation Loans**

### **Section**

715.134	Policy Statement
715.136	Purpose
715.138	Applicability
715.140	Agricultural Water Conservation Loan Fund
715.142	Priority in Expenditure of Funds
715.144	Agricultural Water Conservation Loans
715.146	Procedure and Method for Setting Interest Rates
715.148	Security
715.150	Loan Amounts
715.152	Preapplication Meeting
715.154	Applications for Agricultural Water Conservation Loans
715.156	Approval of Applications
715.158	Loan Documents
715.160	Loan Closing
715.162	Loan Cancellation
715.164	Release of Funds
715.166	Pre-Closing Inspections
715.168	Post-Construction Inspection; Corrective Action; Alterations; Certificates of Completion; Release of Retainage
715.170	Signs
715.172	Environmental Assessments not Required
715.174	Default and Foreclosure by Authority
715.176	Reporting Requirements
715.178	Audits
715.180	Post-Project Completion Responsibilities
715.182	Annual Proof of Insurance

### **§ 715.134      Policy Statement**

It is the Authority's policy to implement an agricultural water conservation loan program in order to conserve the groundwater of the Aquifer. It is not the policy of the board to provide grants for equipment purchases to provide for agricultural water conservation projects.

### **§ 715.136      Purpose**

The purpose of this part of this subchapter is to implement §§ 1.11(d) and 1.24 of the Act.

### **§ 715.138      Applicability**

This part of this subchapter governs the Authority's financial assistance for agricultural water conservation loans. The following persons may apply for an agricultural water

conservation loan from the Authority:

- (1) owners of initial regular permits for irrigation purposes; and
- (2) owners of applications for initial regular permits for which the general manager has issued a proposed initial regular permit for irrigation purposes.

**§ 715.140 Agricultural Water Conservation Loan Fund**

The Authority shall establish and maintain a Default Reserve Account with a federally insured financial institution to secure payment of loans from the TWDB. The Authority will, at all times, maintain a minimum balance in the account of 2% of the balance outstanding on all loan agreements between the Authority and the TWDB.

**§ 715.142 Priority in Expenditure of Funds**

When applications for agricultural water conservation loans exceed available funds, priority will be given to those geographical areas within the boundaries of the Authority which, in the opinion of the general manager, have the most critical water conservation needs and to the activities which will be most likely to produce substantial agricultural water conservation.

**§ 715.144 Agricultural Water Conservation Loans**

(a) The Authority may make agricultural water conservation loans for capital equipment or materials, labor, preparation costs, and installation costs:

- (1) to improve efficiency of water delivery and application on existing irrigation systems;
- (2) for preparing irrigated land to be converted to dryland conditions;
- (3) for preparing dryland for more efficient use of natural precipitation;
- (4) for preparing and maintaining land to be used for brush control activities, including but not limited to activities conducted pursuant to the Agriculture Code, Chapter 203; or

(5) for implementing precipitation enhancement activities in areas of the Authority where such activities would be, in the Authority's judgment, most effective.

(b) Agricultural water conservation loans for the purposes listed in subsection (a) of this section may be granted by the Authority to borrowers for use on private property.

(c) The Authority may make agricultural water conservation loans to borrowers for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.

**§ 715.146 Procedure and Method for Setting Interest Rates**

The Authority will charge borrowers an interest rate on agricultural water conservation loans not to exceed the interest rate that the Authority is charged by the TWDB under the loan agreement between the Authority and the TWDB, plus an amount not to exceed 1.0% per annum for administrative expenses as may be determined by order of the board.

**§ 715.148 Security**

Each agricultural water conservation loan shall be secured by a first lien on the equipment or other forms of security with a value that is equal to or exceeds the loan amount. All or part of an initial regular permit may be used as collateral for an agricultural water conservation loan.

**§ 715.150 Loan Amounts**

(a) The loan to collateral value ratio shall be determined by the general manager in a ratio that is consistent with standard banking practices for similar loans. Subject to the limitation set forth in subsection (b) hereof, loans may be made by the Authority in an amount that does not exceed 90% of the value of eligible expenses, provided that the borrower grants a security interest to the Authority in collateral with a value at least equal to the amount of the loan.

(b) No agricultural water conservation loan shall be made in an amount exceeding 10% of the amount of the Authority's conservation loan from the TWDB.

**§ 715.152 Preapplication Meeting**

Loan applicants should schedule a preapplication conference with the Authority to obtain guidance and establish basic eligibility for the agricultural water conservation project for which a loan is sought.

**§ 715.154 Applications for Agricultural Water Conservation Loans**

A borrower that desires to obtain an agricultural water conservation loan from the Authority shall complete and submit a loan application to the Authority on a form prescribed by the Authority.

