

**EDWARDS AQUIFER AUTHORITY
RULEMAKING**

Document Title: **REASONS AND JUSTIFICATION FOR RULEMAKING**

Title: **EDWARDS AQUIFER AUTHORITY RULES**

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I. INTRODUCTION

The Board of Directors (Board) of the Edwards Aquifer Authority (EAA) is proposing to amend existing rules related to definitions, procedures before the authority, fees, groundwater withdrawals, transfers and amendments of permitted rights, water quality, critical period management, and enforcement.

II. REASONS AND JUSTIFICATION FOR THE RULES

The EAA is required by the Edwards Aquifer Authority Act¹ (“Act”) to manage, conserve, preserve, and protect the Edwards Aquifer (Aquifer), to increase the recharge of the Aquifer, and prevent the waste or pollution of the Aquifer.²

The Act created the EAA in order to protect the “distinctive natural resource of the [A]quifer” and the “diverse economic and social interests dependent on the [A]quifer for water supply.”³ The EAA is to manage the [A]quifer “to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state.”⁴ The Act gives the EAA “all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer....”⁵ The EAA is required by the Act to “adopt rules necessary to carry out the [EAA]’s powers and duties under [the Act].”⁶

Orders of the Board adopting a rule must state the reason and justification for the rule.⁷

CHAPTER 702 (Definitions)

Section 702.1 Definitions

The following definitions were amended, deleted from, or added to the EAA rules. The reason and justification for the changes is to provide clarity in the rules and to effectuate changes required by bills passed during the 86th Regular Session of the Texas Legislature:

“Base Irrigation Groundwater” was amended to reflect the accurate section referenced in the EAA Act.

“Groundwater” was amended to reference the definition of “underground water” within the EAA rules and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

“Underground water” was amended to provide a direct definition, rather than reference the definition of “groundwater” in Chapter 36 of the Texas Water Code and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

¹ Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended.

² See Act §§ 1.01, 1.03, 1.08, 1.11, and 1.35.

³ *Id.* § 1.01.

⁴ *Id.*

⁵ *Id.* § 1.08(a).

⁶ *Id.* § 1.11(a).

⁷ *Id.* § 1.115(c).

CHAPTER 707 (Procedure Before the Authority)

Subchapter E. Actions on Applications

Section 707.511 Fees

The reason and justification for the amendment to Sections 707.511(a) and (b) is to clarify that application and registration fees are not mandatory and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Subchapter F. Procedures for Contested Case Hearings

Section 707.601 Applicability

The reason and justification for the amendments to Section 707.601(1)-(4) is to clarify what actions by the EAA are subject to a contested case hearing and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.602 Persons Entitled to a Contested Case Hearing

The reason and justification for the amendments to Section 707.602(a) and (b) is to clarify what persons or entities have a personal justiciable interest in and are entitled to a contested case hearing and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.603 Request for Contested Case Hearing

The reason and justification for the amendments to Section 707.603(b) and (c) is to clarify how a person or entity requests a contested case hearing from the EAA and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.607 Service of Documents

The reason and justification for the amendment to Section 707.607 is to provide consistent language throughout the EAA rules.

Section 707.610 Designation of Parties

The reason and justification for the amendments to Section 707.610(a) and (b) is to clarify appropriate parties to a contested case hearing related to EAA actions, to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.6101 Discovery

The reason and justification for the amendments to Section 707.6101 is to provide

consistent language throughout the EAA rules.

Section 707.61011 Depositions

The reason and justification for the amendments to Section 707.61011 is to provide consistent language throughout the EAA rules.

Section 707.6102 Expenses of Witness or Deponent

The reason and justification for the amendments to Section 707.6102 is to provide consistent language throughout the EAA rules.

Section 707.611 Burden of Proof

The reason and justification for the amendment to Section 707.611 is to clarify the burden of proof for contested case hearings and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.612 Commissions Requiring Depositions and Subpoenas

The reason and justification for the amendment to Section 707.612 is to provide consistent language throughout the EAA rules.

Section 707.613 Remand to Board

The reason and justification for the amendment to Section 707.613 is to provide consistent language throughout the EAA rules.

Section 707.6131 Informal Dispositions

The reason and justification for the amendment to Section 707.6131 is to provide consistent language throughout the EAA rules.

