

Exhibit C

Includes three sets of redlined Final Rules for the following Chapters and Subchapters:

Chapter 702 Definitions

Chapter 707 Procedure Before the Authority

Subchapter E (Actions on Applications)

Subchapter F (Procedures for Contested Case Hearings)

Chapter 709 Fees

Subchapter B (Registration Fees)

Subchapter C (Permit Application Fees)

Subchapter D (Aquifer Management Fees)

Subchapter E (Administrative Fees)

Chapter 711 Groundwater Withdrawals

Subchapter C. Exempt Wells

Subchapter D. Limited Production Wells

Subchapter E. Groundwater Withdrawal Permits

Subchapter L. Administration of Permits

Chapter 713 Water Quality

Subchapter C (Well Construction, Operation and Maintenance)

Subchapter D (Well Closures)

Chapter 715 Comprehensive Water Management

Subchapter E (Critical Period Management Plan)

Chapter 717 Enforcement

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

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 711.50 Transfer of Ownership

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 Subchapter D. Limited Production Wells
 Section

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 Subchapter E. Groundwater Withdrawal Permits
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711.356 Validation of Transfers

Rule Type: Final Rules (FRs)

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

Through: Darcy Alan Frownfelter, General Counsel
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Approved By: Roland Ruiz, General Manager

Approved by Board of Directors 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(~~e~~)(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

~~Exempt well registrations are administered as provided in Subchapter L.~~ Persons transferring ownership of exempt wells are required to file a new registration with the Authority ~~in accordance with the transfer provisions contained in § 711.326(d).~~

...

Subchapter D. Limited Production Wells

...

§ 711.72 Transfer of Ownership

~~Registrations for limited production wells are administered as provided in Chapter 711, Subchapter L.~~ Persons transferring ownership of limited production wells are required to file a new registration with the Authority ~~in accordance with the transfer provisions contained in § 711.326(d).~~

...

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 lands ~~s identified in the place of use of an original initial regular permit issued for irrigation purposes.~~ Unrestricted irrigation groundwater may be made appurtenant to lands other than the ~~original~~ historically irrigated lands if the Authority approves the transfer or amendment of an initial regular permit which changes the place of use to a location other than ~~original~~ the historically irrigated lands. 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 ~~original~~ historically irrigated lands.

(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 ~~original~~-historically irrigated lands, unrestricted irrigation groundwater is allocated to the ~~original~~-historically irrigated ~~acres~~ 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 lands 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 lands; or

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

(c) **Base Irrigation Groundwater.** Base irrigation groundwater is allocated to the historically irrigated ~~acres~~-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) ~~the permit holder~~ retained ownership of other historically irrigated lands on which the permit holder's well is located; and

...

(3) the permit holder:

...

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

...

(4) for the permit holders:

...

(B) parts of the historically irrigated lands 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 lands, 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 ~~an application, permits, or registrations can~~ may be changed in light of transactions or other activity related ~~thereto—applications, permits, and registrations;~~
~~and~~
- (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) ~~As provided herein, t~~This subchapter applies to:

- (1) initial regular permits, ~~and applications for such permits;~~
~~and~~
- (2) ~~well registrations under §§ 711.21 and 711.62~~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).

~~(b)~~(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, ~~applications, and registrations~~ may be transferred as follows:

(1) conveyance of permit ownership, or the lease of rights to withdraw groundwater under ~~the~~ permit;

(2) point of withdrawal;

(3) purpose of use;

(4) place of use;

(5) maximum rate of withdrawal; or

(6) ~~reductions in the~~ groundwater withdrawal amount.

(b) Except as provided in Subsection ~~(e)~~(d) and § 711.332(b), ownership of ~~initial regular permits, or applications for an initial regular permits,~~ may be transferred separately from ownership of the place of use.

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

(d) Except as provided in § 711.338(b), Ownership of all or part of an ~~initial regular~~ permit issued with base irrigation groundwater shall pass with the transfer of ownership of ~~the~~all or part of the historically irrigated land to which the permit is appurtenant~~irrigated during the historical period owned by the transferor identified as the place of use in such permit.~~ No reservation in the transferor of base irrigation groundwater separate from the transferred historically irrigated lands shall be effective.