**§ 715.156 Approval of Applications**

The board may approve an application if it finds that:

- (1) the public interest would be served in granting the application;
- (2) the borrower has the legal authority and ability to make an application for an agricultural water conservation loan;

- (3) the borrower has the ability to repay the loan;
- (4) the loan will be secured by collateral with, by such methods as, but not limited to, an irrevocable letter of credit or a lien on personal property with a value of 110% of the amount of the loan;
- (5) approving the application will further water conservation of the Aquifer;
- (6) the application complies with the Act and the Authority's rules;
- (7) the application complies with the Authority's comprehensive water management plan;
- (8) installation of the requested equipment is part of a groundwater conservation plan approved by the Authority or will eliminate the need for implementation of a groundwater conservation plan;
- (9) all applicable fees and expenses have been paid, and the applicant is current on the payment of any other fees due and owing to the Authority;
- (10) a meter has been installed on all wells for the applicant's property in accordance with Chapter 711 (Groundwater Withdrawals), Subchapter M (Meters; Alternative Measuring Methods; and Reporting) of the Authority's rules; and
- (11) all applicable reports have been filed with the Authority.

**§ 715.158 Loan Documents**

The loan documents shall, at a minimum, contain the following:

- (1) provisions assuring the applicant's compliance with the Authority's rules and all relevant statutes; and
- (2) any additional conditions that may be requested by the general manager.

**§ 715.160 Loan Closing**

(a) Conditions precedent to closing. The documents which shall be executed by the borrower at the time of closing shall include the following:

- (1) evidence that the requirements and regulations of all local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;
- (2) if applicable, a certified copy of the ordinances or resolutions adopted by



the governing body of the borrower authorizing the filing of the application;

(3) a certification by the borrower providing:

(A) that a final accounting be made to the Authority of the total sources and authorized use of project funds and that any surplus loan funds be used in a manner as approved by the general manager, or be refunded to the Authority;

(B) that the borrower will, to the greatest extent possible, install, construct, and maintain the project to maximize and implement all water conservation opportunities due to the installation or construction of the project for the longer of the following periods:

(i) until all financial obligations to the Authority have been discharged; or

(ii) in perpetuity if, due to the construction of the conservation project, the borrower has converted base irrigation groundwater to unrestricted irrigation groundwater pursuant to an order of the board issued in accordance with § 711.342(a)(5) (Basis for Granting Applications to Convert Base Irrigation Groundwater) of the Authority's rules.

(C) that the borrower shall maintain current, accurate and complete financial records and accounts related to the operation of its farming or other operation that is the source of the funds used to repay the loan;

(D) that the borrower covenants to abide by the Authority's rules and relevant statutes;

(E) that the borrower will secure and keep in force, throughout the term of the loan, insurance on the collateral acceptable to the Authority to protect against all risks, including, but not limited to, loss from destruction and theft; and

(F) that the equipment being acquired with the agricultural water conservation loan has been delivered to the project site;

(4) an executed escrow agreement, if any, entered into by the borrower and an escrow agent bank or an executed trust agreement entered into by the entity and the trust agent satisfactory to the general manager, in the event that loan funds are escrowed;

(5) a loan agreement in a form satisfactory to the general manager;

(6) a promissory note in a form satisfactory to the general manager;

(7) a Security Agreement in a form satisfactory to the general manager;

(8) a UCC-1 Financing Statement covering the collateral securing the loan;

(9) any other documents as may be required by the general manager to ensure that the loan is secured;

(10) payment schedules conforming to the following:

(A) No more than 7 annual payments for loans of \$20,000 or more;

(B) No more than 6 annual payments for loans of \$10,000 to \$19,999;

(C) No more than 5 annual payments for loans of \$9,999 or less; and

(D) proof of insurance on the collateral securing the loan naming the Authority as a loss payee and providing that the coverage provided thereby may not be altered or canceled by the insurer until after 30 days prior written notice to the Authority; and

(11) other or additional data and information, if deemed necessary by the general manager.

#### **§ 715.162 Loan Cancellation**

The granting by the board of an application for an agricultural water conservation loan shall be automatically revoked if:

(1) through no fault of the Authority, the loan is not closed within 90 days of the board action approving the application; or

(2) equipment to be acquired with the agricultural water conservation loan funds has not been delivered to the project site within 90 days of the board action approving the application.

#### **§ 715.164 Release of Funds**

The general manager shall not release any funds approved by the board in granting an application for an agricultural water conservation loan until after the execution of all appropriate documents at closing or as the general manager may deem appropriate.

#### **§ 715.166 Pre-Closing Inspections**

Prior to closing, the Authority may inspect the site of the proposed project in order to determine if the project is suitable for funding and make appropriate reports to the TWDB.

#### **§ 715.168 Post-Construction Inspection; Corrective Action; Alterations; Certificates of Completion; Release of Retainage**

(a) After closing, the Authority may inspect the project in order to make all

appropriate reports to the TWDB, and require assurances that the work is being performed in a satisfactory manner in accordance with the approved application for an agricultural water conservation loan, and in accordance with sound engineering principles and construction practices. The general manager is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the Authority to any action for damages.

(b) The borrower shall take corrective action as necessary to complete the project in accordance with the instructions of the general manager consistent with the approved application for agricultural water conservation loan. Failure to do so shall be deemed a breach of the loan terms and conditions.

(c) The borrower shall not alter the scope or character of a project that is financed with a loan without the prior written consent of the Authority.

(d) Upon notice from the borrower that the project was completed in accordance with approved plans and specifications, the general manager shall conduct an inspection to confirm the project status and provide documentation for the loan file.

