

EDWARDS AQUIFER AUTHORITY RULEMAKING

Title: **EDWARDS AQUIFER AUTHORITY RULES**
Chapter 702 Definitions
Section
702.1 Definitions

Chapter 711 Groundwater Withdrawals
Subchapter C. Exempt Wells
Section

...
711.50 Transfer of Ownership

...
Subchapter D. Limited Production Wells
Section

...
711.72 Transfer of Ownership

...
Subchapter E. Groundwater Withdrawal Permits
Section

...
711.95 Stacking of Irrigation Rights

...
Subchapter L. Administration of Permits
Section

711.320 Purpose
711.322 Applicability
711.324 Transfers
711.326 Applications to Transfer
711.328 Basis for Granting Transfer Applications
...
711.330 Leases
711.332 Amendments
711.334 Applications to Amend
711.336 Basis for Granting Amendment Applications
711.338 Conversions
711.340 Applications to Convert
711.342 Basis for Granting Conversion Applications
711.344 Consolidations
711.346 Applications to Consolidate

...
711.353 Notice of Claims
711.354 Recordation of Permits
711.356 Validation of Transfers

Rule Type: Proposed Rules (PRs)

Prepared By: Marc Friberg, Executive Director, External & Regulatory Affairs

Through: Darcy Alan Frownfelter, General Counsel

Approved By: Roland Ruiz, General Manager

Approved by Board of Directions and released for Public Comment on _____, _____

Chapter 702 Definitions

§ 702.1 Definitions

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

...

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

...

Chapter 711 Groundwater Withdrawals

Subchapter C. Exempt Wells

...

§ 711.50 Transfer of Ownership

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

...

Subchapter D. Limited Production Wells

...

§ 711.72 Transfer of Ownership

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

...

Subchapter E. Groundwater Withdrawal Permits

...

§ 711.95 Stacking of Irrigation Rights

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

(b) **Unrestricted Irrigation Groundwater.** Unless otherwise transferred or amended prior to the effective date of this rule to a place of use other than the historically irrigated land, unrestricted irrigation groundwater is allocated to the historically irrigated land on a pro rata basis in an amount not to exceed 1.0 acre-feet/acre/annum. However, unrestricted irrigation groundwater may be allocated to the historically irrigated land on a non-pro rata basis, or in amounts greater than 1.0 acre-feet/acre/annum, if:

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

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

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

...

(2) the permit holder:

...

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

...

(3) the permit holder:

...

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

...

(4) for the permit holders:

...

(B) parts of the historically irrigated land were owned individually by the cotenants of the well; and

...

(5) the Authority determines that the groundwater withdrawal amount for an initial regular permit, when divided by the number of acres of historically irrigated land, is less than 2.0 acre-feet/acre/annum.

...

Subchapter L. Administration of Permits

§ 711.320 Purpose

The purpose of this subchapter is to provide for the administration of permits in order to:

- (1) identify the processes by which permits may be changed in light of transactions or other activity related thereto;
- (2) ensure the updating and accuracy of Authority permitting records; and
- (3) ensure compliance with the Act and the Authority's rules.

§ 711.322 Applicability

- (a) This subchapter applies to:
 - (1) initial regular permits;
 - (2) regular permits;
 - (3) term permits; and
 - (4) emergency permits.
- (b) As used in this subchapter, the term "permit" shall refer to any of the permits identified in Subsection (a).
- (c) This subchapter does not apply to the wholesale or retail sale of groundwater on a commodity basis to a person under a utility service contract, water supply contract, or similar document.

§ 711.324 Transfers

- (a) Between parties, permits may be transferred as follows:
 - (1) conveyance of permit ownership, or the lease of rights to withdraw groundwater under a permit;
 - (2) point of withdrawal;
 - (3) purpose of use;
 - (4) place of use;

- (5) maximum rate of withdrawal; or
- (6) groundwater withdrawal amount.

(b) Except as provided in Subsection (d) and § 711.332(b), ownership of permits may be transferred separately from ownership of the place of use.

(c) Except as provided in Subsections (d) and (f), unless there is an express reservation of rights in the transferor, the transfer of ownership of the place of use for a permit is presumed to also transfer ownership of the permit appurtenant thereto.