(e) ~~In a transfer of the ownership of all or part of the place of use identified in an initial regular permit issued with unrestricted irrigation groundwater, the transferor may reserve all or part of the unrestricted irrigation groundwater in the transferor. 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 an ~~initial regular~~ 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 ~~or application~~ owned by the water utility.

_____(g) Except for ~~initial regular~~ permits issued for irrigation purposes with base irrigation groundwater, ~~initial regular permits and regular~~ permits may be transferred that provide for no place of use or point of withdrawal. However, withdrawals may not be made under such ~~transferred~~ 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, ~~application, or registration~~ 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 ~~S~~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. ~~An initial regular~~ 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. ~~An initial regular~~ permit may not be transferred for a term exceeding the date provided in the document approving the transfer application.

~~(d) For transfers of well registrations for exempt wells or limited production wells, the well owner shall file a new well registration.~~

...
(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 ~~initial regular~~ permit sought to be transferred;

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

...

(6) for transfers of part of the place of use of an ~~initial regular~~ permit for irrigation use:

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

(i) the historically irrigated lands ~~irrigated during the historical period which provided the basis for the issuance of the original initial regular permit and are identified as all or part of the place of use in the permit;~~

(ii) the portion of the historically irrigated lands conveyed to the transferee; and

(iii) the portion of the historically irrigated lands retained by the transferor; and

(iv) the boundaries of the place of use in the permit and the actual historically irrigated acresland in relation to one another;

...

§ 711.330 Leases

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

...

(c) If a transferor of an ~~initial regular~~ 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 an ~~initial regular~~ 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 lands ~~that are the original place of use of the initial regular permit 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 lands as provided in § 711.324(d). However, the party to whom the permit holder has transferred ownership shall take title of the historically irrigated lands subject to the lease.

§ 711.332 Amendments

(a) All ~~initial-regular~~ 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) ~~reductions in the~~ groundwater withdrawal amount.

(b) Except as provided in Subsections (c) and §§ 711.338(b), holders of ~~initial-regular~~ 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 ~~n-initial regular~~ 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 lands to which the permit is appurtenant that are the original place of use of the initial-regular permit 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 lands 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.

~~(d)(e)~~ Except for ~~initial-regular~~ permits issued for irrigation purposes with base irrigation groundwater, ~~initial-regular~~ 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.

~~(e)(f)~~ Permit holders of ~~initial-regular~~ permits for irrigation purposes may designate the

location of the original historically irrigated lands ~~that provided the basis for the Authority's determination on the application~~ 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 lands 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 lands. 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 lands.

§ 711.334 Applications to Amend

(a) Permit holders desiring to amend the terms of ~~their initial regular 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 711.332--711.336.

...

(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 ~~initial regular~~ permit sought to be amended, if applicable;

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

...

(6) for amendments to part of the place of use of ~~an initial regular~~ 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 ~~an initial regular~~ 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).

~~§ 0F~~

~~(6) a change in land use has occurred whereby 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~~

~~(A) the historically irrigated land that is the subject of the application has been physically developed such that at least 75 percent of the land meets the characteristics of development; or~~

~~(B) the historically irrigated land has been re-zoned such that it can no longer be used for agricultural purposes; or~~

~~(C) the historically irrigated land has been acquired by an entity with the power of condemnation or eminent domain, and the entity uses the land in a manner within the entity's legally authorized purposes; or~~

~~(D) the historically irrigated land is no longer practicable to farm as evidenced by the following:~~

~~(i) the historically irrigated land has not been irrigated for 3 or more years; and~~

~~(ii) evidence has been submitted demonstrating one of the following:~~

~~(a) due to surrounding development, continuing agricultural activities on the land have the potential to compromise the health and safety of a farm operator or the general public occupying or residing on adjacent properties; or~~

~~(b) surrounding development substantially impairs any continued agricultural activities on the historically irrigated land; or~~

~~(7) an initial regular permit originally issued by the Authority contains base irrigation groundwater at an amount in excess of one acre foot per acre of historically irrigated land, and the conversion application seeks to convert only the amount of base irrigation groundwater that is in excess of one acre foot per acre of historically irrigated land.~~

(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 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 ~~initial-regular~~ 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 ~~initial-regular~~ 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 an ~~initial regular~~ 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 an ~~initial regular~~ 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~~ permits 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 ~~regular~~ 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 ~~regular~~ permit.