(e) After a confirmation inspection by the Authority, the final release of any retainage shall be made.

#### **§ 715.170 Signs**

The borrower shall allow the Authority to erect a sign on or near the property on which the project was installed or constructed with the name and logo of the Authority, the name and logo of the TWDB, and a statement that the project was funded through the Authority's agricultural water conservation loan program.

#### **§ 715.172 Environmental Assessments Not Required**

Neither the Authority nor the borrower are required to conduct any of the environmental assessments referred to in § 367.49, 31 TEX. ADMIN. CODE (environmental assessments for TWDB's Agricultural Water Conservation Loan Program) because the Authority will not make any loans for any project that requires erecting, building, altering, remodeling, improving or extending a water supply project and which will require surface or subsurface disturbance of the soil or alter the existing vegetation.

#### **§ 715.174 Default and Foreclosure by Authority**

(a) In the event of a default by a borrower in the repayment of an agricultural water conservation loan, or the failure to perform any of the terms, covenants or conditions contained in any of the loan documents, the Authority shall pursue all remedies available under law, including without limitation foreclosure of its security interest under the conservation loan documents and liquidation of any collateral securing the loan.

(b) Foreclosure under a conservation loan agreement shall be accomplished in the manner provided by law for foreclosure of similar loan agreements made by private lending institutions and by the conservation loan agreement.

#### **§ 715.176 Reporting Requirements**

(a) The general manager may request certified copies of all minutes, operating budgets, monthly operating statements, any borrower contracts, audit reports, and other documents concerning the use and expenditure of the loan proceeds received by the borrower under this subchapter.

(b) During the term of a loan, borrowers shall report annually to the general manager on the anniversary of the loan to disclose any changed conditions from the originally scheduled conservation measures. Borrowers shall submit their reports with their regular loan payment.

#### **§ 715.178 Audits**

The general manager is authorized to conduct engineering, environmental, and financial audits or inspections of every project that is financed in whole or in part by Authority financial assistance. Audits may be conducted on site if necessary and Authority staff shall be provided access to all project records necessary to complete such audit. The borrower shall take actions to correct any items found to be in noncompliance with agreements relating to the Authority's financial assistance. Should any information obtained by the general manager indicate noncompliance with any agreements, the general manager shall require the borrower to take timely corrective action. Failure to take corrective action on a timely basis shall be deemed a breach of the loan terms and conditions.

#### **§ 715.180 Post-Project Completion Responsibilities**

(a) After the satisfactory completion of the project, the borrower shall remain responsible for continued compliance with all representations, assurances, and covenants made to the Authority under the loan application and loan documents.

(b) Borrowers shall operate and maintain the project in accordance with the representations made in the application for an agricultural water conservation loan application until all financial obligations to the Authority have been discharged.

(c) If the general manager determines that the water conservation project is not being operated or maintained to conserve groundwater from the Aquifer for irrigation purposes as represented in the agricultural water conservation loan application, the general manager shall take any action necessary to ensure that groundwater is conserved, or otherwise revoke the benefit of any conversion to unrestricted irrigation groundwater that may have occurred.

#### **§ 715.182 Annual Proof of Insurance**

During the term of a loan, borrowers shall provide to the Authority proof of insurance

annually.

**Part 7      Groundwater Reuse Plans [reserved]**

## **Subchapter D. Demand Management and Critical Period Management Rules**

### **Section**

715.200	Purpose
715.202	Applicability
715.204	Authorized Withdrawals; Demand Management and Critical Period Withdrawal Schedules
715.206	Transfers
715.208	Groundwater Carryforwards Generally Prohibited; Irrigation Carryforwards
715.210	Monthly Groundwater Withdrawal Reports
715.212	Commencement and Expiration of Demand Management Period for the San Antonio Pool
715.216	Commencement and Expiration of Critical Period Management for the San Antonio and Uvalde Pools
715.218	Interruption of Withdrawals During Demand Management and Critical Periods
715.220	Variance Applications

### **§ 715.200 Purpose**

The purpose of this chapter is to implement §§ 1.14(h), 1.25, and 1.26 of the Act, which requires that the Authority prepare and implement a management plan for critical periods and implement and enforce certain water management practices. These rules are intended to authorize the maximum aggregate withdrawals from the aquifer from wells with groundwater withdrawal permits, interim authorization status, or exempt well status balanced against the Authority's aquifer management strategy to slow the rate of decline of springflows in Comal or San Marcos Springs. Slowing the rate of decline of springflows will allow more time for the return of normal precipitation events resulting in the maintenance or increase of aquifer levels which would concomitantly result in the maintenance or increase in springlevels.

### **§ 715.202 Applicability**

(a) This subchapter applies to the following persons or entities that withdraw or beneficially use senior rights from the Aquifer:

- (1) permitted users;
- (2) interim authorization users;
- (3) where expressly referenced, owners of exempt wells;
- (4) where expressly referenced, owners of non-exempt wells with interim authorization status or an initial regular permit authorized to withdraw no more than three acre-feet of groundwater annually;

- (5) contractual users; and
- (6) water utilities.

(b) This subchapter does not apply to junior rights.