(d) Except as provided in § 711.338(b), ownership of all or part of a permit issued with base irrigation groundwater shall pass with the transfer of ownership of all or part of the historically irrigated land to which the permit is appurtenant. No reservation in the transferor of base irrigation groundwater separate from the transferred historically irrigated land shall be effective.

(e) Unless there is an express reservation of rights in the transferor, ownership of all or part of a permit issued with unrestricted irrigation groundwater shall be presumed to pass with the transfer of ownership of all or part of the historically irrigated land to which the permit is appurtenant. A reservation in the transferor of unrestricted irrigation groundwater separate from the transferred historically irrigated land shall be effective.

(f) For water utilities whose place of use is identified in a permit as the area encompassed by a certificate of convenience and necessity, the transfer of land owned by the water utility located inside the certificated area is not presumed to transfer ownership of any part of the permit owned by the water utility.

(g) Except for permits issued for irrigation purposes with base irrigation groundwater, permits may be transferred that provide for no place of use or point of withdrawal. However, withdrawals may not be made under such permits until the Authority has granted an application to transfer that provides for a place of use and point of withdrawal.

§ 711.326 Applications to Transfer

(a) Persons desiring to transfer a permit to another person must file with the Authority an application to transfer on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.324-330.

...

(c) Transfer applications may be filed in advance of the transfer of ownership having taken effect between the parties. A permit may be transferred for a period beginning no later than two years after a transfer application is filed. A transfer may not begin prior to the date an administratively complete application to transfer is filed with the Authority. A permit may not be transferred for a term exceeding the date provided in the document approving the transfer application.

...

(f) If a transfer application is approved, the Authority shall issue an initial regular permit or regular permit as may be appropriate.

...

§ 711.328 Basis for Granting Transfer Applications

The general manager shall approve a transfer application if the following elements are established:

...

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

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

...

(6) for transfers of part of the place of use of a permit for irrigation
use:

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

- (i) the historically irrigated land;
- (ii) the portion of the historically irrigated land conveyed to the transferee; and
- (iii) the portion of the historically irrigated land retained by the transferor; and
- (iv) the boundaries of the place of use in the permit and the actual historically irrigated land in relation to one another;

...

§ 711.330 Leases

(a) If all or a part of a permit is temporarily transferred by lease, the lessee shall file a transfer application and:

...

(c) If a transferor of a permit sells all or part of the permit, and the permit is subject to a lease, within 30 days of the effective date of the transfer, the transferor shall give written notice to all lessees and provide a copy of the transfer approval to the Authority.

(d) Permit holders may temporarily transfer the place of use for all or part of a permit issued for irrigation purposes with base irrigation groundwater to another place of use not owned by the permit holder. The lease term may not exceed ten years. If the permit holder subsequently transfers ownership of the historically irrigated land to which the permit is appurtenant to another person, ownership of the permit with the base irrigation groundwater shall pass with the transfer of the historically irrigated land as provided in § 711.324(d). However, the party to whom the permit holder has transferred ownership shall take title of the historically irrigated land subject to the lease.

§ 711.332 Amendments

- (a) All permits may be amended by the permit holder as follows:
 - (1) point of withdrawal;
 - (2) purpose of use;

- (3) place of use;
- (4) maximum rate of withdrawal; or
- (5) groundwater withdrawal amount.

(b) Except as provided in Subsections (c) and §§ 711.338(b), holders of permits issued for irrigation use with base irrigation groundwater may not amend the place or purpose of use. The permit may be amended in all other respects.

(c) Permit holders may temporarily amend the place of use for all or part of a permit issued for irrigation purposes with base irrigation groundwater to another place of use owned by the permit holder. If the permit holder subsequently transfers ownership of the historically irrigated land to which the permit is appurtenant to another person, the temporary amendment becomes void and ownership of the permit with the base irrigation groundwater shall pass with the transfer of ownership of the historically irrigated land as provided in § 711.324(d).

(d) Holders of permits issued for irrigation use with unrestricted irrigation groundwater may amend the place or purpose of use.

(e) Except for permits issued for irrigation purposes with base irrigation groundwater, permits held by water marketers may be amended to provide for no place of use or point of withdrawal. However, withdrawals may not be made under such amended permits until the Authority has granted an application to amend that provides for a place of use and point of withdrawal.