§ 711.356 Presumption of Validationity of Transfers

(a) As provided in the Act of May 24, 2019, 86th Leg., R.S., ch. 904, § 3, 2019 Tex. Gen. Laws 2416, 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. 904, § 2, 2019 Tex. Gen. Laws 2416, 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.

~~(a)(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.

~~(b)(d)~~ Subsection (c) ~~This section~~ 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 ~~the effective date of this section~~ 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.

EDWARDS AQUIFER AUTHORITY RULEMAKING

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

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

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 Deborah Trejo

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:

...

(80) Groundwater – Has the meaning of “underground” water as defined in this chapter.
~~Water percolating below the surface of the earth.~~

...
(194) Underground water - Water percolating beneath the earth~~Has the meaning of "groundwater" as defined by TEX. WATER CODE § 36.001(5), as incorporated in Subsection (81) of this section.~~
...

CHAPTER 707 PROCEDURE BEFORE THE AUTHORITY

Subchapter E Actions on Applications

Section

707.511 Fees

~~...~~ § 707.511 Fees

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

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

...

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 ~~applications~~proceedings:

(1) Applications for an initial regular permits;

(2) Applications for a term permits;

(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), tThe following persons or entities have a personal justiciable interest in and are entitled to a contested case hearing ~~on applicable applications:~~

(1) ~~an~~the applicant for a permit;

~~(2)(1) an applicant for another groundwater withdrawal permit; and~~

(2) ~~any~~ 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

...

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

...

(3) state whether the person requesting the contested case hearing is ~~the~~an applicant for ~~that a~~ permit or ~~an applicant for 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.

...

§ 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.

...

§ 707.610 Designation of Parties

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

- (1) the general manager;
- (2) ~~the~~ an applicant; and
- (3) ~~the~~ 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).

...

§ 707.6101 Discovery

Discovery in a contested case ~~proceedings~~ 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:

...

§ 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 ~~matter-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.

...

§ 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

...

§ 707.6131 Informal Dispositions

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

...

§ 707.614 Certified Questions

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

...

§ 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.

...

§ 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 ~~and will include findings of fact and conclusions of law separately stated.~~

(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.

~~(ee)~~ If a party submits proposed findings of fact, the decision will include a ruling on each proposed finding.

~~(fd)~~ 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.

(ge) The Board may change a finding of fact or conclusion of law made by ~~thea~~ 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.

...

§ 707.622 ~~Motion-Requests~~ for Rehearing

(a) ~~A~~Only a party to ~~thea~~ contested case ~~proceedinghearing~~ may ~~file a motion for request a~~ rehearing ~~before the Board~~. The ~~motionrequest~~ shall be filed with the docket clerk ~~in the Authority's office by~~ not later than the 20th day after the date ~~of the Board's decision issues its findings and conclusions~~. On or before the date of filing of a ~~motionrequest~~ for rehearing, the party filing the ~~motionrequest~~ shall mail or deliver a copy of the motion to all parties with certification of service furnished to the Authority. The ~~motionrequest~~ shall contain:

(1) the name and representative capacity of the person filing the ~~motionrequest~~;

(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 ~~motionrequest~~, including a concise statement of each allegation of error.

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

(c) The ~~motion~~request for rehearing will be scheduled for consideration during a Board meeting. A ~~motion~~request for rehearing may be granted in whole or in part. When a ~~motion~~request 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~~request for rehearing, Authority staff shall schedule the rehearing not later than the 45th day after the date the ~~motion~~request is granted. Thereafter, the Board shall render a decision or order.

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

(a) ~~In the absence of a timely motion for rehearing, a~~A decision ~~or order of~~by the Board ~~on an application~~ 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) is a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or~~

~~(2) if a request for rehearing is filed on time, on the date:~~

~~(1A) the Board denies the motion for rehearing, including a denial by operation of law; or~~

~~(2B) the Board renders a written decision after rehearing.~~

~~(b) A timely filed request for rehearing is a prerequisite to a suit against the Authority under § 1.46(a) of the Act challenging a decision in a contested case hearing.~~

§ 707.624 Appeal of Final Decision

(a) ~~A suit under § 1.46(a) of the Act must be filed N~~not later than the 60th day after the date on which the decision ~~became~~becomes 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 hearing shall include the following:

...