**§ 715.204 Authorized Withdrawals; Demand Management and Critical Period Withdrawal Schedules**

(a) During a quarter in which a demand management or critical period is in effect for any length of time, groundwater from the Aquifer may be withdrawn only if:

(1) the withdrawal is made pursuant to a groundwater withdrawal permit, interim authorization status, or a transfer thereof;

(2) the groundwater is scheduled for withdrawal during the applicable quarter in a demand management and critical period withdrawal schedule required to be filed with the Authority as provided in this section; and

(3) the groundwater is withdrawn at no more than the applicable reduced rate mandated by § 715.218 (Interruption of Withdrawals During Demand Management and Critical Periods) of this chapter (the Adjusted Quarterly Withdrawal Amount).

(b) The volume of groundwater that may be withdrawn by a permitted user, interim authorization user, or contractual user who directly withdraws groundwater from the aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer of a groundwater withdrawal permit or interim authorization status, from the aquifer during a quarter in which a demand management or critical period is in effect, is the Quarterly Scheduled Withdrawal Amount as required to be established under this section adjusted by the interruption coefficient as determined by § 715.218 (Interruption of Withdrawals During Demand Management and Critical Periods) of this chapter.

(c) Each permitted user, interim authorization user, and contractual user who directly withdraws groundwater from the aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer of a groundwater withdrawal permit or interim authorization status, shall file with the Authority a demand management and critical period withdrawal schedule on a form to be provided by the Authority as follows:

(1) for municipal and industrial users, not later than 4:30 p.m. of the last business day on or before December 1 of each year; and

(2) for irrigation users, not later than 4:30 p.m. of the last business day on or before February 1 of each year.

(d) The schedule shall include the following information:



(1) the Initial Regular Permit application number or permit number for each groundwater withdrawal permit applied for or owned by the person or entity filing the withdrawal schedule, and the total volume of groundwater authorized to be withdrawn thereunder;

(2) the Initial Regular Permit Application number or groundwater withdrawal permit number for which the person or entity filing the withdrawal schedule is the transferee, including the effective date of the transfer, the pool from which the transfer was made, and the total volume of groundwater authorized to be withdrawn pursuant to the transfer;

(3) the volume of groundwater proposed to be withdrawn for each quarter of the year (1<sup>st</sup> quarter - January 1 to March 31; 2<sup>nd</sup> quarter - April 1 - June 30; 3<sup>rd</sup> quarter - July 1 to September 30; and 4<sup>th</sup> quarter - October 1 to December 31) (this will establish the Quarterly Scheduled Withdrawal Amounts); and

(4) the pool from which the withdrawal will occur.

(e) A withdrawal schedule may not be amended when a demand management or critical period is in effect unless the following conditions are met:

(1) during a quarter in which a demand management or critical period is in effect, the person seeking to amend his demand management and critical period withdrawal schedule is the recipient (transferee) of an intra-pool transfer of groundwater;

(2) at the time of the transfer, the groundwater withdrawal right transferred is authorized to be withdrawn by the transferor during the quarter in which the transfer occurs pursuant to the transferor's demand management and critical period withdrawal schedule; and

(3) the transferor's demand management and critical period withdrawal schedule is also amended to reduce his authorized withdrawal amount by the amount of the transfer.

#### **§ 715.206 Transfers**

A permitted user, interim authorization status user, or contractual user may, during a quarter in which a demand management or critical period is in effect, withdraw groundwater from the Aquifer pursuant to a transfer of a groundwater withdrawal permit or interim authorization status only in accordance with § 711.344 (Transfers during a Demand Management or Critical Period).

#### **§ 715.208 Groundwater Carryforwards Generally Prohibited; Irrigation Carryforwards**

(a) Except as provided in subsection (b), groundwater scheduled for withdrawal in a quarter but not actually withdrawn in that quarter may not be carried forward for withdrawal to a subsequent quarter of the year in which a Notice of Cessation, demand management or critical

period is in effect for all or part of the quarter.

(b) An irrigator may carry forward to the third quarter in which a Notice of Cessation, demand management or critical period is in effect for all or part of the quarter groundwater scheduled for withdrawal in the second quarter but not actually withdrawn, and carry forward to the fourth quarter groundwater scheduled for withdrawal in the third quarter but not actually withdrawn, in order to finish an existing crop planted in the year for which the withdrawal schedule is effective, if the irrigator provides notification to the Authority of the intent to carry forward groundwater in the timely-filed monthly report form prescribed by the Authority for the last month of the quarter from which groundwater is to be carried forward.

#### **§ 715.210 Monthly Groundwater Withdrawal Reports**

(a) Each permitted user, interim authorization user, and contractual user who directly withdraws groundwater from the aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer of a groundwater withdrawal permit or interim authorization status, must file monthly groundwater withdrawal reports with the Authority containing withdrawal data in weekly increments when a demand management or critical period is in effect. These reports must be filed on the form prescribed by the Authority and contain the following information:

- (1) the person's name, address, and telephone number;
- (2) contact person and title;
- (3) the reporting month;
- (4) by well, the total volume of groundwater withdrawn during the reporting month in weekly increments; and
- (5) any other information requested by the general manager.