(f) Permit holders of permits for irrigation purposes may designate the location of the original historically irrigated land to clarify and identify the specific location of these lands. The designation must be on a form prescribed or approved by the Authority. At a minimum, the designation document must be irrevocable, signed and acknowledged by the permit holder, clearly and accurately identify the location of the historically irrigated land out of the entirety of the property that is set out in the permit as the place of use. From and after the date of the irrevocable designation, all base or unrestricted irrigation groundwater recognized in the permit is appurtenant to the designated historically irrigated land. In the event the Authority has approved,

consistent with applicable law, a transfer or amendment of unrestricted irrigation groundwater rights prior to the effective date of this rule, this rule is not to be construed to affect the appurtenancy of such rights at a place of use not the original historically irrigated land.

§ 711.334 Applications to Amend

(a) Permit holders desiring to amend the terms of a permit must file with the Authority an application to amend on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.332711.336.

...

(c) If an amendment application is approved, the Authority shall issue an initial regular permit or regular permit as may be appropriate.

...

§ 711.336 Basis for Granting Amendment Applications

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

...

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

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

...

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

...

§ 711.338 Conversions

(a) The portion of a permit issued for irrigation purposes with base irrigation groundwater may be converted to unrestricted irrigation groundwater if:

(1) as provided in § 1.34(c) of the Act, the permit holder installs water conservation equipment on the historically irrigated land; or

(2) as provided in § 1.34(e) of the Act, the historically irrigated land becomes:

(A) developed land; or

(B) land that is no longer practicable to farm.

(b) If an application to convert is approved by Board order under § 711.342, the effect of the order is to convert the base irrigation groundwater rights that are the subject of the application to unrestricted irrigation groundwater rights. After the effective date of the Board order, the owner of the historically irrigated land to which the unrestricted irrigation groundwater rights (formerly base irrigation groundwater rights) are appurtenant may:

(1) sever all or a portion of such rights from all or a portion of such land; and

(2) change the purpose or place of use of all or a portion of such rights.

§ 711.340 Applications to Convert

...

(d) If a conversion application is approved, the Authority shall issue an initial regular permit or regular permit as may be appropriate.

...

§ 711.342 Basis for Granting Conversion Applications

(a) In Chapter 711, the following terms shall have the following meanings:

(1) “Developed land” means historically irrigated land that has been physically altered by the installation of utilities or construction of roads, parking lots, driveways, foundations, structures, buildings, stormwater collection systems, public parks, or athletic fields or by similar improvements.

(2) “Historically irrigated land” means land irrigated during the historical period, as described by § 1.16 of the Act, that provided the basis for the issuance of an initial regular permit for irrigation use and is identified as the place of use in the initial regular permit.

(3) “Land no longer practicable to farm” means historically irrigated land:

(A) that has not been irrigated for more than five years; and

(B) for which the owner of the land has submitted to the Authority documentation demonstrating that because of development on land in close proximity to the historically irrigated land, agricultural activities performed on the land, including crop dusting or other applications of pesticides, have the potential to compromise the health and safety of a farm operator or of persons occupying or residing on property in close proximity to the land.

(b) The Board shall grant a conversion application under Subsection 1.34(c) of the Act based upon the installation of conservation equipment if the following elements are established:

(1) the applicant has paid all applicable fees, including any applicable costs for recordation in the deed records of the appropriate county or counties;

(2) it has been confirmed that the applicant is the owner of the historically irrigated land to which the base irrigation groundwater is appurtenant;

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

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

(5) groundwater from the Aquifer will be conserved as follows:

(A) the conservation equipment was manufactured and installed within fifteen years of the filing date of the application, or can otherwise be demonstrated by the applicant to be as efficient as newly manufactured and installed equipment as determined by the volume of groundwater conserved under Subsection (b)(5)(B);

(B) the volume of groundwater conserved on an annual basis has been determined based on the irrigation water savings assumptions set out in the Irrigation Water Savings Determination Form, unless rebutted by site specific information contained in the application to convert base irrigation groundwater based upon the installation of conservation equipment;

(C) for remaining corners, or other odd shapes, of land over which water conservation equipment has not been installed, the land is too small or irregular to practically and

economically irrigate and the volume of groundwater conserved has been calculated in accordance with Subsection (b)(5)(B); and

(D) for other remaining tracts of land over which water conservation equipment has not been installed, the land is topographically unsuitable to irrigate, and the volume of groundwater conserved has been calculated in accordance with Subsection (b)(5)(B).