§ 707.625 Costs of Record on Appeal

A party who appeals a final decision in a contested case hearing 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

...
709.5 Registration Fees

... § 709.5 Registration Fees

Authority staff ~~shall~~may impose a \$10 fee to file any registration. If imposed, tThe fee shall be paid at the time the registration is filed. ~~The Board may waive this fee for a purpose deemed appropriate by the Board in its discretion.~~

Subchapter C Permit Application Fees

Section

...
709.11 Permit Application Fees

... § 709.11 Permit Application Fees

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

Subchapter D Aquifer Management Fees

Section

...

709.23 Limitations on Fees

...

§ 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

...

709.45 Administrative Fees

...

§ 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 ~~require the payment of an administrative fee for certain administrative acts performed by the Authority. Fees set by the Authority may not unreasonably exceed the cost to~~ 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

...
713.2031 Basis of Approval of Well Construction Applications

...
713.247 Injection Wells Prohibited; Certain Exceptions

...

§ 713.2031 Basis for Approval of Well Construction Applications

...

(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)~~30 TEX. ADMIN. CODE § 331.19.~~

...

§ 713.247 Injection Wells Prohibited; Certain Exceptions

...

(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 in 30 TEX. ADMIN. CODE § 331.19.~~

(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

...

713.304 Duty to Cap Wells

713.306 Duty to Plug Wells

...

§ 713.300 Purpose and Definitions

(a) The purpose of this subchapter is to:

~~(1)~~ implement §§ 1.03(17) and (21), 1.08(a), 1.15(a) and (b), ~~and~~ 1.35(d), and 1.361 of the Act by regulating well closure activities:

~~(12)~~ to prevent the waste of groundwater in the Aquifer;

~~(23)~~ to prevent the pollution of groundwater in the Aquifer;

~~(34)~~ to protect the water quality of the Aquifer; and

~~(45)~~ 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.

§ 713.304 Duty to Cap Wells

...

(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.

...

CHAPTER 717 ENFORCEMENT

Section

...

717.116 Plugging, Sealing or Marking of Wells

717.118 Administrative Penalties

...

§ 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.

...

(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

...

(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).

EDWARDS AQUIFER AUTHORITY RULEMAKING

Title: EDWARDS AQUIFER AUTHORITY RULES

Chapter 715 (Comprehensive Water Management) Subchapter E (Critical Period Management Plan)

Rule Type: Final Rules (FRs)

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

Through: Darcy Alan Frownfelter, General Counsel
Deborah Trejo

Approved By: Roland Ruiz, General Manager

Approved by Board of Directors on _____, _____

§ 715.219 Finishing Out Crop Irrigation; Additional Crops

(a) Notwithstanding the existence of any critical period stage, a person authorized to withdraw groundwater from the Aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed in Table 1 ~~for that stage~~, be allowed to finish a crop already planted in the calendar year during which the critical period is in effect. Except as provided in Subsection (e), a crop is considered to be already planted if seeds, sprigs, or trees for commercial orchards have been placed in the ground and not harvested prior to a determination by the date Authority that a person is in jeopardy of issuance of exceeding the notice of commencement. A reduced groundwater withdrawal amount in the permit due to the withdrawal reductions prescribed in Table 1. Such a crop may be finished by continued irrigation from the date of issuance of the notice of commencement of critical period the Authority's jeopardy determination until as indicated in the following table:

CATEGORY CATEGOR Y	EXAMPLES EXAMPL E S	CONTINUED IRRIGATION TO FINISH OUT
Cereal and oil crops	Grasses (barley, corn, millets, oats, rye, sorghum, wheat), peanuts, sunflower etc.	Until harvested

Forage Crops	Legumes (alfalfa) and grasses (coastal Bermuda, etc.) used for hay production.	One additional cutting after submittal of notice of intent to finish out a crop is submitted.
Forage Crops	Legumes (alfalfa) and grasses (coastal Bermuda, etc.) used for grazing.	Until <u>forage</u> <u>crop</u> goes dormant
Fiber and Misc. Crops	Cotton, jute, flax etc.	Until harvested
Tree and Fruit Crops	All fruit bearing trees	Until harvested
Vegetable Crops	Cabbage, cucumbers, melons lettuce, onions, peppers, squash, etc.	Until harvested

