

EDWARDS AQUIFER AUTHORITY RULEMAKING

Title: **EDWARDS AQUIFER AUTHORITY RULES**
 Chapter 702 (Definitions)
 Chapter 707 (Procedure Before the Authority)
 Subchapter E (Actions on Applications)
 Subchapter F (Procedures for Contested Case Hearings)
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 Subchapter E (Administrative Fees)
 Chapter 713 (Water Quality)
 Subchapter C (Well Construction, Operation and
 Maintenance)
 Subchapter D (Well Closures)
 Chapter 717 (Enforcement)

Rule Type: **Final Rules (FRs)**

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Approved By: Roland Ruiz, General Manager

Approved by Board of Directors on _____, _____

CHAPTER 702 DEFINITIONS

Section

702.1 Definitions

§ 702.1 Definitions

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

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

...

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

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CHAPTER 707 PROCEDURE BEFORE THE AUTHORITY

Subchapter E Actions on Applications

Section

707.511 Fees

§ 707.511 Fees

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

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

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Subchapter F Procedures for Contested Case Hearings

Section

707.601 Applicability

707.601 Applicability

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

- (1) Applications for an initial regular permit;
- (2) Applications for a term permit;
- (3) Requests for a hearing under § 1.37(h) of the Act and § 717.118(e) relative to a preliminary report issued by the general manager under § 1.37(c) of the Act and § 717.118(a); and
- (4) Applications to convert base irrigation groundwater to unrestricted irrigation groundwater under § 711.342(C).

§ 707.602 Persons Entitled to a Contested Case Hearing

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

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

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

§ 707.603 Requests for Contested Case Hearing

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

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

...

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

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§ 707.607 Service of Documents

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

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§ 707.610 Designation of Parties

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

- (1) the general manager;

(2) an applicant; and

(3) a person who requested the contested case hearing that was granted.

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

(1) the general manager; and

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

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§ 707.6101 Discovery

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

§ 707.61011 Depositions

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

§ 707.6102 Expenses of Witness or Deponent

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

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§ 707.611 Burden of Proof

(a) For applications for an initial regular permit or a variance, the burden of proof is on the applicant to establish by convincing evidence that he is entitled to have the application granted.

(b) For all other applications, the burden of proof is by the preponderance of the evidence.

(c) For enforcement actions under § 1.37 of the Act, the burden of proof is on the general manager by the preponderance of the evidence.

§ 707.612 Commissions Requiring Deposition and Subpoenas

(a) On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the amount estimated to accrue under § 707.6102, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested case hearing pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case hearing will be in writing and directed to the Board.

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§ 707.613 Remand to Board

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

(1) all timely hearing requests have been withdrawn;

(2) all parties to a contested case hearing reach a settlement so that no facts or issues remain controverted; or

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§ 707.6131 Informal Dispositions

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

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§ 707.614 Certified Questions

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

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§ 707.6191 Transcription of Board Proceedings

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

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§ 707.620 Reopening the Record

The Board, on the motion of any party to a contested case hearing or on its own motion,

may order the judge to reopen the record for further proceedings on specific issues in dispute. The order shall include instructions as to the subject matter of further proceedings and the judge's duties in preparing supplemental materials or revised proposals based upon those proceedings for the Board's adoption.

§ 707.621 Decision

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

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

§ 707.6211 Notification of Decisions

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

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

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§ 707.622 Requests for Rehearing

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

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

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

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

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

§ 707.6221 Agreement to Modify Time Limits

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

§ 707.623 Decision Final and Appealable

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 timely motion for rehearing, a decision or order of the Board is final and appealable on the date:

- (1) the Board denies the motion for rehearing, including a denial by operation of law;
or
- (2) the Board renders a written decision after rehearing.

§ 707.624 Appeal of Final Decision

(a) Not later than the 60th day after the date on which the decision became final and appealable, parties affected by the final decision of the Board in a contested case may file suit under TEX. WATER CODE § 36.251, to appeal the decision. Parties may not file suit under § 36.251 if a motion for rehearing was not timely filed.

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

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§ 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 is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

CHAPTER 709 FEES

Subchapter B Registration Fees

Section

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709.5 Registration Fees

... § 709.5 Registration Fees

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

Subchapter C Permit Application Fees

Section

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709.11 Permit Application Fees

... § 709.11 Permit Application Fees

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

Subchapter D Aquifer Management Fees

Section

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709.23 Limitations on Fees

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§ 709.23 Limitations on Fees

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

Subchapter E Administrative Fees

Section

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709.45 Administrative Fees

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§ 709.45 Administrative Fees

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

CHAPTER 713 WATER QUALITY

Subchapter C Well Construction, Operation and Maintenance

Section

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713.2031 Basis of Approval of Well Construction Applications

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713.247 Injection Wells Prohibited; Certain Exceptions

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§ 713.2031 Basis for Approval of Well Construction Applications

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(d) If the application is for a § 713.203(a)(3) activity (i.e. injection well), the general manager shall grant the application if the following additional elements are established:

(1) the well is an injection well;

(2) the injection well terminates in the Aquifer; and

(3) the well is constructed, installed, drilled, equipped, or completed in accordance with § 713.247(b).