(b) Monthly groundwater withdrawal reports must be filed with the Authority no later than ten business days after the end of the month in which the week occurs.

#### **§ 715.212 Commencement and Expiration of Demand Management Periods for the San Antonio Pool**

(a) A stage I demand management period for the San Antonio Pool commences at 8:00 a.m. on the day specified in the notice of commencement issued by the general manager. The general manager will issue the notice if any of the criteria in subsection (b) of this section is satisfied. The notice 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 San Antonio Pool jurisdiction of the Authority; and

(3) posted on the Authority's internet site.

(b) The general manager shall issue notice of commencement of stage I of the demand management period if at least one of the following conditions occurs:

(1) at 8:00 a.m., the level of the aquifer is less than 650 feet above mean sea level as measured at well J-17; or

(2) the 5-day running average discharge rate of San Marcos Springs is below 110 c.f.s. as measured by the Authority at the San Marcos gauging station; or

(3) the 5-day running average discharge rate of Comal Springs is below 220 c.f.s. as measured by the Authority at the Comal Springs gauging station.

(c) Unless otherwise provided by the general manager, a stage I demand management period expires at 8:00 a.m. on the 30<sup>th</sup> day after issuance by the general manager of a notice of expiration. The general manager will issue a notice of expiration by posting on the Authority's internet site. The general manager will issue the notice of expiration if none of the criteria in subsection (b) are any longer satisfied.

(d) A stage II demand management period for the San Antonio Pool commences at 8:00 a.m. on the day specified in the notice of commencement issued by the general manager. The general manager will issue the notice if any of the criteria in subsection (e) of this section is satisfied. The notice shall be given as set out in subsection (a) of this section.

(e) The general manager shall issue notice of commencement of stage II of the demand management period if one of the following conditions occur:

(1) at 8:00 a.m., the level of the aquifer is less than 640 feet above mean sea level as measured at well J-17; or

(2) the 5-day running average discharge rate of San Marcos Springs is below 96 c.f.s. as measured by the Authority at the San Marcos gauging station; or

(3) the 5-day running average discharge rate of Comal Springs is below 154 c.f.s. as measured by the Authority at the Comal Springs gauging station.

(f) Unless otherwise provided by the general manager, a stage II demand management period expires at 8:00 a.m. on the 30<sup>th</sup> day after issuance by the general manager of a notice of expiration. The general manager will issue a notice of expiration by posting on the Authority's internet site. The general manager will issue the notice of expiration if none of the criteria in subsection (e) is any longer satisfied.

**§ 715.216 Commencement and Expiration of Critical Period Management for the San Antonio and Uvalde Pools**

(a) A stage III critical period for the San Antonio Pool commences at 8:00 a.m. on the day specified in the notice of commencement issued by the general manager. The general manager will issue the notice if any of the criteria in subsection (b) of this section is satisfied. The notice shall be given as set out in §§ 715.212(a) of this chapter.

(b) The general manager shall issue notice of commencement of stage III critical period if at least one of the following conditions occurs:

(1) at 8:00 a.m., the level of the aquifer is less than 630 feet above mean sea level as measured at well J-17; or

(2) the 5-day running average discharge rate of San Marcos Springs is below 80 c.f.s. as measured by the Authority at the San Marcos Springs gauging station; or

(3) the 5-day running average discharge rate of Comal Springs is below 86 c.f.s. as measured by the Authority at Comal Springs gauging station.

(c) Unless otherwise provided by the general manager, a stage III critical period for the San Antonio Pool expires at 8:00 a.m. on the 30<sup>th</sup> day after issuance by the general manager of a notice of expiration. The general manager will issue a notice of expiration by posting on the Authority's internet site. The general manager must issue the notice of expiration if none of the criteria in subsection (b) of this section are any longer satisfied.

(d) A stage IV critical period for the San Antonio Pool commences at 8:00 a.m. on the day specified in the notice of commencement issued by the general manager. The general manager must issue the notice if any of the criteria in subsection (e) is satisfied. The notice shall be given as set out in §§ 715.212(a) of this chapter.

This subsection is not applicable when the amount of groundwater available for permitted withdrawals for initial and additional regular permits does not exceed 400,000 acre-feet for each calendar year, pursuant to § 711.164(b) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) of Chapter 711 (Groundwater Withdrawals) of the Authority's rules.

(e) The general manager shall issue notice of commencement of stage IV of the critical period in the San Antonio Pool if at least one of the following conditions occurs:

(1) at 8:00 a.m. on the 30<sup>th</sup> day after the general manager issued his notice of commencement of stage III critical period, the level of the aquifer remains at less than 630 feet above mean sea level as measured as well J-17; or

(2) at 8:00 a.m., the level of the aquifer is less than 627 feet above mean sea level as measured as well J-17.

This subsection is not applicable when the amount of groundwater available for permitted withdrawals for initial and additional regular permits does not exceed 400,000 acre-feet for each calendar year, pursuant to § 711.164(b) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) of Chapter 711 (Groundwater Withdrawals) of the Authority's rules.

