

RESOLUTION AND ORDER NO. 12-19-957

OF THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY ADOPTING EDWARDS AQUIFER AUTHORITY RULES WITHIN CHAPTER 702 (DEFINITIONS); CHAPTER 707 (PROCEDURE BEFORE THE AUTHORITY), SUBCHAPTERS E (ACTIONS ON APPLICATIONS) AND F (PROCEDURES FOR CONTESTED CASE HEARINGS); CHAPTER 709 (FEES), SUBCHAPTERS B (REGISTRATION FEES), C (PERMIT APPLICATION FEES), D (AQUIFER MANAGEMENT FEES), AND E (ADMINISTRATIVE FEES); CHAPTER 711 (GROUNDWATER WITHDRAWALS), SUBCHAPTERS C (EXEMPT WELLS), D (LIMITED PRODUCTION WELLS), E (GROUNDWATER WITHDRAWAL PERMITS), L (ADMINISTRATION OF PERMITS); CHAPTER 713 (WATER QUALITY), SUBCHAPTERS C (WELL CONSTRUCTION, OPERATION AND MAINTENANCE) AND D (WELL CLOSURES); CHAPTER 715 (COMPREHENSIVE WATER MANAGEMENT), SUBCHAPTER E (CRITICAL PERIOD MANAGEMENT PLAN); AND CHAPTER 717 (ENFORCEMENT).

WHEREAS, the Edwards Aquifer (Aquifer) is a unique and complex hydrological system;

WHEREAS, diverse economic and social interests are dependent on the Aquifer for water supply;

WHEREAS, the Aquifer has been declared by the Texas Legislature to be "a distinctive natural resource in this state" and "a unique aquifer;"

WHEREAS, the Edwards Aquifer Authority (EAA) was created in 1993 by the Texas Legislature, Edwards Aquifer Authority Act (Act) of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended;

WHEREAS, in § 1.01 of the Act, the Legislature found that "a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state";

WHEREAS, under § 1.08(a) of the Act, the EAA "has all the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer.";

WHEREAS, the EAA possesses broad rulemaking authority;

WHEREAS, § 1.11(a) of the Act provides that "[t]he Board [of Directors of the EAA (Board)] shall adopt rules necessary to carry out the [EAA's] powers and duties under [article 1 of the Act], including rules governing procedures of the [B]oard and [EAA]";

WHEREAS, the EAA is not a “state agency” as that term is defined by Texas’ Administrative Procedure Act, TEX. GOV’T CODE. ANN. §§ 2001.003(7) (West 2008) (APA), and the Legislature has expressly provided that the EAA is not subject to the requirements of the APA, *see* Act of May 28, 2001, 77<sup>th</sup> Leg., R.S., ch. 966, § 6.03, 2001 TEX. GEN. LAWS 1991, 2075;

WHEREAS, § 1.115 of the Act provides the procedural requirements for rulemaking by the EAA;

WHEREAS, when it adopts rules, the EAA must comply with the applicable procedural rulemaking requirements of § 1.115 of the Act;

WHEREAS, the Act does not define a “rule;”<sup>1</sup>

WHEREAS, the EAA has determined that the Proposed Rules (PRs) which it is adding to Chapters 702, 707, 709, 711, 713, 715, and 717 are “rules” as that term is used in § 1.115 of the Act,<sup>2</sup> and, therefore, the process for adopting these rules is subject to the procedural requirements of § 1.115 of the Act;

WHEREAS, pursuant to § 1.115(b) of the Act, the EAA has provided personal notice of the PRs by United States mail to all applicants and permit holders;

WHEREAS, a “notice of public hearing” for the PRs has been published in a newspaper of general circulation within the boundaries of the Authority at least 14 days before the date of the public hearing, pursuant to § 1.115(b) of the Act, and in at least four other newspapers with circulation within all or any portion of the boundaries of the EAA;

WHEREAS, public hearings on the PRs were held on October 1, 2019, at the Braden Keller Center in Castroville, Texas; on October 2, 2019, at the Sgt. Willie de Leon Civic Center in Uvalde, Texas; on October 7, 2019, at the New Braunfels Public Library in New Braunfels, Texas; and on October 8, 2019, at the Edwards Aquifer Authority in San Antonio, Texas;