(c) The Board shall grant a conversion application based upon Subsection 1.34(e) of the Act if the following elements are established:

(1) the applicant has paid all applicable fees, including any applicable costs for recordation in the deed records of the appropriate county or counties;

(2) it has been confirmed that the applicant is the owner of the historically irrigated land to which the base irrigation groundwater is appurtenant;

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

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

(5) any well used to irrigate the historically irrigated land and located on the land that is the subject of the application has been plugged or capped in accordance with Subchapters C and D, Chapter 713, unless it can be demonstrated that the well is to be used for a future purpose other than irrigation use; and

(6) the owner of the historically irrigated land that is the subject of the application demonstrates that all or a portion of the land:

(A) has become developed land; or

(B) is no longer practicable to farm.

(d) Approvals of applications to convert base irrigation groundwater rights under Subsection (c)(6)(A) shall be in the same proportion as the proportion of developed land to undeveloped land. Base irrigation groundwater rights appurtenant to historically irrigated land that cannot be developed because of its topography or its location in a floodplain may be included in the proportion of land considered to be developed land.

(e) Approvals of applications to convert base irrigation groundwater rights under subsection (c)(6)(B) shall be in the same proportion as the proportion of historically irrigated land that is no longer practicable to farm.

§ 711.344 Consolidations

Persons owning two or more permits for the same purpose of use and for wells within the same county may consolidate those permits.

§ 711.346 Applications to Consolidate

(a) Persons desiring to consolidate two or more permits must file with the Authority an application to consolidate on a form prescribed by the Authority containing relevant information related to the requirements in this subchapter and §§ 707.509 and 711.348.

...

(c) If a consolidation application is approved, the Authority shall issue an initial regular permit or a regular permit as may be appropriate.

...

§ 711.353 Notice of Claims

(a) Persons having a good faith belief that they are the owner of all or part of a permit, but the Authority's permit records do not reflect such ownership, may file with the Authority a notice of claim on a form prescribed by the Authority. The purpose of the notice is to provide a basis for the Authority to initiate a fact-finding investigation into the ownership of a permit. The notice shall state the reasons for the claim of ownership, include all appropriate documentary evidence supporting the claim, and provide any other relevant information as may be requested by the Authority. Notices of claim are to be processed according to the procedures set forth in § 707.541.

(b) If a notice of claim is approved, the Authority shall issue an amended or a new initial regular permit or regular permit as may be appropriate to be effective on the date indicated in the Board order approving the claim.

§ 711.354 Recordation of Permits

Within 30 days of issuance of a permit under this subchapter, the Authority, on behalf of the permit holder, will file the permit for recordation in the deed records of the county or counties in which the point of withdrawal and the place of use are identified in the permit.

§ 711.356 Validation of Transfers

(a) As provided in the Act of May 24, 2019, 86th Leg., R.S., ch. ___, § 3, 2019 Tex. Gen. Laws ___, ___transfers that are effective before September 1, 2019, that have not been rescinded, and that are not subject to pending litigation are hereby conclusively validated in all respects. As used in this subsection, “transfer” means a transfer of permits and the Aquifer water rights evidenced thereby between parties under §§ 711.324 – 711.328, and the contracts or other transaction documents of any kind related thereto, including documents related to the extension of credit.

(b) As provided in the Act of May 24, 2019, 86th Leg., R.S., ch. ___, § 2, 2019 Tex. Gen. Laws ___, ___rules adopted by the Authority before September 1, 2019, relating to the severance of water rights from historically irrigated land and actions taken by the Authority under those rules are validated and confirmed in all respects.

(c) Relative to transfers, and actions taken by the Authority under rules adopted by the Authority relating to the severance of water rights from historically irrigated land, under Subsections (a) and (b), respectively, that become effective on and after September 1, 2019, the acts or proceedings of the Authority are conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired;
and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(d) Subsection (c) does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including §§ 1.06 or 109.57, Texas Alcoholic Beverage Code; or

(4) a matter that on May 28, 2001:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.