(f) Unless otherwise provided by the general manager, a stage IV critical period in the San Antonio Pool expires at 8:00 a.m. on the 30<sup>th</sup> day after issuance by the general manager of a notice of expiration. The general manager must issue a notice of expiration by posting on the Authority's internet site. The general manager must issue the notice of expiration if none of the criteria in subsection (e) are any longer satisfied.

(g) A stage III critical period for the Uvalde Pool commences at 8:00 a.m. on the day specified in the notice of commencement issued by the general manager. The general manager will issue the notice if the criteria in subsection (h) of this section is satisfied. The notice shall be:

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

(2) published in at least one other newspaper within the Uvalde Pool jurisdiction of the Authority; and

(3) posted on the Authority's internet site.

(h) The general manager shall issue notice of commencement of stage III critical period in the Uvalde Pool if at, 8:00 a.m., the level of the aquifer is less than 845 feet above mean sea level as measured at well J-27.

(i) Unless otherwise provided by the general manager, a stage III critical period for the Uvalde Pool expires at 8:00 a.m. on the 30<sup>th</sup> day after issuance by the general manager of a notice of expiration. The general manager will issue a notice of expiration by posting on the Authority's internet site. The general manager must issue the notice of expiration if the criteria in subsection (h) of this section is no longer satisfied.

(j) A stage IV critical period for the Uvalde Pool commences at 8:00 a.m. on the day specified in the notice of commencement issued by the general manager. The general manager must issue the notice if any of the criteria in subsection (k) is satisfied. The notice shall be:

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

(2) published in at least one other newspaper within the Uvalde Pool jurisdiction of the Authority; and

- (3) posted on the Authority's internet site.

This subsection is not applicable when the amount of groundwater available for permitted withdrawals for initial and additional regular permits does not exceed 400,000 acre-feet for each calendar year, pursuant to § 711.164(b) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) of Chapter 711 (Groundwater Withdrawals) of the Authority's rules.

(k) The general manager shall issue notice of commencement of stage IV of the critical period in the Uvalde Pool if at least one of the following conditions occurs:

(1) at 8:00 a.m. on the 30<sup>th</sup> day after the general manager issued his notice of commencement of stage III critical period, the level of the aquifer remains at less than 845 feet above mean sea level as measured as well J-27; or

(2) at 8:00 a.m., the level of the aquifer is less than 842 feet above mean sea level as measured as well J-27.

This subsection is not applicable when the amount of groundwater available for permitted withdrawals for initial and additional regular permits does not exceed 400,000 acre-feet for each calendar year, pursuant to § 711.164(b) (Groundwater Available for Permitted Withdrawals for Senior Rights of Initial and Additional Regular Permits) of Chapter 711 (Groundwater Withdrawals) of the Authority's rules.

(l) Unless otherwise provided by the general manager, a stage IV critical period in the Uvalde Pool expires at 8:00 a.m. on the 30<sup>th</sup> day after issuance by the general manager of a notice of expiration. The general manager must issue a notice of expiration by posting on the Authority's internet site. The general manager must issue the notice of expiration if none of the criteria in subsection (k) are any longer satisfied.

#### **§ 715.218 Interruption of Withdrawals During Demand Management and Critical Periods**

(a) The interruption coefficients to be applied during a demand management or critical period to the Quarterly Scheduled Withdrawal Amounts required to be scheduled pursuant to § 715.204 (Authorized Withdrawals; Demand Management and Critical Period Withdrawal Schedules) are as follows:

<b>PERIOD</b>	<b>USER</b>	<b>450,000 AF/ANNUM CAP INTERRUPTION COEFFICIENT</b>	<b>400,000 AF/ANNUM CAP INTERRUPTION COEFFICIENT</b>
<b>Stage I Demand Management</b>	Permitted users, interim authorization users, and contractual users, other than groundwater use for crop irrigation	0.05	0.05
	Permitted users, interim authorization users, and contractual users, with groundwater use for crop irrigation	0.00	0.00
	Owners of non-exempt wells with interim authorization status or an initial regular permit authorized to withdraw no more than three acre-feet of groundwater annually	0.00	0.00
	Owners of exempt wells	0.00	0.00
<b>Stage II Demand Management</b>	Permitted users, interim authorization users, and contractual users, other than groundwater use for crop irrigation	0.10	0.10
	Permitted users, interim authorization users, and contractual users, with groundwater use for crop irrigation	0.00	0.00
	Owners of non-exempt wells with interim authorization status or an initial regular permit authorized to withdraw no more than three acre-feet of groundwater annually	0.00	0.00
	Owners of exempt wells	0.00	0.00
<b>Stage III Critical Period</b>	Permitted users, interim authorization users, and contractual users, other than groundwater use for crop irrigation	0.15	0.15
	Permitted users, interim authorization users, and contractual users, with groundwater use for crop irrigation	0.15	0.15
	Owners of non-exempt wells with interim authorization status or an initial regular permit authorized to withdraw no more than three acre-feet of groundwater annually	0.00	0.00
	Owners of exempt wells	0.00	0.00
<b>Stage IV Critical Period</b>	Permitted users, interim authorization users, and contractual users, other than groundwater use for crop irrigation	0.23	N/A