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§ 713.247 Injection Wells Prohibited; Certain Exceptions

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(b) Injection wells within the boundaries of the Authority that transect or terminate in the Aquifer may be constructed, installed, drilled, equipped, or completed only if:

(1) the wells meet the criteria in 30 TEX. ADMIN. CODE § 331.19; or

(2) water is injected through the wells by a municipally owned utility owned by the City of New Braunfels, and:

(i) the water has a total dissolved solids concentration of less than 1,500 milligrams per liter and is not domestic wastewater, municipal wastewater, or reclaimed water as those terms are defined by 30 TEX. ADMIN. CODE Ch. 210, effective October 31, 2018;

(ii) the injection well terminates in a portion of the Aquifer that contains groundwater with a total dissolved solids concentration of more than 5,000 milligrams per liter; ~~and~~

(iii) if the water injected is state water, the utility has a water right or contract for use of the water that does not prohibit use of the water in an aquifer storage and recovery project; and

(iv) the injection of water complies with requirements imposed under Subchapter G, Chapter 27, TEX. WATER CODE.

Subchapter D Well Closures

Section

713.300 Purpose

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713.304 Duty to Cap Wells

713.306 Duty to Plug Wells

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§ 713.300 Purpose and Definitions

The purpose of this subchapter is to implement §§ 1.03(17) and (21), 1.08(a), 1.15(a) and (b), 1.35(d), and 1.361 of the Act by regulating well closure activities:

- (1) to prevent the waste of groundwater in the Aquifer;
- (2) to prevent the pollution of groundwater in the Aquifer;
- (3) to protect the water quality of the Aquifer; and

(4) to protect the water quality of the surface streams to which the Aquifer provides springflows.

(b) For the purposes of this subchapter, the following terms have the following meanings:

(1) open well - means a well that is open at the surface or through the casing, including any annulus or failure in the annular seal, the well seal, or sanitary seal that allows movement of water, contaminants, or other material between different subsurface formations or between subsurface formations and the ground surface. An open well is considered a deteriorated well;

(2) uncovered well – means a well that is open at the surface that is not a deteriorated well and can be properly capped.

§ 713.300 Purpose and Definitions

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- (1) to prevent the waste of groundwater in the Aquifer;
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- (3) to protect the water quality of the Aquifer; and
- (4) to protect the water quality of the surface streams to which the Aquifer provides springflows.

§ 713.304 Duty to Cap Wells

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(h) If the owner or lessee of land on which an open or uncovered well is located fails or refuses to cap the well in compliance with Chapter 1901, TEX. OCCUPATIONS CODE, and the Authority's rules, the Authority may take enforcement action in accordance with § 717.116 to require the owner or lessee to cap the well.

§ 713.306 Duty to Plug Wells

...

(j) If the owner or lessee of land on which an open or uncovered well is located fails or refuses to plug the well in compliance with Chapter 1901, TEX. OCCUPATIONS CODE, and the Authority's rules, the Authority may take enforcement action in accordance with § 717.116 to require the owner or lessee to plug the well.

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CHAPTER 717 ENFORCEMENT

Section

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717.116 Plugging, Sealing or Marking of Wells

717.118 Administrative Penalties

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§ 717.116 Plugging, Sealing or Marking of Wells

(a) If the Board determines that it is reasonably necessary to ensure that a well is not operated in violation of applicable law, the Board may issue an order for Authority staff to plug, seal or mark any well to prevent any person from unlawfully withdrawing groundwater from the well or to prevent the pollution or waste of the Aquifer. For wells for which the owner refuses to plug or cap the well in accordance with Chapter 1901, TEX. OCCUPATIONS CODE, Authority staff or a person, firm or corporation employed by the Authority may go on the land and plug or cap the well safely and securely.

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(f) Reasonable expenses incurred by the Authority in closing or capping a well under Subsection (a) constitute a lien on the land on which the well is located.

(g) The lien described by Subsection (f) arises and attaches on recordation of, in the deed records of the county where the well is located, an affidavit executed by and person conversant with the facts stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or lessee, after notification, to close or cap the well before the expiration of 10 days after the notification;
- (5) the closing or capping of the well by the Authority, or by an authorized agent, representative, or employee of the Authority; and,
- (6) the expense incurred by the Authority in closing or capping the well.

§ 717.118 Administrative Penalties

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(e) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (d), the person may make a

written request for a hearing to the Authority. Hearings under this subsection are contested case hearings as defined in § 702.1(47).