Section 707.614 Certified Questions

The reason and justification for the amendment to Section 707.614 is to provide consistent language throughout the EAA rules.

Section 707. 6191 Transcription of Board Proceedings

The reason and justification for the amendment to Section 707.6191 is to provide consistent language throughout the EAA rules.

Section 707.620 Reopening the Record

The reason and justification for the amendment to Section 707.620 is to provide consistent

language throughout the EAA rules.

Section 707.621 Decision

The reason and justification for the amendment to Section 707.621 (a)-(g) is to provide clarity to the contested case process and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.6211 Notification of Decisions

The reason and justification for the amendment to Section 707.6211 is to provide consistent language throughout the EAA rules.

Section 707.622 Requests for Rehearing

The reason and justification for the amendments to Section 707.622(a)-(d) is to provide clarity to the contested case process and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.6221 Agreement to Modify Time Limits

The reason and justification for the amendment to Section 707.6221 is to provide consistent language throughout the EAA rules.

Section 707.623 Decision Final and Appealable

The reason and justification for the amendments to 707.623(a) and (b) is to provide clarity to the contested case process and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.624 Appeal of Final Decision

The reason and justification for the amendments to 707.624 is to provide clarity to the contested case process and to be consistent with changes required by HB 2729 and HB 3656 of the 86th Regular Session of the Texas Legislature.

Section 707.625 Cost of Record on Appeal

The reason and justification for the amendment to Section 707.625 is to provide consistent language throughout the EAA rules.

CHAPTER 709 (Fees)

Subchapter B. Registration Fees

Section 709.5 Registration Fees

The reason and justification for the amendments to Section 709.5 is to clarify that registration fees are not mandatory and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Subchapter C. Permit Application Fees

Section 709.11 Permit Application Fees

The reason and justification for the amendments to Section 709.11 is to clarify that application fees are not mandatory and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Subchapter D. Aquifer Management Fees

Section 709.23 Limitation on Fees

The reason and justification for the amendments to Section 709.23 is to provide a limitation on the rate in which the EAA may increase its aquifer management fees and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Subchapter E. Administrative Fees

Section 709.45 Administrative Fees

The reason and justification for the amendments to Section 709.45 is to clarify how and when the EAA may charge an administrative fee and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

CHAPTER 711 (Groundwater Withdrawals)

Subchapter C. Exempt Wells

Section 711.50 Transfer of Ownership

The reason and justification for the amendments to Section 711.50 is to maintain consistency throughout the EAA rules.

Subchapter D. Limited Production Wells

Section 711.72 Transfer of Ownership

The reason and justification for the amendments to Section 711.72 is to maintain consistency throughout the EAA rules.

Subchapter E. Groundwater Withdrawal Permits

Section 711.95 Stacking of Irrigation Rights

The reason and justification for the amendments to Section 711.95 is to make non-substantive changes by removing redundancy in the section and maintain consistency throughout the EAA rules.

Subchapter L. Administration of Permits

Section 711.320 Purpose

The reason and justification for the amendments to Section 711.320 is to make non-substantive, grammatical changes to the section and maintain consistency throughout the EAA rules.

Section 711.322 Applicability

The reason and justification for the amendments to Section 711.322 is to provide consistent language throughout EAA Rules.

Section 711.324 Transfers

The reason and justification for the amendments to Section 711.324 is to maintain consistency with current rule language and provide clarification to existing rules.

Section 711.326 Applications to Transfer

The reason and justification for the amendments to Section 711.326 is to remove redundancy and maintain consistency throughout the EAA rules.

Section 711.328 Basis for Granting Transfer Applications

The reason and justification for the amendments to Section 711.328 is to remove redundancy and maintain consistency throughout the EAA rules.

Section 711.330 Leases

Section 711.330 was amended to maintain consistency throughout the EAA rules.

Section 711.332 Amendments

Section 711.332 was amended to remove redundancy, provide clarification and maintain consistency throughout the EAA rules.

Section 711.334 Applications to Amend

The reason and justification for the amendments to Section 711.334 is to maintain

consistency throughout the EAA rules.

Section 711.336 Basis for Granting Amendment Applications

The reason and justification for the amendments to Section 711.336 is to maintain consistency throughout the EAA rules.

Section 711.338 Conversions

The reason and justification for the amendments to Section 711.338 is to clarify the intent of or to effectuate the changes mandated by House Bill 3656 from the 86th Regular Session of the Texas Legislative Session and to maintain consistent throughout the EAA rules.