PERIOD	USER	450,000 AF/ANNUM CAP INTERRUPTION COEFFICIENT	400,000 AF/ANNUM CAP INTERRUPTION COEFFICIENT
	Permitted users, interim authorization users, and contractual users, with groundwater use for crop irrigation	0.23	N/A
	Owners of non-exempt wells with interim authorization status or an initial regular permit authorized to withdraw no more than three acre-feet of groundwater annually	0.00	0.00
	Owners of exempt wells	0.00	N/A

(b) If one demand management or critical period is effective for an entire quarter, a user's Adjusted Quarterly Withdrawal Amount for that quarter shall be calculated as follows:

$$\text{Adjusted Quarterly Withdrawal Amount} = \text{Quarterly Scheduled Withdrawal Amount} \times (1 - \text{Interruption Coefficient})$$

(c) If a demand management or critical period is effective for less than an entire quarter and no demand management or critical period is effective for the remainder of the quarter, a user's Adjusted Quarterly Withdrawal Amount for that quarter shall be calculated as follows:

$$\text{Adjusted Quarterly Withdrawal Amount} = \text{Quarterly Scheduled Withdrawal Amount} \times (1 - (\text{Interruption Coefficient} \times (\text{number of days in stage} / \text{number of days in quarter})))$$

(d) If two or more different demand management or critical periods are effective during a quarter, a user's Adjusted Quarterly Withdrawal Amount for that quarter shall be calculated as follows, using two or more interruption coefficients, as appropriate:

$$\text{Adjusted Quarterly Withdrawal Amount} = \text{Quarterly Scheduled Withdrawal Amount} \times (1 - (\text{Interruption Coefficient}_x \times (\text{number of days in stage } x / \text{number of days in quarter})) + (\text{Interruption Coefficient}_y \times (\text{number of days in stage } y / \text{number of days in quarter})))$$

(e) In implementing the appropriate water management strategies to accomplish the interruptions required by the table in subsection (a) of this section, a permitted user, interim authorization user, or contractual user who directly withdraw groundwater from the aquifer at an authorized point of withdrawal owned or operated by the contractual user based on a transfer of a groundwater withdrawal permit or interim authorization status, shall reduce, restrict, or limit the use of groundwater from the aquifer for the following uses in the following order of preference



with (1) being the first use that should be reduced, restricted, or limited and (5) being the last use to be reduced, restricted, or limited:

(1) discretionary uses as is appropriate to that permittee or interim authorization user;

(2) the non-discretionary portion of recreation and pleasure use;

(3) the non-discretionary portion of residential landscape irrigation;

(4) the non-discretionary portion of industrial and crop irrigation; and

(5) the non-discretionary portion of municipal use from non-exempt wells, and the non-discretionary portion of domestic and livestock use from exempt wells.

(f) A higher preferred water use category shall not be reduced, restricted, or limited until the water use reductions from a lower preferred water use category have been accomplished to the maximum extent feasible as necessary. A permittee or applicant is not required to reduce, restrict, or limit its water use in an amount that exceeds the interruption coefficients as set out in subsection (a) above.

#### **§ 715.220 Variance Applications**

Any person seeking a variance from the operation of this subchapter based on the implementation of an alternative water management strategy, practice, procedure or method may file with the Authority an application for a variance pursuant to § 707.419 (Applications for Variance from Comprehensive Water Management Rules) of Chapter 707 (Procedure Before the Authority) of the Authority's rules.

**Subchapter E. Withdrawal Reduction Rules**

**[FRs Not Yet Adopted]**

**Subchapter F. Regular Permit Retirement Rules**

**[FRs Not Yet Adopted]**

**Subchapter G. Withdrawal of Junior Rights**

**Section**

- 715.500 Purpose
- 715.502 Applicability
- 715.504 Quantification of Junior Rights
- 715.506 Withdrawals of Junior Rights
- 715.508 Allocation of Junior Rights Between Base Irrigation Groundwater and Unrestricted Irrigation Groundwater

**§ 715.500 Purpose**

The purpose of this subchapter is to implement §§ 1.14(b) and (f), and 1.16(e) of the Act and their legislative intent which requires the Authority to implement a permitting program that imposes a 450,000 acre-foot per annum withdrawal limit for regular permits, and at the same time, requires the Authority to issue such permits at certain specified minimum amounts.

**§ 715.502 Applicability**

This subchapter applies to the holders of initial regular permits, and interim authorization status.

**§ 715.504 Quantification of Junior Rights**

(a) The owner or lessee of junior rights may withdraw such rights in a calendar year in the volume calculated as follows:

amount authorized to be withdrawn in a calendar year pursuant to junior rights	=	junior rights recognized in an initial regular permit	x	Total number of days in a calendar year in which the applicable index well is greater than the prescribed level set out in subsections (b) and (c) of this section as determined on December 31 of each calendar year ÷ 365 days
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(b) For wells in the San Antonio Pool, whenever the water level of the Aquifer as measured at well J-17 is greater than 665 feet above mean sea level, the right to withdraw groundwater from the Aquifer pursuant to a junior right accrues.

(c) For wells in the Uvalde Pool, whenever the water level of the Aquifer as measured at well J-27 is greater than 865 feet above mean sea level, the right to withdraw groundwater from the Aquifer pursuant to a junior right accrues.