~~_____ (b) _____~~ No later than ~~The Authority shall make a jeopardy determination if the person is within 30 days or less of exceeding the reduced permitted groundwater withdrawal amount after a notice of commencement is issued, persons intending to finish applying the applicable interruption coefficients in § 715.218 at the applicable stage interruption coefficient in effect the day a crop shall file~~ Notice of Intent to Finish Out a Crop form is filed with the Authority ~~a notice of intent to finish a crop on~~ the form prescribed by the Authority. ~~The~~ A person may not demonstrate jeopardy if such jeopardy is due to the transfer via sale or lease of a portion of the person's groundwater withdrawal permit or permits to a third party at any time after the date of the first issued notice of commencement of a critical period stage in the current calendar year.

~~_____ (b) _____~~ The Authority shall make a jeopardy determination and allow a person to finish irrigating an applicable crop if the person establishes in the Notice of Intent to Finish a Crop form that the person is in jeopardy of exceedance. The Notice of Intent to Finish a Crop form shall provide spaces ~~to and instructions to calculate predicted critical period reductions,~~ report the type of crop, the date of planting, the crop size in acres irrigated, the estimated date of the final irrigation, the year-to-date meter reading, ~~method of irrigation,~~ and any other relevant information that Authority staff may require, including applicable timeframes of withdrawing the notice. Persons finishing a crop shall, in their annual groundwater use report, indicate that they actually finished out the crop, report the date of the last irrigation, provide a meter reading that corresponds, as near as possible, with the ~~year-to-date meter readings of last irrigation,~~ and include any other relevant information that the Authority ~~staff~~ may require.

~~_____ (c) _____~~ Persons exercising ~~their~~ the right to finish out an already planted crop under Subsection (a) may not plant additional crops ~~while a critical period stage is in effect~~ during the same calendar year as follows unless:

~~_____ (1) _____~~ the additional crop is dry land farmed; or

~~_____ (2) _____ the person has remaining unused irrigates from a source other than the Aquifer.~~

~~(d) A person's Notice of Intent to Finish a Crop will be deemed to be withdrawn by the person and of no force or effect and the person will be required to maintain compliance with the applicable permitted groundwater withdrawal amounts as adjusted under § by § 715.218 and irrigates the additional crop with this groundwater; or, if:~~

~~(1) that the person subsequently obtains a transfer from a third-party of unused groundwater withdrawal amounts as adjusted under § and irrigates a crop with this groundwater; or~~

~~(2) that person plants and irrigates an additional crop utilizing remaining water from the reduced permitted withdrawal amount.~~

~~(e) A person who harvests a crop prior to the date of the issuance of a notice of commencement of a stage of critical period and who has not irrigated for any purpose after such a harvest, may file a Notice of Intent to Finish a Crop form at any time during the calendar year if retroactive application of the interruption coefficients in § 715.218 would cause the person to exceed the reduced permitted groundwater withdrawal amount. After review of the notice, the Authority shall make a retroactive jeopardy determination and allow the person to have finished irrigating an applicable crop as provided in subsection (b). In such a situation, the person shall, on a form prescribed by the Authority, provide a meter reading that corresponds, as near as possible, with the date of last irrigation and provide evidence that no subsequent crops were planted and irrigated.~~

~~(d) No later than 15 days after an additional crop is planted under Subsection (e), persons planting an additional crop shall file with the Authority a notice of planting an additional crop on a form prescribed by the Authority. The form shall provide spaces to report the date of the last irrigation and the year to date meter readings, and any other information that Authority staff may require. Persons planting additional crops shall, in their annual groundwater use report, report the date of the last irrigation, the year to date meter readings, and any other information that Authority staff may require. Persons planting additional crops are subject in all respects to this subchapter beginning the month in which additional crops are planted.~~

~~(f) Nothing in this section shall be construed or interpreted to authorize a person to withdraw more than the authorized groundwater withdrawal amount in the person's groundwater withdrawal permit or permits as unadjusted by § 715.218.~~