Section 711.340 Applications to Convert

The reason and justification for the amendments to Section 711.340 is to provide clarification and maintain consistency throughout the EAA rules.

Section 711.342 Basis for Granting Conversion Applications

The reason and justification for the amendments to Section 711.342 is to clarify the intent of or to effectuate the changes mandated by House Bill 3656 from the 86th Regular Session of the Texas Legislative Session.

Section 711.344 Consolidations

The reason and justification for the amendments to Section 711.344 is to maintain consistency throughout the EAA rules.

Section 711.346 Applications to Consolidate

The reason and justification for the amendments to Section 711.346 is to provide clarification and maintain consistency throughout the EAA rules.

Section 711.353 Notice of Claims

The reason and justification for the amendments to Section 711.353 is to provide clarification and maintain consistency throughout the EAA rules.

Section 711.354 Recordation of Permits

The reason and justification for the amendments to Section 711.354 is to maintain consistency throughout the EAA rules.

Section 711.356 Validation of Transfers

The reason and justification for the amendments to Section 711.356 is to clarify the intent of or to effectuate the changes mandated by House Bill 3656 from the 86th Regular Session of the Texas Legislative Session. Furthermore, Section 711.356 is amended to provide explicit validation from the bill language of transfers of groundwater and severance of groundwater rights from historically irrigated lands that occurred prior to September 1, 2019.

CHAPTER 713 (Water Quality)

Subchapter C. Well Construction, Operation and Maintenance

Section 713.2031 Basis for Approval of Well Construction Applications

The reason and justification for the amendment to Section 713.2031 is to effectuate changes in the law related to New Braunfels Utilities' aquifer storage and recovery project and to be consistent with changes required by SB 520 of the 86th Regular Session of the Texas Legislature.

Section 713.247 Injection Wells Prohibited; Certain Exceptions

The reason and justification for the amendments to Section 713.247 is to effectuate changes in the law related to New Braunfels Utilities' aquifer storage and recovery project and to be consistent with changes required by SB 520 of the 86th Regular Session of the Texas Legislature.

Subchapter D. Well Closures

Section 713.300 Purpose and Definitions

The reason and justification for the amendment to Section 713.300 is to clarify the purpose of the regulations and to add definitions for the terms "open well" and "uncovered well." The amendments make the EAA rules consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Section 713.304 Duty to Cap Wells

The reason and justification for the amendment to Section 713.304(h) is to clarify the EAA's enforcement options when a well is not properly and timely capped. The amendment makes the EAA rules consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Section 713.306 Duty to Plug Wells

The reason and justification for the amendment to Section 713.306(i) is to clarify the EAA's enforcement options when a well is not properly and timely plugged. The amendment makes the EAA rules consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

CHAPTER 715 (Comprehensive Water Management)

Subchapter E (Critical Period Management Plan)

Section 715.219 Finishing Out Crop Irrigation; Additional Crops

The reason and justification for the amendments to Section 715.219(a)-(f) is to: (1) effectuate a change to the process for irrigators to qualify for protection from Critical Period Management permit reductions (“CPM”); (2) introduce the new concept of jeopardy, which is to be determined by the EAA if the permit holder can demonstrate that he or she is within 30 days of over-pumping their permitted amount that has already been reduced by CPM at the time of jeopardy determination; (3) describe the process by which the Authority will determine if and how a permit holder qualifies for protection from CPM, including loss of protection; (4) provide notice to permit holders that by exercising the protections from CPM, they are no longer able to plant additional crops unless such crops are dryland farmed or irrigated via a water source other than the Aquifer; and (5) remove rule language that is unnecessary or in conflict with the new process for qualifying for protection from CPM.

CHAPTER 717 (Enforcement)

Section 717.116 Plugging, Sealing or Marking of Wells

The reason and justification for the amendment to Section 717.116(a), (f), and (g) is to clarify the EAA’s enforcement options, including how and when a lien may be applied to a well owner’s property when a well is not properly and timely capped or plugged. The amendment makes the EAA rules consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.

Section 717.118 Administrative Penalties

The reason and justification for the amendment to Section 717.118 is to clarify the EAA’s administrative penalty process and to be consistent with changes required by HB 2729 of the 86th Regular Session of the Texas Legislature.