WHEREAS, pursuant to § 1.115(c) of the Act, the EAA has allowed at least 45 days for public comment on the PRs prior to adoption of the PRs as Final Rules (FRs);

WHEREAS, there were no written comments provided on the PRs;

WHEREAS, a regular meeting of the Board was held on December 10, 2019, at 3:00 p.m., notice of the public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

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<sup>1</sup> Section 1.115(f) of the Act provides some guidance by noting that “bylaws or internal procedures of the board and authority” are not governed by the rulemaking procedures of § 1.115. *See also South Plains Lamesa R.R., Ltd. v. High Plains Underground Water Conservation Dist. No. 1*, 52 S.W.3d 770, 781 (Tex. App.—Amarillo 2001, no pet.) (noting that neither § 36.101 nor § 36.002 of the Texas Water Code defines the term “rule”).

<sup>2</sup> The *South Plains* court concluded that “the word *rule* [as used in § 36.002, Texas Water Code] contemplates an established standard prescribing a guide for conduct, regulation or principle that does not include discretionary acts of the [board of directors of a groundwater conservation district].” *Id.* (citations omitted).

WHEREAS, an agenda item was duly listed in the notice of public meeting that is the subject of this Resolution and Order;

WHEREAS, a majority of the directors of the Board were present and constituted a quorum; and

WHEREAS, a vote of the majority of the quorum of the Board present passed on, voted in favor of, and adopted the following Resolution and Order; and

WHEREAS, pursuant to § 1.115(c) of the Act, this Order adopts the FRs, and in Exhibit A, states the reasons and justifications for the FRs; and

WHEREAS, the Texas Private Real Property Rights Preservation Act Assessment, as set out on Exhibit B, is attached hereto and incorporated for all purposes;

WHEREAS, after conducting its rulemaking process, the EAA has prepared FRs as set out in Exhibit C, including a redlined version in Exhibit D, which are attached hereto and incorporated for all purposes; and

WHEREAS, the Board has reviewed the above-listed rules and finds that they are consistent with the EAA's statutory authority and should be adopted.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THAT:

- Section 1. The recitals set out above are found to be true and correct and they are hereby adopted by the Board and are made a part of this Resolution and Order for all purposes.
- Section 2. The Reasons and Justifications, attached hereto as Exhibit A, and all of the statements, findings, and conclusions contained therein are hereby approved and adopted by the Board and are incorporated into this Resolution and Order for all purposes.
- Section 3. The Texas Private Real Property Rights Preservation Act Assessment, which is attached hereto as Exhibit B, and all of the statements, findings, and conclusions contained therein are hereby approved and adopted by the Board and are incorporated into this Resolution and Order for all purposes.
- Section 4. The FRs, which are attached to this Resolution and Order as Exhibits C and D are hereby adopted as Final Rules by the Board.
- Section 5. This Resolution and Order shall become effective from and after its adoption.
- Section 6. The FRs adopted herein become final and effective December 20, 2019.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS  
AQUIFER AUTHORITY THIS 10<sup>TH</sup> DAY OF DECEMBER 2019.

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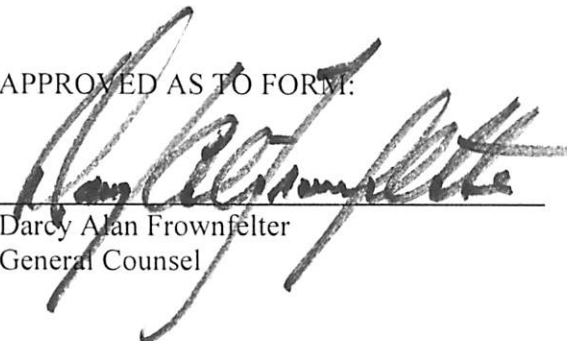
Luana Buckner  
Chairman, Board of Directors

ATTEST:

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Enrique P.Valdivia  
Secretary, Board of Directors

APPROVED AS TO FORM:



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Darcy Alan Frownfelter  
General Counsel