

RESOLUTION AND ORDER NO. 01-20-960

OF THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY CORRECTING RESOLUTION AND ORDER NO. 12-19-957 AND READOPTING EXHIBITS B, C AND D RELATING TO EDWARDS AQUIFER AUTHORITY RULES WITHIN CHAPTER 702 (DEFINITIONS); CHAPTER 707 (PROCEDURE BEFORE THE AUTHORITY), SUBCHAPTER F (PROCEDURES FOR CONTESTED CASE HEARINGS); CHAPTER 711 (GROUNDWATER WITHDRAWALS), SUBCHAPTER L (ADMINISTRATION OF PERMITS); CHAPTER 713 (WATER QUALITY), SUBCHAPTER D (WELL CLOSURES)

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, 77th 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;”¹

WHEREAS, on December 10, 2019, the EAA adopted Resolution and Order No. 12-19-957, which adopted amendments to Chapters 702, 707, 709, 711, 713, 715, and 717 of the EAA’s rules;

WHEREAS, Resolution and Order No. 12-19-957 recited the procedures taken by the EAA in adopting those rules;

WHEREAS, Exhibit B to Resolution and Order No. 12-19-957, the Texas Private Real Property Rights Preservation Act Assessment, contained an incomplete listing of the adopted rules;

WHEREAS, Exhibit C to Resolution and Order No. 12-19-957, the redlined version of the rules adopted, contained some errors in the redline for Sections 702.1(8) and (194), 707.622-.625, 711.342, and 713.300;

WHEREAS, Exhibit D to Resolution and Order No. 12-19-957, the clean version of the rules adopted, contained the same errors to 707.622-.625, and 713.300;

WHEREAS, a corrected version of Exhibits B, C, and D are attached to this Resolution and Order;

WHEREAS, a regular meeting of the Board was held on January 14, 2020, 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

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 corrects Resolution and Order No. 12-19-957 with respect to Exhibits B, C, and D; and

¹ 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”).

WHEREAS, the Board has reviewed the corrections 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. Resolution and Order No. 12-19-957 is hereby corrected, and the attached Exhibits B, C, and D are hereby approved and adopted by the Board and incorporated into this Resolution and Order and Resolution and Order No. 12-19-957 for all purposes.
- Section 3. This Resolution and Order shall become effective from and after its adoption.
- Section 4. The FRs adopted on December 10, 2019, effective on December 20, 2019, remain effective from that date and this Resolution and Order corrects those adopted FRs back to the date of their adoption.

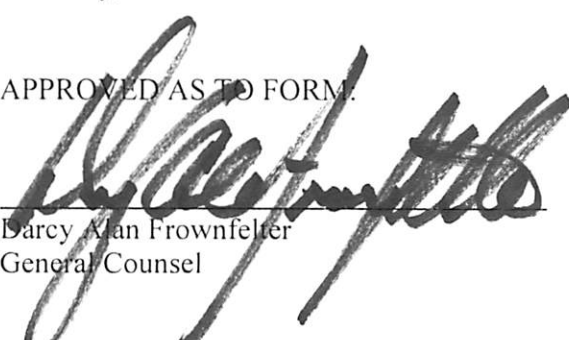
PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THIS 14TH DAY OF JANUARY, 2020.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:



Darcy Alan Frownfelter
General Counsel