## **§ 715.506      Withdrawals of Junior Rights**

A holder of junior rights may make Aquifer withdrawals pursuant to those rights at any time in a calendar year, except when a demand management or critical period management stage that is applicable to the holder is in effect pursuant to §§ 715.212 (Commencement and Expiration of Demand Management Period for the San Antonio Pool), 715.216 (Commencement and Expiration of Critical Period Management for the San Antonio and Uvalde Pools), and 715.218(a) (Interruption of Withdrawals During Demand Management and Critical Periods).

## **§ 715.508      Allocation of Junior Rights Between Base Irrigation Groundwater and Unrestricted Irrigation Groundwater**

(a) In a permanent transfer of junior or senior rights, the transferor, on a one-time basis, may permanently distribute and allocate junior or senior rights between base irrigation groundwater and unrestricted irrigation groundwater as set out in a transfer application, or a notice of transfer of ownership, as appropriate.

(b) In a temporary transfer of junior or senior rights, the transferor may temporarily, for the term of the lease, distribute and allocate junior or senior rights between base irrigation groundwater and unrestricted irrigation groundwater as set out in a transfer application.

**Subchapter H. Pools and Index Wells**

**[FRs Not Yet Adopted]**

## **CHAPTER 717. ENFORCEMENT**

### **Section**

717.100	Purpose
717.102	Applicability
717.104	Notice and Access
717.106	Enforcement Action by the General Manager
717.108	Enforcement Action 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 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 and to any person whose predecessor in interest violated 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**

(a) The Authority, through any authorized officer, agent, employee, or representative of the Authority, may enter upon private or public property within the Authority's regulatory jurisdiction, for the purpose of determining whether any violation of the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit has occurred.

(b) An authorized officer, agent, employee, or representative of the Authority may enter private or public property at any reasonable time for the purposes listed in subsection (a). The persons conducting such entry on private property on behalf of the Authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant of their presence and present proper identification.

### **§ 717.106 Enforcement Action by the General Manager**

If the general manager determines that a person, or his predecessor in interest, is in violation of the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit, he may suspend the processing of any application or authorization that the person has

pending before the Authority.

### **§ 717.108 Enforcement Action by the Board**

If the Board determines that a person, or his predecessor in interest, violated, is violating, or is threatening to violate the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit, 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 or authorization that the person has pending before the Authority, until the violation is remedied;

(2) suspend any permit or authorization issued by the Authority, 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, applicant or permittee into compliance with the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit;

(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 in accordance with this chapter, and 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, which may include the execution of a Supplemental Environmental Project.

### **§ 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 a violation of the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit.

(b) Each day of a continuing violation constitutes a separate violation of the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit.

### **§ 717.112 Civil Penalties**

(a) Any person who violates the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit 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 Edwards Aquifer Authority.

#### **§ 717.114 Cease and Desist Orders**

(a) After determining that a person has violated and continues to violate the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit, the Board may issue an order in accordance with § 717.108 (Enforcement Action by the Board) 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 the Act, the Authority's rules, an order of the Board, or the terms and conditions of a permit, the Board may issue an order in accordance with § 717.108 (Enforcement Action by the Board) for the general manager to plug, seal or mark any well to prevent any person from unlawfully withdrawing groundwater from the well or to prevent the pollution of the Aquifer.

(b) The Board's authority to issue an order under this section 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 a non-exempt existing well 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) In accordance with this section, the general manager may physically mark the well to indicate that the Authority has plugged or sealed the well. The general manager 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 a sealed or marked 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 by the Authority shall constitute a violation of the Authority's rules 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 the Act and the Authority's rules.

(e) The well owner or operator is responsible for reimbursing the Authority for all expenses incurred in accordance with this section.

#### **§ 717.118 Administrative Penalties**

(a) If after an examination of the facts, the general manager concludes that a person has violated the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit, the general manager may issue a preliminary report stating the facts on which he bases his conclusion, recommending that an administrative penalty under this section be imposed, and recommending the amount of the proposed penalty. The general manager 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 penalty recommended by the general manager or fails timely to request an informal review, in accordance with § 717.108 (Enforcement Action by the Board), the Board shall assess the penalty in accordance with this section. The general manager 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 as provided by subsection (b) of this section, the general manager shall conduct the review. The general manager 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) of this section, the person may make a written request for a hearing to the Authority.

(f) If, after informal review, a person charged with committing a violation fails to request a formal hearing in a timely manner, in accordance with § 717.108 (Enforcement Action by the Board), the Board shall assess the penalty in accordance with this section. The general manager 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 prepared under subsection (a) and the response to the report submitted under subsection (b), if any, the Board concludes that a person has violated the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit, in accordance with § 717.108 (Enforcement Action by the Board), 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 Authority's order assessing an administrative penalty is issued under this section, the person found to have violated the Act, the Authority's rules, an order of the Board, or the terms or conditions of a permit shall:

- (1) pay the amount of the penalty;
- (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 subpart (3) of subsection (i) of

this section 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 Authority'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 subpart (2) of subsection (j) of this section, 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 Edwards Aquifer Authority.